

EXPLANATORY NOTES

Finance Act 2014

Chapter 26

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These notes refer to the Finance Act 2014 (c.26)
which received Royal Assent on 17 July 2014

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to Finance Act 2014 that received Royal Assent on 17 July 2014. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Act. They do n ot 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: INCOME TAX: CHARGE, RATES, BASIC RATE LIMIT AND PERSONAL ALLOWANCE FOR 2014-15

SUMMARY

1. This section provides for income tax, sets the amount of the basic rate limit for income tax at £31,865 and sets the amount of the personal allowance for those born after 5 April 1948 at £10,000 for the tax year 2014-15.

DETAILS OF THE SECTION

2. Subsection 1 provides for income tax for 2014-15.

3. Subsection 2 provides the main rates of tax.

4. Subsection 3 replaces the existing amount of the basic rate limit (£32,010) in section 10(5) of the Income Tax Act 2007 (ITA) with £31,865 for 2014-15, and replaces the amount of the personal allowance for those born after 5 April 1948 in section 35(1) of ITA (£9,440) with £10,000 for 2014-15.

5. Subsection 4 disapplies the indexation provisions for the basic rate limit at section 21 ITA as far as it applies to section 10(5), for 2014-15 and disapplies the indexation provisions for the personal allowance, at section 57 of ITA, for those born after 5 April 1948 for 2014-15.

BACKGROUND NOTE

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

7. This section imposes a charge to income tax for the tax year 2014-15. It also provides the main rates of income tax for 2014-15: the 20 per cent basic rate, the 40 per cent higher rate and the 45 per cent additional rate.

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

9. 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 Bill.

10. Budget 2013 announced that the basic rate limit will be set at £31,865 for 2014-15.

11. The table below sets out the amount of the basic rate limit for 2013-14, the indexed amount for 2014-15, and the amount specified by this section for 2014-15.

2013-14	2014-15 indexed	2014-15 by this section
£32,010	£33,100	£31,865

12. The effect of this section is to override the indexed amount for the basic rate limit.

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

14. 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 Bill.

15. Budget 2013 announced that the basic personal allowance will be increased to £10,000 in 2014-15.

16. The table below sets out the amount of personal allowance for 2013-14, the indexed amount for 2014-15 and the amount specified in this section for 2014-15: for those born after 5 April 1948.

2013-14	2014-15 indexed	2014-15 by this section
£9,440	£9,740	£10,000

17. The effect of this section is to override the indexed amount for the personal allowance for those born after 5 April 1948.

SECTION 2: BASIC RATE LIMIT FOR 2015-16 AND PERSONAL ALLOWANCES FROM 2015

SUMMARY

1. This section sets the amount of the basic rate limit and sets the personal allowance for those born after 5 April 1938 for tax year 2015-16. It also omits section 36 of the Income Tax Act 2007 (ITA), the personal allowance for those born before 6 April 1948 and after 5 April 1938, from 2015-16 and makes consequential amendments as a result of that omission.

DETAILS OF THE SECTION

2. Subsections (1) and (4) provide that the amount of the personal allowance for the 2015-16 tax year for those born after 5 April 1938 is £10,500 and that the basic rate limit in section 10(5) of ITA is to be £31,785 for that year.

3. Subsection (2) disapplies the indexation provisions for the basic rate limit at section 21 of ITA as far as it applies to section 10(5), and disapplies the indexation provisions for the personal allowance, at section 57 ITA, for 2015-16.

4. Subsection (5) omits section 36 ITA (personal allowance for those born after 5 April 1938 but before 6 April 1948). Subsection (3) and subsections (6) to (8) make consequential amendments to other provisions in ITA as a result of that omission.

5. Subsection (9) provides that this section has effect from the 2015-16 tax year and subsequent years.

BACKGROUND NOTE

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

7. The basic rate limit is subject to indexation (an annual increase based upon the percentage increase to the retail prices index and, from 2015-16, the consumer prices index). Parliament can over-ride the indexed amounts by a provision in the Finance Bill.

8. Budget 2014 announced that the basic rate limit will be set at £31,785 for 2015-16.

9. The effect of this section is to override the anticipated indexed amount for the basic rate limit for 2015-16.

10. 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.

11. Income tax personal allowances are subject to indexation (an annual increase based upon the percentage increase to the retail prices index, and from 2015-16 the consumer prices index). Parliament can over-ride the indexed amounts by a provision in the Finance Bill.

12. Budget 2014 announced that the basic personal allowance will be increased to £10,500 in 2015-16. As a consequence, it will be aligned with the personal allowance for those born after 5 April 1938 and before 6 April 1948.

13. The effect of this section is to override the indexed amount for the personal allowance for those born after 5 April 1948 that is anticipated to be lower than £10,500 in 2015-16, and make the consequential amendments to remove references to the personal allowance for those born after 5 April 1938 and before 6 April 1948 from ITA.

SECTION 3: THE STARTING RATE FOR SAVINGS AND THE SAVINGS RATE LIMIT.

SUMMARY

1. This section reduces the income tax starting rate for savings income from 10 per cent to 0 per cent and increases the starting rate limit to £5,000. It also modifies an existing power to make regulations so that regulations may provide that individuals who are not liable to pay tax on their savings income as a result of these changes can register to receive interest payments from their bank or building society without tax being deducted.

DETAILS OF THE SECTION

2. Subsections (1) and (2) amend sections 7 and 12(3) of the Income Tax Act 2007 (ITA 2007) to set the starting rate for savings and the starting rate limit for savings respectively for 2015-16 tax year.

3. Subsection (3) provides that the indexation of the starting rate limit for savings, as provided for in section 21 ITA 2007, will not apply for 2015-16.

4. Subsection (4) amends the regulation-making power in section 852 ITA 2007 so that regulations may provide that the duty on deposit-takers and building societies (arising from section 851 ITA 2007) to deduct a sum representing income tax at the basic rate from certain interest payments, does not apply where an eligible individual provides a certificate to the effect that they are unlikely to be liable to pay income tax on their savings income for the year.

BACKGROUND NOTE

5. The starting rate for savings can apply to an individual's taxable savings income (such as interest on bank or building society deposits). The extent to which an individual's savings income is liable to tax at the starting rate for savings, rather than the basic rate of income tax, depends upon the total of their "non-savings" income (including income from employment, profits from self-employment and pensions income). Should an individual's non-savings income in a tax year exceed the starting rate limit for savings, the starting rate is not available. Where an individual's non-savings income in a tax year is less than the starting rate limit, their savings income is taxable at the starting rate up to that limit. The starting rate is currently 10 per cent and the starting rate limit for savings for 2013-14 is £2,790 and £2,880 for 2014-15.

6. This change is designed to support savers (particularly low income savers) by, firstly, enabling more people to benefit from the starting rate for savings and, secondly, by reducing this rate to nil. The effect will be to remove the savings income of many lower income savers from liability to tax from 2015-16. It also simplifies processes around the starting rate for savings by enabling eligible savers to register with their bank or building society to receive interest on their savings without tax being deducted, rather than having to reclaim tax they have paid on interest from HM Revenue and Customs.

SECTION 4: INDEXATION OF LIMITS AND ALLOWANCES UNDER ITA 2007

SUMMARY

1. This section changes the basis of indexation for income tax allowances and limits from the retail prices index (RPI) to the consumer prices index (CPI).

DETAILS OF THE SECTION

2. Subsection (2) replaces 'retail prices index' with 'consumer prices index' in section 21(1), (3) and (3A), and inserts a definition for 'consumer prices index' after Section 21(5), as a new subsection (6).

3. Subsection (3) replaces 'retail prices index' with 'consumer prices index' in section 57(2), (3) and (4), and inserts a definition for 'consumer prices index' after section 57(6), as a new subsection (7).

4. Subsection (4) sets out that the amendments made by subsections (2) and (3) have effect from 2015-16 and for subsequent tax years.

BACKGROUND NOTE

5. This change reflects the Government's intention to move the underlying indexation assumption for direct taxes to the CPI.

6. Income tax personal allowances, the basic rate limit, the starting rate limit for savings and the adjusted net income limit are increased each year by the annual percentage increase in the RPI ("indexation"). This section will change the basis of indexation from the RPI to the CPI.

7. Section 21 of the Income Tax Act 2007 (ITA) applies where the RPI for the September before the start of the tax year is higher than it was for the previous tax year. Where section 21 applies, the amount of the basic rate limit and the starting rate limit for savings are increased by the annual percentage increase in the RPI (subject to rounding).

8. Section 57 of ITA applies where the RPI for the September before the start of the tax year is higher than it was for the previous September. Where section 57 applies, the amount of the personal allowance for people born after 5 April 1948; the married couple's allowance; the minimum amount of married couple's allowance; the income limit that applies to the higher personal allowances and the married couple's allowance; and the blind person's allowance are increased by the annual percentage increase in the RPI (subject to rounding).

9. Where sections 21 and 57 apply, the increased amounts must be set in a Treasury Order before the start of the tax year.

10. The changes made by this section mean that, with effect from the tax year 2015-16, the calculations made under section 21 and 57 will be made by reference to the percentage increase in the CPI rather than the percentage increase in the RPI.

SECTION 5: CORPORATION TAX: CHARGE FOR FINANCIAL YEAR 2015

SUMMARY

1. This section charges corporation tax (CT) for the financial year beginning 1 April 2015.

DETAILS OF THE SECTION

2. This section charges CT for the financial year beginning 1 April 2015.

BACKGROUND NOTE

3. Parliament charges CT for each financial year. This section charges CT for the financial year beginning 1 April 2015. The rate of CT for the financial year 2015 was set at 20 per cent in section 6 (1) Finance Act 2013.

SECTION 6: CORPORATION TAX: SMALL PROFITS RATE AND FRACTIONS FOR FINANCIAL YEAR 2014

SUMMARY

1. This section sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2014 at 20% for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19%. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 1/400 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 2014.

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

BACKGROUND NOTE

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.

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 at 21 per cent	£105,000
Minus 1/400 of £1,000,000*	£2,500
Tax payable	£102,500

*£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 at 30 per cent	£150,000
Minus 11/400 of £1,000,000*	£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 7 AND SCHEDULE 1: CORPORATION TAX: RATES FOR RING FENCE PROFITS AND ABOLITION OF SMALL PROFITS RATE FOR NON-RING FENCE PROFITS

SUMMARY

1. This section and schedule abolish the small profits rate of corporation tax (CT) for companies with profits other than ring fence profits and set the rates of CT and the marginal relief fraction for ring fence profits for the financial year 2015 onwards.

DETAILS OF THE SCHEDULE

Part 1

2. Part 1 makes changes to the Corporation Tax Act (CTA) 2010. Paragraph 1 introduces the changes.

3. Paragraph 2 makes minor changes to section 1 CTA 2010, (overview of the Act).

4. Paragraph 3 amends section 3 CTA 2010 to remove the reference to the small profits rate of CT.

5. Paragraph 4 repeals Part 3 CTA 2010, (companies with small profits.) Part 3 previously contained the rules for computing marginal relief.

6. Paragraph 5 inserts Chapter 3A in Part 8 CTA 2010 (oil activities). Chapter 3A includes new sections 279A to 279H CTA 2010 and makes provision for the rates of CT chargeable on ring fence profits and marginal relief.

7. New section 279A provides for the rates of tax charged on ring fence profits. Where the augmented profits of the company exceed a lower limit of £300,000, CT on ring fence profits is charged at the main ring fence profits rate of 30 per cent. Where the augmented profits do not exceed this limit, CT on ring fence profits is charged at the small ring fence profits rate of 19 per cent.

8. New sections 279B to 279H provide for the calculation of marginal relief where the augmented profits of a company with ring fence profits exceed the lower limit of £300,000 but do not exceed an upper limit of £1,500,000.

9. New section 279B states how relief is calculated for companies with only ring fence profits and sets the marginal relief fraction at 11/400.

10. New sections 279C and 279D set out how relief is calculated where a company has ring fence and other profits.

11. New section 279E sets the lower limit at £300,000 and the upper limit at £1,500,000. Where the company has one or more "related 51% group companies", the upper and lower limits are divided by the number of "related 51% group companies" plus 1.

12. New section 279F defines a "related 51% group company" for the purposes of determining the amount by which the upper and lower limits are divided. This replaces the associated companies rules previously in Part 3 CTA 2010. Subsection (1) defines a "related 51% group company" by reference to a "51% subsidiary" which is itself defined for corporation tax purposes by section 1119 CTA 2010. Subsections (2) and (3) retain some of the rules from the associated companies legislation in Part 3 CTA 2010. Subsection (2) covers a situation where 2 or more companies are "related 51% group companies" for different parts of the accounting period, and subsection (3) excludes dormant companies from the definition. Subsections (4) to (9) expand on the types of company that are excluded under subsection 3.

13. New sections 279G and 279H define "augmented profits" for the purposes of determining whether the upper or lower limits have been exceeded.

Part 2

14. Part 2 makes changes to legislation consequential on Part 1 of the Schedule. Most of the changes are minor, ensuring that references to marginal relief and rates of CT are omitted or amended to apply only to ring fence profits where appropriate. For example:

- Paragraph 6 amends paragraph 8 subsection (1) Schedule 18 FA 1998 (company tax returns, assessments and related matters) so that references to sections 19, 20 and 21 CTA 2010 (marginal relief for companies with small profits) are replaced by Chapter 3A Part 8 CTA 2010 (rates at which CT is charged on ring fence profits.)
- Paragraph 15 subparagraphs (1) to (3) amend sections 614 and 618 CTA 2010 (authorised investment funds) so that the references to sections 18 and 19 CTA 2010 (marginal relief for companies with small profits) are omitted. Authorised investment funds cannot have ring fence profits and marginal relief will no longer be due.

15. Paragraphs 8 and 13 contain more significant amendments arising through replacement of the previous associated companies rules with the "related 51% group company" legislation in new section 279F. Paragraph 8 amends section 99 Capital Allowances Act (CAA) 2001 so that the "related 51% group company" rules are used to determine the amount of the monetary limit in computing capital allowances on long life assets. Paragraph 13 amends sections 357CL and 357CM CTA 2010 so that the "related 51% group company" rules are used to determine the profit limit for companies electing for small claims treatment under the Patent Box legislation.

Part 3

16. Part 3 makes commencement and transitional provisions.

17. Paragraph 21 provides that changes relating to the Capital Allowances Act and the Patent Box legislation will apply for accounting periods beginning on or after 1 April 2015.

18. Paragraph 22 provides that all other changes will apply with effect from the financial year 2015 onwards.

BACKGROUND NOTE

19. This schedule makes changes to legislation to unify the rate of corporation tax chargeable on a company's profits (other than oil and gas ring fence profits) from the Financial Year 2015. The rate of tax is to be known as "the main rate".

20. Corporation tax will continue to be charged at two rates on ring fence profits (to be renamed "the main ring fence profits rate" and "the small ring fence profits rate"). The legislation relating to these rates and marginal relief has been moved to new Chapter 3A within Part 8 CTA 2010 that contains the Oil Activities legislation.

21. The new legislation changes the way in which the marginal relief fraction and ring fence rates of tax are set. Currently, the rates are set by Parliament for each financial year through a provision in the Finance Bill. From Financial Year 2015, the ring fence rates and fraction will be fixed in Chapter 3A of Part 8 CTA 2010. "The main rate" of corporation tax will continue to be set by Parliament for each financial year.

22. The anti-fragmentation rules within the legislation for computing marginal relief (now applicable only to ring fence profits) have been simplified by replacing the associated companies rules (previously in Part 3 CTA 2010) with a "related 51% group companies test". The upper limit of £1,500,000 and lower limit of £300,000 will now be divided amongst the claimant company and its "related 51% group companies", the latter being based on the definition of a 51% subsidiary in section 1119 CTA 2010.

23. The associated companies anti-fragmentation rules were also used in the long life assets legislation (section 99 of the Capital Allowances Act (CAA) 2001) and the legislation covering the small claims treatment in the Patent Box regime (sections 357CL and 357CM CTA 2010). These rules have also been replaced by the "related 51% group companies" test.

SECTION 8: CAPITAL GAINS TAX ANNUAL EXEMPT AMOUNT FOR 2014-15

SUMMARY

1. This section sets the capital gains tax annual exempt amount for the tax year 2014-15 at £11,000.

DETAILS OF THE SECTION

2. Subsection (1) sets the annual exempt amount at £11,000 for 2014-15.

3. Subsection (2) disapplies the indexation provisions for the annual exempt amount for 2014-15.

BACKGROUND NOTE

4. Individuals do not have to pay capital gains tax (CGT) unless their chargeable gains (net of all allowable losses) for a tax year exceed the "annual exempt amount" (AEA) for the year. The AEA is not available to non-domiciled individuals who claim the remittance basis of taxation for the tax year. Personal representatives of deceased persons are entitled to the AEA for the tax year in which the individual dies and the following two tax years. Trustees of settled property are entitled to a fraction of the AEA for an individual. In most cases the fraction is one-half, but a smaller fraction applies in some cases. Trusts for the benefit of certain vulnerable individuals are entitled to the full AEA due to an individual.

5. The AEA is automatically increased by reference to inflation, as measured by the consumer prices index for the 12 months to September in the preceding tax year, rounded up to the next £100. Parliament can override automatic indexation and set a different figure in the Finance Act.

6. The AEA for the tax year 2013-14 is £10,900.

SECTION 9: CAPITAL GAINS TAX ANNUAL EXEMPT AMOUNT FOR 2015-16

SUMMARY

1. This section sets the capital gains tax annual exempt amount for the tax year 2015-16 at £11,100.

DETAILS OF THE SECTION

2. Subsection (1) sets the annual exempt amount at £11,100 for 2015-16 and subsequent tax years.

3. Subsection (2) disapplies the indexation provisions for the annual exempt amount for 2015-16 only. Therefore for tax year 2016-17 onwards the annual exempt amount will be adjusted (if necessary) in accordance with section 3(3) unless Parliament otherwise determines.

BACKGROUND NOTE

4. Individuals do not have to pay capital gains tax (CGT) unless their chargeable gains (net of all allowable losses) for a tax year exceed the "annual exempt amount" (AEA) for the year. The AEA is not available to non-domiciled individuals who claim the remittance basis of taxation for the tax year. Personal representatives of deceased persons are entitled to the AEA for the tax year in which the individual dies and the following two tax years. Trustees of settled property are entitled to a fraction of the AEA for an individual. In most cases the fraction is one-half, but a smaller fraction applies in some cases. Trusts for the benefit of certain vulnerable individuals are entitled to the full AEA due to an individual.

5. The AEA is automatically increased by reference to inflation, as measured by the consumer prices index for the 12 months to September in the preceding tax year, rounded up to the next £100. Parliament can override automatic indexation and set a different figure in the Finance Act.

6. Section 8 in Finance Act 2014 sets the AEA for the tax year 2014-15 at £11,000.

SECTION 10 AND SCHEDULE 2: TEMPORARY INCREASE IN ANNUAL INVESTMENT ALLOWANCE

SUMMARY

1. Section 10 and schedule 2 increases the maximum amount of the annual investment allowance (AIA) to £500,000 for an extended temporary period from 1 April 2014 for corporation tax (CT) and 6 April 2014 for income tax (IT) to 31 December 2015. The increase in the amount of the AIA is effective for expenditure incurred on or after 1 (or 6) April 2014.

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 £250,000 to £500,000, in relation to expenditure incurred on or after the start date of 1 April 2014 (CT) or 6 April 2014 (IT) and, in each case, on or before 31 December 2015. For expenditure incurred on or after 1 January 2016, the maximum AIA returns to its previous limit of £25,000.

3. Subsection (2) provides that Schedule 2 contains provisions about chargeable periods that straddle the start date or 1 January 2016, and amends or repeals certain of the provisions of section 7 and Schedule 1 Finance Act 2013 by which the maximum AIA was increased from £25,000 to £250,000 for a period from 1 January 2013 to 31 December 2014.

4. Subsection (3) explains that the start date means 1 (or 6) April 2014.

DETAILS OF THE SCHEDULE

Part 1

5. Paragraph 1(1) explains that the paragraph applies to a chargeable period that begins before the start date of 1 (or 6) April 2014 given by subsection (3) of the section and ends on or after that date. Such a period is referred to as "the first straddling period".

6. 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 1 January 2013 and the start date.

The first period

Because some businesses may have a chargeable period that began before 1 January 2013, and so may be affected by the changes enacted by section 7 of Finance Act 2013, the first period is so much of the actual chargeable period as falls before 1 January 2013. The legislation does not require that there has to be such a

period, but where the chargeable period starts before 1 January 2013 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 January 2013, but before 1 (or 6) April 2014.

The third or last period

The third period is so much of the actual chargeable period as falls on or after 1 (or 6) April 2014.

7. So, where a business has a chargeable period that straddles 1 (or 6) April 2014, the maximum allowance for that period is the sum of:

a. (If appropriate) the maximum AIA entitlement based on the £25,000 annual cap that applied before 1 January 2013, for the portion of the period falling before that date; and
b. the maximum AIA entitlement based on the £250,000 annual cap that applied for the portion of the period falling on or after 1 January 2013, but before 1 (or 6) April 2014; and
c. the maximum AIA entitlement based on the new temporary £500,000 annual cap for the portion of a year falling on or after 1 (or 6) April 2014.

8. Paragraph 1(3) provides that this calculation of the maximum AIA entitlement for the whole of "the first straddling period" is subject to paragraphs 2 and 3, which contain some additional rules about the maximum AIA entitlement for expenditure actually incurred in the period prior to 1 January 2013 and for the period ending on 31 March (or 5 April) 2014. Paragraph 2 gives the additional rules for first straddling periods beginning before 1 January 2013, and paragraph 3 gives the rules for first straddling periods beginning on or after that date.

9. Paragraph 2(1) explains that the paragraph applies where the first straddling period begins before the relevant date of 1 January 2013.

For example, a business with a chargeable period of 18 months from 1 December 2012 to 31 May 2014 would calculate its maximum AIA entitlement based on:

a. the proportion of the period from 1 December 2012 to 31 December 2012, that is,
   1/12 x £25,000 = £2,083
b. the proportion of the period from 1 January 2013 to 5 April 2014, that is,
   15/12 x £250,000 = £312,500; and
c. the proportion of the period from 6 April 2014 to 31 May 2014, that is,
   2/12 x £500,000 = £83,333.

So, the company's maximum AIA for this first straddling period would be the total of (a) + (b) + (c) = £2,083 + £312,500 + £83,333 = £397,917.

10. Paragraph 2(2) effectively provides that in the part of the first straddling period falling before 1 January 2013, the maximum allowance for expenditure actually incurred in this period, is the amount that would have been the maximum allowance for the whole of the first straddling period, if neither the temporary increase in the AIA to £250,000 nor the temporary increase in the AIA to £500,000 had been made. So, for expenditure incurred in period (a) of the example in paragraph 9 above, the maximum allowance would be

1/12 x £25,000	=	£2,083,
15/12 x £25,000	=	£31,250 and
2/12 x £25,000	=	£4,167
Total		£37,500

11. Paragraph 2(3) provides that, in relation to expenditure actually incurred in the part of the first straddling period before the start date of 1 (or 6) April 2014, the maximum allowance for the whole of the first straddling period is what would have been the maximum AIA entitlement for the whole of the first straddling period if there had been no increase in the AIA limit from £250,000 to £500,000 and paragraphs 1 of Schedule 1 to Finance Act 2013 applied to that period. In other words, returning to the example at paragraph 9 above, in relation to expenditure incurred in period (a) + (b), a maximum allowance would be

1/12 x £25,000	=	£2,083,
15/12 x £250,000	=	£312,500 and
2/12 x £250,000	=	£41,667
Total		£356,250

12. Paragraph 3(1) gives the rule about the maximum allowance for expenditure incurred in a first straddling period which begins on or after 1 January 2013. For example, a company with such a straddling period might have a chargeable period that ran from 1 January 2014 to 31 December 2014. It would calculate its maximum AIA entitlement based on:

a. the portion of the period from 1 January 2014 to 31 March 2014, that is, 3/12 x £250,000 = £62,500; and
b. the portion of the period from 1 April 2014 to 31 December 2014, that is, 9/12 x £500,000 = £375,000.

The company's maximum AIA for its first straddling period would therefore be the total of (a) + (b) = £62,500 + £375,000 = £437,500.

13. Paragraph 3(2) provides that so far as expenditure is incurred in the part of the first straddling period falling before the start date of 1 (or 6) April 2014, the maximum allowance is to be calculated as if the increase in the maximum AIA to £500,000 had not been made. In other words, in the example given at paragraph 12, for expenditure incurred before 1 (or 6) April 2014, only expenditure up to the maximum amount of the £250,000 cap can be covered.

14. Paragraph 4 provides the transitional rules for chargeable periods that straddle 1 January 2016, when the maximum amount of the AIA is to return to its previous maximum of £25,000. This rule is similar in its operation to paragraph 4 of Schedule 1 of Finance Act 2013 which was to have applied when the AIA was due to be reduced from £250,000 to £25,000.

15. Paragraph 4(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2016 and ends on or after that date. Such a period is referred to as "the second straddling period".

16. 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 2016, and
b. the period beginning with 1 January 2016 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 2015 to 31 March 2016, would calculate its maximum AIA entitlement for its 'second straddling period' based on:

a. the proportion of the period from 1 April 2015 to 31 December 2015, that is, 9/12 x £500,000 = £375,000, and,
b. the portion of the period from 1 January 2016 to 31 March 2016, 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) = £381,250.

17. Paragraph 4(3) provides that, for expenditure incurred in the part of the chargeable period falling on or after 1 January 2016, the maximum allowance is the maximum calculated in accordance with (b) in paragraph 16 above, that is, £6,250 in our example. This rule does not affect the business's maximum AIA entitlement for the second straddling period as a whole (which, in the example given in paragraph 16 above, is £381,250), simply the amount of expenditure incurred on or after 1 January 2016 that may be covered by AIA.

18. For example, if the company in our example at paragraph 16 above, incurred no qualifying expenditure in the period 1 April 2015 to 31 December 2015 and then spent, say, £30,000 in the period 1 January 2016 to 31 March 2016, the maximum AIA available to that company for expenditure in that particular part period would be limited to £6,250.

19. Paragraph 5 provides the rules explaining the operation of the AIA where businesses have to share a single AIA (where restrictions apply). This rule is similar in its operational effect to paragraph 5 of Schedule 1 of Finance Act 2013

20. Paragraph 5(1) provides that paragraphs 1 to 4 of the Schedule 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 of 1 (or 6) April 2014 or end date of the temporary increase, being 31 December 2015. This provision is stated to be subject to sub-paragraphs (2) and (3).

21. 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.

22. For example, four companies in a company group with different chargeable periods of 12 months ending in the financial year 2015-2016 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, £500,000. So if, say, £500,000 were allocated to Company A, nothing further could be allocated to other companies in the group in this particular year. Alternatively, if, say, £200,000 were allocated to Company C, and the balance of the greatest maximum was to be allocated to Company D, no more than (£500,000 - £200,000 =) £300,000 could be allocated to D in this particular year.

Example: a related group of companies with chargeable periods ending in the transitional year: 1.04.15 to 31.03.16

Company	**Chargeable period ending on**	**Maximum time-apportioned AIA**
A	31 December 2015	£500,000
B	31 January 2016	£460,417
C	29 February 2016	£420,833
D	31 March 2016	£381,250

23. 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.

24. Paragraph 5(4) 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. Paragraph 5(4) 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.

Part 2

25. Paragraph 6 amends Section 7 of Finance Act 2013 which increased the maximum AIA from £25,000 to £250,000 for a period from 1 January 2013 to 31 December 2014.

26. Paragraph 6(2) amends the period of temporary increase in the AIA limit to £250,000 from two years beginning with 1 January 2013 to a period beginning with 1 January 2013 and ending with the specified date given by Paragraph 6(3) of 31 March 2014 for corporation tax purposes or 5 April 2014 for income tax purposes.

27. Paragraph 6(4) provides for an ancillary amendment to paragraph 7(2)(a).

28. Paragraph 7 amends Schedule 1 of Finance Act 2013 which provides transitional rules for chargeable periods that straddle 1 January 2013 or 1 January 2015.

29. Paragraph 7(2)(a) limits the application of transitional rules for a chargeable period which spans 1 January 2013 to those chargeable periods which span 1 January 2013 and end on or before the specified date of 31 March 2014 for corporation tax or 5 April 2014 for income tax which is given by Paragraph 7(2)(b). Transitional rules for a chargeable period which begins before 1 January 2013 and ends after 31 March (or 5 April) 2014 are given by Paragraphs 1 and 2 of Schedule 1 of Finance Act 2014 (see above).

30. Paragraph 7(3) omits paragraph 4 of Schedule 1 of Finance Act 2013 which dealt with a chargeable period which straddles 1 January 2015, which is replaced by Paragraph 4 of Schedule 1 of Finance Act 2014 providing transitional rules for the chargeable period which straddles 1 January 2016.

31. Paragraph 7(4) provides ancillary amendments to paragraph 7(2) and 7(3).

BACKGROUND NOTE

32. Since 1 April 2008 (CT) and 6 April 2008 (IT) 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 (IT) the maximum amount of the AIA was reduced from £100,000 to £25,000 for qualifying expenditure incurred on or after those dates.

33. Following an announcement in the 2012 Autumn Statement, Finance Act 2013 temporarily increased the maximum amount of the AIA from £25,000 to £250,000 for the period 1 January 2013 to 31 December 2014.

34. At the Budget 2014 the Chancellor announced his intention to extend the period of the temporary increase to 31 December 2015 and further increase the maximum amount of the AIA to £500,000 from 1 (or 6) April 2014.

35. These temporary increases are 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.

36. 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 upfront 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.

37. 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).

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

39. 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.

40. 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.

41. 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 11: TRANSFERABLE TAX ALLLOWANCE FOR MARRIED COUPLES AND CIVIL PARTNERS

SUMMARY

1. This section introduces a transferable tax allowance for married couples and civil partners.

DETAILS OF THE SECTION

2. Subsection 1 inserts sections 55A to 55E into Income Tax Act 2007 to provide for the transfer of income tax personal allowances for married couples and civil partners.

3. New section 55A introduces the new provisions and provides that the transferred allowance is given effect as a deduction from an individual's income tax liability.

4. New section 55B provides the conditions that an individual must meet to receive the transferred allowance and sets out how the tax reduction is to be calculated. Where an individual or their spouse is entitled to the married couple's allowance (available to spouses and civil partners born before 6 April 1935) they are not entitled to a tax reduction under this section. For 2015-16, the transferable amount is £1,050. From 2016-17, the amount of the transfer for a tax year will be 10 per cent of the personal allowance for those born after 5 April 1938.

5. New section 55C provides the conditions that an individual must meet to make an election to surrender entitlement to the transferred amount of their personal allowance. If an individual is entitled to a personal allowance but is not a UK resident for the tax year, they must have a hypothetical income that is less than the personal allowance they are entitled to.

6. New section 55D provides the procedures for an individual to make an election. An election will have effect in subsequent tax years unless it is withdrawn. If the election is made after the end of the tax year to which it relates, the election only applies to that year. A transferor can only withdraw their election with effect from the tax year following the tax year in which they make the withdrawal. There is an exception where during a tax year their marriage or civil partnership comes to an end. The exception allows the transferor to withdraw their election with effect in the year they make the withdrawal. An election becomes ineffective where the recipient does not obtain a tax reduction.

7. New section 55E provides that an individual cannot have more than one tax reduction or election for a tax year. It also makes consequential amendments flowing from the new provisions.

BACKGROUND NOTE

8. This measure introduces a transferable personal allowance for married couples and civil partners where neither spouse nor civil partner is liable to income tax at the higher or additional rate. From 2015-16, a spouse or civil partner (a transferor) who meets the qualifying conditions will be able to elect to transfer a fixed amount of their personal allowance to their spouse or civil partner (the recipient). Where the qualifying conditions are met, the recipient's income tax liability is reduced by an amount calculated in accordance with new section 55B.

9. Transferors will be able to withdraw their election with effect from the tax year following the tax year in which they notify HM Revenue & Customs. However, the transferor will have the option to withdraw their election with effect from the tax year that their marriage or civil partnership comes to a legal end.

SECTION 12: RECOMMENDED MEDICAL TREATMENT

SUMMARY

1. This section provides for a new exemption from income tax where an employer meets the cost of recommended medical treatment provided to an employee to assist them to return to work after a period of absence due to ill-health or injury, subject to an annual cap of £500.

DETAILS OF THE SECTION

2. Subsection 1 amends Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (exemptions).

3. Subsection 2 inserts new section 320C into Chapter 11 (miscellaneous exemptions).

4. New subsection 320C(1) provides that no liability to income tax arises where an employer either provides recommended medical treatment to an employee or pays or reimburses the costs of such treatment as long as the provision, payment or reimbursement is not subject to salary sacrifice or flexible remuneration arrangements.

5. New subsection 320C(2) limits the value of the exemption in a tax year to £500.

6. New subsection 320C(3) sets out at paragraphs (a) (b) and (c) the cumulative conditions under which medical treatment provided to the employee is "recommended". Paragraph (a) provides that a recommendation is made to an employee as part of occupational health services provided to the employee by a service provided under s2 of the Employment and Training Act 1973, or by, or in accordance with arrangements made by, the employer. Paragraph (b) provides that treatment is for the purpose of assisting an employee to return to work after an absence due to injury or ill health, and paragraph (c) provides the Treasury with a power to set out other requirements in regulations.

7. New subsection 320C(4) provides at paragraphs (a) and (b) that regulations under new subsection 320C(3)(c) may specify that the recommendation must be given after the employee has been assessed as unfit for work for at least a minimum number of consecutive days, and in a manner, and by a person, specified in regulations.

8. New subsection 320C(5) provides the Treasury with a power to amend new subsection 320C(3)(a) to add, amend or remove a reference to any enactment.

9. New subsection 320C(6) clarifies that the value of the exemption in a tax year is an amount equal to the sum of all payments that are classed as earnings under section 62 ITEPA and all benefits that are treated as earnings under the benefits code that would be exempt from liability to income tax under new subsection 320C(1) if the £500 limit at new subsection 320C(2) did not apply.

10. New subsection 320C(7) provides definitions of terms used within new section 320C.

11. Subsection (3) amends section 266 ITEPA by adding to the list of non-cash vouchers that do not give rise to tax liability under Chapter 4 of Part 3 of ITEPA a new paragraph (f) covering medical treatment that meets the requirements of new section 320C. The effect of this is to remove the tax charge that would otherwise arise when the employer arranges for the provision of this form of medical treatment by means of non-cash vouchers.

12. Subsection (4) provides that these amendments will have effect in accordance with a Treasury Order.

13. Subsection (5) disapplies the effect of section 1014(4) of the Income Tax Act 2007 in relation to an order made under subsection (4).

BACKGROUND NOTE

14. Under current legislation an employer who arranges and pays for medical treatment for an employee is generally providing a benefit in kind that is treated as earnings and is liable to income tax. Where an employer either pays for medical treatment arranged by an employee or reimburses an employee for the costs of such treatment, this constitutes a payment of earnings and is also subject to income tax.

15. This legislation will provide an exemption from a charge to income tax for any payment by an employer to meet the costs of medical treatment that has been recommended by occupational health services up to a limit of £500 per employee per year. This will support the Government's aim to widen access to occupational health treatment and to encourage employers to engage with the wellbeing of their employees.

SECTION 13: RELIEF FOR LOAN INTEREST: LOAN TO BUY INTEREST IN CLOSE COMPANY

SUMMARY

1. This section extends the income tax relief for interest paid on loans to buy an interest in a close company to interest paid by individuals investing in companies which are resident in the European Economic Area (EEA) and would be 'close' if they were resident in the United Kingdom.

2. The section also adds a new section containing the definition of a 'close investment-holding company'.

DETAILS OF THE SECTION

3. Subsection 1 introduces changes to Chapter 1 of Part 8 of the Income Tax Act 2007 (ITA 2007).

4. Subsection 2(a) provides that a 'close company' for the purposes of sections 392 and 393 ITA 2007 includes a company which is resident in an EEA state other than the United Kingdom.

5. Subsection 2(b) changes the reference to the legislation containing the definition of 'close investment-holding company' from section 34 of the Corporation Tax Act 2010 (CTA 2010) to section 393A ITA 2007.

6. Subsection 3 adds new section 393A to ITA 2007. This contains the definition of 'close investment-holding company' that is currently at section 34 CTA 2010.

BACKGROUND NOTE

7. A company is defined as 'close' in Corporation Act 2010 (CTA 2010) if it is controlled by five or fewer participators or any number of directors who are participators, or if more than half the company's assets would be distributed to five or fewer participators or to any number of directors in a winding up. Section 442 CTA 2010 provides that a company is not treated as a close company if it is not UK resident.

8. The change to the definition of a close company for the purposes of this relief has been made to ensure that the legislation is compatible with EU law.

9. The addition of the definition of 'close investment-holding company' is made because section 34 CTA 2010 is to be repealed as a result of the adoption of a single rate of corporation tax for companies (other than those with oil and gas ring fence profits) from Financial Year 2015.

SECTION 14: RELIEF FOR LOAN INTEREST: LOAN TO BUY INTEREST IN EMPLOYEE-CONTROLLED COMPANY

SUMMARY

1. This section extends the income tax relief for interest paid on loans to buy an interest in an employee-controlled company to interest paid by individuals investing in such companies, wherever they are resident in the European Economic Area (EEA).

DETAILS OF THE SECTION

2. Subsection 1 replaces subsection 397(2)(a) Income Tax Act 2007 with a new subsection. This provides that interest may be relieved on loans to acquire an interest in unquoted companies that are resident in the United Kingdom or another EEA State and are not resident outside the EEA.

BACKGROUND NOTE

3. This change has been made to ensure that the legislation is compatible with EU law.

SECTION 15 AND SCHEDULE 3: RESTRICTIONS ON REMITTANCE BASIS

SUMMARY

1. This section and Schedule tax certain overseas earnings and employment income of non-domiciled individuals on the 'arising' basis. In most cases this will apply where separate employment contracts have been artificially arranged to obtain a tax advantage (commonly known as "dual contracts"). This will have effect for income earned in tax year 2014-15 and thereafter. It will not apply to overseas income that falls within the 3-year period for Overseas Workday Relief set out at section 26 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

2. Schedule 3 contains provision for taking certain overseas earnings, income relating to employment-related securities and securities options and employment income provided through third parties out of the scope of the remittance basis for UK resident non-domiciles. This will apply to income in respect of employment where:

- An individual has both a UK employment and one or more "relevant" (i.e. foreign) employments.
- The UK employer and the relevant employer are "associated" with each other.
- The UK employment and the relevant employment are "related", and
- the foreign tax rate that applies to income in respect of a relevant employment, calculated in accordance with the amount of foreign tax credit relief which would be allowed against income tax if the income were not taxed on the remittance basis, is less than 65% of the UK's additional rate of tax (currently 45%).

DETAILS OF THE SCHEDULE

3. Paragraph 2 inserts new subsection (1A) into section 23. The effect of the new subsection is that a UK resident non-domiciled individual's (P) overseas employment income will be taxed on the "arising" basis and not on the "remittance" basis if the new section 24A of ITEPA (inserted by paragraph 3) applies.

4. Paragraph 3 inserts new sections 24A and 24B into ITEPA.

5. New section 24A(1) and (2) set out when new section 24A will apply and provide a signpost to the provisions which set out the consequences. New section 24A(1) also defines the terms "relevant employment" and "relevant tax year".

6. New section 24A(3) provides that PAYE will not apply to income taxed on the "arising" basis under new sections 23(1A), 41C(4A), 41H(5) and 554Z9(1A). Section 41H is inserted by section 52 of, and Schedule 9 to Finance Act 2014.

7. New section 24A(4) defines other terms used in this section.

8. New section 24A(5) sets out different types of employment income (certain overseas earnings, income relating to employment-related securities and securities options and employment income provided through third parties), in respect of a relevant employment. One or more of these paragraphs must apply, and conditions 1 to 4 must be met, (and condition 5 must not be met), for new section 24A to be engaged (see new section 24A(1)(a) to (c)).

Condition 1: The UK employments test

9. New section 24A(6) sets out condition 1, which is that P has a "UK employment" at the same time as they hold the "relevant employment" *at some point in the "relevant tax year" or in the UK part of the year if the year is a split year*.

Condition 2: The associated employer test

10. New section 24A(7) sets out condition 2, which is that P's UK and relevant (i.e. overseas) employer are either the same, or are associated with one another.

Condition 3: The related employments test

11. New section 24A(8) sets out condition 3, which is that the UK employment and the relevant (i.e. overseas) employment are related to one another and new section 24A(9) contains provisions to assist in interpreting when a UK employment and a relevant employment will be "related".

12. Some examples of scenarios in which HMRC would consider a UK employment and a relevant employment to be related to one another are:

- Where it is reasonable to suppose that P's UK employment would cease if their relevant employment ended.
- Where P has two employments and undertakes client meetings, entertainment or marketing under the relevant employment and manages investments for the same clients under the UK employment.
- Where P is employed in the UK and P's contract specifies that P cannot work outside the UK. P is also employed in France, and P's contract specifies that they can only work in France. P does the same type of work under their French contract as under their UK contract, so although these duties are separated geographically, the work is of the same type.
- Where P provides financial advice to an individual under both a UK and relevant employment.

13. New section 24A(9)(f) and (10) provides that employments will be "related" where P has a senior position in at least one of their UK or overseas employments or with an associated employer. In deciding whether or not P meets this condition, regard must be had to their level of seniority compared with other employees in their organisation: to hold a senior position, P must either be a director who owns or controls more than 5% of their UK or relevant employer's ordinary share capital, or be in the highest tiers of seniority or remuneration compared to other employees.

14. New section 24A(11) and (12) provide that the Treasury may amend new section 24A in respect of the "related employments" test by regulations. Any such regulations will be subject to the positive affirmation procedure by the House of Commons.

Condition 4: The 65% test

15. New section 24A(13) sets out condition 4. New section 24A(14) and (15) and new section 24B define terms used in relation to condition 4. Condition 4 will be engaged if the rate of foreign tax relief that would apply to the relevant employment income defined in accordance with new section 24A(5), if that income were taxed on the arising basis, would be less than 65% of the UK's additional rate of tax. For example, if the UK's additional rate of tax is 45% in 2014-15, then condition 4 will apply if the rate of foreign tax credit relief that would be given in relation to the relevant employment income in tax year 2014-15 would be less than 29.25% (65% of 45%).

16. New section 24A(16) provides that the percentage set out at new section 24A(15) may be amended by Treasury Regulations. Any such regulations will be subject to the negative affirmation procedure.

Condition 5: The regulatory requirement test

17. New section 24A(17) sets out condition 5. Section 24A will only apply if condition 5 is not met. Condition 5 applies if (a) the duties of the relevant employment could not be lawfully performed in the relevant territory by virtue of any regulatory requirement imposed by or under the law of that territory if the duties were duties of the UK employment instead and (b) the UK duties of the UK employment could not be lawfully performed in the UK by virtue of any regulatory requirement imposed by or under the law of any part of the UK if the duties were duties of the relevant employment instead.

18. New section 24A(18) provides the definition of "the relevant territory" and "UK duties" for the purposes of new section 24A(17).

19. Paragraph 4 amends section 41C of ITEPA and sets out the circumstances in which overseas income from employment-related securities is taken out of the scope of the remittance basis. It has effect for cases where the tax year in question is the tax year 2014-15 or any subsequent tax year.

20. Paragraph 4(3) introduces new section 41C(9), which sets out that if the remittance basis does not apply to employment-related securities income by virtue of new section 24A, then section 41E (just and reasonable apportionment) is to be treated as providing that it is just and reasonable that none of the securities income accruing in the tax year is "foreign". This means that section 41E will not override the amount of shares income which is determined under this measure to be taxed on the arising basis.

21. Paragraph 5 sets out the circumstances in which overseas employment income provided through a third party is taken out of the scope of the remittance basis. Section 554Z9 of ITEPA makes the link between the rules on employment income provided through third parties and the remittance basis in cases in which the employee ('A') is non-UK domiciled but does not meet the requirement of section 26A of ITEPA (remittance basis: 3-year period of non-residence). This paragraph amends section 554Z9 to remove this link, so the provisions will apply if new section 24A applies to the relevant employment.

22. Paragraph 6 makes a minor consequential amendment to section 717 of ITEPA.

23. Paragraph 7 contains the commencement provisions for the legislative change. It applies new sections 24A and 24B to income earned on or after 6 April 2014 or, in the case of securities income, to income accrued in 2014-15 or subsequent tax years.

BACKGROUND NOTE

24. This measure supports the Government's objective of making the tax system fairer by targeting and preventing contrived avoidance by a small number of high-earning UK resident non-domiciled individuals who are creating an artificial division between the duties of UK and overseas employments in order to obtain a tax advantage.

25. This measure will tax UK resident non-domiciles on income that arises in respect of overseas employments according to the 'arising' basis if that income passes a series of tests to establish whether or not there has been an artificial separation of UK and overseas employments. The effect of this measure is to prevent the income it identifies from being eligible for remittance basis tax treatment.

SECTION 16: TREATMENT OF AGENCY WORKERS

SUMMARY

1. This section amends existing agency legislation (treatment of workers supplied by agencies) in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

DETAILS OF THE SECTION

2. Subsection 1 provides that Chapter 7 of Part 2 of ITEPA is amended.

3. Subsection 2 substitutes a new section 44 ITEPA 2003.

4. New section 44 (1) if the conditions in 44(1) (a), (b), and (c) apply then this section applies. Those conditions are where:

a. A worker personally provides their services.
b.
i. There is a contract between an end client (the person who the worker is providing their services to) or a person connected to an end client, and
ii. a third party (known as the agency in this legislation but could be any third party).
c. As a result of which either (i) services of the worker are provided, or (ii) the client pays, or otherwise provides consideration, for services to be provided.

5. New section 44 (2) provides that the section will not apply where:

a. The manner in which the service is provided by the worker is not subject to (or the right of) control, direction or supervision by any person, or
b. payments receivable by the worker under or in consequence of the contract are treated as employment income under another chapter before considering this chapter.

6. New section44 (3) (a) & (b) state that where the worker is providing services personally they must be treated as an employee of the agency for income tax purposes (deemed employee), and all income receivable by the worker in consequence of providing the services must be treated for income tax purposes as earnings to have come from that employment.

7. New section 44 (4) states that subsection (5) (explained below) will apply either before or after the worker begins to provide their services when either:

a. the end client provides a fraudulent document to the agency which is intended to mislead as to the manner in which the service is provided by the worker, that being not subject to (or the right of) control, direction or supervision by any person.

b. a relevant person provides the agency with a fraudulent document with the intention to infer that remuneration/payment received by the worker in consequence of providing the services is already being treated as employment income elsewhere.

8. New section 44 (5) sets out that the services provided to an end client by the worker after a fraudulent document is provided:

a. The liability that sits with the agency deemed to be the employer will no longer apply (sub-section 3),
b. the worker is instead to be treated as having an employment with the end client or as the case may be with the relevant person were the duties consist of services, and
c. all of the remuneration received by the worker as a result of providing the services is to be treated as earnings from employment for income tax purposes by either the end client or again the relevant person were appropriate.

9. New section 44 (6) defines what is meant by a relevant person, that being a person other than the client, worker or a person connected with the client or the agency who:

a. is resident or has a place of business in the United Kingdom, and
b. is party to a contract with the agency or a person connected with the agency, under or in consequence of which:
    i. the services are provided, or
    ii. the agency, or the person connected with the agency makes a payment in response to the provision of services.

10. Subsection 3 amends section 45 ITEPA 2003: New 45 (a) & (b) omits references to the agency.

11. Subsection 4 amends section 46 ITEPA 2003:

a. in (1) (a) the obligation to personally provide is removed.
b. in (2) removes the reference to an agency contract and instead inserts a reference to the remuneration being received by the worker as a consequence of providing, or the services.

12. Subsection 5 insert 46A Anti-avoidance.

13. New section 46A (1) section shall apply if:

a. an individual (the worker) personally provides services to another person (to be treated as the client) which are not excluded services,
b. a third person (the agency) enters into arrangements with the main or one of the main purposes being to secure that the services being provided by the worker are not treated for income tax purposes under section 44 as duties of an employment held by a worker with an agency, and
c. if this section did not exist, section 44 would not apply in relation to the services provided by the worker.

14. New section 46A (2) sets out what is to be covered by the term "arrangements" in subsection (1)(b).

15. New section 46A(3) states that in the scenarios where the Targeted Anti Avoidance Rule (TAAR) comes in to force section 44 will apply.

16. New section 46A (4) defines who is the worker, client and agency in section 46A and states that section 44 has effect as if subsections (4) to (6) were omitted.

17. Subsection 6 amends section 47 ITEPA 2003: 47 (1) has now been omitted, removing the definition of an agency contract and the obligation for personal service.

18. Subsection 7 amends Chapter 3 Part 11 of ITEPA. It substitutes sub-section (1) of section 688 for new sub-section (1). New subsections 1A and 1B apply if the income receivable by the worker would be treated as employment income under the new section 44 and are explained below.

19. New subsection 1A treats the worker as being an employee of the agency (third party).

20. New sub-section 1B states that for the purposes of sections 687, 689 and 689A if:

a. Someone other than the third party (agency) or their intermediary makes a payment on account of PAYE income of the worker, and
b. the payment is not within the agency legislation – a payment of, or on account of PAYE income of the worker is to be treated as being made by the client (the person whom the worker is providing their services to) or at the expense of the client on behalf of the agency or their intermediary.

21. In subsection (2) –

a. "the client is not the deemed employer, and" have been added, and
b. "agency" has been replaced by "deemed employer".

22. In subsection (3), the words "the agency" and "the client" have been substituted with definitions for the "the client" and "the deemed employer".

"the client" is now defined as the person who is the client for the purposes of section 44; and

"the deemed employer" means the person with whom the individual is treated under section 44 as having an employment, and the duties of which consist of the services,".

BACKGROUND NOTE

23. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment. It supports the Government's anti-avoidance policy.

SECTION 17: RECOVERY UNDER PAYE REGULATIONS FROM CERTAIN COMPANY OFFICERS

SUMMARY

1. This section amends the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) to transfer PAYE debts from a company where new section 44 (4) to (6) ITEPA apply: persons providing fraudulent documents and persons seeking to avoid the charge.

DETAILS OF THE SECTION

Regulation 97ZA

2. Provides the interpretation. In particular it defines:

a relevant debt as one arising where a company has failed to account for PAYE as a result of a person providing fraudulent documents as described in section 44 (4) to (6) ITEPA 2003 and where the anti-avoidance provisions in section 46A ITEPA apply.

Regulation 97ZB

3. Paragraph 1 applies where a company fails to deduct or account for PAYE when required to do so.

4. Paragraph 2 provides that HMRC may serve a notice on a person who was at the relevant time a director of the company which will specify the extent of the unpaid PAYE and requiring the director to pay that amount and specified interest.

5. Paragraph 3 provides for the rate of interest.

6. Paragraph 4 provides that an amount due should be paid within 30 days.

7. Paragraph 5 provides that a notice may be served on more than one director in respect of the same amount of unpaid PAYE.

Regulation 97ZC

8. This provides for a right of appeal against a personal liability notice issued under regulation 97ZB.

9. Paragraph 1 provides the right of appeal.

10. Paragraph 2 provides that it must be made within 30 days of the service of the notice and must detail the grounds of the appeal.

11. Paragraph 3 provides that permitted grounds of appeal which are that the amount on the notice does not represent a PAYE debt to which regulation 97ZB applies or that the person who was served the notice was not a director of the company at the relevant time.

12. Paragraph 4 provides that no appeal may be made if another appeal on the same question has already been determined.

13. Paragraphs 5 and 6 provide that a tribunal may uphold or quash an appeal or reduce or increase the amount on the notice.

Regulation 97ZD

14. This provides for the withdrawal of a notice if quashed by a tribunal or HMRC considers it appropriate to do so.

Regulation 97ZE

15. This extends the recovery provisions in Taxes Management Act to liabilities under a notice.

Regulation 97ZF

16. This provides for the repayment of surplus amounts where more than one notice has been issued in respect of the same liability. Any amount paid above that due on the notice may be repaid in a just and equitable basis.

BACKGROUND NOTE

17. This section has been introduced to assist in the prevention of avoidance of employment taxes by UK agencies engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment. It supports the Government's anti-avoidance policy.

SECTION 18: EMPLOYMENT INTERMEDIARIES: INFORMATION POWERS AND RELATED PENALTIES

SUMMARY

1. This section relates to the agency legislation (treatment of workers supplied by agencies) for information powers and related penalties in the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

DETAILS OF THE SECTION

2. Subsection (1) inserts new Section 716B, "Employment intermediaries to keep, preserve and provide information etc" has been inserted after 716A as a new section.

3. Subsection 716B(1) enables the Commissioners of Her Majesty's Revenue and Customs ("HMRC") to make provision (by regulations) for certain employment intermediaries to keep specified information, records or documents and provide them to HMRC.

4. Subsection 716B(2) defines an "employment intermediary" is someone who makes arrangements for an individual to work for someone else or who makes arrangements as a consequence of which that individual is paid.

5. Subsection 716B(3) provides for a definition of when an individual works for a person, that being where they undertake duties of employment (even if not employed by that person) or provide, or are involved in the provision of, a service to the person.

6. Subsection 716B(4) defines "specified", used in subsection (1) as specified or described in regulations made under this section.

7. Subsection 716B(5) states that regulations under this section may make different provisions for different cases or purposes, and may make consequential, supplementary, or transitional provisions and savings.

8. Subsections (2) to (4) amend Section 98 of TMA 1970. Subsection (3) inserts new sub-section (4F) which sets out the penalty limits if a person fails to provide any information or produce any document or record in accordance with regulations under section 716B of ITEPA 2003. These penalties are £3,000 per failure and a £600 per day penalty for each day of continued failure after the £3,000 penalty.

9. The Table at section 98 TMA 1970 has had the following included in the second column: Regulations under section 716B of ITEPA 2003.

10. Subsection (5) states that the amendments made to section 98 TMA 1970 in subsections (2) to (4) will have effect from a date which the Treasury may decide by order made by statutory instrument.

BACKGROUND NOTE

11. This section has been introduced to assist in the prevention of avoidance of employment taxes by UK agencies engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment. It supports the Government's anti-avoidance policy.

SECTION 19: PAYMENTS MADE BY EMPLOYER ON ACCOUNT OF TAX WHERE DEDUCTION NOT POSSIBLE

SUMMARY

1. This section changes the deadline for employees to make good to their employer the amount the employer must pay to HM Revenue and Customs in respect of the tax due on notional payments treated as made by the employer and received by the employee, before that employee is liable to a tax charge as employment income.

DETAILS OF THE SECTION

2. Subsection (1) amends subsection (1)(c) of section 222 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) changing the time allowed for an employee to make good to the employer an amount equal to the tax that must be paid to HMRC by the employer in relation to an event that constitutes a notional payment. This deadline is currently 90 days after the notional payment is treated as made by the employer, and will be changed to 90 days after the end of the tax year in which the notional payment is treated as made by the employer.

3. Subsection (2) specifies that the change has effect in relation to notional payments treated as made on or after 6 April 2014.

BACKGROUND NOTE

4. Where an employer is treated as making a notional payment to an employee (such as when an amount becomes chargeable to tax as employment income of the employee under an arrangement involving Employment Related Securities) deduction of tax at source is not possible but the employer is still required to pay an amount to HMRC ("the due amount") as if tax had been deducted and the employee is entitled to credit as if they had paid tax. Section 222 charges to tax as employment income, by treating as additional earnings of an employee, an amount equal to the due amount that must be paid to HMRC by the employer if the employee does not make good that amount to the employer within the time allowed. There is no charge to tax under section 222 if the employee makes good the due amount to the employer within a specified time. The amendment extends the time available for an employee to make good the due amount to the employer before that amount is treated as earnings of that employee.

5. The Office of Tax Simplification (OTS) published a report and recommendations on unapproved employee share schemes in January 2013. This report included recommendations for changes to the rules in section 222 of ITEPA, which often applies to taxable income received or treated as received by an employee under arrangements involving Employment Related Securities, but also applies to notional payments more generally.

6. This section makes changes to the rules in section 222 of ITEPA following the recommendations made by OTS and which the Government consulted on during summer 2013. A summary of responses to this consultation was published on 10 December 2013. Most of the measures arising from the OTS recommendations in relation to unapproved employee share schemes are in section 50 (Employment-related securities etc) and Schedule 7.

SECTION 20: PAYE OBLIGATIONS OF UK INTERMEDIARY IN CASES INVOLVING NON-UK EMPLOYER

SUMMARY

1. This section sets out that a UK agency is responsible for operating PAYE where the worker is employed or engaged by or through a non-UK company and works for a UK company. Where there is no UK agency the arrangements remain as they are currently and the UK company who the employee works for in the UK is responsible for operating PAYE.

DETAILS OF THE SECTION

2. Subsection 1 provides for amendments to Section 689 ITEPA 2003.

3. Subsection 2 inserts into Section 689, employee of a non-UK employer, new subsections 1(B) and 1(C). Section 689 applies where PAYE regulation do not apply to the employer of the worker. This is usually because the worker's employer is outside of the UK.

4. New subsections 1(B) and 1(C) set that the third person (usually a UK agency) is responsible for making PAYE payments on the amounts paid to the worker. It sets out that for the third person to be responsible for making PAYE payments the following conditions must apply:

a. The employee works for a person who is not their employer (this person is called the relevant person) and that their working for this person is because another party – the third person (usually a UK agency) has facilitated these arrangements,
b. that the third person (the agency) has not made payments of or on account of PAYE income, and
c. the PAYE regulations would apply to the third person (the agency). For example they are in the UK.

5. Subsection 3 sets out that this new subsection will take priority over the current arrangements, so where there is a third person (agency) involved in the provision it will be the third person and not the relevant person who is responsible for making PAYE payments.

BACKGROUND NOTE

6. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.

SECTION 21: OIL AND GAS WORKERS ON THE CONTINENTAL SHELF: OPERATION OF PAYE

SUMMARY

1. This section amends the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 to add in a new section, section 689A. This section applies where oil and gas workers on the UK Continental Shelf are supplied by a non-UK based employer. It provides that a UK-based associate company of the overseas employer, or in the absence of an associate, the oil field licensee, will be responsible for operating PAYE. Where PAYE is paid and accounted for by the offshore employer, HMRC may issue a certificate to confirm this. Whilst the certificate is in force, it relieves the oil field licensee of their obligation to operate PAYE.

DETAILS OF THE SECTION

2. Subsection 2 amends section 222 (payments by employer on account of tax where deductions not possible) so that the section also applies to section 698A. Section 222 regulates situations where the employee is paid by a means other than cash and it is not possible for the employer to deduct income tax and other relevant debts (such as overpayment of tax credits). It requires the employee to pay the amount of tax owed to the employer within 90 days for the employer to account to HMRC for it.

3. Subsection 3 inserts in to section 421L (persons to whom certain duties to provide information and returns apply) a new paragraph (3) (ba) which deals with employees who are continental shelf workers and the PAYE regulations do not apply to their employer, it then moves to any person who is a "relevant person". A further section is inserted at (5A) which provides a definition of "continental shelf worker" and "relevant person" used in (3) (ba).

4. Subsection 4 amends section 689 to clarify that 689 does not apply in cases where 689A applies or would apply but for a certificate issued under the regulations made under subsection (7) of 689A. Section 689 applies where an employee works for someone in the UK, but is employed and paid by an employer outside the UK. The person in the UK for whom the employee works is treated, for the purposes of the PAYE regulations, as making any payments of, or on account of, PAYE income.

5. Subsection 5 inserts the new section *689A Oil and gas workers on the continental shelf* after section 689. The details of new section 689A are:

> a. *Subsection 1 s*tates the three conditions (subsections 4(1)(a) – (c)) necessary for section 689A to apply.
>
> > i. *Subsection (1)(a)*: when a person (employer or intermediary) makes a payment of PAYE income (earnings on which tax is deductable), or what is deemed to be PAYE income, of a continental shelf worker for a certain period. This person can be an employer or an intermediary. An intermediary is someone acting on behalf of the employer or someone acting on behalf of the relevant person. A relevant person is defined in subsection 4(11) as the oilfield licensee or an associated company of the

employer (as defined in the Company Tax Act 2010) with a UK base or registered office.

ii. Subsection (1)(b): when PAYE regulations do not apply to the person making the payment, or the employer, when the person making the payment is acting on behalf of the employer or the relevant person.

iii. Subsection (1)(c): when the person making the payment, or the employer, if that person is acting on behalf of the employer or relevant person, does not deduct or account for income tax or any relevant debts, in accordance with PAYE regulations.

b. *Subsection (3)* states that for the purposes of PAYE regulations, the associated onshore company of the offshore-employer or the oilfield licensee is to be treated as making a payment of PAYE income of the continental shelf worker equal to the amount defined in subsection (4) of section 689A.

c. *Subsection (4)* defines the amount of payment as:

i. where the amount of payment made to the recipient has already had income tax and any relevant PAYE debts deducted, the amount referred to is the amount before any income and relevant PAYE debts were deducted,

ii. where the amount of payment made to the recipient has not had income tax and any relevant PAYE debts deducted, that is the amount to which subsection (3) refers.

d. *Subsection (5)* states that if income from the employer is not paid by cash, but by vouchers and tokens, for example, it falls under sections 687A and 693-700. This means that for the purposes of PAYE regulations, the employer is treated as having made a payment of that amount in cash to a worker. Section 689A then applies as if the employer had made an actual payment of that amount to a continental shelf worker, and as if subsection (4)(a) were omitted.

e. *Subsection (6)* defines what is meant by the term "an intermediary of the employer or of the relevant person" which makes a payment of, or on account of, PAYE income of a continental shelf worker. An intermediary of the employer or of the relevant person can be a person acting on their behalf, or on behalf of a person connected with the employer or the relevant person. They can also be trustees holding property for the continental shelf worker.

f. *Subsection (7)* gives the power for PAYE regulations to make provision for, and in connection with, the issue of a certificate by HMRC to a relevant person in respect of one or more continental shelf workers. This certificate will confirm that income tax and any relevant debts for the PAYE income of specified continental shelf workers is being deducted and accounted for, as mentioned in subsection (1)(c). Whilst this certificate is in force section 689A does not apply to payments of, or on account of, PAYE income of the specified workers. The relevant person (as defined in regulations) is relieved of their obligation to operate PAYE during this time.

g. *Subsection (9)* provides that subsection (10) applies where there is more than one relevant person for a continental shelf worker.

h. *Subsection (10)* states that if one of the relevant persons complies with section 710 (which regulates earnings, called notional payments, which are not paid by cash) and accounts for the income tax and relevant debts of any PAYE income of the worker, the other relevant persons do not have to comply with that section with regards the payments they are treated as making.

i. *Subsection (11)* defines the terms "continental shelf worker", "employer" and "relevant person".

j. *Subsection (12)* gives the Treasury the power to modify these definitions by regulations.

k. *Subsection (13)* describes the ways in which regulations under subsection (12) can be used.

6. Subsection (6) edits section 690 (employee non-resident etc) of ITEPA 2003 to ensure that the section applies to those falling under section 689A. Section 690 ensures that where an employee, who is not resident or, if resident, not ordinarily resident in the UK, works or will work in the UK, and also works or is likely to work outside the UK, only part of their income may be taxable. Usually payments, which only partly consist of PAYE income, will not be subject to deductions under PAYE. Section 690 provides that payments, or at least a proportion of payments, are subject to PAYE.

7. Subsection (7) edits subsection (2) of section 710 (notional payments: accounting for tax) to ensure that the term notional payment includes the payments described in section 689A (4)(a) too, and that the term employer includes those making payments and specified in section 689A. Notional payments are payments not made in cash. This means that section 710 covers those falling under section 689A. Section 710 ITEPA 2003 says how the employer should operate PAYE in respect of a notional payment.

8. Subsection (8) inserts subsections (12) and (13) into section 689A. Subsection (12) provides the Treasury with the ability (power) to change the definitions of "continental shelf worker" and "relevant person" and subsection (13) sets out what type of changes to the regulations under subsection (12) can be made.

BACKGROUND NOTE

9. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.

SECTION 22: THRESHOLD FOR BENEFIT OF LOAN TO BE TREATED AS EARNINGS

SUMMARY

1. This section introduces an increase in the current statutory threshold in section 180 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) from £5,000 to £10,000 for loans provided by an employer with interest at less than commercial rates, sometimes known as 'beneficial loans'. This section prevents a tax charge on small amounts of benefit arising from cheaper loans by providing a £10,000 threshold which applies in the two circumstances explained below.

DETAILS OF THE SECTION

2. The section increases the current beneficial loans threshold from £5,000 to £10,000, effective from 6 April 2014 and for subsequent years. The increase in the threshold applies to all loans, no matter when they were taken out.

3. Section 180(1)(a) of ITEPA 2003 is amended to provide that the 'normal' threshold for the cash equivalent of an employed related loan is increased to £10,000. No tax is chargeable if the balance outstanding on all beneficial loans does not exceed £10,000 in the year of assessment.

4. Section 180(1)(b) of ITEPA 2003 is amended to provide that where the balance outstanding on all beneficial loans exceeds the threshold, but the balance outstanding on non-qualifying loans does not exceed £10,000 throughout the tax year, no tax is chargeable in respect of the non-qualifying loans.

5. Section 180(2) of ITEPA 2003 is amended to provide the increase to £10,000 where all taxable cheap loans are aggregated to find whether the normal £10,000 threshold is exceeded for the purposes of subsection (1)(a).

6. Section 180(3) of ITEPA 2003 is amended to provide that for non-qualifying loans (sub-section 1(b)), the £10,000 limit will also apply to the calculation where taxable cheap loans are aggregated. So if the qualifying loans are deducted and the total is then less than £10,000 the cash equivalent of the non-qualifying loans is not treated as earnings

7. Subsections (4) and (5) which define "non-qualifying loan" and "qualifying loan" are not amended.

8. Subsection 2 provides for the increase in the threshold to be effective from the beginning of the 2014-15 tax year and subsequent years.

BACKGROUND NOTE

9. The beneficial loan threshold has remained unchanged since it was first introduced in section 88(3) of the Finance Act 1994. The increase in the threshold is to ensure that it more accurately reflects the current levels of such loan arrangements.

10. Although a beneficial loan can be taken out for any purpose by an employee, one of the most common reasons is to fund the purchase of season tickets for commuting.

SECTION 23: TAXABLE BENEFITS: CARS, VANS AND RELATED BENEFITS

SUMMARY

1. This section relates to taxable benefits on company cars and vans. It will repeal section 114(3) ITEPA 2003 to ensure that the full amount of car or van benefit is subject to tax with effect from 6 April 2014.

DETAILS OF THE SECTION

2. Subsection 1 removes section 114(3) ITEPA 2003, which will ensure that the cash equivalent of the benefit for a car or van made available for private use will still be treated as earnings from the employment even if it would also fall to be earnings by virtue of any other provision.

BACKGROUND NOTE

3. Section 114(3) ITEPA 2003 provides that Chapter 6 of Part 3 of ITEPA 2003 (Taxable Benefits: Cars, Vans and related benefits) does not apply if the cash equivalent of the benefit of a company car or van made available for private use constitutes earnings from the employment by virtue of any other provision. This could allow an individual to pay less tax on their car or van benefit than the Government originally intended and have a negative impact on Exchequer revenue.

4. From 6 April 2014, section 114(3) ITEPA 2003 will be repealed for the tax year 2014-15 and subsequent tax years. This supports the Government's policy of the full amount of car or van benefit being subject to tax and protects Exchequer revenue. Protection from double taxation is already provided by other provisions in the Act.

SECTION 24: CARS: THE APPROPRIATE PERCENTAGE

SUMMARY

1. This section relates to taxable benefits on company cars. With effect from 6 April 2016, it modifies the appropriate percentage bands and carbon dioxide (CO_2) emissions threshold by revising appropriate percentages, including that for the relevant threshold. It also repeals the supplementary appropriate percentage for diesel engined cars.

2. This section also increases the appropriate percentages for cars registered before 1998 and those otherwise without a registered CO_2 emission.

DETAILS OF THE SECTION

3. Subsection (1) introduces changes to Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars, vans and related benefits). Subsection (2) amends section 133 ITEPA which sets out the legislative references for finding the appropriate percentage, and removes the reference to diesel cars to which section 141 applies (relating to the diesel supplement).

4. Subsection (3) introduces the changes to section 139 ITEPA. Subsection (4) increases the appropriate percentage for cars with a CO_2 emission figure between 0 – 50 grams per kilometre (g/km) from 5 per cent to 7 per cent; for 51 – 75 g/km from 9 per cent to 11 per cent and for 76 – 94 g/km from 13 per cent to 15 per cent. Subsection (5) increases the appropriate percentage of the relevant threshold from 14 per cent to 16 per cent. Subsection (6) removes the reference to diesel cars in section 139(7)(a).

5. Subsection (7) introduces changes to section 140 ITEPA. Subsection (8) increases the appropriate percentage for cars without a CO_2 emissions figure so that engines with a cylinder capacity of 1,400 or less increases from 15 per cent to 16 per cent and those with a cylinder capacity of 1401-2000 increases from 25 per cent to 27 per cent. Subsection (9) increases the appropriate percentage from 5 per cent to 7 per cent for cars which are not, under any circumstances, capable of emitting CO_2 emissions when being driven. Subsection (10) removes the reference to diesel cars in section 140(5).

6. Subsection (11) repeals section 141 ITEPA 2003.

7. Subsection (12) introduces changes to section 142 ITEPA. Subsection (13) amends section 142(2). It increases the appropriate percentage for cars first registered before January 1998 with an internal combustion engine with a cylinder capacity of 1,400 or less from 15 per cent to 16 per cent; from 22 per cent to 27 per cent for cars with a cylinder capacity of 1401 – 2,000 and from 32 per cent to 37 per cent for cars with a cylinder capacity of 2001 or more.

8. Subsection (14) amends section 142(3) and provides an increase for cars without a cylinder capacity from 32 per cent to 37 per cent.

9. Subsections (15) and (16) provide for consequential amendments.

10. Subsection (17) provides that these amendments have effect for the tax year 2016-17 and subsequent tax years.

BACKGROUND NOTE

11. Section 139 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars with CO_2 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.

12. From 6 April 2016, the graduated table of bands for taxing the benefit of a company car will provide for a two percentage point increase for each band, starting at 7 per cent for cars emitting 0-50 grams of CO_2 per kilometre to a maximum of 37 per cent for cars emitting 200 grams of CO_2 per kilometre or more.

13. Section 140 ITEPA sets out the basis for calculating the appropriate percentage for cars without CO_2 emissions and all but the higher band (which was increased in section 23(8) of the Finance Act 2013) have also been increased.

14. Section 141 ITEPA 2003 sets out the diesel supplement. From 6 April 2016, the 3 percentage point diesel supplement set out in section 141 ITEPA will be repealed, so that diesel cars will be subject to the same level of tax as petrol cars.

15. Section 142 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars registered before 1 January 1998, and these have also been increased in line with other changes.

SECTION 25: CARS AND VANS: PAYMENTS FOR PRIVATE USE

SUMMARY

1. This section relates to taxable benefits on company cars and vans. With effect from 6 April 2014, any payment which an employee is required to make for the private use of a car or van needs to be made before the end of the tax year in which the private use was undertaken. Such private use payments can reduce the employee's tax liability on a car or van benefit.

DETAILS OF THE SECTION

2. Subsection (1) amends section 144 (1)(b) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to provide for a reduction in the cash equivalent of the benefit of a car if, in a tax year, an employee pays in full the contributions required as a condition of that car being available for private use in that year.

3. Subsection (2) amends section 158 (1)(b) ITEPA 2003 to provide for a reduction in the cash equivalent of the benefit of a van if, in a tax year, an employee pays in full, the contributions required as a condition of that van being available for private use in that year.

4. Subsection (3) provides that these amendments have effect for the tax year 2014-15 and subsequent tax years.

BACKGROUND NOTE

5. This section aligns the legislation with the Government's policy intention that any private use payment needs to be made in the tax year in which private use was undertaken. This section also ensures that if appropriate the full amount of tax is payable on a car or van benefit.

6. Section 144(1) ITEPA 2003 provides for an employee to reduce their tax liability on a car benefit if the employee makes payment for private use of the car.

7. Section 158(1) ITEPA 2003 provides for a similar tax liability reduction if payment for private use of a company van is made by an employee.

8. From 6 April 2014, sections 144(1) and 158(1) ITEPA 2003 will be amended to provide for a reduction in an employee's tax liability on a company car or van benefit only if payments for private use of a company car or van are made in the tax year in which the private use was undertaken.

SECTION 26: RELEASE OF DEBTS: STABILISATION POWERS UNDER BANKING ACT 2009

SUMMARY

1. This section modifies the corporation tax rules on loan relationships that apply to cases where credits are not required to be brought into account on the release of debts. The section adds a further case where a debt is released as a result of the application of any of the stabilisation powers under Part 1 of the Banking Act 2009.

DETAILS OF THE SECTION

2. Subsections (1) to (3) provide for the loan relationship rules in section 322 of CTA to be amended. Section 322 specifies cases where a debtor company does not have to bring credits into account when a liability to pay an amount under a debtor relationship is released.

3. Subsection (4) provides that this amendment will come into force on 26 November 2013.

BACKGROUND NOTE

4. The rules that apply to loan relationships work on the principle that amounts taxed and relieved as credits and debits under those rules are the profits and losses arising in amounts drawn up in accordance with generally accepted accounting practice. When a debtor company is released from a debt it owes, its profit will be taxable as a loan relationship credit.

5. Section 322 of the Corporation Tax Act 2009 (CTA) exempts a company that is party as debtor to a loan relationship from a credit on the profit arising on the release of that debt if: the debt is accounted for on an amortised cost basis of accounting, the release is not a release of relevant rights, and one of three conditions A, B or C are met. The conditions are that the release is part of a statutory insolvency arrangement, in consideration of shares (or any entitlement to such shares) or the debtor meets one of the insolvency conditions in subsection (6).

6. Section 322 ensures that companies and creditors releasing debt to avoid or manage insolvency are not doubly punished with a tax charge. Resolution by the Bank of England is a new form of such measures. It would be unwise to try and enable the rescue of financial institutions through the exercise of stabilisation powers and then undermine this rescue by levying a tax charge which could, in extreme cases, cause the institution to fail - resulting in the loss of all future possible tax revenues - and pose a threat to wider financial stability.

7. This change was announced during the passage of Financial Services (Banking Reform) Bill on 26 November 2013. It will be applied retrospectively to that date.

SECTION 27: HOLDINGS TREATED AS RIGHTS UNDER LOAN RELATIONSHIPS

SUMMARY

1. This section amends the legislation which applies to those holdings in unit trusts, open-ended investment companies (OEIC) and offshore funds which are treated as loan relationships. It extends the existing treatment of distributions from authorised investment funds, so that distributions from any type of fund in which a company has a relevant holding are not treated as distributions for corporation tax purposes, and so fall within the loan relationships legislation instead. It also introduces a new anti-avoidance provision which sets out that where a company has a holding in a fund which is treated as a loan relationship and arrangements are entered into to obtain a tax advantage for any person, then adjustments must be made to counteract that tax advantage.

DETAILS OF THE SECTION

2. Subsection (1) provides for amendments to the Corporation Tax Act 2009 (CTA 2009).

3. Subsection (2) adds a new subsection (3)(za) to section 465 (Exclusion of distributions except in tax avoidance cases). The new subsection adds holdings in funds which are treated as loan relationships under section 490(2) to the list of provisions under which some amounts are prevented from being distributions for corporation tax purposes.

4. Subsection (3) replaces subsection (2) of section 490 CTA 2009 with a new subsection (2). That subsection provides that where section 490 applies to a holding in an OEIC, unit trust, or offshore fund, then the relevant holding is treated as rights under a creditor loan relationship, and any distribution in respect of that holding is not a distribution and is therefore within Part 5.

5. Subsection (4) makes consequential repeals of subsections (4) and (5) of section 490.

6. Subsection (5) replaces section 492 CTA 2009 with a new section 492.

7. Section 492(1) sets out the circumstances in which the provision applies. Subsection 492(2) applies where section 490 applies to a relevant holding in a fund held by a company, where a relevant fund enters into any arrangements, and the main purpose or one of the main purposes of the arrangements is to obtain a tax advantage for any person.

8. Section 492(2) provides that a holder of an interest in a bond fund must make adjustments to counteract any tax advantage that arises which is connected in any way with the arrangements mentioned in subsection 492(1).

9. Section 492(3) provides that the arrangements may be entered into at a time when the company does not hold the relevant holding, and that the person obtaining the tax advantage need not be identified when the arrangements are entered into.

10. Section 492(4) provides that the adjustments required are those which are just and reasonable.

11. Section 492(5) defines terms used in the legislation.

12. Subsection (6) amends the definition of qualifying holdings in section 495 CTA 2009. It repeals subsection (2), which formerly restricted the categories of qualifying investment to be taken into account in deciding whether holdings in funds were qualifying holdings, and makes consequential amendments to subsection (1).

13. Subsections (7) to (9) are commencement provisions. They provide that the amendments have effect for accounting periods beginning on or after 1 April 2014, and provide that for these purposes a new accounting period begins on 1 April 2014. Any apportionment may be made on a time basis, or a just and reasonable basis.

BACKGROUND NOTE

14. This section introduces some minor clarifications and amendments of the provisions of Chapter 3 of Part 6 of CTA 2009 (the "bond fund rules"). The changes include the addition of a section to clarify the way in which distributions are treated when the bond fund rules apply. The section also amends the anti-avoidance provisions, to counteract avoidance schemes that exploit the bond fund rules. While those schemes are subject to a number of challenges by HMRC, the section strengthens the anti-avoidance provisions within the bond fund rules specifically. The new provision will apply to any arrangements that relate to a bond fund, and allow a just and reasonable adjustment to be to made to counteract a tax advantage obtained by the company holding the investment in the fund, or by any other person.

SECTION 28: DE-GROUPING CHARGES (LOAN RELATIONSHIPS ETC)

SUMMARY

1. This section amends the corporation tax rules that apply where a company to which a loan relationship or a derivative contract has been transferred subsequently leaves a group.

DETAILS OF THE SECTION

2. Subsection (1) introduces changes to the Corporation Tax Act 2009 (CTA 2009).

3. Subsection (2) amends sections 345 and 346 of CTA 2009. These sections apply where a loan relationship is transferred from one company to another in the same group of companies. In such cases the loan relationship is transferred at a notional carrying value. If the company to which the loan relationships is transferred is itself sold out of the group within six years of the date of transfer there is a deemed disposal and reacquisition of the loan relationship for its fair value immediately before the transferee company leaves the group. As a consequence, amounts may arise under the loan relationships rules as credits and debits. However, this 'de-grouping' charge currently operates, in most cases, to bring into account for tax purposes only loan relationships credits.

4. The amendments made by subsection (2) remove the conditions that restrict the application of the rule to loan relationship credits, so that in future the de-grouping charge will bring into account both credits and debits in all cases.

5. Subsection (3) make the same change to the equivalent rules that apply to derivative contracts.

6. Subsection (4) provides that these changes have effect for de-groupings that take place on or after 1 April 2014.

BACKGROUND NOTE

7. At Budget 2013 the Government announced a review of the legislation governing the taxation of corporate debt ('loan relationships') and derivative contracts. The aim of the review is to make the legislation simpler and more certain, as well as more resistant to abuse. A consultation document *Modernising the taxation of corporate debt and derivative contracts* was published in June 2013, and the Government's response to the consultation was published in December 2013.

8. The consultation document reviewed and set out proposals for changes to a wide range of the provisions relating to loan relationships and derivative contracts, including a change to the de-grouping rules.

9. Subject to further consultation, it is envisaged that most of these changes will be enacted in Finance Bill 2015. However, some changes will be made in Finance Act 2014, including the change in this measure.

SECTION 29: DISGUISED DISTRIBUTION ARRANGEMENTS INVOLVING DERIVATIVE CONTRACTS

SUMMARY

1. This section stops tax avoidance schemes involving total return swaps. Where arrangements are entered into involving total return swaps or other derivative contracts, and the effect of the arrangements is to transfer profits of a company to other group companies, this measure will prevent any deduction being given for payments under the arrangements.

DETAILS OF THE SECTION

2. Subsection (1) introduces a new section 695A into Chapter 11 of Part 7 of the Corporation Tax Act 2009.

3. Section 695A(1) sets out the circumstances in which section 695A applies. These circumstances are set out in subsections (1)(a) to (1)(e).

4. Section 695A(1)(a) sets out the first condition, which is that a company A is party to arrangements involving derivative contracts.

5. Section 695A(1)(b) sets out the second condition, which is that another company B is also a party to the arrangements.

6. Section 695A(1)(c) sets out the third condition which is that companies A and B are members of the same group.

7. Section 695A(1)(d) sets out the fourth condition, which is that as a result of the arrangements there is a payment from A to B of all or a substantial part of the profits of a company which is a member of a group with A or B or both. The payment can be in substance, can be either the whole or a significant part, and can be direct or indirect.

8. Subsection 695A(1)(e) sets out the fifth condition, which is that the arrangements are not arrangements of a kind which companies carrying on the same kind of business as company A would enter into in the ordinary course of that business.

9. Section 695A(2) provides that debits arising in these circumstances are not to be brought into account.

10. Section 695A(3) applies to credits arising from the arrangements. It provides that credits arising will not be brought into account, but only to the extent that they do not exceed debits arising from the same arrangements which have not been brought into account as a result of subsection (2).

11. Section 695A(4) provides an exclusion from subsection (3) in respect of credits only. It provides that, notwithstanding subsection (3), a credit can be brought into account if it arises from tax avoidance arrangements.

12. Section 695A(5) sets out when companies are in the same group for the purposes of section 695A.

13. Subsection 695A(6) sets out definitions of some terms used in Section 695A.

14. Subsections (2) to (6) of this section contain commencement provisions.

15. Subsection (2) provides that the section has effect in relation to accounting periods beginning on or after 5 December 2013, subject to subsections (3) to (6).

16. Subsection (3) provides that for companies which have accounting periods straddling 5 December 2013, the parts of the accounting period falling before and after that date are treated as separate accounting periods.

17. Subsection (4) provides that the sections do not have effect for debits arising from the arrangements to the extent that credits arising from the same arrangements were brought into account for accounting periods ending before 5 December 2013.

18. Subsection (5) provides that for credits to which subsection (6) applies, the legislation is to have effect as though section 695A (2) referred to credits and debits.

19. Subsection (6) sets out the credits to which subsection (5) applies. It provides that they are those credits which would have been brought into account if the companies had an accounting period beginning with 5 December 2013 and ending with 22 January 2014.

BACKGROUND NOTE

20. This measure closes a tax avoidance scheme using derivative contracts.

21. The schemes targeted by the measure involve the use of a derivative contract described as a total return swap under which payments are made, and a deduction is claimed for payments under the total return swap. The payments involved are in substance distributions of profits. It will apply to any arrangements involving any derivative contract which have the effect of making a payment of all or a significant part of the profits of a company to another company in the same group. The effect of the legislation will be to make it clear that no deduction is due for payments of this nature.

SECTION 30: AVOIDANCE SCHEMES INVOLVING THE TRANSFER OF CORPORATE PROFITS

SUMMARY

1. This section of the Corporation Tax Act 2009 (CTA2009) stops tax avoidance arrangements where arrangements are entered into to transfer profits between companies in the same group for tax avoidance reasons. It does not apply to any arrangement falling within the new section 695A of CTA2009 (introduced in Finance Act 2014 and proposed to come into effect from 5 December 2013) which relates specifically to arrangements involving derivative contracts, but it does apply to arrangements that have been put in place to circumvent that provision.

DETAILS OF THE SECTION

2. Subsection (1) introduces a new section 1305A into Chapter 1 of Part 20 of the Corporation Tax Act 2009.

3. New Subsection 1305A(1) sets out the circumstances in which section 1305A applies. These circumstances are where the conditions set out in subsections (1)(a) to (1)(d) are met. However, new subsection 1305A(5) provides that section 1305A will not apply to arrangements which are caught by section 695A CTA 2009.

4. New Subsection 1305A(1)(a) sets out the first condition, which is that two companies "A" and "B" are party to arrangements whether or not at the same time. Arrangements are defined in subsection 1305A (6) as including any scheme, arrangement or understanding, whether or not legally enforceable.

5. New Subsection 1305A(1)(b) sets out the second condition, which is that company A and company B are members of the same group. New Subsection 1305A(4) sets out when companies are in the same group for the purposes of section 1305A.

6. New Subsection 1305A(1)(c) sets out the third condition which is that the arrangement results in what is in substance a payment from A to B of all, or a significant part of, the profits of the business of A or of a company which is a member of the same group as A or B or both. This is called the "profit transfer" and can be either direct or indirect.

7. New Subsection 1305A(1)(d) sets out the fourth condition, which is that a main purpose of the arrangement must be to secure a tax advantage. 'Tax advantage' here takes its meaning from section 1139 of the Corporation Tax Act 2010.

8. New Subsection 1305A(2) provides that for the purposes of corporation tax the profits of company A are to be calculated as though no profit transfer had occurred.

9. New Subsection 1305A(3)(a) denies any deduction in respect of the profit transfer and section 1305A(3)(b) applies to all or part of the profit transfer not covered by subsection (3)(a) and states that the profits of A must be increased by the amount of the profit transfer.

10. Subsection (2) of the section is a commencement provision and provides that the legislation has effect in relation to payments made on or after 19 March 2014.

BACKGROUND NOTE

11. Section 1305A applies a tax avoidance test to any arrangements entered into for what is in substance a transfer of profit between companies in the same group.

12. The measure follows the announcement of section 695A CTA 2009 on 5 December 2013, to be introduced in Finance Act 2014 with effect from the date of announcement.

13. This measure does not apply to transactions that fall within section 695A CTA2009, which closes down an avoidance scheme. In the scheme, a company enters into a derivative contract known as a total return swap, with a parent company or another group company, generally located in a tax haven. Under the contract, all of the profits of the company are paid away in return for much smaller payments back. A deduction is claimed for the payment under the contract, leaving little or no profit chargeable to tax.

14. Section 1305A in contrast applies irrespective of the mechanism by which profits are transferred and is therefore not limited to payments under a total return swap. It can apply to a wider range of arrangements than section 695A but unlike that section is subject to a test which requires the arrangements to have a tax avoidance purpose.

SECTION 31: R&D TAX CREDITS FOR SMALL OR MEDIUM-SIZED ENTERPRISES

SUMMARY

1. This section amends Part 13 of the Corporation Tax Act 2009 (CTA 2009) to increase the rate of payable tax credit for small and medium sized companies (SMEs).

DETAILS OF THE SECTION

2. The section increases the rate of payable tax credit for expenditure incurred on or after 1 April 2014 from the current rate of 11 per cent to 14.5 per cent of the surrenderable loss.

BACKGROUND NOTE

3. Additional tax relief for expenditure on research and development (R&D) was introduced in 2000 for SMEs.

4. The SME R&D relief currently gives an additional deduction from profits at a rate of 125 per cent of the qualifying expenditure. This combined with the normal deduction for such expenditure, gives a total deduction of 225 per cent.

5. A loss-making SME is able to obtain a payable R&D tax credit at a rate of 11 per cent of the lower of its trading loss for the period and 225% of the qualifying R&D expenditure incurred, giving a maximum payment of 24.75 per cent of the original expenditure. The rate of payable credit is to be increased to 14.5 per cent for expenditure incurred on or after 1 April 2014, giving a maximum payment of 32.625 per cent of the original expenditure.

SECTION 32: FILM TAX RELIEF

SUMMARY

1. This section introduces changes to the film tax relief. There will be two bands of surrenderable loss, each attracting a different rate of payable tax credit (instead of the rate being determined by whether a film is a limited budget film). The minimum UK spending requirement is also to be changed.

DETAILS OF THE SECTION

2. Subsections (1) to (3) amend Chapter 3 of Part 15 of Corporation Tax Act 2009 ('CTA') in relation to films whose principal photography is uncompleted before the commencement date of the section (see subsections (1) and (6) of the section).

3. Subsection (2) provides that UK expenditure requirement at section 1198(1) CTA (minimum UK core expenditure) is reduced from 25 per cent to 10 per cent. UK qualifying production expenditure is that expenditure incurred on filming activities (pre-production, principle photography and post production) which take place within the UK.

4. Section 1202 is amended so that relief on the surrenderable loss is available for at a rate of 25 per cent up to the first £20 million of each production's surrenderable loss (to a maximum of 80 per cent of the UK core production expenditure) and 20 per cent thereafter (to a maximum of 80 per cent of the UK core production expenditure), for all productions. Previously the rate of 25 per cent only applied to limited budget films i.e. those with qualifying core expenditure up to £20 million.

5. Subsections (6) to (9) of the section also make provision for the amendments to be commenced by Treasury Order. Since commencement is subject to State aid approval from the European Commission, provision is also made for the amended sections to be further amended by secondary legislation in connection with the terms of approval.

BACKGROUND NOTE

6. As announced in Budget 2013 and following consultation over the summer, legislation will be introduced to amend the film tax relief in Finance Act 2014.

7. Subject to State aid approval, from 1 April 2014 film tax relief will be available for surrenderable losses at a rate of 25 per cent up to the first £20 million of each production's UK core production expenditure (to a maximum of 80 per cent of UK core production expenditure) and 20 per cent thereafter (to a maximum of 80 per cent of the UK core production expenditure), for all productions. Previously the rate of 25 per cent only applied to limited budget films i.e. those with UK core production expenditure up to £20 million.

8. The minimum UK spending requirement will also change from 25 per cent to 10 per cent. The new rules will not apply to films that complete principal photography before a date to be specified by Treasury Order. A response to the consultation was published on 10 December 2013.

SECTION 33: TELEVISION TAX RELIEF: ACTIVITIES TO BE TREATED AS A SEPARATE TRADE

SUMMARY

1. This section clarifies that only those television programmes that claim television tax relief are within the scope of the rules at Part 15A Corporation Tax Act 2009 ('CTA 2009').

DETAIL OF THE SECTION

2. Part 15A of CTA 2009 is amended at sections 1216A and 1216B to insert 'qualifying'. This makes it clear that only those television programmes that claim the credit are required to have separate trades for the purposes of the rules in Part 15A.

BACKGROUND NOTE

3. The television production tax relief was introduced by Finance Act 2013. Part 15A provides the rules for claiming tax credits on qualifying expenditure for high-end television or animation productions.

4. This tax relief allows 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 that loss for a payable tax credit.

SECTION 34: VIDEO GAMES DEVELOPMENT

SUMMARY

1. This section introduces amendments to the video games regime to ensure it is compliant with state aid requirements. The section also clarifies that only those video games that claim the relief are within the scope of the rules at Part 15B Corporation Tax Act 2009 ('CTA 2009').

DETAILS OF THE SECTION

2. Subsection 1 provides that Part 15B of CTA 2009 is amended as follows.

3. Subsection 2 amends section 1217A.

4. Subsection 3 provides that in section 1217AE 'used or consumed' is substituted for 'expenditure on goods or services that are provided from within the European Economic Area'.

5. Subsection 4 amends section 1217B to clarify that only qualifying video games will need to be treated as separate trades for the purposes of Part 15B.

6. Subsection 5 inserts a new subsection in section 1217CF to limit the amount of subcontracting payments (as defined in new subsection (5)) to £1 million. Any payments for subcontracting exceeding this amount will not be treated as allowable expenditure for the purposes of claiming the tax credit.

7. Subsection 6 specifies provisions in which "UK expenditure" is substituted by "EEA expenditure".

8. Subsection 7 amends Schedule 4 to CTA 2009.

9. Subsection 8 specifies that the amendments will be commenced by Treasury Order since commencement is subject to State aid approval from the European Commission.

BACKGROUND NOTE

10. Video games tax relief was introduced by Finance Act 2013. The regime has not yet commenced as it is awaiting State aid approval from the European Commission.

11. 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.

SECTION 35: CORPORATE GIFT AID FOR COMMUNITY AMATEUR SPORTS CLUBS

SUMMARY

1. This section introduces a new tax relief for the donation of company profits to Community Amateur Sports Clubs (CASCs). In substance, the measure would put the tax treatment of donation of company profits to CASCs on a par with donation of company profits to charity, known as Corporate Gift Aid for charities. An anti-abuse rule is inserted in Part 6 of the Corporation Act 2010.

DETAILS OF THE SECTION

General provisions

2. Subsection (1) introduces amendments to Part 6 (charitable donations relief) of the Corporation Taxes Act (CTA) 2010, the main provision covering gift aid tax relief of gifts of company profits to charities.

3. Subsection (2) amends section 189 (relief for qualifying charitable donations) to ensure relief for qualifying donations to CASCs is subject to the anti-abuse provisions in new Chapter 2A.

4. Subsection (3) amends section 192 (condition as to repayment), which applies where a subsidiary company makes a payment to its parent charity before the exact amount of its profits is known. Subsection (3) of section 1 ensures that a repayment by a CASC of any excess payment to its subsidiary to adjust the company's taxable profits to nil will not be treated as non-qualifying expenditure. Non-qualifying expenditure of a CASC may be chargeable to tax under the provisions of section 666 (exemptions reduced if non-qualifying expenditure incurred) of CTA 2010.

5. Subsection (4) amends section 200 of CTA 2010, which sets out the conditions for a company to be regarded as wholly owned by a charity, by inserting new subsection (4A) which makes provision for CASCs with ordinary share capital.

6. Subsection (5) amends the meaning of 'charity' in section 202 for the purposes of Chapter 2, to include `registered clubs` as entities which qualify as charities. This enables the donation of money to CASCs by companies to rank as `qualifying payments` for company Gift Aid purposes.

7. Subsection (6) inserts new section 202A, which applies the definition of a `registered club` given by section 658(6) of CTA 2010 to Chapter 2 of Part 6. A 'registered club' is commonly known as a 'CASC'.

Anti-abuse provisions

8. Subsection (7) inserts new Chapter 2A, which provides new anti-abuse provisions aimed at discouraging abuse of companies owned or controlled by CASCs.

9. New section 202B (1) (restriction on relief for payments to community amateur sports clubs) sets the conditions where the new anti-abuse provision would apply and introduces the concept of 'inflated member-related expenditure', which is defined at new section 202C.

10. Where a company, which is owned or controlled by a CASC, incurs inflated member-related expenditure, new section 202B (2) reduces (but not below nil) the amount of a qualifying payment by the company to its parent CASC that qualifies for tax relief. The amount of the reduction is the total amount of the inflated member-related expenditure or, if less, the amount of the qualifying payment. The effect of this provision is to bring back into the charge to corporation tax the amount of the inflated member-related expenditure.

11. New section 202B (3)-(7) deals with the situation where the amount of inflated member-related expenditure referred to in new section 202B (2) is greater than the qualifying payment made in the same accounting period. In that case any excess inflated member-related expenditure can be carried back to adjust qualifying payments in earlier years for up to six years. The excess expenditure is set off against qualifying payments made by the company starting from the latest year and working back.

12. The commencement provision at subsection (15) of section 1 prevents adjustments being made in accounting periods ending before the general commencement given by subsection (13).

13. New section 202B (8) to (11) provide a number of definitions for the purposes of new section 202B In particular new subsections (9) and (10) explains when a company is controlled by a club or two or more charities (including the club) for the purposes of the anti-abuse rule.

14. New section 202C (2) defines in paragraphs (a) and (b) the two situations in which expenditure incurred by a company is `inflated member-related expenditure`.

15. The situation in paragraph (a) is that expenditure on the employment of a member of the club by the company is not at arm's length. New section 202C (7) enables HM Treasury to provide, by Order, what counts as 'employment-related' expenditure for this purpose.

16. The situation in paragraph (b) is that expenditure on the supply of goods and services to the club by a member or member-controlled body is not on an arm's length basis.

17. New section 202C(3) provides that where the expenditure, taken as a whole, is beneficial to the company rather than to the third party then that expenditure will not fall within the definition of 'inflated member-related expenditure'.

18. New section 202C (4) and (5) explain the meaning of `member-controlled` for the purpose of section 202C (2).

19. New section 202C (6) provides that a reference to a member of the club includes a reference to a person connected to a member.

Donations from companies to CASCs

20. Subsection (8) introduces amendments to Chapter 9 of Part 13 (community amateur sports clubs) to include donations from companies within the tax relief provisions for CASCs.

21. Subsections (9) and (10) set the tax treatment of gifts of money to CASCs by companies. Subsection (9) inserts new section 661E, which brings gifts of money by companies into the charge to corporation tax. Subsection (10) amends section 664 (exemption for interest and gift aid income) to relieve a gift of money by a company, referred to as 'company gift income', from the charge to corporation tax so long as the payment is used for qualifying purposes.

22. Subsections (11) and (12) make consequential amendments to reflect the changes brought about by this section.

23. Subsection (13) provides that the amendments made in this section have effect in relation to payments made on or after 1 April 2014.

24. Subsection (14) provides that the amendments enabling corporate gift aid for CASCs are to be ignored for the purposes of section 199 (payment attributed to earlier period) where the company makes a claim for the payment to be treated as a qualifying payment for an earlier accounting period ending before 1 April 2014. This prevents a company attributing a qualifying payment made under the new provisions to an accounting period ending before 1 April 2014.

25. Subsection (15) provides that the restriction on relief for payments to CASCs in earlier accounting periods under new section 202B (3) (where there is 'inflated member-related expenditure') does not apply in respect of accounting periods ending before 1 April 2014.

BACKGROUND NOTE

26. This section extends the scope of tax relief available to companies that give money to CASCs allowing them to foster greater involvement in community sporting activity.

27. The section includes anti-abuse provisions to deter CASC members from obtaining a financial advantage from a company owned by a CASC. The anti-abuse provisions hinge on the new concept of `inflated member-related expenditure`. The following examples show how this concept operates.

Example 1:

28. A company, owned and controlled by a CASC buys supplies from one CASC member and rents property from another. Both of the payments are more than what would be expected under an arm's length arrangement. As a result CASC members benefit financially to the detriment of the company and its parent sports club.

29. In the Accounting Period Ended (APE) 31.01.16, the subsidiary incurred total costs of £37,500 and £12,500 for the supply of sporting equipment and rent, respectively.

30. In respect of the same APE the subsidiary made a qualifying gift of its entire net profit of £75,000 to the CASC.

31. Because neither of the arrangements was at arm's length the value of the qualifying gift would be reduced by £50,000 (37,500 + £12,500).

32. Accordingly, the subsidiary would become liable to pay corporation tax in respect of an APE 31.01.16 profit of £50,000, rather than nil, despite the company donating its entire net profit to the CASC.

Example 2:

33. A contract agreed between a CASC controlled company and a CASC member provides for two supplies for a total figure of £100,000. An arm's length transaction would have cost £25,000 for each supply. It is impossible to know how the £100,000 is allocated to each supply in this case, therefore the whole of the £100,000 will be treated as Inflated Member Related Expenditure.

SECTION 36 AND SCHEDULE 4: TAX RELIEF FOR THEATRICAL PRODUCTION

SUMMARY

1. Section 36 and Schedule 4 introduce a relief from Corporation Tax for theatrical productions.

DETAILS OF THE SCHEDULE

2. Schedule 4 introduces a new relief for theatrical productions, and provides for the consequential amendments to other parts of the Taxes Acts and for the commencement of the new relief.

3. Part 1 of the schedule introduces amendments to the Corporation Taxes Act (CTA) 2009, Part 2 introduces the consequential amendments to other parts of the Taxes Acts, and Part 3 contains the commencement provisions.

Part 1: Introduction

4. New section 1217F sets out the scope and an overview of the legislation.

5. New section 1217FA defines what is meant by a "theatrical production", "dramatic production", "dramatic piece", and "live".

- Plays, opera, musicals or other dramatic pieces are theatrical productions if the playing of roles is the whole or major part of what is done by persons performing and, each performance is live to an audience before whom the performers are actually present.
- A 'dramatic piece' may include a show performed by a circus. For example, where the performance is scripted, the performers play roles as opposed to something like a pure high-wire trapeze performance which is generally regarded as more of an indoor sport.
- Any ballet is a theatrical performance, whether or not there is also a dramatic production. This allows for contemporary ballet productions where there may not be a dramatic narrative but the production incorporates elements of classical ballet and classical ballet technique.

6. New section 1217FB(1) sets out what productions are not to be regarded as a theatrical production.

These include:

- Advertisements.
- Competitions and contests.
- Productions of a sexual nature.
- Where the making of a recording or broadcasting is the main object in relation to the production.

- Productions containing 'wild animals'.

7. New section 1217FB(3) provides for what is to be regarded as a production of a sexual nature.

8. New section 1217B(4) defines what a relevant recording is.

9. New section 1217B(5) defines "broadcast", "film" and "wild animal".

10. New section 1217FC(1) sets out the general rule that governs whether a company is a theatrical production company in relation to a theatrical production. The company must be responsible for: producing, running and closing the theatrical production as well as making an effective creative, technical and artistic contribution to the production. The company must be actively engaged in planning and decision taking during those stages of a production; and it must directly negotiate, contract and pay for rights, goods and services.

11. New section 1217FC(2) provides that there can be only one production company in relation to a theatrical production. Partnerships are therefore not eligible.

12. New section 1217FC(3) recognises that there may be more than one company meeting the conditions of 1217FC(1) and provides that where this is the case, the company most directly engaged in the activities referred to in 1217FC(1) is the theatre production company in relation to the theatrical production.

13. New section 1217FC(4) makes it clear that it is possible that there may be no theatrical production company in relation to the production.

14. New section 1217G provides for how a company qualifies for relief. A company must be the production company, satisfy a commercial purpose condition and a minimum EEA expenditure condition.

15. New section 1217GA sets out the commercial purpose condition. At the beginning of the production phase the company must intend that the performances will be to paying members of the general public so events held in private will not be eligible unless those attending are charged for the entertainment (and there is a view to making a profit). Performances for educational purposes do not have to be before the general paying public. This allows, for example a charitable theatrical production company, whose main charitable aim is educational to present to schools. Where a performance is for educational purposes the company must not be associated with those who may benefit from the performance or be connected with the beneficiaries (an example is by being their employer).

16. New section 1217GB sets out the minimum European Economic Area spend required by the production company to qualify for the relief. At least 25% of the core expenditure (see 1217GC) must be on goods or services that are provided from within the EEA. For example if costumes are commissioned and paid for in the UK that expenditure may be eligible.

17. New section 1217GC provides that core expenditure means expenditure on the activities directly involved in producing the production, such as the costs of costumes, closing the production, and the final striking of the set. Core expenditure will not include indirect expenditure such as marketing the production, financing, associated finance costs,

legal fees, accountancy fees or storage of sets. Ordinary running costs incurred on or after the date of the first performance of the production to the paying general public (for example ongoing salary costs) will only qualify as core expenditure in the 'running phase' of a production if incurred in connection with a substantial recasting or a substantial redesign of the set. Development expenditure that precedes production will not be eligible if the production does not get 'green lit' (see also new section 1217IE). The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the production.

18. New section 1217H sets out how a company may claim for the additional deduction. A company that makes a claim for relief must treat each qualifying theatrical production as a separate trade. A company is treated as beginning to carry on the separate trade when the production phase begins or, if earlier at the time of the first receipt by the company of any income from the theatrical production.

19. New section 1217I provides an introduction to new sections 1217IA and 1217IF.

20. New section 1217IA sets out how the profits and losses of the separate theatrical trade are calculated for the first period of account and any subsequent periods.

21. New section 1217IB sets out what is income for the purposes of the calculation of the profits or losses of the separate theatrical trade. Income includes: receipts from the sale of tickets or of rights in the theatrical production, royalties or other payments for use of other aspects of the production such as characters or music, rights for merchandise and receipts by the company by way of any profit share agreements.

22. New section 1217IC sets out that for the purpose of the calculation of the profits or losses of the separate theatrical trade, costs incurred by the company will be those direct costs in developing, producing, running and closing the production. Capital expenditure is treated as being of a revenue nature where it is on the creation of the production.

23. New section 1217ID sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example that costs are incurred when they are represented in the state of completion of the work in progress or do not include any amount that has not been paid unless it is the subject of an unconditional obligation to pay. Costs which remain unpaid by four months after the end of a period of account are ignored for that period.

24. New section 1217IE outlines the circumstances in which pre-trading expenditure, including expenditure on developing the production before it was 'green-lit', may be treated as expenditure of the separate theatrical trade.

25. New section 1217IF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.

26. New section 1217J provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate theatrical trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80 per cent of the total amount of qualifying expenditure. For subsequent periods of account, the amount of additional deduction is the

lesser of the amount of qualifying expenditure which is EEA expenditure or 80 per cent of the total amount of qualifying expenditure minus any additional deductions given for previous periods.

27. New section 1217JA defines "qualifying expenditure" and also provides that where relief has been given for R&D tax credits on the same expenditure under the SME R&D scheme then relief is not available for theatrical relief. Nor is relief available if a company is entitled to relief under Chapter 6A of Part 3.

28. New section 1217K provides that where a theatrical production company has a surrenderable loss then that company may claim a tax credit for the period. The whole or part of the loss may be surrendered.

29. New subsection 1217K(4) sets out the two rates for theatre tax relief. For touring productions it is 25% and 20% for other non-touring productions.

30. New subsection 1217K(6) defines what a 'touring production' is. At the beginning of the production stage a company must intend that it either will present performances in 6 or more separate premises or, it will present performances of the production in at least two separate premises and that the number of the performances must be more than 14.

31. New section 1217KA defines a surrenderable loss and a relevant unused loss, and sets out how the available loss and any loss carried forward are to be calculated. The surrenderable loss is the lesser of the trading loss and the available qualifying expenditure.

32. New section 1217KB provides that where a company is entitled to a theatre 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.

33. New section 1217KC sets out that for State aid purposes the total amount of any theatre tax credits for each undertaking must not exceed 50 million euros per year. "Undertaking" must be interpreted within the context of the General Block Exemption Regulation.

34. New section 1217LA sets out that a company does not qualify for relief where the main or one of the main purposes of the arrangements to claim the tax credit or otherwise benefit from the relief is to obtain a tax advantage.

35. New section 1217LB sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.

36. New section 1217M sets out the application of the new section 1217MA to 1217MC.

37. New section 1217MA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate theatrical trade.

38. New section 1217MB provides for how losses are to be treated in the completion period.

39. New section 1217MC provides for how terminal losses are to be treated and the circumstances in which terminal losses can be transferred.

40. New section 1217N sets out the conditions for claiming provisional relief, such as, a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period, a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in 1217GB

41. New section 1217NA allows for the clawback of provisional relief where it subsequently appears the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do when it ceases to carry on the theatrical trade.

42. New sections 1217O to OB concern the interpretation of various terms within the Schedule.

Part 2: Consequential Amendments

43. Part 2 contains consequential amendments to the Taxes Act.

44. Paragraph 2 covers the necessary consequential amendments to ICTA 1988.

45. Paragraphs 3 to 6 cover the necessary consequential amendments to FA 1998.

46. Paragraphs 7 covers the necessary consequential amendments to CAA 2001.

47. Paragraph 8 covers the necessary consequential amendments to FA 2007.

48. Paragraphs 9 to 13 cover the necessary consequential amendments to CTA 2009.

49. Paragraph 14 covers the consequential amendments to FA 2009.

50. Paragraph 15 covers the necessary consequential amendments to CTA 2010.

Part 3: Commencement

51. Paragraphs 16 and 17 set out that the commencement date of the new relief is for accounting periods beginning on or after 1 September 2014. Where a company has an accounting period starting before the 1 September 2014 and ending after that day i.e. it straddles the date of commencement, for the purposes of the relief there will be a deemed accounting period ending on 31 August 2014 and another commencing on 1 September 2014.

BACKGROUND NOTE

52. The new tax relief for theatrical productions will allow qualifying companies engaged in the production of theatre 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.

53. 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 for touring productions and 20% for all other theatrical productions.

54. The credit is based on the company's qualifying expenditure on the production of a qualifying theatrical production of which at least 25% of the qualifying expenditure must be on goods or services that are provided for from within the European Economic Area.

55. The aim of this new relief is to encourage and support UK theatre producers to continue to develop, and to incentivise touring productions.

56. In March 2014 a Stage 2 consultation document: 'Theatre tax relief' was published giving more detail on the design proposals.

SECTION 37: CHANGES IN COMPANY OWNERSHIP

SUMMARY

1. This section introduces two changes to Part 14 of Corporation Tax Act 2010 (CTA 2010), amending section 688 and introducing a new section 724A. The amendment to section 688 changes the definition of a significant increase in the amount of a company's capital. The new section 724A provides for the disregard of a change of ownership of a company (C) where it is acquired by a new company (N) or there is a scheme of reconstruction involving a share cancellation and, broadly, the shareholders and shares of N after the acquisition or scheme are the same as shareholders and shares in C before.

DETAILS OF THE SECTION

2. Subsection (2) amends the definition in subsection (2) of section 688 of a significant increase in capital of a company.

3. Subsection (3) amends subsection (1) of section 723 to include a reference to section 724A.

4. Subsection (4) introduces a new section to Part 14. New section 724A disregards a change in parent company for the purposes of Chapters 2 to 6 of Part 14 if the conditions in subsections (1) to (8) of 724A are met.

5. New subsection 724A(1) provides that a change of ownership of a company (C) is disregarded where a new company (N) acquires all the issued shares of C. The subsection provides for particular conditions in relation to the acquisition of C by N which must be met for the section to apply. These include conditions relating to the voting power of C as well as entitlement to profits and assets of C available for distribution to equity holders. It also provides that the 'continuity requirements' must be met.

6. New subsection 724A(2) defines "the resulting ownership change".

7. New subsection 724A(3) defines a "new" company.

8. New subsection 724A(4) sets out the continuity requirements which are, broadly, concerned that the acquisition of C by N has been by way of a share for share exchange. The first requirement, in subsection (4)(a), is that the consideration for the acquisition consists only of the issue of shares in N to the shareholders of C. The remaining requirements ((4)(b) to (e)) set out various tests requiring a comparison between shareholders in C immediately before the acquisition with N immediately after. These requirements include tests relating to the shareholders, the classes of shares, the proportion of shares held in each class and the proportion of shares of each class held by each shareholder.

9. New subsection 724A(5) provides that section 724A also applies to a scheme of reconstruction where all the shares in C are cancelled and shares in N issued. Section 724A applies if, as a result of the scheme, N holds all the issued share capital of C and only shares in N are issued to persons who were shareholders of C immediately prior to the cancellation.

10. New subsection 724A(6) modifies the basis on which the continuity requirements in section 724A(4) apply for schemes of reconstruction.

11. New subsection 724A(7) defines a "scheme of reconstruction" for the purposes of section 724A.

12. New subsection 724A(8) ensures that Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (1)(b) and (c).

13. Subsection (5) includes a reference to a shareholder in section 726 (interpretation of Chapter).

14. Subsection (6) provides that the amendments in this section have effect in relation to any change of ownership which occurs on or after 1 April 2014.

BACKGROUND NOTE

15. These changes have been introduced to bring the change in company ownership rules in Part 14 CTA 2010 in line with modern commercial practice.

16. The threshold for a significant increase in capital for companies with investment business has remained unchanged since 1995. The measure relaxes the threshold limit to reflect the general increase in investment business capital levels since that time.

17. There is also a new disregard from section 719, specifically allowing new holding companies to be inserted at the top of a group without triggering a change of ownership for the purposes of Chapters 2 to 6 of Part 14. There is an existing disregard at section 724 but it only covers the event of an insertion below the group parent.

SECTION 38: TRANSFER OF DEDUCTIONS: RESEARCH AND DEVELOPMENT ALLOWANCES

SUMMARY

1. This section amends the definition of "deductible amounts" in section 730B Part 14A of Corporation Tax Act 2010 (CTA 2010) to exclude an expenditure of a trade to the extent that it arises from research and development allowances under section 450 of Capital Allowances Act 2001 (CAA 2001).

DETAILS OF THE SECTION

2. Section 730B(1) is amended by the insertion in paragraph (a), after the word "trade", of the words "other than an amount treated as an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade)". The amended definition excludes trading expenditure that comes within the definition of research and development allowances from the provisions of Part 14A CTA 2010.

3. Section 212C of CAA 2001 describes the circumstances where, on a "relevant day", a qualifying change has happened. Where the relevant day is on or after 1 April 2014 the amended section 730B will apply.

BACKGROUND NOTE

4. This amendment has been made to allow expenditure qualifying as research and development allowances to escape restriction by the transfer of deductions rules in Part 14A of CTA 2010.

SECTION 39: TAX TREATMENT OF FINANCING COSTS AND INCOME

SUMMARY

1. This section makes amendments to the "worldwide debt cap" (WWDC) legislation which places certain limitations on the deductibility of interest and similar expenses in computing corporation tax where the combined funding expenses of the UK members of a group exceed the funding expenses of the group as a whole. The changes clarify the position in cases where a group includes entities that do not have ordinary share capital. The measure also makes a minor change to the power to make regulations relevant to the potential impact of the provisions on whole business securitisations.

DETAILS OF THE SECTION

2. Subsection (1) provides that Chapter 10 of Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) is amended.

3. Subsection (2) amends subsection 345(7) TIOPA and inserts new subsections 345(8) to 345(10).

4. Amended subsection 345(7) TIOPA allows the meaning of 75% subsidiary in subsection 345(6)(a) for the purposes of the WWDC to be determined by reference to the definitions in Chapter 3 of Part 24 of the Corporation Tax Act 2010 (CTA 2010). It also allows for the provisions of Chapter 6 of Part 5 of CTA 2010 to be applied in determining the extent to which the ultimate parent is beneficially entitled to the profits or assets of a UK group company for the purposes of subsections 345(6)(b) or (c). In each case this is subject to the modifications set out in new subsections 345(8) and 345(9). These modifications are designed to have the following overall effects.

5. The definition of a 75% subsidiary is widened, in its application to the WWDC legislation, such that a company without share capital can be a 75% subsidiary of the ultimate parent. Also, in dealing with indirect subsidiaries, ownership can be traced through entities that do not have share capital.

6. A UK group company can be a relevant group company, even if it is not a 75% subsidiary, where the ultimate parent is beneficially entitled to 75% of the profits available for distribution by the company or 75% of the net assets available for distribution in a winding up.

7. These changes put it beyond doubt that the ultimate parent's beneficial entitlement to profits or assets can be traced through any intermediate company, entity, trust or arrangement.

8. In particular, new subsection 345(8) TIOPA provides that sections 169 to 182 of CTA 2010 do not apply for the purposes of the WWDC legislation. These provisions, which are primarily designed to ensure that 75% subsidiaries with shares carrying variable or complex rights are not artificially included in a group relief group, are not required in the context of the WWDC.

9. One consequence of new subsection 345(9)(a) is that it ensures that a UK group company that does not have ordinary share capital, such as a company limited by guarantee, is capable of being a relevant group company. It introduces the term "corresponding ordinary holding", defined in new subsection 345(10).

10. New subsection 345(9)(b) makes it clear that, in applying the rules in Chapter 6 of Part 5 or Chapter 3 of Part 24 of CTA 2010, ownership or beneficial entitlement to distributable profits can be traced through entities that do not have ordinary share capital in the same way as they might be traced through companies with ordinary share capital.

11. New subsection 345(9)(b) provides that, when ownership or beneficial entitlement is traced in this way, the holders of a "corresponding ordinary holding" (see below) are treated in the same way as holders of ordinary shares. Accordingly, the corporation tax rules which determine the profits and assets of a company available for distribution, and the rules on indirect ownership of shares apply to "corresponding ordinary holdings" in the same manner as they do to holdings of ordinary shares.

12. New subsection 345(10) defines a "corresponding ordinary holding". The key feature of such a holding is that it conveys economic rights corresponding to those conveyed by a holding of ordinary shares, without regard to the legal form of the holding or any instruments that might comprise that holding. For example, a foreign partnership may have different classes of interests: preferred interests that convey rights to only a fixed amount of profit or percentage return on capital and residual interests that convey the rights to a share of the residual profit or surpluses on asset disposals. A holding of residual interests would be considered to be a corresponding ordinary holding, whereas a holding of preferred interests would not.

13. Subsection (3) amends section 353A(4) TIOPA to the effect that regulations made under the section may require certain conditions be met before an election to transfer liability can be made. For instance, regulations may require company A, a party to a capital market arrangement, to meet conditions such as being required to provide security over its assets before it is permitted to make an election under regulations made under section 353A.

BACKGROUND NOTE

14. Finance Act 2009 introduced a package of changes to the taxation of companies on their foreign profits. One of these measures limits 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, and is commonly referred to as the worldwide debt cap (WWDC).

15. The rules broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the rules, 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.

SECTION 40: DETERMINATION OF BENEFICIAL ENTITLEMENT FOR PURPOSES OF GROUP RELIEF

SUMMARY

1. This section 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 (CTA) 2010.

DETAILS OF THE SECTION

2. The section amends section 169 of CTA 2010 which provides the definition of "arrangements" for the purposes of the anti-avoidance rules in sections 171 to 174. These sections restrict access to group relief were there are arrangements in place meaning that at some point in the future one company's rights over the profits or assets of another company could change.

3. Subsection (2)(a) splits the definition of "arrangements" in section 169(2) into two. Subsection (a) retains the existing wording. Subsection (b) provides that "arrangements" does not include conditions or requirements imposed by, or agreed with, Ministers or statutory bodies.

4. Subsection (2)(b) inserts new subsection (3) which provides a definition of statutory body for the purposes of section 169(2).

5. Subsection (3) extends the exclusion to the definition of "company" in section 188(1) to include section 169(3).

6. Subsection (4) provides that the changes made by the section are for accounting periods ending on or after 1 January 2015.

BACKGROUND NOTE

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 may be inadvertently caught by the anti-avoidance rules in sections 171 to 174 of CTA 2010 restricting the flow of group relief.

8. For accounting periods ending on or after 1 January 2015, any such conditions imposed by, or agreed with, Ministers or a statutory public body will not be arrangements that restrict the flow of group relief.

SECTION 41: PENSION FLEXIBILITY: DRAWDOWN

SUMMARY

1. This section amends Finance Act 2004 to allow drawdown pensioners to choose to receive an authorised pension up to a cap of 150 per cent of the amount of an equivalent annuity (up from 120 per cent). It also reduces to £12,000 the minimum annual relevant income that a drawdown pensioner must be receiving in order not to be subject to this cap (down from £20,000 a year).

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 120 per cent of the basis amount to 150 per cent 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".

3. Subsection (2) amends pension death benefit rule 4 in section 167 of FA 2004 to increase the maximum dependants' drawdown pension payable from 120 per cent of the basis amount to 150 per cent 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) and (4) reduce the minimum income threshold from £20,000 to £12,000 for members and dependants respectively. A drawdown pensioner whose relevant income is at or above the threshold can apply not to be subject to the restrictions on withdrawals prescribed in pension rule 5 or pension death benefit rule 4 as appropriate.

5. Subsection (5) removes the provisions in Finance Act 2013 that previously increased the amount that drawdown pensioners could choose to receive as an authorised pension (from 100 per cent to 120 per cent).

6. Subsections (6) to (8) provide when the amendments take effect.

BACKGROUND NOTE

7. This section sets out that the increase in the maximum drawdown pension to 150 per cent of the basis amount has effect for all drawdown pension years starting on or after 27 March 2014.

8. 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 a 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.

9. So, for example, if a member first became entitled to drawdown pension on 1 June 2012, the higher maximum drawdown pension of 150 per cent of the basis amount would first be available for the drawdown pension year starting on 1 June 2014, even if no new reference period starts on that date. And if the member has added to the drawdown pension fund between 1 June 2013 and 31 May 2014, this would make no difference to when the 150 per cent multiplier first applies, which would still be for the drawdown pension year starting on 1 June 2014.

10. All withdrawals from drawdown funds are subject to tax as pension income. An individual making a withdrawal from a drawdown pension fund during a period when they are resident outside the UK for a period of less than five full tax years is liable for UK income tax on that withdrawal for the tax year in which they become UK resident again.

11. Any new pension savings for an individual after the tax year in which he or she applied for flexible access to their drawdown pension fund will be liable to the annual allowance charge on all pension input amounts relating to those new savings.

12. 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 2014 Finance Bill received Royal Assent where they have made payments from a drawdown pension fund which are higher than 120 per cent of the basis amount but are not more than 150 per cent of the basis amount in a drawdown pension year beginning on or after 27 March 2014.

SECTION 42: PENSION FLEXIBILITY: TAKING LOW-VALUE PENSION RIGHTS AS LUMP SUM

SUMMARY

1. This section amends Finance Act 2004 to increase to £30,000 (up from £18,000) the maximum total pension savings that individuals can have before they are no longer permitted to receive lump sums from their registered pension schemes under trivial commutation rules. It also increases the amount that can be paid as a small lump sum irrespective of an individual's total pension savings to £10,000 (up from £2,000). It also amends secondary legislation to increase from two to three the number of small lump sums that an individual can receive from pension schemes that are not occupational or public service pension schemes.

DETAILS OF THE SECTION

2. Subsections (1) and (3) provide for the commutation limit to increase to £30,000. A trivial commutation lump sum is one of the authorised lump sums payable to a member. Paragraph 7(1) of Schedule 29 to Finance Act 2004 (FA 2004) sets out the conditions for a lump sum to be a trivial commutation lump sum and paragraph 7(4) sets the maximum value of an individual's total pension savings at or below which the individual can choose to withdraw those savings as one or more lump sums.

3. Subsections (2) and (4) repeal a provision which, following an increase or decrease in the commutation limit, adjusted the value of pension savings the individual had already crystallised for the purpose of calculating whether the member's total pension savings were more than the commutation limit. This simplifies the revaluation rules.

4. Subsection (5) amends secondary legislation and provides for an increase from £2,000 to £10,000 in the maximum amount of certain lump sums that can be trivial commutation lump sums when paid in connection with a tax-free pension commencement lump sum in certain circumstances. This trivial commutation lump sum can be paid after an individual receives a transitionally-protected pension commencement lump sum, the value of which is higher than the amount defined in paragraph 3 of Schedule 29 to FA 2004 (normally 25% of the value of the member's rights under the scheme). To be a trivial commutation lump sum their remaining pension rights must not be more than the maximum amount.

5. Paragraph (6)(a) amends secondary legislation and raises from £2,000 to £10,000 the maximum amount that may be made as authorised payments for a number of lump sums.

6. Paragraph (6)(b) and subsection (7) amend secondary legislation and raise the maximum amount of certain payments that can be taken as a trivial commutation lump sum from £18,000 to £30,000. The affected payments are payments that would be trivial commutation lump sums but for the continuing payment of an annuity, and which also satisfy the other conditions set out in regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

7. Paragraph (6)(c) amends secondary legislation and increases a limit from £2,000 to £10,000 in relation to certain small lump sums paid by public service pension schemes or occupational pension schemes. The total value of benefits the individual is entitled to under the scheme paying the lump sum and any related scheme must not be more than that limit.

8. Paragraph (6)(d) amends secondary legislation and increases from two to three the maximum number of small lump sums that an individual can receive, in accordance with regulation 11A of SI 2009/1171, as an authorised payment from registered pension schemes that are not public service pension schemes or occupational pension schemes.

9. Paragraph (6)(e) amends secondary legislation and increases the threshold from £2,000 to £10,000 in relation to payments under one of the provisions amended by subsection (6)(a). The payments affected are some of those made by larger public service or occupational pension schemes in accordance with the conditions set out in regulation 12 of SI 2009/1171. One of the conditions for such payments to be an authorised payment is that there are at least 20 members of the scheme each of whose arrangements have an individual value greater than the threshold.

10. Subsections (8), (9)(a) and (10) provide that the amendments made by the section take effect for commutation periods that start and for payments that are made on or after 27 March 2014. The commutation period is defined in paragraph 7(2) of Schedule 29 to FA 2004 as the period of 12 months starting on the day on which the member is first paid a trivial commutation lump sum.

11. Paragraph (9)(b) provides that the amendment made by subsection (5) is to be treated as made by the Treasury using the powers conferred by section 283(2) FA 2004.

12. Subsection (11) of the section provides that the amendments made by subsection (6) are to be treated as made by HM Revenue & Customs using the powers conferred by section 164 FA 2004.

BACKGROUND NOTE

13. There are a number of payments that registered pension schemes are authorised to make as lump sums. This section increases the maximum amount that may be paid as lump sums that are an individual's total pension savings (trivial commutation lump sums) and small lump sum payments that may made in addition to other authorised payments, which are treated as trivial commutation lump sums.

14. The section is covered by a resolution made under the Provisional Collection of Taxes Act 1968. Under this resolution scheme administrators of registered pension schemes account for income tax under Pay As You Earn procedures before the 2014 Finance Bill received Royal Assent for lump sums to which the section applies where paid on or after 27 March 2014.

SECTION 43 AND SCHEDULE 5: PENSION FLEXIBILITY: FURTHER AMENDMENTS

SUMMARY

1. Section 43 and Schedule 5 introduce transitional provisions in connection with the new flexibilities available to individuals for accessing their pension savings introduced by sections 41 and 42 of this Act as well as the further flexibilities that will be introduced from April 2015. Normally any tax-free lump sum paid from pension savings must be taken in connection with a pension, no more than 6 months before the pension and must be paid from the same scheme. Where these conditions are not met the intended tax-free lump sum is an unauthorised payment and subject to various tax charges. This Schedule amends these provisions to enable individuals to take a tax–free lump sum now and wait until April 2015 to decide how they want to access their pension savings, transfer the rest of their pension savings to another pension provider to enable them to access their pension savings, or receive the rest of the pension savings now as a lump sum under the limits raised in section 42.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new paragraph 1A into Schedule 29 to Finance Act 2004 (Schedule 29) to provide that certain lump sums paid before 6 April 2015 will be capable of being paid tax-free as pension commencement lump sums (PCLS) so long as the member becomes entitled to the pension the PCLS is paid in connection with before 6 October 2015.

3. New paragraph 1A(1) of Schedule 29 removes the condition that a PCLS must be paid no more than six months before the member becomes entitled to the connected pension when paragraph 1A applies.

4. New paragraph 1A (2) provides that paragraph 1A applies when the member becomes entitled to the connected pension before 6 October 2015 and the intended PCLS is paid:

- Before 6 April 2015.
- From a money purchase arrangement including cash balance arrangements.
- Before the member becomes entitled to the connected pension, and
- Either on or after 19 September 2013 (that is 6 months before the date the flexibility changes were announced at Budget 14) or if it was paid before 19 September 2013, where a lifetime annuity purchased in connection with the intended PCLS is cancelled on or after 19 March 2014.

5. New paragraph 1A(3) provides that a further PCLS cannot be paid out of or in connection with the sums and assets held for the purpose of providing the expected pension which relates to the intended PCLS.

6. New paragraph 1A(4) confirms that for the purposes of deciding whether the member has become entitled to a pension, the member is not to be treated as having become entitled to a lifetime annuity if the contract which was to provide that annuity is cancelled on or after 19 March 2014.

7. Paragraph 2(1) inserts new paragraph 1B into Schedule 29 to provide in certain prescribed circumstances that a PCLS can be paid from a different registered pension scheme (scheme A) to the scheme (scheme B) that provides the pension it is paid in connection with. Where this applies the maximum that can be paid as a PCLS must be based on the expected pension that scheme A would have paid, not the actual pension that is paid from scheme B.

8. New paragraph 1B(1) removes the conditions that to be a PCLS, the member must become entitled to the PCLS in connection with a pension paid under the same scheme to which the member becomes entitled no more than six months after the PCLS was paid. It also sets out when references to a pension in paragraphs 1 and 2 of Schedule 29 should be read as referring to the actual pension or the expected pension.

9. New paragraph 1B(2) prescribes when paragraph 1B applies and defines the "actual pension" and "expected pension". In addition to the circumstances that must be met for paragraph 1A to apply, for paragraph 1B to apply the intended PCLS must also be paid in the expectation that a pension (the expected pension) would be provided from scheme A. However the sums and assets intended to be used to provide the expected pension when the intended PCLS was paid from scheme A may be transferred to scheme B to provide an actual pension. The member must become entitled to the actual pension from scheme B before 6 October 2015 and the actual pension must use up all the sums and assets transferred and any sums derived from them, for example any investment growth.

10. New paragraph 1B(3) provides that any other lump sum paid by scheme B to the member in connection with the sums and assets transferred cannot be paid tax free as a PCLS.

11. New paragraph 1B(4) provides that for the purposes of deciding whether there was a recognised transfer for the purposes of sub-paragraph (2)(g), the member is not to be treated as having become entitled to a lifetime annuity if the contract which was to provide that annuity is cancelled on or after 19 March 2014.

12. Paragraph 2(2) inserts new sub-section (za) into section 166(2) of Finance Act 2004 (FA 2004). This provides that when paragraph 1B applies the member is treated as becoming entitled to the PCLS paid by scheme A immediately before becoming entitled to the actual pension under scheme B. This date is also the date on which the payment of the PCLS gives rise to a benefit crystallisation event 6 for the purposes of the lifetime allowance charge in sections 214 to 216 of FA 2004.

13. Paragraph 3 inserts new section 185J into FA 2004. New Section 185J relates to the repayment of certain lump sums paid before 6 April 2015.

14. New section 185J(1) sets out the circumstances in which an intended PCLS that is repaid by the member to the scheme that paid it, is treated for tax purposes as never having been paid and that the repayment is not treated as a payment. This means that no tax is payable on the intended PCLS and no tax relief is due in respect of the repayment.

15. New section 185J(2) sets out the circumstances in which paragraph 3 applies. These are that an intended PCLS must be paid in the period and circumstances specified in new paragraph 1A of Schedule 29 as inserted by paragraph 1 of the Schedule and that the intended PCLS must be paid in the expectation that a pension (the expected pension) would be provided from the scheme and the repayment must be made before 6 October 2015.

16. New section 185J(3) confirms that when deciding whether the intended PCLS was repaid before the member became entitled to the expected pension, the member is not to be treated as having become entitled to a lifetime annuity if the contract which was to provide that annuity is cancelled on or after 19 March 2014.

17. Paragraph 4 provides how to calculate the maximum applicable amount that can be paid as a PCLS where either new paragraph 1A or 1B of Schedule 29 apply. It inserts new sub-paragraphs (8A) and (8B) into paragraph 3 of Schedule 29.

18. New paragraph 3(8A) of Schedule 29 provides that when calculating the maximum PCLS in paragraph 3 of Schedule 29 where the expected pension is a lifetime annuity the contract for which is cancelled, the applicable amount for the purposes of paragraphs 2 and 3 of Schedule 29, is one third of the price of the annuity that was cancelled. Sub-paragraph (8A) also provides that in any other case where either new paragraph 1A or 1B of Schedule 29 apply, the calculation of the applicable amount is based on the assumption that the member had become entitled to the expected pension in connection with which the PCLS was paid at the time the lump sum is paid.

19. New paragraph 3(8B) confirms that for the purposes of new sub-paragraph (8A), if a contract for a lifetime annuity is cancelled within the required timescale, the member is not treated as having become entitled to the lifetime annuity.

20. Paragraph 5 amends FA 2004 to provide for a lump sum, which was intended to be a PCLS, to be paid tax free where the rest of the funds are used to pay a trivial commutation lump sum instead of a relevant pension. Trivial commutation lump sums are defined in paragraphs 7 to 9 of Schedule 29.

21. Paragraph 5(1) adds a new category of tax-free authorised lump sum that may be paid to a member called a transitional 2013/14 lump sum.

22. Paragraph 5(2) inserts new paragraph 11A into Schedule 29, which provides for certain lump sums to be transitional 2013/14 lump sums and how they and the associated trivial commutation lump sums are subject to tax.

23. New paragraph 11A(1) provides that a transitional 2013/14 lump sum (also the 'earlier sum') must be paid within the same time period as if new paragraph 1A of Schedule 29 applied, in the expectation that the earlier sum would be a PCLS and that an expected pension would be paid in connection with it. In addition all the sums and assets expected to be paid as a pension must be paid on or after 6 July 2014 and before 6 April 2015 as a trivial commutation lump sum (the further sum).

24. New paragraphs 11A(2) to (4) provide that the value of certain specified lump sums is taken into account when determining whether the commutation limit of £30,000 is exceeded, in order to work out whether or not "the further sum" is a trivial commutation lump sum.

25. New paragraphs 11A(5) and (6) prescribe that the whole of the trivial commutation lump sum is subject to income tax if the trivial commutation lump sum is paid solely from the sums and assets intended to be paid as the expected pension. This ensures that no part of this further sum can be paid tax free where a tax-free lump has already been paid in connection with all the sums and assets that make up the further sum. Where the trivial commutation lump sum is paid from other sums and assets in addition to those intended to be paid as an expected pension, only 25% of the part of the trivial commutation lump sum that relates to the sums and assets not intended for the original pension may be paid tax free.

26. New paragraph 11A(7) confirms that for the purposes of deciding whether a lump sum is a transitional 2013/14 lump sum, the member is not to be treated as having become entitled to a lifetime annuity if the contract which was to provide that annuity is cancelled on or after 19 March 2014.

27. Paragraph 5(3) amends section 636A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to add transitional 2013/14 lump sums to the list of lump sums that are paid tax free to the member.

28. Paragraph 6 amends the Registered Pension Schemes (Authorised Payments) Regulations 2009 (S.I. 2009/1171) to allow a lump sum that was paid and was intended to be a PCLS, to be paid tax free where the funds intended to provide a pension in connection with the lump sum are instead paid out as a lump sum under regulations 11, 11A or 12 of S.I. 2009/1171 or paragraph 7A of Schedule 29. Where this paragraph applies, the intended PCLS will still be a tax free authorised payment.

29. Paragraph 6(1) inserts new regulation 3A into S.I. 2009/1171.

30. New regulation 3A(1) provides that when regulation 3A applies, which are the same circumstances as when new paragraph 11A of Schedule 29 applies, except that the sums and assets expected to be paid as a pension must be paid on or after 6 July 2014 and before 6 April 2015 as a lump sum under regulations 11, 11A or 12 of S.I. 2009/1171 or a trivial commutation lump sum within paragraph 7A of Schedule 29 (the further sum).

31. New regulation 3A(2) provides that where regulation 3A applies and the lump sum is of a payment described in S.I. 2009/1171, the intended PCLS is an authorised payment under section 164(1)(f) of FA 2004 and is treated as a PCLS for the purposes of section 636A of ITEPA 2003, so that it can be paid tax free to the member, although it is not a PCLS for any other purposes.

32. New regulation 3A(3) provides that where the lump sum is within paragraph 7A of Schedule 29, the requirement for the lump sum to be paid no later than one month after the PCLS is omitted.

33. New regulations 3A(4) and (5) prescribe that the whole of the further sum is subject to income tax where it is paid solely from the sums and assets intended to be paid as the expected pension. Where the further sum is paid from other sums and assets in addition to those intended to be paid as an expected pension, only 25% of the part of the further sum that relates to the sums and assets not intended for the expected pension may be paid tax free.

34. New regulation 3A(6) confirms that for the purpose of whether regulation 3A applies, the member is not to be treated as having become entitled to a lifetime annuity if the contract which was to provide that annuity is cancelled on or after 19 March 2014.

35. Paragraph 7 amends paragraphs 22 and 23 of Schedule 36 to FA 2004 (Schedule 36), to ensure that where an individual is entitled to a protected pension age under that Schedule, any recognised transfer to which new paragraph 1B of Schedule 29 applies will not result in the loss of that protected pension age.

36. Paragraph 7(1) inserts new sub-paragraph (6A) into paragraph 22 of Schedule 36. It prescribes that a transfer is also a block transfer if it involves the transfer of all the members' rights under that scheme and the transfer takes place on or after 19 March 2014 but before 6 April 2015. As a protected pension age is not lost by reason of a block transfer, this means that when this paragraph applies the member does not lose their right to a protected pension age in consequence of a transfer.

37. Paragraph 7(2) amends paragraph 23(6) of Schedule 36 so that where that paragraph applies, block transfer has the same meaning as in paragraph 22(6) and 6(A).

38. Paragraph 8 amends paragraph 29 of Schedule 36 to set out the maximum that can be paid as a PCLS to an individual who has a protected lump of greater than £375k, where new paragraphs 1A or 1B of Schedule 29, as inserted by paragraphs 1 and 2 of the Schedule, apply. In this case the maximum is to be determined by reference to the expected pension rather than the actual pension paid.

39. Paragraph 9 amends paragraph 31 of Schedule 36 to provide that a protected right to a PCLS of greater than 25% of a member's uncrystallised rights is not lost as a result of a transfer to which this Schedule applies.

40. Paragraph 10 amends paragraph 34 of Schedule 36 which modifies paragraph of Schedule 29 for calculating the maximum that can be paid as a PCLS where an individual has a protected right to a PCLS of greater than 25% of their uncrystallised rights.

41. Paragraphs 10(2) and (3) provide that when calculating the maximum PCLS, the amount crystallised (AC) is to be based on the value of the expected pension rather than the actual pension.

42. Paragraph 11(1) inserts new regulations 19 & 20 into the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567).

43. New regulation 19 provides how the reporting requirements apply following a transfer to which new paragraph 1B of Schedule 29 applies. It sets out the information that is required to be provided between scheme administrators and from scheme administrators to HMRC and members. It also sets out when the required information must be provided.

44. New regulation 20 sets out the reporting requirements where there has been a transfer to which new paragraph 1B would have applied had the entitlement to the actual pension arisen before 6 October 2015. The unauthorised payment represented by the intended PCLS must be reported to HMRC under regulation 3 by the receiving scheme as if the unauthorised payment was paid on 5 October 2015.

45. Paragraphs 12(1) and (2) amend section 239 of FA 2004 to provide that where new paragraph 1B would have applied had the entitlement to the actual pension arisen before 6 October 2015, the scheme administrator of the receiving scheme is liable for the scheme sanction charge due in respect of the unauthorised payment represented by the intended PCLS. However, where the lump sum would have exceeded the permitted maximum had it been a PCLS, the scheme sanction charge in respect of the part of the lump sum that is in excess of that permitted maximum is the liability of the scheme administrator of the transferring scheme.

46. Paragraph 12(3) enables a scheme administrator of the receiving scheme to apply for a discharge of any liability where they believe it would not be just and reasonable for them to be liable to the scheme sanction charge.

47. Paragraphs 12(4) and (5) amend article 18 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572) to provide that for individuals with enhanced protection, section 239(3)(b) of Finance Act 2004 applies without the requirement for the member to have available lifetime allowance.

48. Paragraph 13 amends section 166 of FA 2004 to introduce a power to make regulations to amend the lump sum rules in Part 1 of Schedule 29 or Part 3 of Schedule 36 where the lump sum is paid on or after 19 September 2013 and before 6 April 2015, or if it was paid before 19 September 2013, where a lifetime annuity purchased in connection with the intended PCLS is cancelled on or after 19 March 2014.

49. Paragraph 15 provides that the amendments made by paragraphs 1 to 12 of this Schedule are treated as coming into force on 19 March 2014.

BACKGROUND NOTE

50. Finance Act 2004 sets out the tax rules in connection with payments to and from registered pension schemes. It sets out those payments (most commonly pensions and lump sums) that are authorised and the conditions that must be met for each type of payment to be authorised. Where a payment is made that doesn't meet the conditions to be an authorised payment, various tax charges apply.

51. Sections 41 and 42 of this Act make various changes to the limits that apply when pensions and lump sums can be paid. In addition the Government announced at Budget 14 that new flexibilities would be introduced from April 15 on how individuals could access their pension savings. The Schedule deals with a number of transitional issues arising in consequence of the Budget 14 announcement.

52. One of the authorised payments a scheme can make to a member is the PCLS which is paid tax free. This Schedule amends Finance Act 2004 to ensure that:

- Where an intended PCLS is paid before 6 April 2015 in respect of a money purchase arrangement, the pension associated with the PCLS can commence up to 5 October 2015.
- Where an intended PCLS is paid before 6 April 2015 in respect of a money purchase arrangement, the pension associated with the PCLS can be paid from a different scheme from that which paid the PCLS.
- Where the associated pension is paid from a different scheme to the PCLS under the bullet point above, any right to a protected pension age or protected lump sum is preserved as part of the transfer.
- Where an intended PCLS paid before 6 April 2015 in respect of a money purchase arrangement is repaid before 6 October 2015, the intended PCLS is treated for all tax purposes as if it had never been paid, and,
- where a member has received an intended PCLS before 27 March 2014, if they commute the uncrystallised expected pension to a lump sum under the trivial commutation or small pots rules then the intended PCLS will continue to be an authorised payment and tax free.

SECTION 44 AND SCHEDULE 4: TRANSITIONAL PROVISION FOR NEW STANDARD LIFETIME ALLOWANCE FOR 2014-15 ETC

SUMMARY

1. This section and Schedule introduce a new protection regime, individual protection 2014 (IP14), for pension savers who are affected by the reduction in the standard lifetime allowance to £1.25 million from 6 April 2014. IP14 entitles individuals who have pension rights on 5 April 2014 of greater than £1.25 million and who do not have primary protection, to a lifetime allowance equal to the value of those pension rights, subject to a maximum of £1.5 million.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraphs 1 to 5 set out who can notify HMRC that they intend to rely on IP14, how their pension rights are valued and the level of protected lifetime allowance that they will be entitled to.

3. Paragraph 1(1) provides that individuals can notify HMRC that they intend to rely on IP14 if they have pension rights (their "relevant amount", as defined in paragraph 1(5)) of greater than £1.25 million on 5 April 2014 and they do not have primary protection as set out in paragraph 7 of Schedule 36 to FA2004, and that notice must be given before 6 April 2017.

4. Paragraph 1(2) provides that where an individual has IP14 their standard lifetime allowance is the greater of their relevant amount (subject to an overall limit of £1.5 million) and the standard lifetime allowance from time to time.

5. Paragraph 1(3) provides that where an individual who has notified HMRC that they intend to rely on IP14 has one of three specified existing LTA protections, then as long as one of those more beneficial protections is valid, IP14 does not apply.

6. Paragraph 1(5) defines the relevant amount as the sum of amounts A to D which are defined in paragraphs 2 to 5. This is the value of the individual's pensions in payment plus their pension savings, not yet taken, that have benefited from UK tax relief.

7. Paragraphs 1(6) to (9) deal with the position where the pension rights of an individual with IP14 are subject to a pension debit, as a result of the sharing of the individual's pensions rights following a divorce, on or after 6 April 2014. In such a case, the individual's relevant amount is reduced by the amount of the debit. However for IP14 purposes the amount of debit is reduced by 5 per cent for each complete tax year between 5 April 2014 and the date of the pension debit. The reduction is intended to reflect any increase in the individual's total pension rights between 5 April 2014 and the time of the pension debit. Where the individual's relevant amount is reduced to below £1.25 million as a result of the pension debit, they will no longer be entitled to rely on IP14.

8. Paragraph 2 sets out how to calculate amount A, which is the value of the pensions that the individual was receiving on 6 April 2006 (A-day), that is the day when Finance Act 2004 including the lifetime allowance first applied from.

9. Paragraphs 2(2) to (5) apply where a benefit crystallisation event ('BCE') has occurred, in respect of the individual on or before 5 April 2014, for example when an individual has taken some of their pension benefits. In this case Amount A is 25 times the annual rate of the pre A-day pension immediately before the BCE, multiplied by a factor of £1.5 million (the standard lifetime allowance for 2013-14) over the standard lifetime allowance at the date of the BCE. The factor is applied to take account of any change in the standard lifetime allowance since the BCE, so that that percentage of the standard lifetime allowance used up by the pre A-day pension is the same on 5 April 2014 as it was on the date of the BCE.

10. Paragraphs 2(6) and (7) apply where no BCE has occurred in respect of the individual since A-day, in which case amount A is 25 times the annual rate at which the pre A-day pension is payable on 5 April 2014.

11. Paragraphs 2(8) and (9) define expressions used in subparagraphs (2) to (7).

12. Paragraph 3 sets out how to calculate amount B, which is the value of any BCEs in respect of the individual occurring on or before 5 April 2014. Amount B is the aggregate of the value of each BCE, multiplied by a factor of £1.5 million (the standard lifetime allowance for 2013-14) over the standard lifetime allowance at the date of the BCE.

13. Paragraph 4 sets out how to calculate amount C, which is the value of any uncrystallised pension rights that the individual has in a registered pension scheme on 5 April 2014. Amount C is calculated in accordance with the method set out in section 212 of Finance Act 2004.

14. Paragraph 5 sets out how to calculate amount D, which is the value of any uncrystallised pension rights that the individual has under relieved non-UK pension schemes on 5 April 2014. To calculate amount D, it is assumed that there is a BCE in respect of those rights at that date and the amount that would have been crystallised in accordance with paragraph 14 of Schedule 36 to Finance Act 2004.

15. Paragraph 6 provides that expressions used in Schedule Y have the same meaning as in Part 4 of Finance Act 2004.

Part 2

16. Paragraphs 7 to 9 provide powers for HMRC to make regulations to amend Part 1 and to specify how individuals must give notice of their intention to rely on IP14.

Part 3

17. Part 3 makes consequential amendments to existing legislation as a result of the reduction in the lifetime allowance.

18. Paragraph 10 amends section 219(5A) of Finance Act 2004 so that it only applies to individuals with primary protection where the individual has at least one BCE before 6 April 2014 and another BCE on or after 6 April 2014.

19. Paragraph 11 amends section 98 of the Taxes Management Act 1970 to bring regulations relating to applications for fixed protection 2012, fixed protection 2014 and IP14 within the penalty provisions in section 98.

BACKGROUND NOTE

20. 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 lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from pension schemes that benefit from UK tax relief, including any UK tax relieved savings the individual has in a relieved non-UK pension scheme.

21. 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 the excess is subject to the lifetime allowance charge. The rate of the 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 taken as a pension is taxable at 25 per cent, and the income will be taxable at the individual's marginal rate.

22. The Government announced on 5 December 2012 that legislation would be introduced to reduce the standard lifetime allowance to £1.25 million for the 2014-15 tax year onwards. It also announced that fixed protection 2014 (FP14) would be introduced to protect individuals from potentially retrospective tax charges arising from the reduction and that it would consult on whether an individual protection regime should supplement FP14, to offer a more flexible framework. At Budget 2013 the Government confirmed that it would offer individual protection 2014 and that it would consult on the detail over the summer. That consultation took place from 10 June to 2 September. A summary of responses to the consultation was published on 10 December 2013.

SECTION 45: TAXABLE SPECIFIC INCOME: EFFECT ON PENSION INPUT AMOUNT FOR NON-UK SCHEMES

SUMMARY

1. This section amends Finance Act 2004 to prevent the amount that is tested against the annual allowance in respect of a relevant non-UK scheme from reducing as a result of the member having taxable specific income.

2. The section makes amendments to the "appropriate fraction" in paragraphs 10 and 11 of Schedule 34 to Finance Act 2004. Paragraphs 10 and 11 of Schedule 34 modify how the annual allowance charge applies in respect of a relevant non-UK scheme, when some or all of the pension input amounts are attributable to the member's employer. The appropriate fraction is intended to reduce the value of the pension input amounts tested against the annual allowance when some of the member's employment income for the tax year is not subject to UK tax.

DETAILS OF THE SECTION

3. Subsections (2) and (3) provide that any taxable specific income is included in the numerator of the appropriate fraction, so treating it for the purposes of the annual allowance charge the same as other employment income that is taxable. The appropriate fraction previously not only undervalued how much of the employer pension provision was potentially subject to the annual allowance charge but in consequence also equivalently overvalued how much of that provision might count as employment income by virtue of Chapter 2 of Part 7A (employment income provided through third parties).

4. Subsection (4) provides when the amendments have effect.

BACKGROUND NOTE

5. This section removes an anomaly resulting from the way in which the employment income tax legislation interacts with the treatment of employer contributions to relevant non-UK schemes, which could have led to another measure in Finance Act 2014 (section 50 - Employment-related securities etc) creating unintended tax and NIC liabilities for internationally mobile employees.

6. The section is covered by a resolution made under the Provisional Collection of Taxes Act 1968. Under this resolution employers account for income tax under Pay As You Earn procedures for the 2014-15 tax year in accordance with the amendments this section made before the 2014 Finance Bill received Royal Assent.

SECTION 46 AND SCHEDULE 7: PENSION SCHEMES

SUMMARY

1. This section and Schedule amend Finance Act 2004 (FA2004) to tackle the growing threat of pension liberation and preserve pension savings. Pension liberation describes schemes encouraging individuals to access their pension savings earlier than permitted by Parliament. The changes are intended to make it harder for liberation schemes to register for tax relief and ensure that tax charges and penalties applying where liberation occurs are fair.

DETAILS OF THE SCHEDULE

2. Paragraph 1 introduces the amendments made by the Schedule.

Registration of pension schemes

3. Paragraph 2 amends section 153 of FA2004, relating to new applications for registration of pension schemes.

4. Subparagraph 2(2) provides that HMRC has time to consider new registration applications and does not have to make a decision immediately on receipt of the application.

5. Subparagraph 2(3) amends section 153(5) to prescribe more circumstances in which HMRC may refuse to register a pension scheme. These amendments allow HMRC to refuse to register a pension scheme where it appears to HMRC that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person to be the scheme administrator. The amendments also extend the existing provisions relating to the failure to provide information or the provision of inaccurate information to include documents provided in connection with the application as well as where the scheme administrator has deliberately obstructed an HMRC official in connection with an inspection of documents on the business premises of the scheme administrator, where the inspection was approved by the tribunal.

6. Subparagraph 2(4) inserts new subsections (5A), (5B) and (5C) into section 153. New subsections (5A) and (5B) define the scope of the information and documents covered by section 153(5) as amended by subparagraph 2(3). New subsection (5C) expands on the reference to a failure to comply with an information notice in section 153(5).

7. Paragraph 3 inserts new sections 153A to 153F into FA 2004. These provide new powers for HMRC to request additional information and documents and a new inspection power, including a power to enter business premises for the inspection, in connection with an application to register a pension scheme. It also includes a mechanism for appeals and penalties for failure to comply with a notice or the production of inaccurate information or documents.

8. New section 153A provides that HMRC may send an information notice to the scheme administrator of a pension scheme, or a third party, where an application to register a scheme is made. The information notice can request any information or document that is reasonably required by HMRC to make a decision on whether to register the scheme or not. New subsection 153A(3) applies specified paragraphs of Schedule 36 to Finance Act 2008 (FA2008) to information notices under new section 153A. Schedule 36 to FA 2008 prescribes HMRC's general powers to obtain and inspect information and documents. New subsection 153A(4) requires that where the notice is sent to a person other than the scheme administrator, it must be copied to the scheme administrator. New subsections 153A(5) and (6) deal with appeals where the notice is sent to a person other than the scheme administrator and apply paragraph 32 of Schedule 36 FA2008 (appeals against information notices) to any appeal under section 153A. Where the notice is sent to the scheme administrator, there are no penalties as failure to comply with that notice may lead to HMRC refusing to register the pension scheme under section 153. The scheme administrator may appeal under section 156 of FA2004 against a decision not to register a pension scheme.

9. New subsections 153B(1) to (4) provide that HMRC may enter the business premises of the scheme administrator or another person to inspect documents, in connection with the application to register a pension scheme. New subsection 153B(3) defines business premises for the purposes of this section. New subsection 153B(4) applies paragraphs 10(2), 12, 15 and 16 of Schedule 36 FA2008 (power of inspection) for the purposes of this section.

10. New subsection 153B(5) provides that HMRC can not inspect a document that could not be requested under an information notice under Schedule 36 FA2008. New subsections (6) and (7) allow HMRC to ask the tribunal to approve the inspection and specify that where this occurs, paragraphs 13(1A), (2) and (3) of Schedule 36 FA2008 apply.

11. New section 153C imposes penalties if a person other than the scheme administrator, fails to comply with an information notice under new section 153A, or deliberately obstructs an officer of HMRC carrying out an inspection under new section 153B that has been approved by the tribunal. New subsection 153C(3) applies the penalty provisions in paragraphs 39(2), 40 and 44 to 49 of Schedule 36 FA2008 (penalties for failure to comply or obstruction). Where penalties apply, a person is liable to a penalty of £300, and daily penalties of up to £60 per day, if the failure to comply continues after the initial penalty is imposed.

12. New section 153D imposes penalties if an application to register a pension scheme contains a material inaccuracy and the scheme administrator either did not take reasonable care, or where the scheme administrator is aware of the inaccuracy but does not inform HMRC. In these circumstances the scheme administrator is liable to a penalty of up to £3,000 for each inaccuracy. New subsection 153D(8) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008 .

13. New section 153E imposes penalties if the information or documents provided under an information notice under new section 153A contain a material inaccuracy the person either did not take reasonable care, or where the person is aware of the inaccuracy but does not inform HMRC. New subsection 153E(2) imposes a penalty of up to £3,000 for each inaccuracy and applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

14. New section 153F imposes penalties if a declaration accompanying an application to register a pension scheme is false and the person completing the declaration either did not take reasonable care, or where they were aware of the inaccuracy but did not inform HMRC. The penalty is up to £3,000 for each falsehood. New subsection 153F(4) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

15. Paragraph 4 inserts new section 156A into FA2004. This provides that if HMRC have not made a decision on whether or not to register a pension scheme within a period of 6 months of the application being received by HMRC, the scheme administrator may appeal to the tribunal as if a decision had been taken by HMRC not to register the scheme at the end of that period. Where the tribunal decides the pension scheme should have been registered, it will also provide the date from which it will be treated as being registered.

16. Paragraph 5 provides that the amendments made by paragraphs 2 to 4, have effect in relation to all applications to register a pension scheme received by HMRC on or after 20 March 2014 (the day after Budget Day). However where the application is made before 1 September 2014, HMRC can not refuse to register the pension scheme under section 153(5)(g), as inserted by subparagraph 2(3), that is, on the basis that it appears to HMRC that the scheme administrator is not a fit and proper person.

De-registration of pension schemes

17. Paragraph 6 amends section 158 of FA2004 to add new grounds upon which a pension scheme can be de-registered. These allow HMRC to de-register a scheme where it appears that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person. HMRC may also de-register a scheme where the scheme administrator has obstructed HMRC in the course of an inspection approved by the tribunal. It also extends the existing provisions relating to the failure to provide information or the provision of inaccurate information to apply to all documents in connection with the pension scheme.

18. Paragraph 7 inserts new sections 159A to 159D into FA2004. These provide new information and inspection powers for HMRC to establish whether the scheme administrator is a fit and proper person, as well as a mechanism for appeals and penalties for failure to comply with an information notice or the production of inaccurate information or documents under new sections 159A or 159B. These sections mirror the provisions of new sections 153A to 153C and 153E relating to information notices in connection with an application to register a pension scheme.

19. Paragraph 8 provides that the amendments made by paragraphs 6 and 7, have effect in relation to all registered pension schemes on or after 20 March 2014 (the day after Budget Day), but before 1 September 2014 the provisions relating to the requirement that the scheme administrator is a fit and proper person do not apply.

Declarations required from person who is to be a scheme administrator

20. Paragraph 9 amends section 270 of FA2004. Section 270 defines "scheme administrator" and prescribes what declarations HMRC may require a person, who wishes to be a scheme administrator, may be required to make.

Payments by registered pension schemes: surrender

21. Paragraph 10 amends section 172A of FA2004 relating to surrenders of pension rights. Subparagraph 10(2) repeals subparagraph 172A(5)(d) to ensure that where a surrender of rights is made to fund an authorised surplus payment to a sponsoring employer, the surrender is treated as an unauthorised payment of the value of the rights surrendered. Subparagraph 10(3) inserts new subsection (5A) into section 172A so that a surrender of rights in favour of dependant will be treated as an unauthorised payment unless the new rights are provided under the same scheme under which the surrendered rights were held.

22. Paragraph 11 amends section 207 of FA2004 relating to the authorised surplus payments charge. It provides that the authorised payment surplus charge does not apply where the surplus is derived either directly or indirectly from a surrender of rights to the extent that surrender was treated as an unauthorised payment by virtue of section 172A, as amended by paragraph 10.

23. Paragraph 12 provides when paragraphs 10 and 11 have effect.

Orders for money etc to be restored to pension schemes

24. Paragraph 13 amends section 188 of FA2004 relating to relief for contributions paid by or on behalf of the individual. New subsection (3A) of section 188 provides that contributions made on the member's behalf under a court order under sections 16(1), 19(4) or 21(2)(a) of Pensions Act 2004 or their Northern Ireland equivalent do not receive tax relief to the extent the contribution has enabled the member to claim relief from unauthorised payments tax charges under section 266A FA2004. The court orders specified in section 188 (as amended by paragraph 13) and in section 266A (as amended by paragraph 14) are made or instigated by the Pensions Regulator with a view to providing restitution for the member. Where relief has been claimed under section 266A by virtue of the contribution, it is not appropriate for the member also to get tax relief on the contribution. Taken together with the original tax reliefs on contributions to the scheme and the refund of unauthorised payment charges this would amount to double relief in respect of the same amount. The amendments made by paragraph 13 are closely connected with the amendments made by paragraph 14.

25. Paragraph 14 amends section 266A of FA2004. It provides that a member may claim relief from an unauthorised payments tax charge or unauthorised payments surcharge where contributions are paid on the member's behalf to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent as a result of an unauthorised payment. The Pensions Regulator can use section 16 of the Pensions Act 2004 to apply to a court to issue an order of restitution to a member when pension scheme assets have been misused or misappropriated.

26. Paragraph 15 amends section 266B of FA2004. It provides that a scheme administrator may claim relief from the scheme sanction charge where the sums and assets paid to or on behalf of the member as an unauthorised payment are subsequently paid to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent.

27. Paragraph 16 provides when paragraphs 13 to 15 have effect.

Liabilities of trustees appointed by Pensions Regulator etc

28. Paragraph 17 provides a power for HMRC to make regulations for assessments in respect of any liability under new section 272C.

29. Paragraph 18 provides a consequential change in connection with new section 272C, which is inserted into FA 2004 by paragraph 19.

30. Paragraph 19 inserts new sections 272A to 272C into FA2004.

31. New section 272A ensures that an independent trustee who is appointed as a result of action by the Pensions Regulator does not become liable for specified tax charges that predate their appointment.

32. New subsections 272A(1) and (2) provide when the section applies and in relation to whom.

33. New section 272A(3) defines the date of the "relevant day" in respect of a person P who is an Independent Trustee.

34. New subsection 272A(4) to (6) provide that where the independent trustee (P) becomes a scheme administrator they do not become liable to the tax charges specified in subsection (7) that they would otherwise assume liability for in their capacity as scheme administrator. However, subsection (4) does not apply if P was the scheme administrator before the relevant day, as defined in subsection (3).

35. New subsections 272A(7) to (11) prescribe which tax charges that P does not assume liability for paying, which P otherwise would assume liability for by virtue of being either the scheme administrator, a trustee or a person who controlled the management of the pension scheme.

36. New Section 272B ensures that where a scheme administrator (Q) is appointed when a pension scheme has one or more independent trustees, Q will not become liable to specified tax charges.

37. New subsection 272B(1) provides when the section applies and in relation to whom.

38. New subsections 272B(2) and (3) provide that Q does not assume any liability for those tax charges specified in section 272A(7) that they would otherwise assume by virtue of being either the scheme administrator or a person who controls the management of the pension scheme. Subsection (5) defines the relevant day for the purposes of section 272B, as well as section 272A when it applies for the purposes of new section 272B.

39. New subsection 272B(4) provides that subsections (2) and (3) do not apply where Q was a scheme administrator before the relevant day.

40. New subsection 272B(5) defines the date of the "relevant day" in respect of a person Q, in relation to new section 272B as well as the tax charges prescribed in new section 272A(7) to (11).

41. New section 272C specifies who is liable for those tax charges for which neither P nor Q assume liability by virtue of new sections 272A and 272B.

42. New subsections 272C(1) and (2) prescribe the tax liabilities that the section applies to. New subsection 272C(3) provides that the liability is retained or assumed by the person or persons who were the scheme administrator immediately before the relevant day in relation to P or Q as appropriate.

43. New subsection 272C(4) provides that if there was no scheme administrator immediately before the relevant day, the liability is retained or assumed by the last scheme administrator before the relevant day.

44. New subsection 272C(5) provides that if there is any conflict between section 271 FA2004 and subsections (3) and (4), then the liability will be as set out in subsections (3) and (4).

45. New subsections 272C(6) and (7) provide that subsection (7) applies if no one assumes the liabilities under subsections (3) or (4) or the persons who do assume the liabilities either can not be traced or are already in serious default. In such cases, subsection (7) provides that the liability for the tax charges will fall as set out in section 272(4) of FA2004.

46. New subsection 272C(8) provides that where subsection (7) applies HMRC must notify the person of their liability as soon as is reasonably practicable; but failure to do so does not affect the person's liability.

47. New subsection 272C(9) provides that if a person is liable to a tax charge, and this section imposes liability on another person, the first person does not cease to be liable to that tax charge.

48. New section 272C(10) provides that a new scheme administrator appointed after the Pension Regulator's intervention in the pension scheme has come to an end, takes over responsibility for all the outstanding tax liabilities of the pension scheme.

49. New sections 272C(11) and (12) provide that a scheme administrator, who has assumed liabilities by virtue of new sections 272C(3) and (4), may apply to HMRC to be released from those liabilities and has the right of appeal to an independent tribunal if HMRC refuses the application.

50. Paragraph 20 inserts new subsection (1A) into section 273 of FA2004, which sets out the circumstances in which members of a pension scheme may assume the liability of a scheme administrator. New subsection (1A) extends section 273 to include cases where a person other than the member had assumed liability for a tax charge under sections 239 and 241(1)(b) or (c) of FA2004 by virtue of section 272C, but has failed to pay the tax due and has either died or ceased to exist or HMRC considers the failure to pay the tax is of a serious nature.

51. Paragraph 21 makes consequential changes to section 274 of FA2004.

52. Paragraph 22 provides that new sections 272A to 272C, which act in relation to liabilities arising before Independent Trustees are appointed, do not apply

- In relation to a person P, who is an Independent Trustee, unless P is first appointed on or after 1 September 2014, and
- in relation to a person Q, who is a scheme administrator, unless the scheme in question first had an independent trustee on or after 1 September 2014.

53. Paragraph 23 amends sections 169(5), 257(4), 261(1) and 264(2) of FA2004 to replace 'incorrect' with 'inaccurate', to ensure consistency in Part 4 of FA 2004.

BACKGROUND NOTE

54. Pensions tax relief is provided on contributions to a registered pension scheme for and on behalf of a member, and once in the registered pension scheme any investment growth on the funds is normally tax free. This tax relief is provided so that the funds can be used in later life by the member and/or their dependants. The pensions tax rules therefore set a minimum pension age at which benefits can normally be taken, this is currently age 55. Where benefits are taken before this age, except in prescribed circumstances, for example on the payment of an ill health pension, the payment of benefits will be an unauthorised payment and significant tax charges apply to recover the tax reliefs previously given.

55. A number of pension scheme promoters have set up schemes intended to enable individuals to access some or all of their pension benefits before the minimum pension age. To do this, they often use a registered pension scheme to which the member is encouraged to transfer their pension to before the pension is 'liberated' to the member. In many cases the member is not told of the significant tax charges that will apply and therefore are often left with little or no money after the promoter's fees have deducted.

56. These changes have been introduced to:

- Provide additional powers to HMRC to help it detect and prevent the registration of liberation schemes and to detect and de-register any liberation schemes that have already been registered.
- Prevent authorised surpluses being artificially created as a potential means of liberation.
- Ensure that where the Pensions Regulator becomes involved with a pension scheme any tax charges are applied fairly.

SECTION 47: GLASGOW GRAND PRIX

SUMMARY

1. This section provides for an income tax exemption for non-UK resident competitors at the Glasgow Grand Prix athletics event.

DETAILS OF THE SECTION

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

3. Subsection (2) defines what is meant by Glasgow Grand Prix activities for the purpose of this section.

4. Subsection (3) defines what is meant by the non-residence condition for the purpose of this section.

5. Subsection (4) provides that withholding obligations provided by 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 this section.

6. Subsection (5) defines the terms "accredited competitor", "the games period", "the Glasgow Grand Prix", 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 2014.

BACKGROUND NOTE

8. As announced on 12 February 2014, there will be an exemption from UK income tax on any income arising for non-UK resident competitors at the Glasgow Grand Prix athletics event to be held at Hampden Park in July 2014. The section introduces a similar exemption to those granted for non-UK resident competitors at both the 2013 London Anniversary Games and the 2014 Glasgow Commonwealth Games

9. Both employment and self-employment income arising to non-UK resident competitors who compete in, or carry out activities primarily to promote or support, the Glasgow Grand Prix will be exempted from income tax under this section. This exemption will apply only in respect of income arising as a result of activities carried out during the period 5 July to 14 July 2014. This exemption only applies where the competitor holds a Glasgow Grand Prix accreditation card in the competitors' category which has been issued by UK Athletics Ltd.

SECTION 48: MAJOR SPORTING EVENTS: POWER TO PROVIDE FOR TAX EXEMPTIONS

SUMMARY

1. This section introduces a new power which allows the Government to make provision by Treasury regulations for income tax and corporation tax for major sporting events. Regulations made under this power must be approved by a resolution of the House of Commons.

DETAILS OF THE SECTION

2. Subsection 2 details the particular circumstances for which provision may be made.

3. Subsection 3 details certain criteria by which classes of person may be specified.

4. Subsection 5 describes how the regulations are to be made. They will be subject to the affirmative procedure so that a draft of a statutory instrument containing the provisions must be laid before, and approved by, the House of Commons. This procedure will allow for Parliamentary debate.

BACKGROUND NOTE

5. The Government is introducing a power to allow provision to be made for income tax and corporation tax exemptions for major sporting events using secondary legislation.

6. The Government's policy is to grant certain tax exemptions for sporting events if the event is:

- World-class,
- internationally mobile, and
- where exemption by the host country is a requirement of a bid to host the event.

7. In addition the Government has provided exemptions for events which were or are exceptionally well-placed to extend and preserve the legacy of the London 2012 Olympic and Paralympic Games.

8. Previous exemptions and special provisions have needed to be legislated in a Finance Bill. The power will enable the Government to make provision outside of that process. This will allow for more flexibility whilst retaining Parliamentary scrutiny of any proposed exemption or provision.

SECTION 49: SHARE INCENTIVE PLANS: INCREASES IN MAXIMUM ANNUAL AWARDS ETC

SECTION 50: SHARE INCENTIVE PLANS: POWER TO ADJUST MAXIMUM ANNUAL AWARDS ETC

SUMMARY

1. Section 49 increases the maximum value of the shares that can be awarded or purchased each year under the Share Incentive Plan (SIP) tax advantaged employee share scheme. Section 50 enables future changes to SIP limits to be made by Treasury Order.

DETAILS OF THE SECTIONS

SECTION 49: SHARE INCENTIVE PLANS: INCREASE IN MAXIMUM ANNUAL AWARDS ETC

2. Subsections (1) to (4) amend Schedule 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to increase the maximum value of the SIP free shares that can be awarded to an employee each year from £3,000 to £3,600; and the maximum amount of an employee's salary that can be used to purchase SIP partnership shares each year from £1,500 to £1,800. These changes took effect from 6 April 2014.

SECTION 50: SHARE INCENTIVE PLANS: POWER TO ADJUST MAXIMUM ANNUAL AWARDS ETC

3. Subsections (1) to (4) amend Schedule 2 of ITEPA to allow future changes to SIP annual limits to be made by Treasury Order. This new power applies to the maximum value of SIP free shares that can be awarded to an employee (as set out in paragraph 35 Schedule 2), the maximum amount of an employee's salary that can be used to purchase SIP partnership shares (paragraph 46) and the maximum ratio of matching shares to partnership shares (paragraph 60). This change took effect from the date the Finance Bill 2014 received Royal Assent.

BACKGROUND NOTE

4. SIPs are tax advantaged 'all employee' share schemes, which enable employees to acquire shares in various ways, up to maximum values specified in legislation. SIP features may include the purchase of 'partnership shares' by employees by deduction from salary, or the award of 'free shares' or 'matching shares' by employers.

5. This increase in SIP limits reflects the Government's support for employee share ownership.

6. Alongside this measure, the Government also proposes to increase the maximum amount an employee can contribute to savings arrangements linked to tax advantaged Save As You Earn share option schemes. That change was implemented by Treasury Order and took effect from 6 April 2014.

SECTION 51 AND SCHEDULE 8: EMPLOYEE SHARE SCHEMES

SUMMARY

1. This section and Schedule implement several recommendations of the Office of Tax Simplification (OTS) to simplify the tax rules and administrative processes for employee share schemes. The main changes include:

- Replacing approval by HM Revenue & Customs (HMRC) with self certification for three of the tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP).
- Introducing online filing for all employee share scheme returns and information, including for Enterprise Management Incentives (EMI) and non-tax advantaged arrangements providing employment-related securities.
- a number of technical changes to the SIP, SAYE and CSOP rules designed to clarify the legislation, including modification of the 'purpose test' that must be met by these schemes.

2. These changes aim to simplify the employee share scheme rules where these may create undue complexities or unnecessary administrative burdens for scheme users. They support the Government's objective to simplify the tax system. The changes will come into effect on 6 April 2014.

DETAILS OF THE SCHEDULE

3. The Schedule implements a series of changes across all schemes and arrangements providing employment-related securities.

4. The main legislation as it currently stands 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. The rules concerning the provision of information to HMRC in relation to employment-related securities are in sections 421J-421L. Statutory references in this Note are to provisions in ITEPA unless otherwise stated.

Part 1: Share Incentive Plans

5. Paragraph 1 introduces amendments to Chapter 6 of Part 7 of ITEPA, which provides for income tax advantages to be available in connection with shares obtained under SIP.

6. Paragraphs 2-12 make various changes to Chapter 6 to reflect the replacement of the present arrangements for HMRC approval of SIPs with self certification of plans by employers. In particular the paragraphs remove legislative references to 'approved SIPs'.

Instead the concept is introduced of SIPs that meet the conditions being certified by employers as 'Schedule 2 SIPs'.

7. Paragraph 8 modifies the current rules in Chapter 7 for determining the value of partnership shares (and the amount that counts as employment income of the participant) upon the shares ceasing to be subject to the plan within five years of their acquisition by the participant. This includes special rules that apply in certain circumstances where shares are required to be offered for sale by the participant.

8. Paragraphs 13-32 set out amendments to Schedule 2 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SIPs to self certification by employers, and there are new powers for HMRC to determine that a plan is no longer to be a Schedule 2 SIP, and to make enquiries into the running of a SIP.

9. Paragraph 16 amends the introductory provision for the SIP rules in paragraph 1 Schedule 2, taking account of the new self certification arrangements and HMRC powers to enquire into plans and decide that certain plans should not be Schedule 2 SIPs.

10. Paragraph 19 amends paragraph 7 Schedule 2 to introduce a new purpose test to be met by Schedule 2 SIPs. In addition to the current requirement that the purpose of a SIP must be to provide shares that give employees a continuing stake in the company, key new conditions are that SIPs must not provide benefits other than in accordance with Schedule 2 (unless the benefits are the same as the employee would have received had the shares been acquired outside the SIP), and in particular must not provide participants with cash as an alternative to shares.

11. Paragraph 23 amends paragraph 43 Schedule 2 to make clear that a plan may require an employee who has purchased SIP partnership shares to offer the shares for sale in certain circumstances, and provides conditions in relation to the price at which the shares are to be offered for sale.

12. Paragraph 25 amends the provisions in paragraph 56 Schedule 2 concerning the repayment of partnership share money to employees. It concerns cases in which HMRC give notice that the plan is not to be a Schedule 2 SIP, and takes account of the right of companies to appeal against such a notice.

13. Paragraph 26 amends paragraph 65 Schedule 2 to make clear that a plan may require an employee who has acquired SIP dividend shares offer them for sale in certain circumstances, and provides conditions in relation to the price at which the shares are to be offered for sale.

14. Paragraph 28 inserts a new Part 10 in Schedule 2, setting out rules for notification of SIPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a plan is not to be a Schedule 2 SIP and make enquiries into the running of a SIP, as well as appeal rights in respect of these powers.

15. New paragraph 81A of Schedule 2 provides new rules concerning notification of SIPs to HMRC. For a plan to be a Schedule 2 SIP and qualify for favourable tax treatment, the company must give notice to HMRC and make a declaration that the plan meets and, where

the declaration is made after the first award of shares, has met the relevant conditions of Schedule 2. The notice should be given by 6 July following the tax year in which the first award of shares is made under the scheme, and sub-paragraph (5) explains when the plan will be a Schedule 2 SIP in cases when this deadline is missed.

16. New paragraph 81B obliges companies to make annual returns to HMRC in respect of SIPs for which notice has been given under paragraph 81A, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SIP or the plan trust in the tax year in question and contain a declaration by the employer. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a plan. If companies become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

17. New paragraph 81C lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where companies have a 'reasonable excuse' for the failure.

18. New paragraph 81D provides that notification of SIPs and annual SIP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

19. New paragraph 81E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the company.

20. New paragraph 81F empowers HMRC to make enquiries into a SIP after giving notice to a company of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 2 are not or have not been met in relation to the plan.

21. New paragraph 81G provides the rules for closure of HMRC enquiries, the decision that may be included within an HMRC closure notice, the right of companies to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

22. New paragraph 81H sets out the action HMRC may take where a SIP does not meet or has not met the conditions of Schedule 2. If the breach of the SIP rules is considered serious enough to warrant it, HMRC may decide that a plan is not to be a Schedule 2 SIP either from the time of the closure notice or such time as is specified in the notice, and the company is liable for a penalty. This will not affect the operation of the SIP rules (and any tax advantages available) in relation to shares awarded prior to the time in question.

23. New paragraph 81I sets out the action HMRC may take in cases where a breach of the SIP rules is not considered serious enough for the plan not to be a Schedule 2 SIP. HMRC will require the company to put right any failure within a specified period, and the company is liable for a penalty. Where the breach is not put right within the specified period, HMRC

may provide by a 'default notice' that a plan is not to be a Schedule 2 SIP either from the time of the notice or such time as is specified in the notice, and the company is liable for a further penalty. This will not affect the operation of the SIP rules (and tax advantages available) in relation to shares awarded prior to the time in question.

24. New paragraph 81J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

25. New paragraph 81K provides rights for companies to appeal against decisions of HMRC, for example that a plan is not to be a Schedule 2 SIP and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

26. Paragraph 30 confirms that shares appropriated to, or acquired on behalf of, a SIP participant may not be awarded under a plan following its termination. This makes clear that the paragraph 90 Schedule 2 prohibition on the award of further shares after termination of a plan applies to SIP dividend shares as well as other types of SIP shares.

27. Paragraph 31 amends HMRC's powers in paragraph 93 Schedule 2 to require information concerning a SIP. In particular HMRC are empowered to require information needed to check details supplied by companies in their notification of a SIP or annual SIP returns, or to determine the liability to tax of any relevant person.

28. Paragraphs 33-43 make amendments to various provisions of Taxation of Chargeable Gains Act 1992 (TCGA) arising from the replacement of HMRC approval of SIPs with self certification.

29. Paragraphs 44-52 make amendments to various provisions of ITEPA and Finance Act 2004 (FA 2004).

30. Paragraphs 53-67 make amendments to various provisions of Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

31. Paragraphs 57 and 63 introduce modifications to the rules that apply to determine for income tax purposes the amount of distribution treated as made to the SIP participant, and the amount of dividend treated as paid to the participant, where dividend shares cease to be subject to a Schedule 2 SIP within three years of their acquisition on the participant's behalf where shares are required to be offered for sale by a SIP participant.

32. Paragraphs 68-73 make amendments to various provisions of Income Tax Act 2007 (ITA 2007).

33. Paragraphs 74-83 make amendments to various provisions of Corporation Tax Act 2009 (CTA 2009). These amendments arise from the replacement of HMRC approval of SIPs with self certification, and include in paragraph 83 an amendment to section 998 CTA 2009 to enable an officer of HMRC to direct that a deduction made under section 987 CTA 2009 for the costs of setting up a SIP is withdrawn where a plan ceases to be a Schedule 2 SIP.

34. Paragraphs 84-87 make amendments to the Individual Savings Account Regulations 1998.

35. Paragraph 88 revokes the Employee Share Schemes (Electronic Communications of Returns and Information) Regulations 2007, which are superseded by the provisions of this Schedule.

36. Paragraph 89 provides that the new rules for SIPs come into force on 6 April 2014, and paragraph 90 introduces transitional provisions for SIPs approved by HMRC before that date.

37. Paragraph 91 provides that in the case of SIPs approved immediately before 6 April 2014, any provisions of the plan which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 2).

38. Paragraph 92 provides that for these existing approved SIPs the new purpose test introduced by paragraph 19 of this Schedule only applies from such time as there is alteration to a key feature of the SIP or the plan trust.

39. Paragraph 93 provides that these existing approved SIPs have effect from 6 April 2014 as if the SIP and plan trust include various modifications made by Part 1 of this Schedule.

40. Paragraph 94 modifies arrangements for the notification of these plans under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of shares acquired or appropriated under a SIP before 6 April 2014, the SIP code (and tax advantages where appropriate) will still apply in relation to these shares, whether or not the plan is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 2 SIP applies in relation to breaches of the SIP rules that occurred prior to 6 April 2014. An annual return is required in relation to the schemes even if the scheme has not been notified to HMRC.

41. Paragraph 95 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SIP approved by HMRC before 6 April 2014 is not affected by any changes in Part 1 of the Schedule.

Part 2: SAYE Option Schemes

42. Paragraph 97 introduces amendments to Chapter 7 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under SAYE schemes.

43. Paragraphs 98-101 make various changes to Chapter 7, mainly to reflect the replacement of the present arrangements for HMRC approval of SAYE schemes with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved SAYE schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 3 SAYE option schemes'. In addition, paragraph 101 amends section 519 ITEPA to reflect the tax relief

available for certain exercises of SAYE options in the case of a 'non-UK company reorganisation arrangement'.

44. Paragraphs 102-120 set out amendments to Schedule 3 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SAYE schemes to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 3 SAYE scheme, and to make enquiries into the running of a scheme.

45. Paragraph 105 amends the introductory provision for the SAYE rules in paragraph 1 Schedule 3, taking account of the new self certification arrangements and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 3 SAYE schemes.

46. Paragraph 108 amends paragraph 5 Schedule 3 to introduce a new purpose test to be met by Schedule 3 SAYE schemes. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 3. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

47. Paragraph 109 amends the requirements relating to shares that may be subject to SAYE options to reflect changes made in paragraph 114 of this Schedule, concerning the exercise of options on certain company events where shares in the company to which an option relates cease to meet the conditions of Schedule 3.

48. Paragraph 111 amends the provisions of paragraph 28 Schedule 3, which allow adjustment of the price, amount or description of shares under an SAYE option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.

49. Paragraph 112 amends the provisions in paragraph 32 Schedule 3 to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.

50. Paragraph 113 amends provisions in paragraph 34 Schedule 3 concerning exercise of options where employment ceases, to remove a minor element of duplication in relation to arrangements under the Transfer of Undertakings (Protection of Employment) Regulations.

51. Paragraph 114 amends provisions in paragraph 37 Schedule 3 allowing exercise of SAYE options where certain 'company events' occur.

- The circumstances in which paragraph 37 may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (4A).
- Where shares in the company to which an option relates cease to meet the conditions of Schedule 3, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (6B) to (6D) of paragraph 37 allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.

- New sub-paragraphs (6E) to (6F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that, if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.

52. Paragraph 115 concerns provisions in paragraph 38 Schedule 3 allowing exchange of options on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

53. Paragraph 116 amends provisions in paragraph 39 Schedule 3 concerning the requirements about share options granted in exchange for other SAYE options on a company reorganisation. In such an exchange, the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation. The market value of shares for the purposes of paragraph 39 must be determined using a methodology agreed by HMRC.

54. Paragraph 117 inserts a new Part 8 in Schedule 3, setting out rules for notification of SAYE schemes, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not to be a Schedule 3 SAYE scheme and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

55. New paragraph 40A of Schedule 3 provides new rules concerning notification of SAYE schemes to HMRC. For a scheme to be a Schedule 3 SAYE scheme and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, if the declaration is made after the date of the first grant of options, has met the conditions of Schedule 3. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme, and sub-paragraph (5) explains when the scheme will be a Schedule 3 SAYE scheme in cases where this deadline is missed.

56. New paragraph 40B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 3 SAYE schemes, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SAYE scheme in the tax year in question and of any variations made to terms of SAYE options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

57. New paragraph 40C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where scheme organisers have a 'reasonable excuse' for the failure.

58. New paragraph 40D provides that notification of SAYE schemes and annual SAYE returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

59. New paragraph 40E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.

60. New paragraph 40F empowers HMRC to make enquiries into an SAYE scheme after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 3 are not or have not been met in relation to the scheme.

61. New paragraph 40G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

62. New paragraph 40H sets out the action HMRC may take where an SAYE scheme does not meet or has not met the conditions of Schedule 3. If the breach of the SAYE rules is considered serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.

63. New paragraph 40I sets out the action HMRC may take in cases where a breach of the SAYE rules is not considered serious enough that the scheme is not to be a Schedule 3 SAYE scheme. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.

64. New paragraph 40J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

65. New paragraph 40K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 3 SAYE scheme and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

66. Paragraph 118 amends HMRC's powers in paragraph 45 Schedule 3 to require information concerning an SAYE scheme. In particular HMRC are empowered to require information needed to check details supplied by scheme organisers in their notification of an SAYE scheme or annual SAYE returns, or to determine the liability to tax of any relevant person.

67. Paragraph 119 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the SAYE code.

68. Paragraphs 121-128 make amendments to various provisions of TCGA, mainly arising from the replacement of HMRC approval of SAYE schemes with self certification.

69. Paragraphs 129-142 make amendments to various provisions of ITEPA, FA 2004, ITTOIA and CTA 2009.

70. Paragraphs 143-145 make amendments to the Individual Savings Account Regulations 1998.

71. Paragraph 146 provides that the new rules for SAYE schemes come into force on 6 April 2014, and paragraph 147 introduces transitional provisions for schemes approved by HMRC before that date.

72. Paragraph 148 provides that in the case of SAYE schemes approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 3).

73. Paragraph 149 provides that for these existing approved schemes the new purpose test introduced by paragraph 108 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.

74. Paragraphs 150-154 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 2 of this Schedule, and also provides that other modifications made by Part 2 do not have effect in certain circumstances.

75. Paragraph 155 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of SAYE options granted before 6 April 2014, the SAYE code (and tax advantages where appropriate) will still apply in relation to these options, whether or not the scheme is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 3 SAYE scheme applies in relation to breaches of the SAYE rules that occurred prior to 6 April 2014. An annual return is required in relation to the scheme even if the scheme has not been notified to HMRC.

76. Paragraph 156 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SAYE scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 2 of the Schedule.

Part 3: CSOP Schemes

77. Paragraph 158 introduces amendments to Chapter 8 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under CSOP schemes.

78. Paragraphs 159-162 make various changes to Chapter 7 to reflect the replacement of the present arrangements for HMRC approval of CSOPs with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved CSOP schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 4 CSOP schemes'. In addition, paragraph 161 makes changes to section 524 ITEPA to reflect the tax relief available for certain exercises of CSOP options in the case of a 'non-UK company reorganisation arrangement'.

79. Paragraphs 163-182 set out amendments to Schedule 4 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of CSOPs to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 4 CSOP, and to make enquiries into the running of a scheme.

80. Paragraph 166 amends the introductory provision for the CSOP rules in paragraph 1 Schedule 4, taking account of the new self certification arrangements for CSOP and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 4 CSOPs.

81. Paragraph 169 amends paragraph 5 Schedule 4 to introduce a new purpose test that must met by Schedule 4 CSOPs. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 4. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

82. Paragraph 171 amends the requirements relating to shares that may be subject to CSOP options, to reflect changes made in paragraph 175 of this Schedule concerning the exercise of options on certain company events, where shares in the company to which an option relates cease to meet the conditions of Schedule 4.

83. Paragraph 173 inserts new paragraph 21A in Schedule 4, which sets out a series of general conditions that CSOP options must satisfy. In particular, certain terms of the option must be stated at the time the option is granted. Terms of an option may be changed after grant, but only as provided for in paragraph 22 of Schedule 4 (concerning requirements as to the price for acquisition of shares) or on the basis of a mechanism stated at the grant of the option. Any such mechanism must be applied in a fair and reasonable way. The terms of the option and any mechanism for varying it must be notified to the participant as soon as practicable after grant of the option.

84. Paragraph 174 amends the provisions of paragraph 22 Schedule 4, which allow adjustment of the price, amount or description of shares under a CSOP option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.

85. Paragraph 175 amends provisions in paragraph 25 Schedule 4 concerning the exercise of options after the death of the participant, to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.

86. Paragraph 176 amends provisions in paragraph 25A Schedule 4 allowing exercise of CSOP options where certain 'company events' occur.

- The circumstances in which paragraph 25A may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (6A).
- Where shares in the company to which an option relates cease to meet the conditions of Schedule 4, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (7B) to (7D) of paragraph 25A allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.
- New sub-paragraphs (7E) to (7F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.

87. Paragraph 177 concerns provisions in paragraph 26 Schedule 4 allowing exchange of option on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

88. Paragraph 178 amends provisions in paragraph 27 Schedule 4 concerning the requirements about share options granted in exchange for other CSOP options on a company reorganisation. In such an exchange, the market value of the shares and the price payable for the shares by the participant must be substantially the same under the new options as it was under the old options. The market value of shares for the purposes of paragraph 27 must be determined using a methodology agreed by HMRC.

89. Paragraph 179 inserts a new Part 7 in Schedule 4, setting out rules for notification of CSOPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not a Schedule 4 CSOP and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

90. New paragraph 28A of Schedule 4 provides new rules concerning notification of CSOPs to HMRC. For a scheme to be a Schedule 4 CSOP and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, where the declaration is made after the first grant of options, has met the conditions of Schedule 4. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme and sub-paragraph (5) explains when a scheme will be a Schedule 4 CSOP in cases where this deadline is missed.

91. New paragraph 28B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 4 CSOPs, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the CSOP in the tax year in question and of any variations made to terms of CSOP options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. This requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

92. New paragraph 28C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is specified where scheme organisers have a 'reasonable excuse' for the failure.

93. New paragraph 28D provides that notification of CSOPs and annual CSOP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

94. New paragraph 28E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.

95. New paragraph 28F empowers HMRC to make enquiries into a CSOP after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 4 are not or have not been met in relation to the scheme.

96. New paragraph 28G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

97. New paragraph 28H sets out the action HMRC may take where a CSOP does not meet or has not met the conditions of Schedule 4. If the breach of the CSOP rules is considered serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 4 CSOP either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty.

98. New paragraph 28I sets out the action that HMRC may take in cases where a breach of the CSOP rules is not considered serious enough that the scheme is not to be a Schedule 4 CSOP. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 4 CSOP either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty.

99. New paragraph 28J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

100. New paragraph 28K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 4 CSOP and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

101. Paragraph 180 amends HMRC's powers in paragraph 33 Schedule 4 to require information concerning a CSOP. In particular HMRC are empowered to require information needed to check details supplied by a scheme organiser in their notification of a CSOP scheme or annual CSOP returns, or to determine the liability to tax of any relevant person.

102. Paragraph 181 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the CSOP code.

103. Paragraphs 183-189 make amendments to various provisions of TCGA arising from the move to self certification of CSOPs.

104. Paragraphs 190-203 make amendments to various provisions of ITEPA.

105. Paragraph 204 provides that the new rules for CSOPs come into force on 6 April 2014, and paragraph 205 introduces transitional provisions for schemes approved by HMRC before that date.

106. Paragraph 206 provides that in the case of CSOPs approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 4).

107. Paragraph 207 provides that for these existing approved schemes the new purpose test introduced by paragraph 168 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.

108. Paragraphs 208-212 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 3 of this Schedule, and also provides that other modifications made by Part 3 do not have effect in relation to options granted under the scheme before that date.

109. Paragraph 213 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of CSOP options granted before 6 April 2014, the CSOP code (and tax advantages where appropriate) will apply in relation to these options, unless the scheme is not notified to HMRC or prior to 6 April 2014 HMRC refused to approve the scheme or decided to withdraw approval. HMRC's ability to determine that a scheme is not a Schedule 4 CSOP applies in relation to breaches of the CSOP rules that occurred prior to 6 April 2014.

110. Paragraph 214 ensures that the availability of certain corporation tax deductions in relation to set up costs for a CSOP scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 3 of the Schedule.

Part 4: Enterprise Management Incentives

111. Paragraph 216 introduces a series of changes to Schedule 5 ITEPA in respect of EMI.

112. Paragraph 217 makes several amendments to paragraph 44 Schedule 5 concerning the requirement to provide HMRC with notice of EMI options granted:

- The employer company's declaration in the notice must include confirmation that the EMI option holder has made a written declaration that they meet the 'working time requirement' of EMI (paragraph 26 Schedule 5). A copy of this declaration must be given to the option holder within a specified period, and a copy retained and produced to HMRC within a specified period if so requested.
- Notices must be delivered in electronic form in a manner prescribed by HMRC, unless an employer company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

113. Paragraph 218 replaces the existing paragraph 52 Schedule 5, which requires certain companies whose shares are or have been subject to an EMI option to deliver an annual return. New paragraphs 52 and 52A of Schedule 5 reflect the shift to online filing of returns and are consistent with the new provisions in this Schedule for the other tax advantaged schemes.

114. New paragraph 52 of Schedule 5 obliges companies whose shares are or have been subject to an EMI option to make annual returns containing the information required by HMRC. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of termination of a scheme. This will be where there are no outstanding EMI options over the company's shares, and no intention to grant any further options over the company's shares under the scheme. If companies become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

115. New paragraph 52A provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

116. Paragraph 219 makes a change to paragraph 53 Schedule 5 to clarify the meaning of 'reasonable excuse' in cases where a person has failed to meet certain time limits set out in Parts 7 and 8 of Schedule 5.

117. Paragraph 220 inserts new provisions on penalties and appeals (at new paragraphs 57A-57E Schedule 5), similar to those in Parts 1, 2 and 3 of this Schedule.

118. New paragraph 57A of Schedule 5 lays down the penalties to which employer companies may be liable for failure to deliver the declarations required by paragraph 44 Schedule 5.

119. New paragraph 57B lays down the penalties to which companies whose shares are or have been subject to EMI options may be liable for failure to deliver annual returns by the specified deadline.

120. New paragraph 57C sets out the penalties that may apply where annual returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the company.

121. New paragraph 57D sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

122. New paragraph 57E provides rights for companies to appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

123. Paragraphs 222-225 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for the tax year 2014-15 onwards.

Part 5: Other Employee Share Schemes

124. Paragraph 226 introduces a series of changes to Chapter 1 of Part 7 of ITEPA, which sets out general rules and requirements in relation to employment-related securities, including arrangements that are not tax advantaged.

125. Paragraphs 227-228 amend section 421J ITEPA concerning the duty to provide information to HMRC, and insert new provisions (new sections 421JA-421JF ITEPA) concerning annual returns, electronic submission, penalties and appeals. These changes reflect the shift to online filing of annual returns for employment-related securities and are consistent with the new provisions in this Schedule for the tax advantaged schemes.

126. New section 421JA ITEPA obliges a responsible person (as defined in section 421L) to make an annual return to HMRC for each tax year within their 'reportable event period'. Returns must contain the information required by HMRC, and be made not later than 6 July following the end of the tax year to which they relate. If they become aware of errors or inaccuracies in returns, the responsible person must provide amended returns correcting the position without delay. Sub-paragraph (7) provides that there is no need to report 'duplicate' information, as defined at sub-paragraph (8).

127. New section 421JB provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a person has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

128. New section 421JC lays down the penalties which may apply for failure to deliver annual returns by the specified deadline. An exception is allowed where a person has a 'reasonable excuse' for the failure.

129. New section 421JD sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the person.

130. New section 421JE sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

131. New section 421JF provides rights of appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

132. Paragraphs 232-234 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for tax year 2014-15 onwards.

BACKGROUND

133. 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.

134. 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.

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

136. 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.

137. The OTS published a report on the tax advantaged employee share schemes in 2012. This identified various areas where the present rules created undue complexities or disproportionate administrative burdens for scheme users, and made recommendations on how the legislation and related provisions could be simplified. The Government implemented the first tranche of changes to give effect to these recommendations in Schedule 2 Finance Act 2013.

138. This measure implements the further OTS recommendations that the Government should introduce self certification and a new 'purpose test' for SIP, SAYE and CSOP (self certification already applies in the case of EMI), and online filing for all employment-related securities returns to HMRC. In drawing up these provisions the Government has consulted extensively over the past 12 months to devise arrangements that will meet the needs of scheme users.

139. The measure also includes minor technical changes to clarify or simplify certain aspects of the current statute, where companies might potentially have found it difficult to self certify with confidence as the legislation stood.

SECTION 52 SCHEDULE 9: EMPLOYMENT-RELATED SECURITIES ETC

SUMMARY

1. This section and Schedule implement a number of recommendations made by the Office of Tax Simplification (OTS) to simplify the tax rules in relation to employment-related securities (ERS) - such as employee shares - or ERS options awarded to employees. It changes the tax treatment of ERS and ERS options awarded to internationally mobile employees, introduces a new relief for certain ERS exchanges, simplifies the rules around nil-paid and partly-paid ERS and extends the corporation tax relief available to companies in relation to employee share acquisitions.

DETAILS OF THE SCHEDULE

Part 1: Internationally mobile employees

2. Paragraphs 1 to 5 amend Part 2 of ITEPA by substituting a new Chapter 5B (taxable specific income from employment-related securities etc: internationally mobile employees) for the current Chapter 5A (taxable specific income: effect of the remittance basis) and making consequential amendments to sections 6 and 10 of ITEPA. The new Chapter 5B comprises sections 41F to 41L, which set out new rules for the taxation of ERS and ERS options received by internationally mobile employees, and also contain provisions on the effect of the remittance basis on ERS income that are currently in Chapter 5A.

3. New sections 41F to 41L of ITEPA set out what income from ERS and ERS options (securities income) is to be subject to UK income tax, either on the normal 'arising' basis or the remittance basis where this applies. The effect of the remittance basis for those to whom this applies is that, broadly, income or gains in respect of foreign duties are only taxable in the UK to the extent that they are remitted to the UK. Income or gains are remitted to the UK when they are brought into, used in, or enjoyed in the UK.

4. New section 41F of ITEPA includes subsection (1) and (2), which set out the scope of the new rules. They apply when an amount counts as employment income under Chapters 2 to 5 of Part 7 of ITEPA (which provides rules for the taxation of ERS and ERS options) and at least one of the 'international mobility conditions' specified in subsection (2) are met. The rules at subsections (3) and (4) identify the amount of income from relevant employment for the tax year (securities income) that will be subject to income tax on the arising basis. These subsections provide that this amount should be established by deducting securities income that is 'foreign' from total securities income. Subsection (5) specifies that the amount of securities income that is foreign is the total of any 'chargeable foreign securities income' and any 'unchargeable foreign securities income', with reference to new sections 41H to 41L of ITEPA. Subsections (6) and (7) identify chargeable foreign securities income that is remitted to the UK as 'taxable specific income'. Subsections (8) and (9) make provision in relation to amounts remitted to the UK in a tax year and broadly reproduce certain provisions currently found in section 41A of ITEPA, concerning the effect of the remittance basis on taxable specific income from ERS.

5. New section 41G of ITEPA (at subsections (2) – (8)) defines the 'relevant period' for each type of ERS for the purposes of the international mobility conditions at new section 41F. This is the period over which securities income is to be apportioned between that which is subject to income tax in the UK, and that which is not. Where appropriate, the relevant periods broadly replicate those already in operation for the remittance basis of taxation at the current section 41B of ITEPA. The rules at subsection (2) to (8) are subject to an override (at subsection (9)) where the relevant period they provide is not just and reasonable.

6. New sections 41H to 41L of ITEPA determine how 'unchargeable' and 'chargeable' foreign securities income are to be calculated, for the purposes of establishing how much securities income is not to be subject to UK income tax, or subject to UK income tax only on the remittance basis. Where appropriate, these sections broadly replicate rules currently in sections 41C to 41E of ITEPA, which establish the amount of foreign securities income for the purposes of the remittance basis of taxation.

7. New section 41H of ITEPA sets out rules to determine whether ERS income is 'chargeable or 'unchargeable' foreign securities income. Chargeable foreign securities income will be subject to UK income tax on the remittance basis. Subsection (2) provides that securities income is regarded as accruing equally on each day within the relevant period, as set out in new section 41G of ITEPA. Subsections (3) to (12) provide rules that apply for the calculation of chargeable and unchargeable foreign securities income in various cases. These include (at subsections (3), (4), (6) and (7)) the rules that apply for tax years within the relevant period during which: the remittance basis applies, an individual satisfies or does not satisfy the requirement for a 3-year period of non-residence in the UK at section 26A of ITEPA, or the duties of the relevant employment are performed wholly or partly outside the UK. Subsection (8) provides the rules that apply for tax years for which the individual is not UK resident. Subsection (9) sets out the rules that apply where any part of the relevant period is within the overseas part of a tax year that is a split year (where an individual either leaves the UK to live or work abroad or comes from abroad to live or work in the UK). Subsection (11) links the rules in this new section to new section 41J of ITEPA relating to the location of duties. Subsection 12 provides that the rules in this new section are subject to the rules on overseas Crown employment in new section 41K of ITEPA and to provisions on just and reasonable apportionment at new section 41L of ITEPA. Subsections (5) and (10) specify how new section 41H will interact with new section 24A ITEPA.

8. New section 41I of ITEPA limits the amount of securities income that is chargeable foreign securities income in various cases where an individual has associated employment (in addition to their relevant employment), which involves UK duties. Subsection (2) provides that the amount of chargeable foreign securities income for the period is limited to the amount that is just and reasonable with reference to the factors specified in this subsection.

9. New section 41J of ITEPA concerns the location of employment duties: UK duties which are incidental to overseas employment, duties on board a vessel or aircraft and employment on the continental shelf.

10. New section 41K of ITEPA provides for the treatment of securities income from overseas Crown employment.

11. New section 41L of ITEPA provides an override where the proportion of securities income that is chargeable or unchargeable foreign securities income, as determined under new section 41H, is not just and reasonable in all the circumstances.

12. Paragraph 7 of the Schedule inserts a new subsection (A1) into section 418 of ITEPA. This requires Part 7 of ITEPA (concerning income from ERS and ERS options) to be read alongside the new Chapter 5B of Part 2 of ITEPA.

13. Paragraph 8 repeals section 421E of ITEPA which sets out the current residence provisions for the taxation of certain ERS.

14. Paragraphs 9, 11 and 12 amend sections 425, 430 and 431 of ITEPA to limit the availability of the elections available under these sections (which allow for the dis-application of certain provisions within Chapter 2 of Part 7 of ITEPA concerning restricted securities). They provide that these elections can only be made where at the time of the acquisition of the securities (or in the case of section 430 at the time of a chargeable event in relation to the securities), the charging provisions of Chapters 4 and 5 of Part 2 of ITEPA apply in relation to earnings from the relevant employment (or in cases where there are no earnings from that employment, would apply if there were any earnings). These charging provisions apply where an employee is UK resident, or performs duties in the UK.

15. Paragraph 10 amends section 428 of ITEPA. Sub-paragraph (2) updates section 428 of ITEPA, concerning the amount subject to income tax on the occurrence of a chargeable event in relation to restricted ERS. The amendment ensures that amounts previously charged to 'non-UK income tax' when the ERS were acquired by an internationally mobile employee can be a 'deductible amount' when calculating what value is subject to UK tax on the occurrence of a subsequent chargeable event in relation to these ERS. It also sets out various definitions for the purpose of these rules. This puts amounts that have been charged to UK income tax and amounts charged to income tax outside the UK on a broadly equal footing, for the purposes of this tax calculation.

16. Sub-paragraph (3) of paragraph 10 clarifies the treatment of income that would have been 'exempt income' in the UK had the internationally mobile employee been UK resident, or subject to the remittance basis of taxation, at the appropriate time. It provides that such amounts are to be treated for the purposes of the relevant calculation in the same way as income that was exempt in the UK – and are therefore not deductible amounts. This puts this income on a broadly equal footing for UK tax purposes, regardless of where the employee was based at the time that the relevant ERS were acquired.

17. Paragraphs 13, 15 and 27 provide the same clarification of the treatment of this 'exempt' income in other cases where it is necessary to establish an amount subject to tax in relation to ERS. These are the calculation of notional loan amounts outstanding in relation to ERS acquired for less than market at section 446T ITEPA; the amount subject to tax on the occurrence of a chargeable event in relation to ERS options; and amount that is taken to be consideration for the acquisition of restricted or convertible shares for the purposes of capital gains tax.

18. Paragraph 14 repeals section 474 of ITEPA which provides the current residence provisions for the taxation of ERS options.

19. Paragraph 16 amends section 540 of ITEPA which ensures that no charge arises under Chapter 3C from the exercise of options under the Enterprise Management Incentives scheme.

20. Paragraphs 17 to 20 amend various sections of ITEPA in consequence of the omission of sections 421E and 474 of ITEPA and the insertion of new Chapter 5B of Part 2 of ITEPA.

21. Paragraphs 21 to 26 and 28 to 33 amend section 700A of ITEPA and various provisions in the Taxation of Chargeable Gains Act 1992, the Corporation Tax Act 2009 (CTA 2009) and the Income Tax Act 2007 in consequence of changes made in this Schedule.

Part 2: Restricted securities and securities acquired for less than market value: replacement and additional securities and rollover relief etc

22. Part 2 of the Schedule provides rollover relief from income tax for certain cases in which restricted securities held by an employee are exchanged for other restricted securities. It also amends the rules at Chapter 3C of Part 7 of ITEPA concerning notional loans, under which tax may be chargeable in relation to nil-paid or partly-paid ERS.

23. Paragraph 35 amends section 421D of ITEPA concerning replacement and additional securities and changes in interests. Sub-paragraphs (2) and (3) address cases in which the value of ERS has been reduced by the issue of certain additional or replacement securities. The provision sets out that, in such cases, the amount of that reduction should be treated as a payment for the acquisition of these new securities for the purposes of Chapter 3C of Part 7 of ITEPA. Chapter 3C provides tax rules for ERS acquired for less than market value, including nil-paid and partly-paid ERS, and taxes certain amounts in relation to these ERS as notional loans.

24. Paragraph 36 inserts new section 430A of ITEPA, which introduces relief from income tax in certain cases where restricted securities held by an individual ('old securities') are exchanged for other restricted securities ('new securities'). Restricted securities are those which have restrictions which reduce their market value. Subsections (3) and (4) of new section 430A concern circumstances in which old securities are exchanged for new securities as well as other consideration, and provide that the new rollover relief will only be available on that part of the consideration that is new securities. That part of the consideration which is not new securities will give rise to a chargeable event on the disposal of the matching proportion of the old securities. Subsection (5) concerns cases in which the only consideration for the old securities is new securities, and provides that neither the disposal of the old securities nor the acquisition of the new securities will give rise to a tax liability and that Chapter 2 of Part 7 of ITEPA applies to the new securities as it applies to the old securities, subject to subsections (6) to (17).

25. Subsections (6) to (17) of new section 430A set out how the new securities are to be treated under Chapter 2 (concerning the taxation of restricted securities). Subsection (6) provides that sections 425 or 431 of ITEPA do not apply in relation to the new securities. Section 425 provides an income tax exemption on the acquisition of certain restricted securities, and sections 425 and 431 allow elections to be made disregarding that exemption and certain other provisions within Chapter 2. The tax arrangements for the old securities will, in certain respects, be transferred to the new securities. This includes (at subsection (7))

any elections to disapply certain provisions of Chapter 2 made in respect of the old securities under sections 430(1) or 431(1); and (at subsection (8) to (10)) the proportions used to calculate the amount of charge under section 428 of ITEPA, in the case of a subsequent chargeable event in relation to the new securities.

26. Subsections (11) to (14) of new section 430A apply where no tax was chargeable on acquisition of the old securities by virtue of section 425(2) of ITEPA, because the securities were 'forfeitable' within 5 years, and a forfeiture restriction still applies to the old securities at the time of the exchange. Broadly, on the occurrence of a chargeable event, income tax will apply in relation to these new securities in the same way as would have been the case for the old securities. Subsection (12) creates a chargeable event immediately after the acquisition of the new securities where the restriction on them is not a forfeiture restriction. Subsections (13) and (14) provide that where the new securities remain forfeitable more than 5 years after the acquisition of the old securities, the forfeiture restriction is treated as having been removed five years after the acquisition of the old securities, so that a chargeable event occurs at that time. Subsections (15) to (17) ensure that these rules apply in relation to subsequent exchanges of these new securities.

27. Paragraph 37 of the Schedule amends the rules at current section 446U of ITEPA concerning the discharge of notional loans, which apply for nil-paid and partly-paid ERS. Sub-paragraph (2) amends the circumstances in which the release of a liability in respect of the ERS will result in a notional loan being treated as discharged. Sub-paragraph (3) removes certain disposals of these ERS from provisions in section 446U that would otherwise treat the outstanding notional loans as employment income subject to tax at that time. Sub-paragraph (4) provides that the notional loan in relation to these ERS is discharged without giving rise to an amount of employment income where these ERS are disposed of in certain circumstances.

28. Paragraph 38 consequentially amends section 554N of ITEPA.

Part 3: Corporation tax relief for employee share acquisitions

29. Part 3 of the Schedule extends the circumstances in which corporation tax relief is available under Part 12 of CTA 2009 in relation to employee share acquisitions.

30. Paragraphs 40 and 41 modify certain interpretations and definitions used for the purposes of Part 12 of CTA 2009, consequential to changes made in this Part of the Schedule.

31. Paragraphs 42, 43, 45 and 46 introduce new sections 1007A, 1015A, 1015B, 1025A, 1025B, 1030A and 1030B of CTA 2009. These new sections concern cases where shares are acquired, or share options are obtained, where an individual is employed by a company not within the charge to corporation tax, and the individual either: (i) works for (but does not have employment with) a company within the charge to corporation tax (for example during a period of secondment); or (ii) takes up employment with such a company.

32. The new sections 1007A and 1015B of CTA 2009 concern employees of non-UK resident companies who work in the UK for (but do not have employment with) a host company that is within the charge to corporation tax - for example under secondment or similar arrangements. These new sections enable the host company to claim relief under Part

12 of CTA 2009 in relation to an acquisition of shares, subject to certain conditions. They provide (at subsection (2) of both new sections) that an individual is treated as having employment with the host company and (at subsection (4) of both new sections) that the shares or option in question are treated as having been acquired or obtained because of work for this host company. Subsection (3) of both new sections makes the application of subsection (4) dependent upon an amount of employment income being charged to tax under ITEPA in respect of the acquisition of the shares, because of work done for the host company. Subsection (6) of both new sections limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to the acquisition.

33. The effect of these new sections is that, subject to certain conditions, the basic requirements for relief at sections 1007 and 1015 of CTA 2009 (concerning the employment of the individual and the employment in respect of which the shares are acquired or the option is obtained) can be satisfied in relation to overseas secondees or similar workers. Relief up to a specified maximum may therefore be available to the host company on the acquisition of the shares. Subsection (5) of both new sections means that relief may be available in relation to an acquisition of shares in the overseas employer. Subsection (7) of both new sections makes provision for cases in which there is more than one company to whom relief might be available in relation to the same acquisition of shares, and sets out that only one company may be given relief.

34. New section 1015A of CTA 2009 concerns share options obtained because of 'overseas employment' with non-UK resident companies, where the employee takes up 'UK employment' with a company within the charge to corporation tax. It provides at subsection (3) that where certain conditions are met, share options obtained because of the overseas employment are treated as if they were obtained because of the UK employment, for the purposes of the requirement at section 1015(1)(c) CTA 2009 (concerning the employment in respect of which the option is obtained).

35. The effect of new section 1015A is that in certain circumstances relief may be available to a UK employer in relation to shares acquired by exercise of an option obtained because of overseas employment. Subsection (2) makes relief as a result of this new section dependent upon an amount of employment income being charged to tax under ITEPA in relation to the acquisition of the shares, because of the UK employment; or the acquisition of the shares taking place because of the UK employment. Subsection (5) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to the acquisition. Subsection (4) means that relief may be available in relation to an acquisition of shares in the overseas employer. Subsection (6) makes provision for cases in which there is more than one company to whom relief might be available in relation to the same acquisition of shares, and sets out that only one company may be given relief.

36. New section 1025A of CTA 2009 concerns the additional relief available under Chapter 4 of Part 12 CTA 2009 where there is a chargeable event involving restricted shares. It addresses cases in which restricted shares have been acquired because of 'overseas employment' with a non-UK resident company, and the employee either takes up 'UK employment' with a company within the charge to corporation tax, or works for such a company on a secondment or similar basis. Subsection (5) means that additional relief under Chapter 4 is available to a UK company, subject to certain conditions. These conditions include a requirement at subsection (1)(h) that, because of the UK employment or work, an amount of employment income is charged to tax under ITEPA in relation to the chargeable

event. Subsection (9) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to this chargeable event. Subsection (8) explains how this new section interacts with other provisions of Part 12 that set out how relief is given. Subsection (10) sets out rules for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event.

37. The new sections 1025B and 1030B of CTA 2009 concern the additional relief available under Chapters 4 and 5 of Part 12 CTA 2009 in relation to chargeable events and restricted shares or convertible securities. These new sections provide, subject to certain conditions, that this additional relief is available to the host company in the secondment or similar arrangements covered by new sections 1007A and 1015B of CTA 2009. Similarly, this relief may be available in cases covered by new section 1015A, where an employee of an overseas company takes up employment with a UK company. Subsection (2) of new sections 1025B and 1030B mean that a host company is treated as the employing company for the purposes of the relief. Provisions within these new sections limit the relief available to the total amount of employment income charged to tax under ITEPA in relation to the chargeable event. These new sections also include provision for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event, and cases in which an employee has died. By virtue of subsection (3) of new section 1030B (concerning convertible securities), the chargeable event for which relief is available may be the conversion of securities into shares in the overseas employer.

38. New section 1030A of CTA 2009 concerns the additional relief available under Chapter 5 of Part 12 CTA 2009 where there is a chargeable event involving convertible securities. It addresses cases in which convertible securities have been acquired because of 'overseas employment' with a non-UK resident company, and the employee either takes up 'UK employment' with a company within the charge to corporation tax, or works for such a company on a secondment or similar basis. Subsection (5) means that additional relief under Chapter 5 is available to a UK company, subject to certain conditions. These conditions include a requirement at subsection (1)(h) that, because of the UK employment or work, an amount of employment income is charged to tax under ITEPA in relation to the chargeable event. Subsection (10) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to this chargeable event. Subsection (7) means that relief may be given in relation to shares in the overseas or UK company. Subsection (9) explains how this new section interacts with other provisions of Part 12 that set out how relief is given. Subsection (11) sets out rules for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event.

39. Paragraph 44 of the Schedule extends the availability of corporation tax relief under Chapter 3 of Part 12 CTA 2009 for shares acquired by exercise of a share option, and concerns shares acquired following a company takeover. It introduces new subsections 1(d) and (1A) to section 1016 CTA 2009, which sets out requirements in relation to the shares acquired. The addition of these subsections means relief will be available in relation to the acquisition of shares that – immediately prior to a company takeover – satisfied the requirements at paragraphs (a) to (c) of Condition 2 at section 1016(1), but no longer do so as a result of this takeover. This is subject to the shares in question being acquired within 90 days of the takeover, as well as an anti-abuse provision.

Part 4: Commencement and transitional provision

40. Part 4 specifies the commencement of those changes in the Schedule which do not take effect from Royal Assent, and provides for The Treasury to make transitional, consequential, supplementary or incidental provision in relation to certain changes made by this Schedule.

BACKGROUND NOTE

41. Income tax is generally due where an employer awards shares or other ERS to employees, and tax may also be due on certain disposals of ERS and on the exercise of share options. The tax rules in this area are designed to ensure that the employment income paid in the form of ERS or options is subject to income tax as appropriate. In certain circumstances, corporation tax relief is available to companies in respect of employee share acquisitions.

42. The OTS published a report and recommendations on unapproved employee share schemes in January 2013. This identified a number of areas in which the current tax rules created undue complexity, and included recommendations for how these might be simplified.

43. The Government consulted on the recommendations being taken forward in this measure during summer 2013. A summary of responses to this consultation was published on 10 December 2013.

44. This measure supports the Government's objective to simplify the tax system. Sections 19 (Payments by employer on account of tax where deduction not possible) and 45 (Taxable specific income: effect on pension input amount for non-UK schemes) of this Act also form part of the overall package arising from the OTS recommendations in relation to unapproved employee share schemes.

45. This Finance Act also includes other simplification changes recommended by the OTS in relation to the Government's four tax advantaged employee share schemes – see section 51 (Employee share schemes) and Schedule 8.

SECTION 53 AND SCHEDULE 10: VENTURE CAPITAL TRUSTS

SUMMARY

1. This section and Schedule make several changes to the Venture Capital Trust ('VCT') legislation at Part 6 of the Income Tax Act 2007.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends section 270 of Income Tax Act 2007, which provides that an assessment for withdrawing or reducing VCT relief must be made for the tax year for which the relief was obtained. The amendment inserts a time limit of 6 years after the end of that tax year, within which any such assessment must be made. This overrides the general time limit for making assessments, provided for in section 34 Taxes Management Act 1970.

3. Paragraph 2 introduces a new section 264A which imposes restrictions on the availability of VCT income tax relief in respect of a subscription for shares in a VCT, in certain circumstances. New section 264A takes effect in relation to shares issued on or after 6 April 2014.

4. New sections 264A(1), (2) and (3) reduce the amount subscribed for shares in a VCT on which income tax relief may be claimed, by the amount of consideration the investor has received for a sale of shares which is "linked" to the subscription for shares.

5. New sections 264A(4), (5) and (6) explain what is meant by a "linked" sale of shares in this context. A sale is "linked" if an individual has sold shares in the same VCT as the VCT in which the investor has subscribed for shares, or in a VCT which is treated as a successor or predecessor of that VCT, and either the subscription for shares is in any way conditionally linked with the share sale, or the subscription and sale are within 6 months of each other.

6. New section 264A(7) explains what is meant by a "successor" or a "predecessor" VCT for this purpose. Where there has been a merger of two VCTs and section 323 ITA applies to treat one VCT as succeeding another, then for the purpose of section 264A those VCTs are regarded as "successor" or "predecessor" as appropriate. Where a new holding company has been inserted above an existing VCT and section 327 ITA applies to treat the holding company as fulfilling the VCT requirements, then the new holding company and the original VCT are treated for the purpose of section 264A as "successor" and "predecessor" companies as appropriate.

7. New section 264A(8) provides that the restriction does not apply to subscriptions for shares which are funded by the reinvestment of dividends payable by the VCT to the individual in respect of shares already held in the VCT.

8. Paragraph 3 amends section 281, which lists the circumstances in which HM Revenue and Customs may withdraw approval from a VCT. The amendment applies in respect of shares issued by a VCT on or after 6 April 2014.

9. New subsection 281(1)(f) requires a VCT's approval to be withdrawn if the company makes a payment to any of its shareholders which represents a repayment of the share capital subscribed for. This includes repayment of any share premium. This also includes a situation where a company uses an amount representing share capital or share premium to fund the issue of new shares to its shareholders.

10. The restriction applies only during a defined "restricted period" following an issue of shares. That period is the period of 3 years from the end of the company's accounting period during which the shares were issued.

11. The restriction does not apply to payments made by the company to redeem or repurchase its shares, nor does it apply to payments which are distributions of assets made in the course of the company's winding up.

12. New subsection 281(1A) provides key definitions for the purpose of new section 281(1)(f), including the definition of "restricted period"; "payment" and "reduction of share capital".

13. Paragraph 4 introduces a new section 330A, which provides that an individual will qualify for income tax relief on a subscription in VCT shares if that subscription is made on the individual's behalf by a nominee. The tax treatment of holdings of shares or disposals of shares in a VCT will follow in the same way whether the shares are held or disposed of by an individual, or by a nominee acting on behalf of the individual. Section 330A took effect from the date Finance Bill 2014 received Royal Assent.

14. Paragraph 4(2) amends section 284 ITA to ensure that any regulations made as to VCT procedures may apply to nominees as well as to other persons holding VCT shares.

BACKGROUND NOTE

15. The VCT regime exists to provide access to finance for qualifying small and medium trading companies, by offering a range of tax reliefs to individuals who invest in VCTs which in turn invest on into such companies. This measure will ensure that the regime continues to be well-targeted and to provide value for money.

SECTION 54: REMOVING TIME LIMIT ON SEIS RELIEF

SUMMARY

1. This section removes the expiry date from the Seed Enterprise Investment Scheme (SEIS) and makes it permanent.

DETAILS OF THE SECTION

2. Subsection 2 amends Section 257A ITA which provides an end date for the SEIS by limiting relief to shares issued on or after 6 April 2012 but before 6 April 2017. The amendment removes the 6 April 2017 restriction and permanently extends the scheme.

BACKGROUND NOTE

3. SEIS was introduced in 2012. It aims to incentivise the provision of equity capital to small 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 55: REMOVING THE TIME LIMIT ON CGT RELIEF IN RESPECT OF RE-INVESTMENT UNDER SEIS

SUMMARY

1. This section makes permanent the capital gains tax (CGT) relief for re-investing chargeable gains into seed enterprise investment scheme (SEIS) shares.

DETAILS OF THE SECTION

2. The section extends the scope of the CGT SEIS reinvestment relief at paragraph 1 of Schedule 5BB to the Taxation of Chargeable Gains Act 1992 by removing the current limitation to tax year 2013-14, applying the relief to any tax year beyond 2012-13. It applies 'the relevant percentage' that is 50 per cent (rather than 100 per cent) for tax year 2013-14 and subsequent years so that half of the amount of the qualifying reinvested gains is relived from CGT; and makes a consequential amendment to section 150G.

BACKGROUND NOTE

3. 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.

4. 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).

5. In 2013 the relief was extended for a further year but provided that half (rather than the whole) of the qualifying re-invested amount can be set against chargeable gains.

SECTION 56: EXCLUSION OF INCENTIVISED ELECTRICITY OR HEAT GENERATION ACTIVITIES.

SUMMARY

1. Section 56 amends the list of excluded activities within the tax-advantaged venture capital schemes, so that a company whose trade consists substantially in the generation or electricity or heat which attracts Renewables Obligation Certificates (ROCs) or payments under the Renewable Heat Incentives (RHI) scheme will no longer qualify for investment under the Seed Enterprise Investment Scheme (SEIS), the Enterprise Investment Scheme (EIS) or the Venture Capital Trusts (VCT) scheme (with some limited exceptions). The restriction will apply in respect of both UK ROCs and RHI schemes, and overseas equivalents. The section also extends the list of non-excluded community companies involved in the production of electricity from renewable sources, to European Co-operative Societies.

DETAILS OF THE SECTION

2. The tax-advantaged venture capital schemes exist to incentivise investment in smaller companies carrying on, or preparing to carry on, qualifying trades. A trade is qualifying if it is carried on commercially and with a view to profit, and if it does not consist to a substantial extent in "excluded activities".

3. The legislation listing the activities which are "excluded" for the purpose of the schemes can be found at sections 192 to 199 Income Tax Act 2007 (ITA) for EIS; those sections apply also for SEIS by virtue of section 257DA ITA. The equivalent VCT provisions are at sections 303 to 310 ITA.

4. Legislation already exists at section 198A and 309A to exclude the generation or export of electricity attracting feed-in tariffs or overseas equivalents, with exceptions made for electricity generated or exported by community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies. Companies producing electricity by anaerobic digestion or hydro power are also excepted from the exclusion.

5. Section 56 extends the existing exclusions at sections 198A and 309A in respect of the subsidised generation or export of electricity, to cases where a ROC is issued in connection with the generation or export, or where the production of the electricity has been incentivised by a similar overseas scheme.

6. The new section adds new sections 198B and 309B to exclude the generation of heat, or the production of gas or fuel, where the generation or production attracts a payment (or other incentive) under the RHI scheme or a similar overseas scheme.

7. As is the case with the feed-in tariffs exclusion, community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies will not be affected by the new restrictions. The amendment extends that list of excepted entities to European Co-operative Societies, for all forms of renewable incentive.

8. The new section ensures that the new restriction will not apply where the electricity is generated by anaerobic digestion or by hydro power, nor where heat is generated, or gas or fuel produced, by anaerobic digestion.

BACKGROUND NOTE

9. The tax-advantaged venture capital schemes are designed to encourage investment by individuals in qualifying early-stage and developing companies, by offering a range of tax reliefs to investors who meet the conditions of the relevant scheme. There has been concern about the proportion of investment into renewable energy companies whose activities are relatively low-risk and which already benefit from generous government subsidies. Much of this investment activity is explicitly marketed as lower risk or aimed at capital preservation, emphasising the generous tax reliefs, the relatively predictable income stream from the energy generation, and the generous government subsidies in the form of ROCs and RHI to attract investors.

SECTION 57 AND SCHEDULES 11 & 12: TAX RELIEF FOR SOCIAL INVESTMENT

SUMMARY

1. Section 57 and Schedules 11 and 12 introduce a range of income and capital gains tax reliefs to encourage individuals to invest in qualifying social enterprises. Investments may be in shares or by way of certain types of debt, and the reliefs will be available in respect of investments made on or after 6 April 2014.

DETAILS OF SCHEDULE 11

Part 1

2. Paragraph 1 inserts new Part 5B into the Income Tax Act 2007 ('ITA'). Part 5B is subdivided into several Chapters.

Chapter 1

3. Chapter 1 contains sections 257J to 257JC which introduce the income tax relief available to individuals who invest in social enterprises.

4. New sections 257J(2) to (3) define "social enterprise" as: community interest company, community benefit society, charity or accredited social impact contractor, and provide that this definition may be further extended by Treasury order to include other types of body. Any such order may have retrospective effect. No definitions are provided for community interest company or charity, which are defined in other Acts: Part 2 of the Companies (Audit, Investigation and Community Enterprise Act 2004 in the case of Community Interest Companies and Schedule 6 to Finance Act 2010 in the case of charities. "Community benefit society" is explained further at new section 257B. Accredited social impact contractor is explained further at new sections 257JD – JG.

5. New section 257JA quantifies the amount of the income tax reduction to which an individual is entitled if a claim to relief is made for a tax year.

6. Subsection 257JA(1) provides that an individual may choose to claim relief in respect of some, but not all, of the investment in relation to which the individual is eligible for relief.

7. Subsections 257JA(2) and (3) are expressed in terms of the individual's entitlement to a reduction in tax liability, as a percentage of the amount invested. Relief is given effect in accordance with Chapter 3 of Part 2 ITA, with the reduction being included at Step 6 of section 23.

8. Subsection (2)(b) provides that there is an upper limit on the amount of an individual's entitlement to relief rather than an upper limit on the amount of investment in respect of which the relief can be claimed.

9. Subsection 257JA(4) provides that an individual may elect to have some or all of the investment treated as though made in the tax year preceding that in which it was made, with relief being given accordingly.

10. Subsection 257JA(5) sets the rate of SI relief at 30%.

11. New section 257JB describes what is meant by a "community benefit society". The Co-operative and Community Benefit Societies Acts are in the process of consolidation so section 257B ensures that that definition applies irrespective of which Act is in force at the relevant time.

12. New section 257JC provides that for the purposes of this Part, charitable trusts are to be treated in the same way as companies which are charities. This is qualified to make it clear that a charitable trust cannot be accredited as a social impact contractor.

13. New section 257JD contains the definition of 'accredited social impact contractor'. Subsection (1) of new 257JD says that this term means a company which is limited by shares and which is accredited under this section as a social impact contractor. Subsection (2) of new section 257JD says that applications for accreditation must be made to a Minister of the Crown in the form and manner specified. Subsection (3) of new section 257JD says that the Minister can only accredit a company if satisfied that each of three conditions is satisfied.

14. The three conditions for accreditation are as follows. The first condition is that the Minister must be satisfied that the company has entered into a relevant contract (a 'social impact contract'). The second condition is that the company must be, and must at all times since incorporation have remained, established for the propose of entering into and carrying out the terms of such a contract, or for that purpose and incidental purposes; it cannot at any time have another purpose (subsection (3)(b) of new section 257JD). The third condition is that the activities of the company in carrying out the social impact contract will not consist wholly or as to a substantial part in excluded activities (subsection (3)(c) of new section 257JD). Excluded activities are defined later in the part, in section 257MQ.

15. Subsection (4) of new section 257JD allows the Minister to withdraw accreditation from a company if he is satisfied that the second and third conditions described above cease to be met. The Minister has discretion to withdraw the accreditation either from the time the condition ceased to be met, or at a later time.

16. New section 257JE provides the Treasury with the authority to make regulations setting out the criteria which a social impact contract must demonstrate in order to be accredited for the purpose of the tax relief scheme. The section describes the extent of the Treasury power, and allows the regulations to include criteria relating to a party to the contract other than the company which is seeking accreditation. It also allows the regulations to be supplemented by guidance material published by the Government department responsible for administering the accreditation facility.

17. New section 257JF provides more detail about the requirements of accreditation. Accreditation must be made on terms required by regulations and any other terms considered appropriate by the Minister of the Crown who is accrediting the company concerned. An accreditation must be conditional on compliance with those requirements.

18. Subsection (2) of new section 257JF says that the requirements that may be imposed include requirements relating to the provision of information.

19. Subsection (3) of new section 257JF provides authority for the regulations to make provision for further specific matters, including: the possibility of an accreditation being varied; the consequences of a breach of any of the conditions of accreditation; the scope for the accrediting department to publish information about an accreditation or accredited contractor; the right for review of, or appeal against, various decisions or actions of the accrediting body.

20. New section 257JG sets out the period for which accreditation as a social impact contractor has effect.

21. Subsection (1) says that this period begins with the day specified in the accreditation and that its length is determined in accordance with the date specified in or determined in accordance with the accreditation.

22. Subsection (2) allows for retrospective accreditation, from a date earlier than either the day the application for accreditation is made or the day new section 257 JD comes into force. However, accreditation cannot be effective for a date before 6 April 2014.

23. Subsection (3) ensures that the section is subject to the power for withdrawal of accreditation. If accreditation is withdrawn the period of accreditation will come to an end on the date a withdrawal takes effect.

24. New section 257JH provides for delegation by a Minister of the Crown of any function given by new sections 257JD to 257JG. It also provides that the term Minister of the Crown has the meaning given by section 8(1) of the Ministers of Crown Act 1975.

Chapter 2

25. Chapter 2 sets out some key terms used in determining eligibility.

26. New section 257K(1) provides that the scheme applies in respect of qualifying investments (as defined in Chapters 3 and 4) made on or after 6 April 2014. It sets a limit of five years on the lifespan on the social investment tax relief scheme, but provides that this lifespan may be extended by Treasury order.

27. New subsection 257K(2) provides for the conditions for eligibility for SITR set out in Chapters 3 and 4 of the new Part 5B to differ where the social enterprise concerned is an accredited social impact contractor.

28. New section 257K(3) provides that the investor is not eligible for SI relief if the investor has otherwise obtained relief on the investment via the Enterprise Investment Scheme, Seed Enterprise Investment Scheme or the Community Investment tax relief scheme.

29. New section 257K(4) makes it clear that the conditions for relief apply equally whether individuals make the investment on their own behalf or whether the investment is made or held for them by a nominee.

30. Tax relief is contingent upon the individual making an investment, and the timing of the making of that investment determines the tax year for which relief will be due. New section 257KB explains when the investment is to be considered to be "made".

31. In the case of an investment in shares, new section 257KB(2) explains that the investment is considered to be made when the shares are issued to the investor.

32. In the case of an investment in qualifying debt investments, when the investment is considered to be "made" will depend on the nature of the investment agreement. The legislation is intended to cater both for situations where the amount specified in the agreement is all paid over at the outset, as well as situations where an investor may commit to lend a sum of money to a social enterprise, but rather than drawing down the whole of that sum at the outset, the social enterprise is able to draw down smaller sums at intervals.

33. New subsection 257KB(3) and (4) deal with the situation where either the investment agreement involves only one advance of money being made to the social enterprise, or where an investment is the first of multiple cash advances to be provided to the social enterprise under the terms of the agreement. It provides that the investment is to be regarded as "made" when the enterprise issues the debenture or debentures to the investor. In the case of an investment agreement which does not involve anything being issued to the investor, then the investment is to be regarded as "made" when the debenture or debentures take effect between the social enterprise and the investor.

34. New subsection 257KB(5) provides that if the investment agreement involves multiple advances of money, then for each second and subsequent advance, the investment is to be regarded as "made" at the time of each cash advance to the social enterprise. If the relevant debenture or debentures are issued, or otherwise take effect, at a date later than the date or dates each cash advance is made, the investment is to be regarded as made on the date of issue or the date the debenture becomes effective.

35. New subsection 257KB(6) explains that the term "debenture" in this context should be interpreted widely as including any instrument which creates or acknowledges indebtedness.

36. New section 257KC explains the terms "shorter applicable period" and "longer applicable period". Many of the eligibility conditions relating to the investor, the investment and the investee enterprises have to be met for a continuous period of time rather than merely at the point of investment, for the tax relief to continue to be available. In the case of some conditions, that continuous period of time runs from the date of investment. In the case of other conditions, it runs from an earlier date – either the date of incorporation or, if later, twelve months before the date of investment. In all cases the continuous period ends with the third anniversary of the investment date. Investors are not required to wait until the end of the relevant applicable period before claiming tax relief (see new section 257PA) but if any of the conditions are breached before the end of the applicable period, relief which has been given may be withdrawn or reduced (see Chapter 7).

Chapter 3

37. Chapter 3, sections 257L to 257LH, sets out eligibility conditions relating to the investor and the investment.

38. New section 257L describes the types of investment which may qualify for relief. Investments may be in shares, or in debt instruments including simple loans. The section ensures that either type of investment must be the lowest-ranking of its type in the event of a winding up and therefore exposed to the greatest degree of risk for investors. In the case of qualifying debt investments, these must as far as possible rank equally in a winding up with those shares which rank lowest .Investments in shares may not carry any right to an amount of dividend which is fixed absolutely; or whose rate is fixed either by reference to the amount invested or by reference to some other factor which is not contingent upon the enterprise's financial success. Irrespective of the nature of the investment, any right of return must not be greater than a reasonable commercial rate. No definition is provided for "reasonable commercial rate".

39. New section 257LA ensures that income tax relief will only be available where the amount in respect of which relief may be claimed has been paid over in cash to the enterprise when the investment is considered to have been made. This means, for instance, that where an investor has undertaken to provide the enterprise with an amount but the enterprise has not drawn down some or all of the amount committed, then relief will be due only on the drawn down amount.

40. New section 257LB(1) ensures that the investor has no right to have the investment redeemed, repaid or repurchased during the shorter applicable period.

41. New section 257LB(2) to (4) ensures that the investment is not made with the benefit of any arrangement which might guarantee an exit from the investment.

42. New subsection 257LB(5) disapplies the requirements in section 257LB(2) to (4) in relation to accredited social impact contractors. This recognises the fact that an accredited social impact contract is likely to be time-limited and will therefore usually include an exit arrangement for investors.

43. New section 257LC(1) prevents the investment from qualifying if at any time in the shorter applicable period, there exist arrangements aimed at protecting the investor's capital, or otherwise protecting the investor from the risks attached to making the investment. This would include, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the investment artificially.

44. Subsection (2) provides an exception for ordinary commercial matters such as insurance by the enterprise against normal trading risks.

45. New section 257LD denies relief if in the longer applicable period, the investor, or any associate, receives a loan from any person which would not have been made, or would not have been made on the same terms, were it not for the making of the relevant investment. This includes cases where credit is given or a debt due from the investor or associate is assigned. This section mirrors the equivalent Enterprise Investment Scheme provision at section 164 ITA. HMRC has published an interpretation of that provision in Statement of

Practice SP6/98 and it is anticipated that that interpretation is likely to apply equally here, providing that the Statement of Practice is still in existence.

46. New section 257LE prevents the investment from qualifying if it is made as part of a scheme or arrangement whose purpose is tax avoidance.

47. New section 257LF prevents individuals from qualifying for relief if they are, or their associates are, employees, partners, remunerated directors or trustees of the enterprise, or of other bodies which have certain relationships with the enterprise. Those restrictions apply throughout the longer applicable period described in section 257KC, and therefore exclude individuals who have had (or whose associates have had) one of the relationships mentioned with the enterprise before the date the investment is made, even if that relationship has ended by the time the investment is made. The term "associate" is defined in new section 257TC as including spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

48. Subsection (3) provides definitions of some terms used in section 257LF. The definition of "related person" includes a person connected with the social enterprise or a linked company. In this context, "connected" is as defined by section 993 ITA, as provided by section 1021 ITA. This subsection also defines "subsidiary" as a 51% subsidiary, which is further explained in section 989 ITA.

49. Subsection (4) explains what is meant by a "remunerated director" in this context. A director is "remunerated" if during the longer applicable period he or a partnership of which he is a member receives, or is entitled to receive, a payment from a "related person" as defined in subsection (3). "Director", for the purpose of Part 5B, takes its meaning from section 452 Corporation Tax Act 2010, modified so that references to companies in that section are to be read as including charities which are trusts. See new section 257TE.

50. Subsection (5) provides that certain types of payment are not taken into account in determining whether the director is "remunerated". These are mostly payments of various types which do not constitute payments for services rendered as a director. However, reasonable payments which are for services rendered as a director may also be ignored, if one of two further conditions is met.

51. The first of these conditions is at subsection (6). This is that the investment was made at a time when the investor met the requirements of section 257LF, 257LG and 257LH, and also had never been involved in carrying on the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary.

52. The second of the conditions is at subsection (7). This is that if the first condition is not met, the investment is made before the third anniversary of the last investment made by the director at a time when the investment met the first condition.

53. Subsection (8) provides that in cases where a director is also an employee of an enterprise, for the purposes of new section 257LF the employee relationship is to be disregarded.

54. New section 257LG prevents individuals from qualifying for relief if they, or their associates, have a certain level of interest in the capital of the enterprise or of a 51% subsidiary of the enterprise. This restriction applies throughout the longer applicable period,

and it applies in respect of an interest in a company which is a 51% subsidiary at any time in that period, even if it is not such a subsidiary at the time of investment.

55. Subsection (3) prevents an individual from qualifying if that individual or an associate controls the enterprise or a 51% subsidiary. "Control" for this purpose is defined at new section 257TD and takes the meaning in section 450 and 451 of the Corporation Tax Act 2010, expanded so that references to company in those sections are to be read as including references to charitable trusts. Trustees who alone, or together with another person connected with them, have the power to exercise certain trustee functions, are regarded as controlling an enterprise in this context.

56. Subsection (4) prevents an individual from qualifying for relief if at any time in the longer applicable period, that individual or an associate has directly or indirectly more than 30% of any of the following:

- The issued share capital of an enterprise or its 51% subsidiary (as defined in section 989 ITA).
- The loan capital of the social enterprise or its 51% subsidiary.
- The voting power of an enterprise or its 51% subsidiary.

57. Subsection (5) disapplies subsection (3) and (4) in respect of any shareholdings at a time when the enterprise has issued only subscriber shares, and has not yet started its business or any preparations for its business. This prevents an individual from being disqualified merely by virtue of having taken shares in a company for the purpose of registering that company with Companies' House but where it is intended that there will be other investors in due course.

58. Subsection (6) defines "loan capital" for the purpose of subsection (4) as including any debt incurred by the relevant enterprise for any money borrowed or capital asset acquired by it; for any right to receive income created in favour of it; or for consideration the value of which to the enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt). But loan capital is treated as excluding debts arising on a normal bank overdraft.

59. New section 257LH imposes a requirement that there must be no "reciprocal" arrangement allowing individuals to circumvent the restrictions in sections 257LF and LG by investing in each other's social enterprises. This provision would apply, for example, where A, B and C are each directors of community interest companies A Ltd, B Ltd and C Ltd respectively, and A invests in B Ltd, B in C Ltd and C in A Ltd.

Chapter 4

60. Chapter 4, sections 257M to 257MV, describe the eligibility conditions relating to the social enterprises.

61. New section 257M requires an enterprise to be a social enterprise as defined in section 257J(2) throughout the shorter applicable period mentioned in section 257KC. There is no requirement for it to be the same type of social enterprise throughout.

62. New section 257MA sets a limit on the amount of tax-advantaged investment which an enterprise or its qualifying subsidiary may receive in a rolling three year period. This limit is imposed by the need to comply with the European Commission's regulations on de minimis State aid, which restrict such aid to an amount not exceeding €200,000 in a three year period. The guidelines also require de minimis aid to be transparent (i.e. ascertainable) at the point at which it is given. As it is not possible to determine at the time of investment what tax reliefs may actually be claimed, the limit is therefore calculated by reference to the aggregate of the maximum amount of SI tax relief under Part 5B ITA and the maximum amount of capital gains tax relief under Schedule 8B Taxation of Chargeable Gains Act which an investment would be capable of attracting, rather than by reference to amounts of tax relief ultimately claimed.

63. New section 257MB grants a power for Treasury to amend by order the enterprise size and investment limits, or other matters needed in connection with an application for State aid approval.

64. New section 257MC sets out the limits that apply to the value of an enterprise's gross assets before and after an investment. The limits are £15m immediately before investment and £16m immediately after. The requirement differentiates between a singleton enterprise and one which is the parent of a group. Where the latter is the case, it is the value of the group assets which has to be taken into account.

65. Subsection (3) provides that for this purpose, no account is taken of any assets which consist in rights against another member of the group, or any shares in, or securities of, another such group member.

66. Section 257MC mirrors an equivalent provision in the Enterprise Investment Scheme legislation, at section 186 ITA. HMRC has published a Statement of Practice SP2/06 in relation to that provision, indicating that ordinarily the value of a company's assets will be determined by reference to the values shown on its balance sheets as explained in the Statement. It is anticipated that similar considerations are likely to apply for this new relief, subject to that Statement of Practice still being in existence.

67. New section 257MD provides that when the investment is made, none of the enterprise's shares, stocks, debentures or other securities may be listed on a recognised stock exchange or other designated exchange as defined, and there must be no arrangements in place for that to happen. This restriction applies in respect of all such instruments issued by the enterprise, not only those in respect of which tax relief may be claimed.

68. New section 257ME contains two tests, each of which must be met for the duration of the shorter applicable period. Both tests rely on the definition of "control" to be found at section 257T, which in turn relies on the definition at sections 450 and 451 of the Corporation Tax Act 2010, modified to take account of charitable trusts. Both tests also rely on the definition of "connection" in section 993 ITA, which applies by virtue of section 1021 ITA.

69. The first test, at subsection (1), prevents an enterprise from qualifying if it controls (either on its own or together with any person connected with it) any company which is not a qualifying subsidiary. "Qualifying subsidiary" for this purpose is as defined at section 257MU.

70. The second test, at subsection (2), prevents an enterprise from qualifying if it is either a 51% subsidiary of another company, or is under the control of another company (or another company and any person connected with that company) without being a 51% subsidiary of that company.

71. New section 257MF provides that any subsidiary which the enterprise has during the shorter applicable period, must be a qualifying subsidiary. The definition of "qualifying subsidiary" for this purpose is to be found at section 257MU.

72. New section 257MG requires that if the enterprise has a subsidiary whose business consists wholly or mainly of holding or managing land, or property deriving its value directly or indirectly from land, that subsidiary (termed a 'property managing subsidiary') must be a qualifying 90% subsidiary of the company. The legislation does not define what is meant by "property deriving its value …indirectly from land", but examples might include the enterprise having shareholdings in a company deriving its value directly or indirectly from land; having any interest in settled property deriving its value directly or indirectly from land; or having any option, consent or embargo affecting the disposition of land. For the definition of 'qualifying 90% subsidiary' see section 257MV.

73. New section 257MH requires that at the time of investment, either the enterprise or the group of which it is a parent, as appropriate, must have fewer than 500 full-time equivalent employees. Part-time employees are to be included on any basis which is "just and reasonable". For the purpose of this section, the term "employee" includes directors, but not employees who are on maternity or paternity leave or students who are on vocational training.

74. New section 257MI provides that neither the enterprise, nor any of its qualifying 90% social subsidiaries, may be a member of a partnership at any time during the shorter applicable period. "Partnership" for this purpose will include a limited liability partnership, by virtue of section 863(2) Income Tax (Trading and Other Income) Act 2005.

75. New section 257MJ describes what is termed the "trading requirement". Despite the title, this is not a requirement that the enterprise must either be trading at time of investment or must trade for any specified period of time. Rather, it is a requirement as to the nature of the activities of the enterprise or of the group of which it is a parent. It must be met throughout the shorter applicable period.

76. The trading requirement does not apply to a social enterprise which is an accredited social impact contractor. It is anticipated that the social impact contract will constitute a trading contract, so that by the time a social impact contractor comes to apply for accreditation for such a contract, it will already be trading and the separate requirement at section 257MJ will not be needed.

77. Subsection (2) provides that the trading requirement can be met in one or other of three ways, depending on whether the enterprise is a single entity or whether it is the parent of a group. A social enterprise which is neither a parent company nor a charity will not qualify if it carries on any activities other in the course of a trade, or in the course of preparing to carry on a trade) The carrying on of investment activities would therefore disqualify a single social enterprise. A single entity will also not qualify if "excluded activities" (as listed in section 257MQ) form a substantial part of the trade. In this context,

activities carried on for "incidental" purposes which would have no significant effect on the company's activities as a whole, are ignored.

78. A single enterprise which is a charity is treated for the purpose of this section as fulfilling this condition, although charities will by their nature carry on a range of activities in order to fulfil their charitable purpose.

79. An enterprise which is the parent company of a group will fulfil the condition if the business of the group as a whole does not substantially involve non-qualifying activities. Subsection (7) defines "non-qualifying activities" for this purpose as excluded activities (see section 257MQ), or activities (other than carried on by a charity) which are carried on otherwise than in the course of a trade.

80. Subsection (3) treats an enterprise as a parent company if it intends that one or more companies will become its qualifying subsidiaries to carry on one or more trades which qualify for the purpose of Part 5B. Once it ceases to have this intention, however, it is no longer to be regarded as a parent company for the purpose of this section.

81. To enable a determination of whether the parent company of a group meets the trading condition as outlined above, subsection (4) provides that it is the business of the whole group taken together which is to be considered.

82. Subsection (5) provides that incidental activities carried on by a subsidiary which otherwise exists wholly to carry on a qualifying trade, are to be ignored.

83. Subsection (6) provides that the following types of activity are ignored altogether:

- Holding shares in a qualifying subsidiary.
- Making loans to a subsidiary, and making loans to the parent company.
- Holding and managing property used by any group company for the purpose of one or more qualifying trades.

84. A company which goes into administration or receivership may fail the trading requirement at section 257MJ. New section 257MK provides that that will not be the case because of anything done as a result of the company being in administration or receivership providing that the entry into administration or receivership, and any subsequent actions, are undertaken for genuine commercial purposes and not for reasons of tax avoidance. Section 257TB explains further what is meant by a company going into administration or receivership.

85. New section 257ML provides that the enterprise must be party to the relevant investment for the purpose of raising money for a "funded purpose".

86. Subsection (1) provides that a funded purpose can be either a qualifying trade carried on at the time of investment by the enterprise or a qualifying 90% social subsidiary; or activities preparatory to a qualifying trade which the enterprise intends will be carried on either by the enterprise itself, or by a 90% social subsidiary. If it relates to the preparatory activities, then the relevant trade must begin within two years of the date of the investment.

87. This section is disapplied for enterprises which are accredited social impact contractors.

88. New section 257MM imposes requirements on the enterprise as to how it uses the monies raised by the investment, and as to a minimum period of trading.

89. Subsection (1) provides that the monies raised by the investment must be employed wholly for the funded purpose (see section 257ML) within 28 months of the date of the investment. Insignificant uses of the money for other purposes are ignored, by virtue of subsection (4). The period of 28 months is reduced to 24 months in the case of an accredited social impact contractor.

90. Subsection (2) provides that the relevant qualifying trade must have been carried on for a period of at least 4 months by either the investee enterprise, or a 90% social subsidiary. This subsection works in conjunction with section 257PB(3) to ensure that an enterprise is not eligible to submit a compliance statement to HMRC until it has completed at least 4 months of trading activity. Subsection (5) and (6) act to ensure that this requirement will still be regarded as having been met if either the enterprise or a qualifying subsidiary is wound up or dissolved, or put into administration or receivership before the end of the 4 month period, providing that such events occur for genuine commercial purposes and not for reasons of tax avoidance. These subsections are disapplied in the case of an accredited social impact contractor.

91. Subsection (3) provides that employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of the funded purpose. This restriction should not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90% social subsidiary (see section 257MV) and that subsidiary then goes on to use the money for a funded purpose carried on by it (which will exclude the acquisition of shares or stock in another company). This section is disapplied in the case of an accredited social impact contractor.

92. New section 257MN provides that at no time during the shorter applicable period must relevant preparation work or the relevant qualifying trade be carried on by someone other the investee enterprise or one of its 90% social subsidiaries. This section is disapplied in the case of an accredited social impact contractor.

93. Subsection (2) provides that this rule does not act to deny relief where an existing trade is carried on by another company and making of the investment is preparatory to the carrying of a qualifying trade by the investee enterprise or one of its 90% social subsidiaries.

94. Subsections (3) to (5) further provide that this rule does not act to deny relief in cases in where the investee enterprise (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for genuine commercial reasons.

95. New section 257MP explains what is meant by “qualifying trade” for the purpose of Part 5B.

96. Subsection (1) says that for a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits. In addition, the trade must not consist wholly or as to a substantial part in the carrying on of 'excluded activities' as defined in section 257MQ.

97. Subsection (2) provides that what the company does must come within the ordinary meaning of 'trade'; that is, it must not count as a trade merely because of the extension of the meaning of that word in section 989 ITA to include 'any venture in the nature of trade'.

98. New section 257MQ provides a list of activities which are "excluded". This list is needed to determine whether a trade is a qualifying trade and the extent to which the business of a group includes non-qualifying activities.

99. Some activities are necessarily excluded in order to comply with the European Commission's regulations on de minimis State aid. These include fishery and aquacultural production activities as listed in Council Regulation (EC) No 104/2000; the primary production of agricultural products as listed at Annex 1 to the Treaty on the Functioning of the European Union (which includes both livestock and crops as well as the production of alcohol from plants and fruit); and road freight haulage.

100. In addition to the exclusions made for State aid purposes, the following are also listed in subsection (1) as excluded: dealing in certain types of assets and commodities; certain financial activities; property development; certain subsidised generation or export of electricity; and the provision of certain services to another enterprise in common ownership where that enterprise's trade is excluded.

101. Subsection (2) provides that lending money to a social enterprise is not "excluded". "Social enterprise" for this purpose bears the same meaning as in section 257J.

102. New section 257MR supplements section 257MQ(1)(c) by explaining what is meant by "property development".

103. Subsection (1) explains that property development for this purpose is defined as the development of land in which the enterprise has, or has had, an interest, with the object of realising a gain from the disposal of the land when developed.

104. Subsection (2) provides that for this purpose, 'interest in land' is defined in the legislation as any estate, interest or right over land including any right affecting the use or disposition of land; or any right to obtain such an estate, interest or right from another person, which is conditional upon the other person's ability to grant it.

105. Subsection (3) makes it clear that references to an interest in land for this purpose do not include mortgage creditors or (in Scotland) the interest of a creditor in a charge or security of any kind over land.

106. New section 257MS supplements section 257MQ(1)(e) to exclude the generation or export of electricity in respect of which any person (whether the enterprise undertaking the generation or export or any other person) receives a feed-in tariff under a UK government scheme to encourage small-scale low-carbon generation of electricity or a financial incentive granted under a similar overseas scheme.

107. New section 257MT supplements section 257MQ(1)(h). Together these sections explain that providing services or facilities for any business comprising a trade, profession or vocation carried on by another person (other than the parent of the company) is an excluded activity, where that other business consists to a substantial extent of any activities listed in section 257MQ as excluded, and a controlling interest in that other business is held by a person who also has a controlling interest in the business carried on by the company.

108. Subsection (2) defines a controlling interest in a business as follows. A person has a controlling interest in a business if, in the case of a business carried on by a company, he controls the company, or the company is a close company and he (or an associate of his) is both a director of it and the beneficial owner of, or able directly or through the medium of other companies (or by any other indirect means) to control, more than 30% of its ordinary share capital, or he owns at least one-half of the business by reference to the tests of ownership set out in sections 941 and 942 CTA 2010.

109. Subsection (3) provides that in the case of a business carried on other than by a company, a person is regarded as having a controlling interest in that business if he is entitled to not less than half of the assets used for, or the income arising from, the business.

110. Subsection (4) provides that for these purposes, the rights or powers of any person's associate count as that person's rights and powers.

111. New section 257MU explains what is meant by a "qualifying subsidiary" of an enterprise for the purpose of the sections of Part 5B which use that term.

112. Subsection (1) provides that a company is a qualifying subsidiary if it is a 51% subsidiary of the investee company. The meaning of 51% subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50% of the ordinary share capital. In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary, and there must be no arrangements by virtue of which these requirements could cease to be met. 'Control' for this purpose has the meaning given at section 257TD.

113. Subsections (2) and (3) provide that these conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.

114. New section 257MV explains what is meant by a "90% social subsidiary" of an enterprise.

115. Subsection (1) provides that, for a subsidiary to be a 90% social subsidiary, the following must apply:

- The subsidiary must be a social enterprise.
- The parent enterprise must own at least 90% of the subsidiary's issued share capital and voting rights.

- The parent enterprise must be beneficially entitled to at least 90% of the assets available for distribution to equity holders of the subsidiary.
- The parent enterprise must be beneficially entitled to at least 90% of any profits of the subsidiary which would be available for distribution to equity holders. "Equity holder" is to be given the same meaning as in Chapter 6 of Part 5 of CTA 2010, as explained at subsection (8) and (9).
- In addition, no person other than the parent enterprise must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions would cease to be met.

116. Subsections (2) to (4) provide that a company is still to be treated as a 90% social subsidiary if it is held indirectly via a company which is a qualifying 100% subsidiary of the relevant company, (based on similar considerations to those above).

117. Subsections (5) and (6) provide that the winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.

118. Subsection (7) provides that arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

Chapter 5

119. Chapter 5, section 257N deals with attribution of relief to investments.

120. New section 257N sets out how SI relief is to be attributed to investments where only one investment is made, or where several investments are made in the same tax year. This becomes significant if the investor later disposes of some but not all of the investment:

- For the purpose of determining what relief is to be withdrawn if the disposal takes place within the qualifying period for the investment.
- For the purpose of determining whether the disposal takes place after the end of the qualifying period relevant to that particular investment, and is therefore exempt from capital gains tax by virtue of section 255B TCGA.

Chapter 6

121. Chapter 6, sections 257P to 257PD, explains the procedures for making claims.

122. New section 257P explains the time limits for making a claim to SI relief.

123. Subsection (1) says that the claim may not be made earlier than the end of the period of 4 months referred to in section 257MM(2). This requirement does not apply where the social enterprise is an accredited social impact contractor. No claims may be made later than the fifth anniversary of the filing date for the tax year in which the investment was made. Note: this overrides the normal claim period provided for in section 43 Taxes Management Act 1970. This is to take account of the fact that the individual's eligibility to claim depends on the enterprise having met certain conditions which may take some time to fulfil.

124. Subsection (2) provides that if the individual has made an election under section 257JA(4) to have some or all of the investment treated as though made in an earlier tax year, then subsection (1) above applies separately to that part of the investment as though it had been made in the earlier tax year.

125. New section 257PA deals with an individual's entitlement to claim SI relief in respect of an investment in a social enterprise.

126. Subsection (1) provides that in order for an individual to be eligible to claim SI relief, the enterprise must provide the individual with a compliance certificate which can be provided to HMRC in support of a claim.

127. Subsections (2) and (3) provide that a claim to SI relief must have been made in order for the individual's PAYE coding to be amended to take account of the SI relief, or for the individual to make any application for tax to be postponed pending the outcome of an appeal made on the grounds that SI relief will be available.

128. New section 257PB provides more detail about the compliance statement referred to in section 257PC(2).

129. Subsection (1) provides that it is a statement to the effect that, in respect of an investment, the conditions for the relief to apply have so far been met (other than those which have to be met by the individual), and the enterprise's intention is that they will continue to be met for the duration of the relevant applicable period. It is therefore not possible for an enterprise to obtain authority to issue certificates under section 257PC once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible.

130. Subsection (2) gives HMRC the power to prescribe the form and content of the compliance statement. The statement must include a declaration to the effect that the statement is correct to the best of the enterprise's knowledge and belief, as well as any other declarations which HMRC may require. It is anticipated that a declaration as to the quantum of de minimis State aid received by the enterprise (see section 257MA) will be required under this section.

131. Subsection (3) provides that an enterprise cannot submit a statement more than two years after the end of the year of assessment in which the investment was made, or more than two years after the end of the period of four months referred to in section 257MM(2). That four month period does not apply to accredited social impact contractors.

132. New section 257PC explains in more detail the requirements for an individual to obtain the compliance certificate referred to in section 257PA(1).

133. Subsection (1) explains that a compliance certificate is a certificate issued by the investee enterprise to the individual. It must state that the requirements for SI relief have so far been met (other than those which have to be met by the individual), and it must be in a form prescribed by HMRC.

134. Subsection (2) and (3) provide that the enterprise may not issue a compliance certificate to an individual until it has provided HMRC with a compliance statement (see section 257PB), and before it has had authority to do so from HMRC.

135. Subsection (5) and (6) provides that HMRC must give a decision in respect of any application to it for authority to issue a compliance certificate, and that a refusal to give such authority is a matter against which the enterprise has the right of appeal as provided for in the Taxes Management Act 1970.

136. New section 257PE grants a power for the Treasury to amend by order the procedures relating to claims.

Chapter 7

137. Chapter 7, sections 257Q to 257RC describes the circumstances in which relief will be withdrawn or reduced.

138. New section 257Q provides for SI relief to be reduced or withdrawn if the investor receives value from the enterprise during the longer applicable period. See also section 257QG which extends the effect of this provision. Whether the relief will fall to be reduced or withdrawn completely depends on the amount of the value received in relation to the amount of relief given, as determined by the formula in subsection (2).

139. Subsection (3) lists provisions which supplement section 257Q.

140. Subsection (6) provides that for the purpose of the value received provisions, a spouse or civil partner who has acquired any part of an investment in the course of a transaction to which section 257T applies is to be treated as the investor.

141. New section 257QA provides that where the amount of the value received is 'insignificant' it is ignored. An amount is insignificant for this purpose if it does not exceed £1000, or if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question. 'Insignificant' is not defined for this purpose.

142. To ensure that this relaxation is not used for tax avoidance purposes, subsection (3) provides that the amount of any value is not to be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the investment. Subsection (6) extends this to include receipts by an associate of the investor, or provision of value by any person connected with the social enterprise. "Arrangements" is as defined in section 257TE.

143. Subsections (4) and (5) provide that where there is more than one receipt which, on its own, would be regarded as insignificant, the rule must be applied to the total amount received within the longer applicable period.

144. New section 257QB modifies the calculation given at subsections 257Q(1) and (2) for cases where there has been more than one issue of investment attracting SI relief.

145. New section 257QC modifies the calculation given at subsections 257Q(1) and (2) for cases where part of the investment is treated as though made in the tax year preceding that in which it was made (see section 257JA(4)).

146. New section 257QD modifies the calculation given at subsections 257Q(1) and (2) for cases where the investor has not been able to obtain the maximum amount of SI relief available in respect of the investment. This would be the case where the maximum amount of relief available exceeded the investor's liability to income tax for the tax year in question.

147. New section 257QE explains when value is considered to have been received by an investor, for the purposes of sections 257Q and 257QB.

148. Subsections (2) to (6) list a wide range of types of payments, benefits and transactions which will give rise to a withdrawal or reduction of SI relief by virtue of the value received provisions. These will include any repayment or part repayment of the investment in respect of which SI relief has been obtained.

149. Subsection (7) provides that if SI relief is withdrawn because the investor has disposed of the investment within the relevant applicable period, the disposal proceeds are not treated as a receipt of value for the purposes of this section.

150. Subsection (8) provides that if the investor is a director of the enterprise, a payment of reasonable remuneration or the provision of a benefit for services provided in the capacity of director or employee, is not to be treated as value received for the purposes of this section.

151. New section 257QF contains a table setting out how the amount of any value received is to be calculated, depending on the nature of the value received.

152. New section 257QG supplements those sections dealing with receipt of value. It provides that those sections apply equally in cases where the value has been provided indirectly as well as directly to the individual; or where the value has been provided to the individual's associate; or where the value has been provided by a person connected with the social enterprise at any time during the longer applicable period.

153. New section 257QH provides that an individual can avoid the consequences of receiving value by returning the whole of the value to the person that gave it. The value may be returned in a number of ways, depending on the circumstances in which value was received. These may include a cash payment, the reversal of the waiver or discharge of a liability, or the transfer in reverse of an asset at under or over value corresponding to that in the original transaction giving rise to the receipt of value.

154. Subsection (5) lists a number of types of cash payment which are not to be treated as providing replacement value for the purpose of section 257QH. These consist broadly of payments at normal arm's length rates for goods or services received, for assets transferred, or representing interest on money lent.

155. New section 257QI supplements section 257QH.

156. Subsection (1) provides that replacement value cannot be used to offset the receipt of value to the extent that it has already previously been used to do so.

157. Subsection (2) deals with the time within which the replacement value must be given in order for the individual to be able to avoid the consequences of receiving value. The replacement value must be given without unreasonable delay. If the amount of the value received was the subject of appeal proceedings it must be given within 60 days after the final determination of the appeal. A payment made before the value was received may be taken into account as replacement value, provided it was not made before the beginning of the longer applicable period referred to in section 257KC.

158. New section 257QJ acts to ensure that tax relief is not available to the extent that an amount equivalent to any part of an individual's investment is used by the enterprise or by one of its subsidiaries to repay, redeem or repurchase any of that entity's share capital. The restriction applies in respect of any such repayment, redemption or repurchase within the longer applicable period referred to in section 257KC. The aim is to prevent tax advantaged funds from being used to provide an exit for earlier shareholders, rather than being used for the activities of the enterprise.

159. New section 257QK provides that a repayment of share capital falling within section 257QJ is ignored if both it and the market value of the share capital repaid are insignificant compared with the market value of the remaining issued share capital of the company. Note that, unlike section 257QA, this provision does not provide for a specified amount to be treated as insignificant.

160. To ensure that this relaxation is not subject to abuse, subsection (3) provides that the amount of any value shall not be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the share issue.

161. New sections 257QL to 257QO supplement section 257QJ by explaining how the tax reduction is to be calculated where there is more than one issue of shares; where more than one individual is involved; where a single issue of shares has been treated partly as made in the previous tax year by virtue of a claim under section 257JA(4); or where the maximum amount of relief was not obtained for the share issue.

162. New section 257QP provides an exception from section 257QJ, to take account of the fact that it is not uncommon for a company to be established via the issue of redeemable shares, which are then redeemed when the company is acquired by its intended permanent owners. No reduction is to be made where share capital has been issued of a nominal value equal to the authorised minimum required by the Companies Act 2006 for a public company to do business, the Registrar of Companies having issued the company with a certificate under that Section, and any of it is redeemed within 12 months of the date of its issue.

163. New section 257QQ acts to ensure that the legislation serves to encourage genuinely new investment in social enterprises by denying relief to anyone who directly or indirectly owned the trade before it came to be owned by the company.

164. The restriction has effect if at any time within the longer applicable period mentioned in section 257KC, either the individual or any group of persons to which he or she belongs either: has more than a half share interest in the trade or part of the trade as carried on by the social enterprise or its qualifying subsidiary, or controls the social enterprise. In the first case, the provision will apply if the individual or group also had such an interest in the

trade, or a part of the trade, at some previous time in the same period when it was carried on by some person other than the social enterprise. In the second case, the restriction will apply if the individual or group, at some previous time in the same period, controlled another company which was then carrying on the trade or part of the trade. The persons to whom a trade belongs, or the extent of their interests in it, are to be determined in accordance with section 941 CTA 2010.

165. New section 257QR similarly acts to ensure that relief goes only in respect of genuine new investment, by denying relief to anyone who alone or together with others, controlled a company which then carried on the trade and that company has come to be owned by the social enterprise in which the individual has now invested. For this purpose, section 257TF provides that 'control' has the meaning given in section 450 CTA 2010.

166. New section 257QS provides for relief obtained by an investor to be withdrawn if it is subsequently found by HMRC not to be due. Where the reason for this is because the social enterprise does not meet, or has ceased to meet, any of the conditions specified in Chapter 4 of Part 5B, HMRC must give notice to the social enterprise before relief can be withdrawn. The purpose of this procedure is to allow the party to any appeal proceedings to be the social enterprise itself in cases where most of the relevant evidence lies within its own power, and to simplify the withdrawal process in cases where there is a large number of investors. See new section 257SA for further information about appeals, and new section 257SB for information about time limits.

167. New section 257R explains that if the investment is wholly or partly disposed of during the shorter applicable period other than to a spouse or civil partner – see section 257T, then relief is to be reduced or withdrawn.

168. Subsection (2) and (3) treat the disposal differently depending on whether it has been made by way of an arms' length bargain or not. Where the disposal is other than at arms' length, the relief is withdrawn entirely. Where it is an arms' length bargain, relief is reduced (including withdrawn completely) by the application of the formula at subsection (4).

169. New section 257RA supplements section 257R by explaining how the reduction or withdrawal of relief is to be calculated in cases where the investor did not receive the maximum amount of relief for the investment.

170. New section 257RB provides that if the investor grants a call option over any part of the investment, that part is treated as though it had been disposed of with the result that the provisions of section 257R will apply. A call option is defined by the legislation as an option granted by the investor which, if exercised, would bind the investor to sell the whole or part of the investment.

171. New section 257RC has a similar effect where at any time in the longer applicable period referred to in section 257KC, a person grants a put option to the investor. A put option is defined as an option granted to the investor by any person which, if exercised, would bind the grantor to purchase any of the investment.

Chapter 8

172. Chapter 8, sections 257S to 257SJ, explains the procedures for withdrawing or reducing SI relief, and deals with various information obligations and powers.

173. New section 257S provides that where any SI relief is to be reduced or withdrawn, that must be done by HMRC making an assessment to recover the relief.

174. New section 257SA provides that where HMRC has given a notice under section 257QS(3), this is to be treated as a decision disallowing a claim by the social enterprise. This has the effect of allowing the social enterprise to appeal against the decision, and for the appeal then to be dealt with in accordance to the legislation dealing with appeals in Taxes Management Act 1970.

175. New section 257SB explains the time limits within which HMRC may make an assessment to recover relief, or issue a notice under section 257QS(3).

176. New section 257SC explains the circumstances in which assessments are not to be made to recover tax relief once it has been given. The first of these is when the investor has died. The second is when all the investments have been disposed of before the end of the qualifying period, and relief has been partially recovered under section 257R(3). Any balance of relief remaining will be recovered only if the investor subsequently fails the requirements at sections 257LF, 257LG or 257LH.

177. Where SI relief falls to be withdrawn, new section 257SD prescribes the relevant date from which interest starts to run. This date will always precede the date when the SA return is amended or the assessment withdrawing relief is made. Normally the relevant date from which interest starts to run will be 31 January next following the tax year in respect of which the assessment is made.

178. New section 257SE places an obligation on an investor to notify HMRC of certain events relating to the investor which would result in relief falling to be withdrawn or reduced. Events listed include: where there is a loan linked to the investment (section 257LD); where the investor ceases to be a qualifying investor by virtue of being an employee, partner or director (section 257LF) or of having more than a 30% interest in the enterprise (section 257LG); where there is a reciprocal arrangement of the type prohibited by section 257LH; where the shares are disposed of (section 257R); where there are put or call options (section 257RB and 257RC); or where the investor or an associate has received value (section 257Q). The investor must make the notification within 60 days of becoming aware of it.

179. New section 257SF similarly places an obligation on a social enterprise to notify HMRC within 60 days of becoming aware of an event relating to the enterprise which would result in relief falling to be withdrawn or reduced. Events which would trigger this obligation include the enterprise ceasing to be a qualifying enterprise by reference to the requirements included in Chapter 4 of Part 5B; providing value to the investor within section 257Q; repaying share capital to other investors within section 257QJ; or where a trade or company previously owned by an individual or group of individuals come to be owned by the social enterprise, within section 257QQ or 257QR.

180. Where HMRC has reason to believe that a notification should have been made under either section 257SE or 257SF, but no such notification has been made, new section 257SG gives HMRC a power to require a person to provide the information that HMRC believes is reasonably required. HMRC has to give the person at least 60 days in which to provide the information.

181. Where HMRC has reason to believe that certain prohibited arrangements exist, new section 257SH gives HMRC power to require a person to provide the information which it may reasonably require. Again, HMRC must give the person at least 60 days in which to provide the information. In the case of this section, the persons which HMRC may require to provide information will vary as specified, depending on which type of prohibited arrangement exists.

182. New section 257SI provides for some circumstances in which HM Revenue and Customs may disclose information to other parties, in relation to SI relief.

183. Subsection 257SI(1) permits HM Revenue and Customs to disclose to a social enterprise that SI relief has been obtained or claimed, in respect of a particular number or proportion of any investments in it. A social enterprise may require this information, for instance, in the context of a later calculation for de minimis State aid purposes (see section 257MA above).

184. Subsection 257SI(2) permits HM Revenue and Customs to disclose information to the Regulator of Community Interest Companies for the purposes of the Regulator's functions, or to a Minister of the Crown for the purposes of accrediting a social impact contractor. Similar legal information gateways already exist between HM Revenue and Customs and the Financial Conduct Authority (the body responsible for the accreditation of Community Benefit Societies); and the Charities Commission.

185. Subsection 257SI(3) prohibits onward disclosure of information obtained under subsection 257SI(2), unless HM Revenue and Customs has either consented to that onward disclosure for the purposes of the Regulator's or Minister's functions, or the disclosure is required by an enactment Subsection 257SI(6) applies the provisions of section 19 of CRCA to any wrongful disclosure of revenue and customs information relating to a person.

186. Subsection 257SI(8) provides that HMRC's confidentiality obligations do not prevent the disclosure of relevant information to a Minister of the Crown or his authorised delegate for the purpose of exercising functions under sections 257JD to 257JG. Similarly, relevant information may be provided to HMRC for the purpose of exercising its functions under Part 5B. 'Relevant information' is defined as information obtained by a Minister of the Crown or delegate in the course of discharging functions under new sections 257JD to 257JG.

Chapter 9

187. Chapter 9, sections 257T to 257TE contain miscellaneous and supplementary provisions, including definitions of key terms used in Part 5B.

188. New section 257T ensures continuity of tax treatment where shares are transferred between spouses or civil partners in the circumstances specified. No relief is withdrawn where one spouse or civil partner disposes of shares to which relief is attributable to the other. Following such a disposal, for the purposes of any subsequent disposal or other event, the shares are treated as if they had always been owned by the spouse or civil partner to whom they have been transferred.

189. An individual who owns investments to which relief is attributable (see section 257N) may also possess other investments in the same company of the same class. Also, investments to which relief is attributable may have been acquired at various times and at various prices. Consequently, new section 257TA explains how to identify which investments have been disposed of, where only part of an individual's holding is disposed of.

190. New section 257TB explains what is meant by a company being in administration or receivership, by reference to the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and any corresponding legislation in a country or territory outside of the United Kingdom.

191. New section 257TC explains what is meant by an "associate" of a person in the context of Part 5B. It includes spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

192. New section 257TD explains the term "control" as used in Part 5B.

193. Subsection (1) provides that "control" should be defined in accordance with section s450 and 451 Corporation Tax Act 2010, but with the modification that "company" in those sections should be read as though including a charitable trust.

194. Subsection (2) explains that if the trustees of a charitable trust (acting in their capacity as trustees) either individually or together control another person as defined by sections 450 and 451 CTA 2010, then the charitable trust of which they are trustees is to be regarded as controlling the other person for the purpose of Part 5B.

195. Subsection (3) describes the circumstances in which a person is to be regarded as controlling a charity which is a trust, whether or not a trustee. A trustee who, alone or together with other trustees who are connected with him, can exercise some or all of the powers of the trustees, is to be regarded as controlling the charity. A person who is not a trustee but who either alone or with others has the power to appoint or remove trustees, or to approve or direct the trustees' functions, is to be regarded as controlling the charity.

196. Subsection (4) explains that subsection (3) should be read as expanding upon subsection (1), rather than limiting it.

197. Subsection (5) provides that for the purposes of Part 5B, a regulator is to be treated as not having control of any company merely by virtue of the fact that that company is regulated by that regulator.

198. Subsection (6) disapplies the definition of "control" at section 995 for the purposes of Part 5B. That definition would otherwise apply by virtue of section 1021. Note: this is a departure from the Enterprise Investment Scheme legislation at Part 5 ITA which has been

used as a broad model. The EIS legislation uses both the section 995 definition, and that at sections 450 and 451 CTA 2010, at different places.

199. New section 257TE provides minor definitions for various terms used in Part 5B, including what is meant by the term "market value" in relation to an asset.

Part 2

200. Part 2 contains various consequential amendments to the Income Tax Act 2007.

DETAILS OF SCHEDULE 12

201. Paragraphs 1 and 2 insert new sections 255A to 255E into the Taxation of Chargeable Gains Act 1992 ('TCGA'). Section 255A directs the reader to new Schedule 8B TCGA where the details of the capital gains tax relief are found.

202. New section 255B provides for special treatment of capital gains and losses which accrue on disposals of assets to which SI relief is attributable.

203. Subsection (1) applies where there would be a loss on a disposal of an asset to which SI relief is attributable. The consideration given for the asset is treated as reduced by the amount of SI relief, so the loss is reduced or eliminated, or becomes a gain.

204. Subsection (2) provides that where an asset to which SI relief is attributable is disposed of three years or more after acquisition, any gain which accrues on the disposal is not a chargeable gain for TCGA purposes. This rule is subject to the effect of section 255C.

205. Subsection (3) disapplies the rule in TCGA which means that a loss is not an allowable loss if, in similar circumstances, a gain would not be a chargeable gain. So although a gain on an asset to which SI relief is attributable is not a chargeable gain, a loss may still be an allowable loss for capital gains tax purposes.

206. Subsection (4) applies the asset identification rules contained in the SI relief provisions for the purposes of deciding which assets have been disposed of from within a holding of social investments, and whether relief is attributable to the assets disposed of.

207. Subsection (5) gives priority to the identification rules in subsection (4) over the normal rules in TCGA.

208. Subsection (6) disapplies the normal asset 'pooling' and identification rules in the TCGA from assets to which SI relief is attributable.

209. Subsection (7) allows HMRC to adjust the capital gains tax due or repayable as necessary when SI relief has been allowed or withdrawn.

210. Subsection (8) defines 'SI relief' as the income tax relief for investments in social enterprises.

211. Subsection (9) states that Part 5B of the Income Tax Act 2007 (income tax relief for investments in social enterprises) applies to determine whether SI relief is attributable to any asset, and the amount of relief so attributable.

212. New section 255C modifies the tax exemption conferred by section 255B(2) in some circumstances. Where the maximum possible SI relief has not been given in respect of the investment in the assets disposed of (other than because the claimant did not have sufficient income tax payable to absorb the maximum relief), the total gain is apportioned and only an amount attributable to the assets on which SI relief was given is exempt from capital gains tax.

213. New section 255D modifies the tax exemption conferred by section 255B(2) where the SI relief originally given has been reduced eg because the investor has received value from the social enterprise or because the investment has been repaid, redeemed or repurchased.

214. Subsection (2) applies where the SI relief has been reduced but the maximum available relief was originally allowed. In these cases, the exemption only applies to a fraction of the total gain corresponding to the fraction of the original relief which has not been withdrawn by reduction.

215. Subsection (3) applies where the SI relief has been reduced and the relief originally given was less than the maximum available, that is to say where section 255C applies. In these cases, the restriction at subsection (2) applies to the reduced gain determined under section 255C.

216. Subsection (4) requires that the reduction in SI relief used in subsection (2) is the total of all reductions which have applied to SI relief in respect of the assets disposed of.

217. Subsection (5) requires that, when apportioning the total gain under subsection (2), the original SI relief is the relief allowed before any reductions.

218. Section 255E contains special rules which apply when shares to which SI relief is attributable are involved in transactions such as reorganisations of the issuer's share capital, share-for-share takeovers and company reconstructions.

219. Subsections (1) and (2) mean that where a person has a holding of shares the normal TCGA rules which apply eg on a reorganisation of share capital will apply to shares in that holding which have:

- Both SI relief and hold-over relief under Schedule 8B attributed to them.
- Have SI relief but not hold-over relief attributed to them.
- Have neither relief attributed to them.

as if those shares were in separate holdings.

220. Subsection (4) is a rule which applies when shares which are involved in a rights issue by the company which issued the shares. If after the rights issue SI relief is attributable either to the existing shares or to the new shares allotted then the normal TCGA treatment of

the existing holding and the new shares will not apply: they will not be treated as the same asset, but rather actual disposals and acquisitions will be recognised for tax purposes.

221. Subsection (5) means that, except in the circumstances described by subsection (6), the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will not apply when SI relief is attributable to those shares. The new holding and the original shares they correspond to will not be treated as the same asset, but rather the actual disposals and acquisitions will be recognised for tax purposes.

222. Subsection (6) specifies the circumstances in which, exceptionally, the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will apply, notwithstanding subsection (5). Broadly,

- The company which issues new shares must have previously issued shares which met the conditions for SI relief to be attributable to them.
- That company must have issued compliance certificates to subscribers for those shares.
- The takeover or reconstruction must occur more than three years after the investor acquired the original shares, and
- the shares which represent the original shares after the transaction must be new shares which meet the conditions for SI relief to be attributable to them.

223. Paragraph 3 of Schedule 12 inserts new Schedule 8B into the TCGA. Paragraph 1(1) of Schedule 8B applies the Schedule if an individual (the investor) has a chargeable gain and acquires specific assets known as 'the social holding', providing the investor is eligible for SI relief on the consideration paid for those assets. Five further conditions (A, B, C, D and E) must also be met. Where the Schedule applies, the individual may claim for the gain to be reduced as provided for in paragraph (4).

224. Paragraph 1(2) of Schedule 8B sets out the first of the five further conditions: condition A. This is that the gain must either accrue either

- On the disposal of an asset, or
- under the entrepreneurs' relief provisions in section 169N TCGA, or
- when a chargeable event occurs in relation to an asset which is, or forms part of, a social holding (see new paragraph (6)(1), paragraph 228 below).

But if entrepreneurs' relief is claimed then only so much of the gain which exceeds the 'lifetime limit' for that relief is eligible for hold-over relief.

225. Paragraph 1(3) of Schedule 8B sets out the second of the five further conditions: condition B. This is that the gain must accrue on or after 6 April 2014 and before 6 April 2019. The Treasury may substitute a later date for the end of this period by means of a Treasury order (paragraph (1)(7)).

226. Paragraph 1(4) of Schedule 8B sets out the third of the five further conditions: condition C. This is that the investor must be resident in the United Kingdom both when the gain accrues and when the social holding is acquired.

227. Paragraph 1(5) of Schedule 8B sets out the fourth of the five further conditions: condition D. This is that the investor must be acting on his or her own behalf and not in any other capacity in making the investment. For instance, condition D will not be met if the individual makes the investment as a partner for the purposes of the Partnership Act 1890 or the Limited Partnership Act 1907, as a member of a Limited Liability Partnership, as a trustee or as a personal representative of a deceased person.

228. Paragraph 1(6) of Schedule 8B sets out the last of the five further conditions: condition E. This is that the investment must be made either in the three years beginning on the day the gain accrues or in the year ending at the beginning of that day.

229. Paragraph 1(7) of Schedule 8B ensures that entrepreneurs' relief and hold-over relief may not both be claimed in respect of the same gain.

230. Paragraph 2 of Schedule 8B specifies a second, alternative set of conditions, under which the Schedule applies. The effect is that a claim may be made for a chargeable gain which has been deferred, and is attributed to an asset within a social holding, to be further deferred if the asset is replaced by a second social holding issued by the same enterprise, even if no cash is given for the second holding. Without this paragraph the investor could not further defer the gain because he would not be eligible for SI relief on the amount invested in the second holding - section 257LA ITA 2007 and paragraph 1(1)(c) of Schedule 8B TCGA.

231. Paragraph 2(1) of Schedule 8B sets down the circumstances in which this continuing deferral is allowed. They are that:

- The social enterprise which issued the first asset must reacquire it from the investor, or must cancel, redeem, extinguish or repay it, so that the deferred gain accrues.
- The investor must receive from the social enterprise assets in respect of which he would be eligible for SI relief but for the 'cash investment rule' at section 257LA ITA 2007.
- The investor gives nothing for his new assets other than the first asset, or suffers no loss other than the value of the first asset.

This subparagraph also applies four conditions which correspond to conditions B - E in paragraph 1 (see above).

232. Paragraph 2(2) to 2(5) of Schedule 8B specify the four conditions F, G, H and J which must be met for the Schedule to apply by virtue of paragraph 2. These correspond to conditions B, C, D and E in paragraph 1 (see paragraphs 213 - 216 of this Note).

233. Paragraph 3 of Schedule 8B defines certain terms used in the Schedule.

234. Paragraph 4(1) and 4(2) of Schedule 8B permit the investor to make a claim for the original chargeable gain to be reduced. Where paragraph 1 applies, the gain may be reduced by an amount specified in the claim, up to a sum equal to the amount invested in the social holding, but not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4)). Where paragraph 2 applies, the gain is reduced by the amount specified in the claim, regardless of the amount 'invested' in the

second social holding, but again not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4)).

235. Where paragraph 1 applies, paragraph 4(3) of Schedule 8B prevents the amount invested or any part of it being used more than once to generate relief under any of the provisions listed at paragraph 4(4).

236. Paragraph 4(4) of Schedule 8B lists the provisions mentioned in paragraph 4(3). These are the hold-over relief under this Schedule 8B, enterprise investment scheme (EIS) deferral relief under Schedule 5B TCGA and seed enterprise investment scheme (SEIS) deferral relief under Schedule 5BB TCGA.

237. Paragraph 4(5) of Schedule 8B imposes an upper limit of £1 million on the gains which may be relieved under this Schedule by an individual in any tax year. This is not the same as the limit which applies to the total amount which a single enterprise may receive under EU State aid rules (see paragraph 40 of this Note).

238. Paragraph 4(6) of Schedule 8B explains that when a gain is reduced in this way, the relief represented by the amount of the reduction is 'attributable to' the asset or assets which form the social holding. It also provides that when the person holding an asset dies, or a chargeable event occurs in relation to that asset, the relief ceases to be attributable to it. Paragraph (6)(1) explains what is meant by a 'chargeable event'.

239. Paragraph 5 of Schedule 8B provides for a gain equal to all or part of the reduction made under paragraph 4(1) to accrue and be taxable when a chargeable event occurs in relation to the social holding. If the chargeable event relates only to part of the social holding then a corresponding part of the gain accrues. The total gains which can accrue in relation to a social holding cannot exceed the total amount of the reduction.

240. Paragraph 6(1) of Schedule 8B lists the chargeable events which cause a relieved gain to accrue when they occur. These are:

- The investor disposing of an asset forming all or part of his social holding (but this does not include disposals to their spouse or civil partner).
- The disposal of an asset forming all or part of a social holding by a person who acquired it from their spouse or civil partner (but this does not include disposals back to the investor).
- An asset forming all or part of the holding being cancelled, extinguished, redeemed or repaid.
- Any of the conditions for eligibility to SI relief in Chapters 3 and 4 of Part 5B of the Income Tax Act 2007 failing to be met.

241. Paragraph 6(2) of Schedule 8B means that the death of the investor, or of a person who acquired the social holding or any part of it from the investor as their spouse or civil partner, will not cause a deferred gain to accrue in relation to the assets in the social holding. Furthermore, nothing which happens at or after the time of death will be a chargeable event, so deferred gains will not accrue.

242. Paragraph 6(3) of Schedule 8B gives rules for identifying assets disposed of out of a holding of fungible assets (such as shares) some of which have one or more reliefs attributable to them. These rules are necessary because in many cases the TCGA 'pools' holdings of assets of the same class and treats them collectively as a single asset. Where some of those assets have relief attributable to them, and their disposal would have particular tax consequences, special rules are needed to identify which assets are disposed of from out of a 'pool'. Under paragraph 4(3)(a) the assets disposed of are identified with assets of the same class on a 'first-in, first-out' basis, taking the acquisitions on a daily basis. Assets acquired on the same day are treated as being disposed of in the following order:

- Firstly, assets to which neither hold-over relief under this Schedule 8B nor SI relief under Part 5B of the Income Tax Act 2007 is attributable.
- Secondly, assets to which hold-over relief but not SI relief is attributable.
- Thirdly, assets to which SI relief but not hold-over relief is attributable.
- Finally, assets to which both hold-over relief and SI relief are attributable.

Paragraph 6(4) explains what is meant by relief being attributable to an asset

243. Paragraph 6(4) of Schedule 8B ensures that when an asset to which hold-over relief under this Schedule (and not SI relief) is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.

244. Paragraph 6(5) of Schedule 8B ensures that an asset to which SI relief is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.

245. Paragraph 6(6) and 6(7) of Schedule 8B provides for the main asset identification rules in the TCGA to be subject to the special rules in paragraph 6, and for the asset pooling and identification rules in sections 104, 105 and 106A not to apply to assets to which hold-over relief and not SI relief is attributable.

246. Paragraph 6(8), 6(9) and 6(10) of Schedule 8B provide rules for attributing the held-over chargeable gain to assets which are treated for tax purposes as representing, or being the same asset as, an asset in a social holding. The original gain, less any gains treated as accruing under paragraph 5, is to be apportioned between the assets which represent the social holding on a just and reasonable basis, and the asset identification rules in paragraph 6 apply to the latter assets as they would apply to the assets which comprised the social holding.

247. Paragraph 7 of Schedule 8B specifies to whom gains are treated as accruing when there is a chargeable event of one of the types given in paragraph 6(1).

248. Paragraph 8 of Schedule 8B specifies the procedure for making claims to hold-over relief under the Schedule. The procedure and requirements for claiming SI relief in ITA 2007 will apply, with the necessary adaptations, to claims to hold-over relief also. If the SI relief procedure is amended (as permitted by the ITA) by secondary legislation, the procedure for hold-over relief claims will be amended in the same way.

BACKGROUND NOTE

249. These tax reliefs have been introduced to incentivise investment by individuals in social enterprises, to support the Government's aim of stimulating the social enterprise sector.

SECTION 58: RELIEF ON DISPOSAL OF PRIVATE RESIDENCE

SUMMARY

1. This section reduces, in most cases, the period for which an only or main residence qualifies automatically for final period exemption from 36 months to 18 months. The exception to this change applies to individuals who are disabled or in a care home and with no other property on which they can claim private residence relief, who will continue to get the 36 month final period exemption.

DETAILS OF THE SECTION

2. Subsection (1) provides that the Taxation of Chargeable Gains Act 1992 (TCGA 1992) shall be amended in accordance with the section.

3. Subsection (2) amends section 223 of TCGA 1992, which provides for the amount of relief from capital gains tax that is available when an individual disposes of an interest in a private residence (a dwelling-house that is, or has at any time in their ownership been, their only or main residence). It reduces the length of the final period of ownership that is always eligible for relief from 36 months to 18 months; removes the ability to amend that period by Treasury order; and makes section 223 subject to a new relief introduced at section 225E.

4. Subsection (3) inserts new section 225E into TCGA 1992.

5. New section 225E provides for a new relief on disposal of a private residence for an individual who is a disabled person or living in a care home at the time of the disposal; enabling them to retain a final period exemption of 36 months. In order to qualify the individual must not have any other residential property on which they can claim private residence relief.

6. New subsection 225E(3) extends relief to the spouse or civil partner of the individual mentioned above.

7. New subsection 225E(7) provides that where the property is held in trust, private residence relief can be given to the trustees for the final 36 months of ownership where the individual occupying the property meets the conditions in section 225E (2) to (6).

BACKGROUND NOTE

8. The final period exemption allows people 18 months to sell a previous only or main residence after moving to a new one without losing private residence relief for the property they are no longer living in.

9. The final period was reduced from 36 months to 18 months as the longer period was being exploited by individuals with more than one property.

SECTION 59: REMITTANCE BASIS AND SPLIT YEAR TREATMENT

SUMMARY

1. This section provides that foreign gains arising to a remittance basis user in the overseas part of a split year of residence and remitted in the UK part of the year are not charged to tax.

DETAILS OF THE SECTION

2. The section inserts a new subsection (1A) into section 12 TCGA 1992 ensuring that foreign gains accruing in the overseas part of a split year of residence are not charged to tax regardless of when in the year they are remitted.

3. The rule applies to gains accruing from 6 April 2013.

BACKGROUND NOTE

4. Schedule 45 of FA 2013 introduced a new Statutory Residence Test and contained rules (previously in extra-statutory concessions) to cater for a split year of residence for an individual coming to or leaving the UK. It provided that gains arising in the overseas part of the year were not charged. However, the consequential change in paragraph 95 of Schedule 45 to the rules for remittance basis users contained an inadvertent error, the effect of which is to wrongly charge their gains arising in the overseas part of the year and remitted in the UK part of the year. This section corrects that error.

SECTION 60: TERMINATION OF LIFE INTEREST AND DEATH OF LIFE TENANT: DISABLED PERSONS

SUMMARY

1. This section extends, from 5 December 2013, the capital gains tax (CGT) uplift provisions that apply to property held on trust for the benefit of a vulnerable beneficiary to include trusts for the benefit of a disabled person where the beneficiary has no absolute entitlement to the income of the trust.

DETAILS OF THE SECTION

2. Subsection (2)(a) extends section 72(1B)(a)(iii) of the Taxation of Chargeable Gains Act 1992 to include all disabled person's interests as defined by section 89B of the Inheritance Tax Act 1984 within those interests to which section 72(1) applies, in particular sections 89B(1)(a) and (b) that provide for interests where the person with the interest is treated as beneficially entitled to an interest in possession in the trust property. Section 73(2A)(a) applies this extension automatically to section 73 in the same way that it applies for section 72. The effect of this change is to apply the same capital gains tax treatment to property within a vulnerable beneficiary trust for a person with a disability where the beneficiary has no interest in possession in the trust property as is available where the beneficiary does have an interest in possession.

3. Subsection (2)(b) inserts new subsection 72(6), which deems that an interest in possession for the purpose of section 72 includes an interest within the meaning of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984.

4. Subsection (3) amends section 73(3) in order to apply new subsection 72(6) for the purpose of section 73 in the same way that it applies for section 72.

5. Subsection (4) provides for commencement.

BACKGROUND NOTE

6. Section 62 of the Taxation of Chargeable Gains Act (TCGA) 1992 contains provisions concerning CGT on death.

7. They provide that when someone dies there is no deemed disposal on death and, therefore, death is not an occasion of charge to CGT. The assets in a person's free estate are treated as being acquired by personal representatives at their market value at the date of death. In this way, gains accrued up to the date of death are not subject to double taxation under inheritance tax (IHT) and CGT.

8. Property held on trust is normally subject to IHT at 6 per cent every ten years. As an exception, property held on qualifying trusts for a vulnerable person are taxed to IHT at the normal 40 per cent rate on the death of the vulnerable person as if the property was held by that person rather than the trustees. The exception applies where the person has an interest in possession in the trust property (broadly, an absolute entitlement to the income of the trust). It also applies where the person does not have an interest in possession by deeming that an interest in possession was held.

9. Sections 72 and 73 of the TCGA 1992 contain provisions similar to those in section 62 for property held in a qualifying vulnerable beneficiary trust. However, this is currently restricted to only those trusts where the beneficiary has an actual interest in possession in the trust property. This requirement is distorting decisions on the most appropriate trust structure. The measure extends sections 72 and 73 to include trusts where the vulnerable beneficiary is treated as having an interest in possession.

SECTION 61: CAPITAL GAINS ROLL-OVER RELIEF: RELEVANT CLASSES OF ASSETS

SUMMARY

1. This section maintains capital gains roll-over relief in relation to payment entitlements under the EU's agricultural subsidy scheme for farmers following changes to the scheme.

DETAILS OF THE SECTION

2. Subsections (1) to (3) amend section 155 of the Taxation of Chargeable Gains Act 1992 to include payment entitlements under the basic payment scheme within the list of classes of assets eligible for roll-over relief.

3. Subsection (4) holds that the amendment has effect in relation to disposals of old assets (or interests in them) and acquisition of new assets (or interests in the) from 20 December 2013, the date that the relevant EU Regulation came into force.

BACKGROUND NOTE

4. Roll-over relief (as the relief at sections 152 to 159 of the Taxation of Chargeable Gains Act (TCGA) 1992 is commonly referred to) permits the deferral of some or all of a chargeable gain on the disposal of a qualifying business asset (or interests in them) where the consideration received for that business asset is wholly or partly applied in acquiring replacement qualifying business assets (or interests in them).

5. Qualifying business assets are listed at section 155 of TCGA 1992. Class 7A refers to the single payment scheme (SPS), the EU's main agricultural subsidy scheme for farmers under the common agricultural policy. SPS is designed to give farmers greater freedom to farm to the demands of the market, as subsidies are not linked to production; and environmentally friendly farming practices (known as cross compliance) are better acknowledged.

6. SPS payments will cease in 2014 and are being replaced by payments under the EU's new basic payment scheme (BPS) from 1 January 2015.

7. SPS and BPS payments are made only to farmers who have established entitlements under either scheme. Entitlements are transferrable and are typically transferred when the underlying agricultural land is transferred.

SECTION 62: CAPITAL GAINS ROLLOVER RELIEF: INTANGIBLE FIXED ASSETS

SUMMARY

1. This section corrects a tax law rewrite error. The section prevents companies claiming capital gains rollover relief on the disposal of tangible assets where the proceeds are reinvested in an intangible fixed asset. It also adjusts the tax cost of the replacement intangible fixed asset where rollover relief has been given for claims made on or after 1 April 2009 and before 19 March 2014, in order to prevent double tax relief being given.

DETAILS OF THE SECTION

Amendment to Section 156ZB TCGA 1992

2. Subsection (1) amends subsection (1) of section 156ZB of the Taxation of Chargeable Gains Act 1992 (TCGA) to restrict its application to subsection (2) so that subsection (3) operates independently. This amendment prevents capital gains rollover relief claims where the disposal proceeds are applied on the acquisition of new chargeable intangible assets within Part 8 of the Corporation Tax Act 2009 (CTA 2009).

New section 870A CTA 2009

3. Subsection (2) inserts new section 870A into Part 8 CTA 2009.

4. Subsection (1) of new section 870A explains when subsection (2) applies. It provides that subsection (2) applies whenever a claim to capital gains rollover relief is made in the circumstances where the proceeds are applied in acquiring an intangible fixed asset within Part 8 CTA 2009.

5. Subsection (2) of new section 870A provides for a reduction in the tax cost of the asset under Part 8 CTA 2009 by the amount of the capital gains rollover relief claim. This ensures that any future debits and credits under Part 8 CTA 2009 reflect the capital gains rollover relief given, preventing relief being given twice. The reduction to tax cost is made on 19 March 2014.

6. Subsection (3) of new section 870A restricts the adjustment in subsection (2) so that the asset cannot have a negative written down value.

7. Subsection (4) of new section 870A ensures that the reduction in subsection (2) is also applied when calculating the tax written-down value of the asset in subsequent accounting periods.

Commencement

8. Subsection (3) provides the effective date for the amendment to section 156ZB TCGA is 19 March 2014 for all claims under section 152 or 153 TCGA.

9. Subsection (4) provides the effective date for new section 870A CTA 2009 is accounting periods beginning on or after 19 March 2014.

10. Subsection (5) provides that an accounting period straddling 19 March 2014 is treated as two separate accounting periods. The consequence of subsections (4) and (5) is that where new section 870A CTA 2009 applies, an accounting period will always commence on 19 April 2014 and the tax cost of the asset will be adjusted to reflect a claim made under section 152 or 153 TCGA on the first day of that accounting period.

BACKGROUND NOTE

11. Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) introduced a new regime from 1 April 2002 to deal with the taxation of companies' intangible fixed assets. It also withdrew capital gains rollover relief on disposals of tangible assets where the proceeds were reinvested in replacement intangible fixed assets acquired on or after 1 April 2002.

12. The legislation was subsequently rewritten in Part 8 CTA 2009 with minor amendments also being made to section 156ZB TCGA. There was no intention to change the rules under the tax law rewrite project. HM Revenue & Customs (HMRC) have been made aware of a drafting error in the rewritten legislation contained in section 156ZB TCGA. This error might suggest that capital gains rollover relief has been reinstated even when replacement intangible fixed assets are acquired on or after 1 April 2002. HMRC consider that this is not correct.

13. These changes correct the drafting error and restore the legislation to what was intended by Parliament. The new legislation at section 870A CTA 2009 also ensures that where rollover relief is given any entitlement to future relief under Part 8 CTA 2009 is adjusted by the amount of any rollover relief given.

14. The changes made by the section are effective from 19 March 2014, the date on which HMRC published the draft legislation.

SECTION 63: AVOIDANCE INVOLVING LOSSES

SUMMARY

1. This section clarifies the operation of one of the Chargeable Gains Targeted Anti-Avoidance Rules. In doing so it confirms the rule will apply to arrangements that use statutory provisions outside of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) that specify that a chargeable gain or a capital loss accrues. It also confirms the rule applies to arrangements which generate an income deduction by whatever means. The changes put beyond doubt that the rule acts generally to counter the contrived use of capital losses to reduce income profits.

DETAILS OF THE SECTION

2. Subsection (1) amends section 184G of TCGA 1992. References to "receipt" in the current section have been changed to confirm that the term includes any amount taken into account in calculating a chargeable gain. The references to disposal in Conditions A and B have been removed.

3. Subsection (2) amends section 184H of TCGA 1992. The amended section now uses the term "income deduction" instead of "expenditure". A definition of income deduction is now within sub-section (10) to explain that it includes any form of deduction in the computation of income or profits. The reference to a disposal in Condition A has been removed.

4. Subsection (3) provides that the amendments will apply from the date of announcement where a gain accrues on a disposal on or after that date or, in the case where there is no disposal, to arrangements that are entered into on or after that date.

BACKGROUND NOTE

5. The three Targeted Anti-Avoidance Rules within TCGA 1992 have wide application to counter arrangements that seek to misuse capital losses to obtain a tax advantage. The abuses they are intended to counter are:

- TAAR 1 - the contrived creation of capital losses where there has been either no economic loss or a disposal of any substance.
- TAAR 2 – the sale of companies between groups to allow losses incurred by one group to be relieved against the gains of another, and
- TAAR 3 – the use of capital losses to shelter income profits.

6. The section confirms that TAAR 3 applies generally to the contrived use of capital losses to reduce income profits.

SECTION 64: EXTENSION OF CAPITAL ALLOWANCES

SUMMARY

1. This section gives the Treasury the power to extend by Treasury Order the duration of four 100 per cent first-year capital allowances, Enhanced Capital Allowance (ECA), schemes.

2. It also extends the ECA scheme for expenditure on plant and machinery for use in designated assisted areas (enterprise zones), due to expire on 31 March 2017, for an additional three years to 31 March 2020.

DETAILS OF THE SECTION

3. This section amends the following sections of the Capital Allowances Act 2001 (CAA):

- Section 45D - expenditure on cars with low carbon dioxide emissions.
- Section 45DA - expenditure on zero-emission goods vehicles.
- Section 45E - expenditure on plant or machinery for gas refuelling station.
- Section 45K - expenditure on plant and machinery for used in designated assisted areas.

4. In each case a new subsection (1A) is added, permitting the Treasury to extend the duration of the schemes by way of Treasury Order.

5. It also amends section 45K(1)(b) CAA by substituting "8 years" for "5 years" extending the duration of the scheme for enterprise zones to 31 March 2020.

BACKGROUND NOTE

6. 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.

7. Most businesses are entitled to a 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant or machinery (excluding cars) up to an annual limit, which for the period 1 April 2014 for businesses within the charge to corporation tax and 6 April 2014 for businesses within the charge to income tax to 31 December 2015 has been temporarily increased to £500,000. 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.

8. ECAs are available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. ECAs, 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. 100 per cent ECAs therefore provide business with a valuable tax-timing benefit.

9. Expenditure on electric cars or cars with very low carbon dioxide emissions (up to 95g/km driven from 1 April 2013) qualify for ECAs. The allowance aims to encourage investment in cleaner cars by providing a tax incentive for businesses to invest in those cars with the lowest carbon dioxide emissions. The government announced in Budget 2013 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015 and the qualifying CO_2 threshold reduced to 75 gms per km driven.

10. ECAs for expenditure on zero-emission good vehicles were introduced in 2010. It is one of a number of measures designed to help businesses reduce their CO_2 emissions and to encourage a shift to cleaner goods vehicles. The government announced in Budget 2014 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015. To comply with EU State aid rules the availability of the ECAs will also be limited to businesses that do not claim the Government's Plug-in Van Grant.

11. ECAs for expenditure on gas refuelling equipment aim 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, and complements wider measures to encourage the up-take of alternatively fuelled vehicles. The government announced in Budget 2013 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015.

12. ECAs for expenditure on plant and machinery for use in enterprise zones were introduced in Finance Act 2012 originally for a five year period to 31 March 2017. This measure will extend that period by three years to 31 March 2020. ECAs are part of a package of measures designed to encourage economic growth and investment in enterprise zones, including simplified planning and business rates discounts.

SECTION 65 AND SCHEDULE 13: GENERAL BLOCK EXEMPTION REGULATION

SUMMARY

1. Section 65 and Schedule 13 amend two enhanced capital allowances to take account of changes made to State aid rules following the introduction of Commission Regulation (EU) No. 651/2014 which replaces Commission Regulation no. 800/2008 "declaring certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the treaty" (the "General Block Exemption Regulation" or "GBER"). The amendments ensure that these two reliefs continue to satisfy State aid requirements in relation to environmental protection and regional aid.

DETAILS OF THE SCHEDULE

2. Schedule 13 amends the following sections of the Capital Allowances Act 2001 (CAA):

- Section 45DB – exclusions from allowances under section 45DA.
- Section 45K - expenditure on plant and machinery for use in designated assisted areas (enterprise zone allowances).
- Section 45M – exclusions from allowances under section 45K.
- Section 45N – effect of plant or machinery subsequently being primarily for use outside designated assisted areas.
- Section 212T – cap on first-year allowances: zero-emission goods vehicles.
- Section 212U – cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas.

3. Paragraph 1 provides for changes to be made to the Capital Allowances Act 2001.

4. Paragraph 2 amends various reference in subsections 45DB(3)(a), 4(a), (11) and (12). It amends the definition of firm in difficulty to refer to an undertaking in difficulty for the purposes of the new GBER. It also updates various existing references so that they correctly cross-refer to the new GBER.

5. Paragraph 3 amends section 45K. Section 45K provides that five conditions, A to E, must be met if expenditure is to qualify for enhanced capital allowances. Condition C at section 45K(8) requires that qualifying expenditure must be incurred on plant and machinery used: (a) for a business of a kind not previously carried on by the company; (b) expanding a business carried on by the company; or (c) starting up an activity which relates to a fundamental change in a product or production process of, or service provided by, a business carried on by the company.

6. Paragraph 3 inserts new subsections (8A) and (8B). These provide that subsection (8)(c) can only be satisfied if the expenditure incurred on the plant and machinery required to change the product, production process or service in question exceeds the depreciation of the plant and machinery being replaced or modernised over the three previous years. This complies with Article 14(7) of the new GBER.

7. For example, a machine used in the existing production process was purchased for £500,000 and had a useful life of 10 years and was depreciated in the accounts on that basis, i.e. £50,000 per year. The new machine must cost at least £150,000 to satisfy new subsection (8A).

8. Paragraph 4(1) provides for various changes to be made to section 45M. Section 45M sets out certain situations when expenditure does not qualify for enhanced capital allowances. The changes exclude certain types of expenditure and provide that expenditure by large businesses in certain enterprise zones must be on new activities only.

9. Paragraphs 4(2) to (4) and (6) make various amendments to subsections 45M(1), (3), (4) and (6) to comply with the new GBER by including a number of additional sectors in which expenditure does not qualify for enhanced capital allowances. These include expenditure incurred on energy generation, distribution or infrastructure and the development of broadband networks. The scope of the existing exclusion on certain activities in the transport sector is also widened.

10. Paragraph 4(5) inserts a new subsection 45M(4A). This provides that the various expressions in subsection (4) take the meaning used in the new GBER.

11. Paragraph 4(7) inserts a new subsection 45M(7A). This complies with Article 14(3) of the new GBER. It provides that qualifying expenditure incurred by large enterprises in enterprise zones that fall within assisted areas that are classified by the European Commission as being Article 107(3)(c) areas only qualifies for enhanced capital allowances if it relates to "a business of a kind not previously carried on by the company", i.e new activities.

12. Assisted areas fall within either Article 107(3)(a) or Article 107(3)(c) of the Treaty on the Functioning of the European Union (with Article 107(3)(a) areas having a lower per capita gross domestic product than Article 107(3)(c) areas).

13. Paragraphs 4(8) and (9) update and clarify the definitions given in subsections 45M(12) and (15).

14. Paragraph 5 amends section 45N(1), and inserts a new subsection (3A). This ensures that where a large enterprise has claimed enhanced capital allowances for expenditure incurred on plant and machinery in an Article 107(3)(a) area for a purpose under either section 45K(8)(b) or (c), that plant or machinery must be used by the person claiming the allowance (or a connected person) for at least 5 years within such an area.

15. If, within that period, the person begins to use the plant or machinery primarily outside such an area, the allowance will be withdrawn and the expenditure will be treated as never having qualified for enhanced capital allowances. This section is designed to prevent exploitation and satisfy the requirements of the new GBER.

16. Paragraphs 6 and 7 update the references in sections 212T and 212U to the new GBER.

17. Paragraph 8 provides that these amendments take effect from Royal Assent.

BACKGROUND NOTE

18. 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.

19. Most businesses are entitled to a 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant or machinery up to an annual limit, which for the period April 2014 to 31 December 2015 has been temporarily increased to £500,000. For expenditure above that limit, writing-down allowances (WDA) are available. These are given at the main rate of eighteen per cent or the special rate of eight per cent per annum.

20. First-year allowances, which are generally called enhanced capital allowances or ECAs, are available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. ECAs accelerate the rate at which tax relief is available for capital spending and allow 100 per cent of the cost of an investment to qualify for tax relief against a business's taxable profits of the year in which the investment is made. They provide business with a valuable cash-flow benefit.

21. Certain ECAs are classified as State aids and have been designed to comply with the GBER. The GBER exempts certain State aid measures from prior notification to the European Commission if various conditions are met. As part of a State Aid Modernisation process the European Commission has revised the existing GBER 800/2008 and a new version 651/2014 took effect from 1 July 2014. The revisions are designed to stimulate economic growth, job creation and other objectives of common interest, without distorting competition. It also reduces the administrative burden for Member States and gives the beneficiaries of aid greater certainty.

22. Whilst similar to its predecessor, the new GBER contains a number of differences which need to be reflected in domestic legislation for zero-emission goods vehicles and enterprise zones to ensure continued State aid compliance.

SECTION 66: BUSINESS PREMISES RENOVATION ALLOWANCES

SUMMARY

1. This section provides for amendments to business premises renovation allowances (BPRA) in order to clarify the expenditure that qualifies for relief. It also reduces the balancing adjustment period from seven to five years.

DETAILS OF THE SECTION

2. Subsection 1 provides for changes to be made to Section 360B of the Capital Allowances Act 2001 (CAA). The changes are specified in subsections 2 to 5.

3. Subsection 2 substitutes a new subsection 360B(1). This substitution provides that qualifying expenditure incurred after the commencement date and before 1 April 2017 for corporation tax purposes and 6 April 2017 for income tax purposes must satisfy conditions A and B and not be excluded by current subsection 360B(3) and new subsections 360(3A) or (3C).

4. Subsection 3 inserts new subsections 360B(2A) to (2C). These require that qualifying expenditure must satisfy Conditions A and B.

5. New subsection 360B(2A) defines expenditure for the purposes of Condition A and is modelled on the existing section 360B(1) CAA with the deletion of "in connection with".

6. New Subsection 360B(2B) defines expenditure for the purposes of Condition B as:

   a. Building works, which applies to the cost of labour and materials.
   b. Architectural and design services, which includes the detailed design of the building and its future layout.
   c. Surveying or engineering services, which includes services to check the structure of the building or specialists checking for asbestos.
   d. Planning applications, which cover the costs of obtaining essential planning permissions to alter, for example, a listed building, including legal fees.
   e. Statutory fees and statutory permissions to include the costs of building regulation fees; obtaining listed building consent; closing roads in order that certain works can be carried out or the costs of obtaining necessary statutory permissions from utilities.

7. New subsection 360B(2C) provides that certain expenditure that meets Condition A but does not fall within Condition B, and is not specifically excluded, may still be qualifying expenditure but is limited to 5 per cent of the expenditure incurred on items (a) to (c) of new subsection (2B). This encompasses expenditure incurred on activities in respect of the conversion or renovation of the qualifying building but not specifically listed in Condition B, such as project management services.

8. Subsection 4 makes various amendments to current subsection 360B(3), which excludes certain expenditure from the scheme.

9. Subsection 5 inserts new subsections 360B(3A) to (3D).

10. New subsection 360B(3A) provides that expenditure is not excluded if it incurred on fixtures that are integral features or are otherwise listed.

11. New subsections 360B(3B) and (3C) provide that expenditure is excluded to the extent that expenditure on the works, services or other matters to which it relates exceeds the normal market value amount.

12. New subsection 360B(3D) provides that expenditure does not qualify for relief before the qualifying building has been unused for a period of 12 months.

13. Subsection 6 amends current section 360B(5), to allow new subsection 360B(3A) to be amended by Treasury Order.

14. Subsection 7 inserts a new section 360BA. New subsections 360BA(1), (2) and (6) provide that where qualifying expenditure has been incurred, the works, services or other matters to which that expenditure relates must be completed within 36 months. If after 36 months those works, services or other matters have not been completed, then the expenditure for those not completed will be treated as never having been incurred. Where those works are eventually provided the expenditure will be treated as being incurred at that time.

15. For example, if a return containing a claim for £100,000 of qualifying expenditure was made and after 36 months only works or services relating to £90,000 has been carried out, then in respect of the remaining £10,000 of expenditure the relevant tax assessments will need to be revised.

16. New subsections 360BA(3), (4) and (5) provide for the making of assessments, or amendments to assessments, that may be necessary to give effect to this requirement and provide that a person who has made a tax return, and later becomes aware that it is incorrect must give notice of the required amendments to HM Revenue & Customs (HMRC) within three months of the day on which the person became aware that the return had become incorrect.

17. Subsection 8 inserts a new section 360L. New section 360L is designed to ensure that BPRA is fully compliant with the rules about cumulation of State aid in the new General Block Exemption Regulation (GBER) (Commission Regulation (EU) No. 651/2014) (the "GBER").

18. New section 360L(1) provides that no allowances are to be made if a relevant grant or relevant payment is made towards qualifying expenditure, or any other expenditure incurred by any person in respect of the same building and on the same "single investment project". For example, a business renovating a qualifying property in an assisted area cannot receive both BPRA and any other State aid, such as regional aid funding in respect of the same building**.** If both forms of funding are available then the business will have to decide which State aid to receive.

19. New subsections 360L(2) to (5) provide that if a relevant grant or payment is made after the making of BPRA, the allowance is to be withdrawn if the relevant grant or payment is made towards the expenditure. If the relevant grant or payment is made toward any other expenditure incurred on the same building and single investment project then the relief is only withdrawn if the relevant grant or payment is made within 3 years of the qualifying expenditure being incurred. Provision is made for all necessary assessments and adjustments to be made for this purpose. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

20. New section 360L(6) defines various terms. For example "single investment project" takes its meaning from the GBER. This requires that a "single investment project" is not limited to the project of a single company, but includes one carried out by an undertaking or undertakings, for example, a joint venture. So, if, for example, two businesses are involved in the same "single investment project" as a joint venture, for example refurbishing different floors of a disused office block which will be let as one building, and one business receives any form of State aid (other than BPRA) in relation to the project, then neither company can claim BPRA even if one of the companies did not receive any other State aid in respect of that joint venture project. This subsection is subject to subsection (13).

21. New section 360L(7) makes clear that any reference to State aid in the section is not to be read narrowly, so as to apply only to State aid that is required to be notified to, and approved by, the European Commission. So, for example, State aid that is brought within the terms of the GBER, so that it is exempt from prior notification, is still a relevant grant or payment.

22. New subsection 360L(8) gives the Treasury a power to amend section 360L should the GBER be replaced by another instrument.

23. Subsection 9 amends section 360M(4). This provides that where qualifying expenditure has been incurred on a qualifying building and a balancing event occurs within seven years, a balancing adjustment must be made. This subsection reduces that period to five years.

24. Subsections 10 and 12 provide that the amendments take effect from a "specified day". This is defined as being the 1 April 2014 for the purposes of corporation tax and 6 April 2014 for the purposes of income tax. 24. Subsection 11 provides that new section 360L takes effect:

a. In relation to a relevant grant or relevant payment made at any time (whether before or on or after the specified day) towards expenditure incurred on or after that day, and

b. in relation to a relevant grant or relevant payment made on or after the specified day toward expenditure incurred before that day.

25. This means new section 360L applies where:

- BPRA qualifying expenditure has been incurred on or after 6 April 2014 and a grant that is a State aid was received before that date.
- BPRA qualifying expenditure has been incurred on or before 5 April 2014, and a grant that is a State aid is received on or after 6 April 2014.
- BPRA qualifying expenditure has been incurred on or after 6 April 2014, and a grant that is a State aid is received on or after 5 April 2014.

26. Subsection 13 provides that in relation to expenditure incurred prior to Royal Assent, the definition of "General Block Exemption Regulation" in new section 360L(6) should be treated as referring to Commission Regulation (EC) No. 800/2008.

BACKGROUND NOTE

27. Capital allowances allow the cost of capital assets to be written off against taxable profits. Not all expenditure qualifies for allowances.

28. BPRA aims to bring long-term vacant business properties in disadvantaged areas back into business use. It does this by providing a 100 per cent capital allowance for the capital costs incurred of renovating, converting or repairing certain business properties that have been unused for at least a year in assisted areas of the United Kingdom. A writing down allowance of 25 per cent on the straight line basis is also available, where the 100 per cent initial allowance is not claimed, or not claimed in full. It therefore offers both an enhanced rate of allowance and a relief for otherwise irrecoverable expenditure.

29. Following an increase in DOTAS (Disclosure of Tax Avoidance Schemes) disclosures involving BPRA (which appeared to contain features aimed at exploiting the relief in ways that Parliament had not intended), a written ministerial statement by the Exchequer Secretary to the Treasury was published on 18 July 2013 authorising HMRC to conduct a technical review of the BPRA legislation with a view to making its policy purpose clearer, more certain in its application and at the same time reducing the risk of exploitation. Following the publication of that statement, HMRC published a Technical Note inviting comments on legislative proposals, with a view to introducing new legislation in 2014.

30. Following the responses to the Technical Note, draft legislation was published in December for consultation. Following that consultation the section published in December has been amended to address some of the concerns expressed. This section clarifies the expenditure eligible for relief. It also requires that where expenditure is incurred for works and services to be carried out over a period of time, or in the future, those works and services must be complete within 36 month to prevent some, or all, the relief given in respect of the expenditure being withdrawn.

31. The section also includes a provision designed to ensure that BPRA remains fully compliant with the GBER rules about the cumulation of State aid, and ensures that businesses can only claim BPRA or another State aid but not both.

32. The legislation presently prevents a balancing adjustment being made if certain balancing events take place more than seven years after the time when the qualifying building was first used or suitable for letting. This period will be reduced to five years.

SECTION 67: MINERAL EXTRACTION ALLOWANCES: ACTIVITIES NOT WITHIN THE CHARGE TO TAX

SUMMARY

1. This section introduces legislation relating to the treatment of Mineral Extraction Allowances (MEAs) where the mineral extraction activity enters or ceases to be within the charge to UK tax. It ensures that the treatment of MEAs is certain and consistent between businesses and aligns with the existing principles for plant and machinery allowances. It also confirms that for the purposes of MEAs a mineral extraction trade consists of activity within the charge to UK tax.

DETAILS OF THE SECTION

2. Subsections 2 to 6 amend, respectively, sections 394, 399, 160 and 161 of the Capital Allowances Act 2001 (CAA) to confirm that for the purposes of MEAs, a mineral extraction trade consists of activity that is within the charge to UK tax.

3. Subsection 7 inserts a new section 431A CAA to provide for the activity of an exempt foreign permanent establishment (FPE) to be treated as a separate mineral extraction trade for the purposes of MEAs.

4. Subsection 7 inserts a new section 431B CAA which provides transitional rules for MEAs similar to those for plant and machinery allowances. The transitional rules provide that where a disposal value is required to be brought into account this will not, in most cases, give rise to a balancing allowance or a balancing charge when a company elects into FPE exemption. However, for some assets, where the company's qualifying expenditure exceeds £5 million, the normal disposal value will be brought into account for capital allowance purposes.

5. Subsection 7 inserts a new section 431C CAA which provides that notional capital allowances will be given automatically in calculating the profits or losses of the exempt FPE, as if the exempt FPE were within the charge to UK tax.

BACKGROUND NOTE

6. This section is being introduced following consultation to confirm the treatment of MEAs where the mineral extraction activity enters or ceases to be within the charge to UK tax.

7. There are a number of changes to existing legislation:

- To confirm that for the purposes of MEAs a mineral extraction trade consists of an activity that is within the charge to UK tax.

- To confirm that the activity of an exempt FPE is treated as a separate mineral extraction trade for the purposes of MEAs.
- To align the treatment of MEAs with the existing principles for plant and machinery allowances; and
- to confirm that notional allowances will be given automatically in calculating the profits or losses of the exempt FPE as if the exempt FPE were within the charge to UK tax.

8. The amendments made by this section are treated as having come into force from 1 April 2014 for corporation tax and 6 April 2014 for income tax.

SECTION 68: MINERAL EXTRACTION ALLOWANCES: EXPENDITURE ON PLANNING PERMISSION

SUMMARY

1. This section extends the scope of qualifying expenditure on mineral exploration and access to include expenditure on seeking planning permission where that planning permission is granted.

DETAILS OF THE SECTION

2. Subsection (1) provides that the section amends Part 5 (mineral extraction allowances) of CAA 2001.

3. Subsection (2) amends section 396(2) of CAA 2001 by substituting "and not as expenditure on acquiring a mineral asset" for "if planning permission is not granted".

4. Subsection (3) amends section 398 of CAA 2001 by inserting "section 396(2) and" after "Subject to".

5. Subsection (4) provides that amendments made by this section have effect in relation to expenditure incurred on or after Royal Assent to Finance Act 2014.

BACKGROUND NOTE

6. The mineral extraction allowances legislation at Part 5 of CAA 2001 provides that allowances are available, amongst other categories, in respect of expenditure on mineral exploration and access (which is qualifying expenditure under Chapter 2) and expenditure on acquiring a mineral asset (which is qualifying expenditure under Chapter 3). Qualifying expenditure under Chapter 3 is given relief at 10% per chargeable period whereas qualifying expenditure under chapter 2 is given relief at 25% and, for expenditure allowable for the purposes of a ring fence trade, 100%.

7. Prior to changes provided by this section, qualifying expenditure on seeking planning permission necessary to enable mineral exploration and access to be undertaken at any place, or any mineral deposits to be worked, is treated as expenditure on mineral exploration and access (and thus obtaining relief at the higher rates) if planning permission is not granted. However if planning permission is granted then such expenditure is treated as acquiring a mineral asset with relief being given at the lower rate of 10%.

8. This section aligns the treatment of both successful and unsuccessful planning permission with successful planning permission now qualifying for allowances at the higher rates.

SECTION 69 SCHEDULE 14: OIL AND GAS FISCAL REGIME: EXTENDED RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

SUMMARY

1. This section and Schedule will extend from 6 to 10 the number of accounting periods for which a company can claim ring fence expenditure supplement (RFES) in relation to qualifying expenditure or losses from onshore oil and gas activity.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts a new chapter after Chapter 5 of Part 8 of Corporation Tax Act 2010 (CTA). New Chapter 5A contains new sections 329A to 329T.

3. New Section 329A provides an overview of the chapter.

4. Subsection (1) explains that the new provisions allow a company which has a ring fence trade to claim additional RFES for a) qualifying pre-trade onshore expenditure, b) onshore losses, c) supplement which they have received in relation to RFES claims made under Chapter 5 CTA 2010, and d) the additional supplement claimed under new Chapter 5A, in respect of onshore oil related activities.

5. Subsection (2) refers to the interpretative provisions at new sections 329B to 329H that apply for the purposes of Chapter 5A.

6. Subsections (3) and (4) explain that provisions about pre-trade expenditure are at new Sections 329I to 329M, and those related to losses are at new Sections 329N to 329T.

7. Subsection (5) explains that a company may only make 4 claims for additional supplement.

8. Subsection (6) sets out the adjustments which need to be made to the qualifying expenditure and losses before the claim for supplement is allowed.

9. New Section 329B defines a "qualifying company".

10. New Section 329C provides definitions for "onshore oil-related activities" and "offshore oil-related activities".

11. New Section 329D defines key terms relating to accounting periods, by reference to whether a company commenced its ring fence trade in that accounting period ("the commencement period"), and whether, or not, a company was carrying on a ring fence trade in an accounting period that ended on or after 5 December 2013 (a "post-commencement period" and a "pre-commencement period" respectively). It also introduces the concept of a "straddling period" as an accounting period straddling 5 December 2013.

12. New Section 329E sets the "relevant percentage" for an accounting period (that is, the rate at which supplement is payable on an amount specified under the Chapter) as 10 per cent and provides that the relevant percentage can be varied by order by the Treasury.

13. New Section 329F provides that a company may make no more than 4 claims for additional supplement, and the claims need not be consecutive, but can only be made after 6 claims allowed under Chapter 5.

14. New Section 329G subsections (1) to (5) define "qualifying pre-commencement onshore expenditure". Subsections (6) to (9) define research and development expenditure that qualifies for RFES for SMEs and large companies.

15. New Section 329H provides the same definition for "unrelieved group ring fence profits" as is contained in the existing provisions in Chapter 5.

16. New Section 329I is concerned with the availability of additional supplement in respect of a pre-commencement accounting period.

17. Subsection (1) makes provision for a qualifying company to claim additional supplement for pre-commencement onshore expenditure relating to a ring fence trade.

18. Subsection (2) sets out that any additional supplement allowed on a claim made for a pre-commencement period is to be treated as expenditure incurred by the company in the commencement period and allowable as a deduction in calculating profits.

19. Subsection (3) states that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329M, in relation to the "mixed pool" as described by s329J) for that period.

20. Subsection (4) states that the reference amount for the pre-commencement period is calculated in accordance with new sections 329J to 329M.

21. Subsection (5) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is shorter than 12 months.

22. Subsection (6) provides that any claim for pre-commencement supplement must be made as a claim for the commencement period.

23. Subsection (7) specifies that existing provisions on the time limit for claims for group relief apply for claims for pre-commencement additional supplement.

24. New Section 329J makes provision for, and determination of the amount of, a mixed pool of qualifying pre-commencement onshore expenditure and supplement.

25. Subsections (1) and (2) provide that during pre-commencement periods, a company is considered to have had a continuing mixed pool comprising qualifying pre-commencement onshore expenditure, and pre-commencement supplement under new Chapter 5A and Chapter 5, as further described by new subsections (3) to (8).

26. Subsection (3) gives instructions on how to calculate the amount of qualifying pre-commencement onshore expenditure to allocate to the mixed pool for any pre-commencement period.

27. Subsections (4) and (5) provide for any pre-commencement supplement, claimed under Chapter 5, to be allocated to the mixed pool to the extent that it relates to qualifying pre-commencement onshore expenditure, based on the proportion of that supplement attributable, on a just and reasonable basis, to the company's qualifying pre-commencement onshore expenditure ('the appropriate proportion").

28. Subsection (6) concerns claims for pre-commencement supplement made under Chapter 5 in respect of pre-commencement expenditure incurred in a straddling period. In that case pre-commencement supplement claimed under Chapter 5 that is attributable to qualifying pre-commencement onshore expenditure on a just and reasonable basis is to be allocated to the mixed pool, according to the proportion of that expenditure incurred on or after 5 December 2013.

29. Subsection (7) provides that a company may elect to use an alternative apportionment method if the time basis in (6) is unjust or unreasonable.

30. Subsection (8) provides for any pre-commencement additional supplement, claimed under Chapter 5A, to be allocated to the mixed pool.

31. New Section 329K provides for reductions to the mixed pool in respect of disposal receipts for expenditure for which allowance would be given under the Capital Allowances Act 2001.

32. New Section 329L provides for reduction to the mixed pool in respect of unrelieved group ring fence profits.

33. Subsection (2) provides for reductions to be made firstly under Section 329K (disposal receipts) before reducing the net onshore expenditure by a sum equal to the unrelieved group ring fence profits.

34. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.

35. Subsections (4) and (5) provide that, in the case where a company carries on both onshore and offshore oil related activities in the pre-commencement period, unrelieved group ring fence profits should be set against "net offshore expenditure" first.

36. Subsection (6) gives instructions for calculating the "net offshore expenditure" of the company for that period.

37. Subsection (7) defines "pre-commencement offshore expenditure".

38. Subsections (8) and (9) provide that where there are disposal receipts relating to expenditure for which allowance would be given under the Capital Allowances Act 2001, representing pre-commencement expenditure used for offshore activities, the amount of pre-commencement offshore expenditure should be reduced by those disposal receipts. It should be set against expenditure incurred in the most recent periods first.

39. Subsections (10) and (11) provide for, in the case of a "mixed-activities asset", only the proportion which is just and reasonable having regard to that expenditure is to be brought to account.

40. New Section 329M defines the reference amount (on which the rate of additional supplement will be calculated under s329I(3)) for a pre-commencement period.

41. New Section 329N is concerned with the availability of additional supplement in respect of a post-commencement period.

42. Subsection (1) provides for a qualifying company to claim additional supplement where it incurs a loss in respect of its onshore ring fence trade in a post-commencement period.

43. Subsection (2) provides that post-commencement additional supplement should be treated as a loss incurred in carrying out the ring fence trade.

44. Subsection (3) specifies that existing provisions on the time limit for claims for group relief apply for claims for post-commencement additional supplement.

45. New Section 329O makes provision for the calculation of the amount of post-commencement additional supplement for a post-commencement period.

46. Subsection (1) provides that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329T in relation to the "onshore ring fence pool" as described by s329Q) for that period.

47. Subsection (2) states that the reference amount for the post-commencement period is to be calculated in accordance with new sections 329P to 329T.

48. Subsection (3) provides for proportional reduction of the amount of additional supplement where the post-commencement period is a period of less than 12 months.

49. New Section 329P makes provision for the determination of onshore ring fence losses.

50. Subsection (1) provides that if in a post-commencement period, a company's ring fence trade consists solely of onshore oil-related activities, then so much of the loss incurred as is available to be carried forward under section 45 is the "onshore ring fence loss" of the company.

51. Subsections (2) and (3) provide that where a company incurs a loss and carries on both onshore and offshore activities as part of a ring fence trade in a post-commencement period, only the proportion of that loss that is, on a just and reasonable basis, attributable to

the company's onshore oil-related activities in that trade ("the appropriate proportion") is the "onshore ring fence loss" of that company.

52. Subsection (4) provides that in the case of a straddling period, a company's onshore ring fence losses are the portion that, if the whole amount is apportioned according to the number of days falling before, and on and after, 5 December 2013, is apportioned to the later period.

53. Subsection (5) provides that a company may elect to use an alternative apportionment method if the time basis in (4) is unjust or unreasonable.

54. Subsections (6) to (9) set out the assumptions to be used in calculating how much of the loss falls to be used under section 45 CTA 2010 for the purposes of sub-section (1)(b) and (2)(b). That is, every claim that could be made under section 37 CTA10 is made, and that section 42 CTA10 applies.

55. New Section 329Q makes provision for, and determination of the amount of the onshore ring fence pool.

56. Subsections (1) to (3) makes provision that during post-commencement periods, a company is considered to have a continuing mixed pool comprising the company's onshore ring fence losses, post-commencement supplement under Chapter 5 and post-commencement additional supplement under Chapter 5A, as further described by new subsections (4) to (9).

57. Subsection (4) sets out how allocations are to be made to the onshore ring fence pool in respect of a) onshore ring fence loss in the period of the loss, b) the "appropriate proportion" of post-commencement supplement allowed under a claim under Chapter 5, and c) any post commencement additional supplement claimed under Chapter 5A.

58. Subsection (5) provides that the "appropriate proportion" of Chapter 5 post-commencement supplement is either 100% of that amount, or, where the company has at any time carried on offshore oil related activities, the proportion attributable, on a just and reasonable basis, to the company's onshore oil related activities in the period of Chapter 5 claim.

59. Subsection (6) concerns claims for post-commencement supplement made under Chapter 5 in respect of losses incurred in a straddling period. In that case the "appropriate proportion" of Chapter 5 post-commencement supplement under new subsections (4) and (5) is proportionately divided between the number of days falling before, and on and after, 5 December 2013, and only the amount apportioned to the later period is added to the onshore pool.

60. Subsection (7) provides that a company may elect to use an alternative apportionment method if the time basis in (6) is unjust or unreasonable.

61. Subsections (8) and (9) make provision for the order of making additions to the pool (as provided by section 329Q(4) to (7)) and reductions to it (as provided by sections 329R and 329S).

62. New Section 329R provides for reductions to the onshore ring fence pool to be made in respect of utilised onshore ring fence losses.

63. Subsection (1) provides that losses used under section 45, a reduction is to be made in that period.

64. Subsection (2) provides that the onshore ring fence pool is to be reduced by the amount of losses carried forward under s45 that are onshore ring fence losses.

65. Subsection (3) provides that, in the case where a company carries on both onshore and offshore oil related activities in the post-commencement period, the company's offshore losses are to be used in priority to onshore ring fence losses.

66. Subsection (4) defines "relevant offshore loss".

67. Subsection (5) provides that where the loss is incurred in a straddling period, the amount of the relevant offshore loss is proportionately apportioned to the period falling on or after 5 December 2013.

68. Subsection (6) provides that a company may elect to use an alternative apportionment method if the time basis in (5) is unjust or unreasonable.

69. New Section 329S Subsections (1) and (2) provide that the onshore ring fence pool is to be reduced by amounts of unrelieved group ring fence profits, after any reductions to be made for utilised onshore ring fence losses under section 329R.

70. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ends on the date that the straddling period ends.

71. Subsection (4) provides that, in the case where a company has at any time carried on offshore oil related activities, the sum to be set against the onshore ring fence pool is to be first reduced by the "notional offshore loss pool".

72. Subsection (5) defines the "notional offshore loss pool".

73. New Section 329T defines the reference amount (on which the rate of additional supplement will be calculated under s329O(1)) for a post-commencement period.

74. Paragraph 2 inserts a new subsection after subsection (5) in section 270 of CTA 2010 to make provisions for the new Chapter 5A.

75. Paragraph 3 inserts defined expressions into Schedule 4 to CTA 2010.

76. Paragraph 4 states that the amendments made by the Schedules have effect in relation to accounting periods ending on or after 5 December 2013.

BACKGROUND NOTE

77. In addition to corporation tax (CT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. For the oil and gas industry, CT is set at 30 per cent for profits of more than £1.5m and 19 per cent (the small profits rate) for profits of more than £300k. The SC is set at 32 per cent.

78. Companies are allowed to set qualifying expenditure against profits for CT purposes. For companies engaged in a trade where it may take some years to show a profit, the value of the expenditure will be reduced by the time they come to be utilised.

79. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their "qualifying pre-commencement expenditure", by 10 per cent for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

80. The early development of projects for shale gas and other onshore hydrocarbons is expected to have longer payback periods than offshore hydrocarbon projects and to be dominated by companies which do not have existing ring fence profits against which to set their expenditure. Extending the number of accounting periods for which these companies can claim RFES allows them to maintain the value of their expenditure for longer to recognise the extended period before they are able to utilise those amounts.

SECTION 70 AND SCHEDULE 15: SUPPLEMENTARY CHARGE: ONSHORE ALLOWANCE

SUMMARY

1. This section and Schedule introduce a new allowance, which will remove an amount equal to 75 per cent of capital expenditure incurred by a company in relation to an onshore site from its adjusted ring fence profits for the purposes of supplementary charge (SC).

DETAILS OF THE SCHEDULE

Part 1

Amendments to Part 8 of CTA 2010

2. Paragraph 1 provides that the Schedule amends Part 8 of CTA 2010.

3. Paragraph 2 provides that section 357 is renumbered as section 356AA.

4. Paragraph 3 inserts after Chapter 7 a new Chapter 8 entitled "Supplementary Charge: Onshore Allowance" which makes provision for a new allowance (reducing the Supplementary Charge) for capital expenditure on "on-shore oil-related activities".

5. New section 356B provides an overview of new Chapter 8. It explains that relief is given by way of an allowance for capital expenditure incurred on onshore oil-related activities, said allowance operating by way of reducing a company's adjusted-ring fence profits for the purpose of the Supplementary Charge; that the new allowance is activated by relevant income in relation to a site; that allowances are transferred on disposal of a licence interest; and that a company may elect to transfer allowances between different sites for which it holds a licence.

6. New section 356BA defines "Onshore oil-related activities".

7. New section 356BB defines "activities".

8. New section 356BC defines what is meant by "site".

9. New section 356C explains how onshore allowance is generated, including that an amount of "relievable capital expenditure" (as defined by reference to activities in the course of which it is incurred, and disqualifying conditions) generates an allowance of 75 per cent of that amount, and that allowance is generated in relation to a "qualifying site" (as defined by reference to date of development authorisation). There is also provision for cases where, in relation to a qualifying site, relievable capital expenditure is incurred there only partly for the purposes of onshore oil-related activities, or is incurred only partly in relation to the site; in that case the expenditure is to be apportioned to that site on a just and reasonable basis.

10. New section 356CA defines the conditions which disqualify capital expenditure from being "relievable capital expenditure".

11. New section 356CB provides for how a company is to treat capital expenditure incurred before a site is established.

12. New section 356D provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the total amount of activated allowances held by the company in that period.

13. New section 356DA provides that a company's unused activated allowances are carried forward to the next accounting period.

14. New section 356DB provides that where a company holds both field allowances and onshore allowances it may choose the order in which the allowances are to be used.

15. New section 356E provides, in the case where during an accounting period a company's share of the equity in the site remains unchanged, that a company is to have activated allowances no greater than the relevant income from that site. "Relevant income" is also defined in this section.

16. New section 356EA provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.

17. New section 356EB provides that an amount equal to the a company's closing balance of unactivated allowances, less relevant income for the period, is to be carried forward to the next accounting period.

18. New section 356F provides that, where a company has an interest in a licence for more than one site, it may elect for the whole or part of its unactivated allowances in one site to be transferred to another site.

19. New section 356G introduces new sections 356GA to 356GD, which provide for the case where a company's share of the equity in a licensed area changes in any one accounting period. In summary, those provisions introduce a reference period to identify those parts of the accounting period for which the company is a licensee, and make provision for the activation of allowance for those reference periods.

20. New section 356GA defines a "reference period".

21. New section 356GB provides for the calculation of a company's activated allowance in any reference period.

22. New section 356GC provides that the unactivated allowance in a reference period is carried forward to the next period (being either a reference period or an accounting period).

23. New section 356GD provides for the calculation of the amount of total unactivated allowances attributable to a reference period and a site.

24. New section 356H introduces new sections 356HA and 356HB which apply where a company holds unactivated allowances and disposes of some or all of its equity interest in a licensed area.

25. New Section 356HA provides for the calculation of the amount to be deducted from a company's unactivated allowances attributable to a reference period and a site following the disposal of an equity interest in the licensed area.

26. New section 356HB provides for the calculation of the amount of unactivated allowance generated by a company for a reference period and in relation to a site following the acquisition of an equity interest in the licensed area.

27. New section 356I provides that any alteration to a company's adjusted ring fence profits is reflected in the operation and calculations of Chapter 8.

28. New section 356IA provides that Treasury may by Order make adjustments to the percentage specified at section 356C(2) and the also the cap on production specified in section 356CA(1) or (2).

29. New section 356J explains how references in new Chapter 8 to "authorisation of development": drilling and extraction sites are to be interpreted.

30. New Section 356JA explains when capital expenditure can be said to be incurred for the purposes of new Chapter 8.

31. New section 356JB provides interpretation on definitions for "adjusted ring fence profits", "cumulative total amount of activated allowance", "licence", "licensed area", "licensee", "onshore allowance", "relevant income", and "site".

32. Paragraph 4 of the Schedule makes provision for existing field allowances to be unavailable in respect of fields licensed for onshore activity on or after commencement of Chapter 8.

Part 2

Minor and consequential amendments

33. Paragraph 5 makes minor consequential amendments to Part 8 as follows.

34. Paragraph 5(2) inserts in section 270 (overview of Part 8) a new subsection (7A) to introduce the onshore allowance.

35. Paragraph 5(3) amends section 333 (reduction of adjusted ring fence profits) to bring the wording in line with that used for the onshore allowance with regard to field allowances.

36. Paragraph 5(4) amends the definition of adjusted ring fence profits in section 357 to insert a reference to allowances under Chapter 8.

37. Paragraph 5(5) amends Schedule 4 of CTA 2010 to substitute "357" for "356AA".

Part 3

Commencement and transitional provisions

38. Paragraph 6 provides that the amendments are to have effect in relation to capital expenditure incurred on or after 5 December 2013.

39. Paragraph 7 introduces transitional arrangements for onshore oil fields, allowing a company to elect to defer commencement of the onshore allowance until 1 January 2015.

40. Paragraph 8 introduces arrangements in paragraphs 9 and 10 for accounting periods which straddle the commencement date of 5 December 2013 (or, if applicable, 1 January 2015).

41. Paragraph 9 provides for the apportionment of a company's adjusted ring fence profits in a straddling accounting period according to the number of days falling on or after the commencement day.

42. Paragraph 10 provides for the apportionment of relevant income for determining activated allowance in a straddling accounting period according to the number of days falling on or after the commencement day.

BACKGROUND NOTE

43. In addition to ring fence corporation tax (RFCT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. The rate of SC is set at 32 per cent.

44. Field allowances provide relief by reducing the amount of adjusted profits on which SC is due for oil and gas projects which meet certain conditions. Existing field allowances are provided by Part 8, Chapter 7 Corporation Taxes Act 2010 and apply to both onshore and offshore projects which satisfy the relevant criteria.

45. This section introduces a new allowance, replacing field allowances for onshore projects.

SECTION 71: OIL AND GAS: REINVESTMENT AFTER PRE-TRADING DISPOSAL

SUMMARY

1. This section makes provision for relief from corporation tax on chargeable gains where a company disposes of certain assets that were used by it for the purpose of oil and gas exploration and appraisal (E&A) activities. The relief applies where the proceeds are then reinvested in the UK or in the UK sector of the continental shelf.

DETAILS OF THE SECTION

2. Subsection (1) inserts new sections 198J-198L after section 198I of Chapter 2 of Part 6 of Taxation of Chargeable Gains Act 1992 (TCGA).

New section 198J

3. New subsection (1) specifies the assets whose disposal may benefit from the relief. To qualify for the relief, the company making the disposal must be an "E&A company" disposing of "relevant E&A assets", as those terms are defined in subsection (7). Additionally, the assets disposed of must either be used by the company in an area in which it is licensed to carry out E&A activities (also defined in subsection (7)), or be a licence (or licence interest) relating to an undeveloped area.

4. An "E&A company" is a company engaged in E&A activities outside the oil and gas ring fence (see s277 Corporation Tax Act 2010). The definition of "E&A activities" refers to UK or UK continental shelf "oil and gas exploration and appraisal", that term being defined at section 1134 Corporation Tax Act 2010. "Relevant E&A assets" are defined in subsection (7) as assets used solely by the company for E&A activities that are within a class of assets listed in section 155 TCGA 1992.

5. New subsection (2) sets out that the relief will be available if the disposal proceeds are reinvested on "E&A expenditure" (defined in subsection (7) as expenditure on E&A activities treated as such under generally accepted accounting practice) whilst the company is an E&A company, or on "oil assets" (as defined in 198E(5) TCGA 1992) for the purposes of the company's ring fence trade. This definition includes the incurring of exploration, appraisal and development expenditure as provided for by section 198I. Subsection (2) also specifies that the disposal proceeds must be reinvested within the "permitted reinvestment period" as defined in subsection (5), and sets out that the effect of making a claim for relief is that the gain on the disposal will not be chargeable.

6. New subsections (3) and (4) provide that partial relief is available where only part of the proceeds of the disposal has been reinvested as required by subsection (1).

7. New subsection (5) defines "the permitted reinvestment period".

8. New subsection (6) specifies that certain existing provisions under roll-over relief for capital gains, modified as necessary, are to be used for the purpose of apportioning

consideration, and so calculating the disposal proceeds that may benefit from the relief, where the assets disposed of have not been used only for E&A activities.

9. New subsection (7) defines key terms used in new sections 198J-198L.

New section 198K

10. New subsections (1) and (2) allow the relief at 198J(2) and (4) to be applied provisionally.

11. New subsections (3) and (5) specify the conditions in which any provisional relief ceases to apply, and subsection (4) specifies the tax adjustments to be made in that event.

12. New subsection (6) replicates as necessary new 198J(6) (apportioning consideration and calculating disposal proceeds where asset disposed of was not used only for E&A activities) for the purposes of provisional application of the relief, and adopts the definitions in new s198J(7).

New Section 198L

13. New section 198L allows the disposal and expenditure to be made by different companies within the same capital gains group.

14. Subsection (2) provides that the provisions inserted by paragraph (1) are to have effect in relation to disposals made on or after 1 April 2014.

BACKGROUND NOTE

15. Companies are subject to corporation tax (CT) on chargeable gains that arise when they dispose of assets. When the proceeds of a disposal of an asset used for the purposes of a trade are invested in new assets, which are also used only for the purpose of the trade, within certain time limits, sections 152 and 154 TCGA 1992 provide that the chargeable gain is not charged to tax immediately but instead is deducted from the allowable cost of the new assets or, in certain circumstances, is deferred until the sale of the replacement business assets (roll-over relief).

16. Reinvestment relief was introduced as one of a number of measures in Finance Act 2009 for companies with ring fence oil and gas trades. Reinvestment relief provides that, in circumstances where disposal proceeds are reinvested in new oil trade assets, and the disposal and acquisition qualify for roll-over relief, chargeable gains will not arise (rather than, as under roll-over relief, being deferred until the sale of the replacement assets).

17. Companies carrying on oil and gas exploration and appraisal activity who have not commenced trading are not eligible for existing reinvestment relief due to the trading requirement for roll-over relief. The new exemption will allow these companies to make disposals and reinvestments without a chargeable gain arising. This will provide an equivalent to the exemption given by existing reinvestment relief for companies carrying on exploration and appraisal activities who have commenced a trade.

SECTION 72: SUBSTANTIAL SHAREHOLDER EXEMPTION: OIL AND GAS

SUMMARY

1. This section amends Schedule 7AC of the Taxation of Chargeable Gains Act 1992 (TCGA) to extend the scope of the substantial shareholding exemption. A company disposing of a substantial shareholding in a subsidiary will be treated as having owned that shareholding for twelve months prior to disposal (a condition of the exemption), where the subsidiary is using assets for oil and gas exploration and appraisal activity that have been transferred from other group companies.

DETAILS OF THE SECTION

2. The section inserts new subparagraph (2A) into paragraph 15A Schedule 7AC of the TCGA 1992 and provides that the amendments will take effect for disposals made on or after 1 April 2014.

3. New subparagraph (2A) amends the definition of "trade" at subparagraphs (2)(b) and (2)(d) of paragraph 15A to include oil and gas exploration and appraisal. "Oil and gas exploration and appraisal" is defined at section 1134 Corporation Tax Act 2010.

BACKGROUND NOTE

4. The substantial shareholding exemption provides that where a company disposes of shares or an interest in shares that it holds in a second company, the gain is not a chargeable gain, and a loss is not allowable, if certain conditions are met. Those conditions include the substantial shareholding requirement, as set out in paragraph 7 of the Schedule. This requires that, in the period starting two years before the disposal, there is a continuous period of 12 months when the shareholding company holds a "substantial shareholding" in the company whose shares it then disposes of.

5. At paragraph 15A of the Schedule, the rules also provide that as long as the shareholding company holds a substantial shareholding immediately before the disposal, in certain circumstances the company does not need to have held it for a 12 month period within the previous two years. The circumstances concerned are where there has been an earlier transfer of assets used in a trade between members of the same group.

6. If, at the time of the disposal, the company whose shares are being disposed of is using an asset which was transferred to it from another company within the same group of companies, and both companies were using the asset for the purposes of their trades, the period during which the shareholding company is treated as having a substantial shareholding is extended to include the earlier period when the asset was used by the other company in the capital gains group for the purposes of its trade. This can enable the shareholding company to meet the 12 month requirement at paragraph 7 of the Schedule, even where the disposal is of shares in a company that is newly incorporated, provided that all other requirements for the exemption are met.

7. The substantial shareholding exemption allows companies flexibility in restructuring their business by removing potential tax barriers to that flexibility. This amendment will ensure that the structure of the oil and gas fiscal regime does not prevent E&A companies from benefiting from the amendments made to SSE in Finance Act 2011. It will remove a barrier to the transfer of companies from a group undertaking E&A activity in the oil and gas sector to another group in that sector.

SECTION 73 AND SCHEDULE 16: OIL CONTRACTOR ACTIVITIES: RING-FENCE TRADE ETC.

SUMMARY

1. Section 73 and Schedule 16 introduce provisions to restrict the use of deductions for leasing payments relating to assets used as part of a composite offshore oil and gas service.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides that CTA2010 is to be amended.

3. Paragraph 2 inserts a reference to the new Part 8ZA into the overview section of the CTA. Part 8ZA contains new rules applicable to contractors operating in the offshore oil and gas industry, (who are not also within the Part 8 oil and gas ring fence) who lease assets from their associates.

4. Paragraph 3 inserts a new section into the existing rules for the calculation of profits from Oil and Gas exploration and exploitation activities. This section mirrors the effect of the new Part 8ZA in circumstances where separate contracts have been used and is required to prevent new Part 8ZA being sidestepped.

5. New subsection 285A(1) defines the two conditions that must both be satisfied for payments to be within scope of the new section. New subsection 285A(1)(a) requires that oil contractor activities are carried out, which is defined in new subsection 285A(10) so as to have the same meaning as in new Part 8ZA. New subsection 285A(1)(b) requires that the ring fence company (that is to say one whose activities are within Chapter 4 Part 8) is making payments under a lease as part of obtaining a composite service from a contractor. New subsection 285A(10) provides the definitions for the terms used.

6. New subsection 285A(2) limits the amount that can be deducted in computing the company's ring fence profits. Any amount paid in excess of that limit will be allowed as a deduction from a company's non ring fence profit under new subsection 285A(6).

7. New subsection 285A(3) provides the size of that limitation, referred to as a "hire cap", by reference to the relevant percentage which is further defined in new subsection 285A(5).

8. New subsection 285A(4) provides for the case where more than one contractor or ring fence company are subject to the hire cap in respect of the same asset. The subsection ensures that the total hire cap available is equal to that which would apply if there had been a single entity. The hire cap itself is then allocated to each payer on the basis of their relative contribution as is just and reasonable.

9. New subsection 285A(5) defines "relative percentage" and TC (the cost on which the relevant percentage operates to determine the hire cap) by using the same definitions as in the new Part 8ZA which are to be found in new 356N subsections (5) to (15).

10. New subsection 285A(6) provides that any amount paid in excess of the hire cap will be allowed as a deduction from the company's total profits; or may be surrendered as a trading loss for use against profits by other members of the paying company's group. New subsection (7) prevents any deduction under new subsection 285A(6) from profits within either the existing ring fence for producers (under Chapter 4 of Part 8 of CTA2010) or the new contractor's ring fence brought in by new Part 8ZA.

11. New subsection 285A(8) provides a targeted anti avoidance rule to prevent arrangements with a tax avoidance main purpose from frustrating the intended application of new subsection 285A.

12. New subsection 285A(9) defines "arrangements" for the purposes of new subsection 285A(8).

13. New subsection 285(10) provides definitions for terms used in new section 285A by reference to definitions provided in new Part 8ZA. The definition of lease uses that provided by the existing section 868 CTA 2010 which is:

> " 868 Lease
>
> (1) This section applies for the purposes of this Chapter.
>
> (2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.
>
> (3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it."

14. Paragraph 4 inserts new Part 8ZA into the CTA2010.

15. New section 356K provides an overview of new Part 8ZA.

16. New subsection 356L(1) gives effect to the definitions for the purposes of new Part 8ZA. New subsection 356L(2) defines what "oil contractor activities" are for the purposes of new part 8ZA and new section 285A. This excludes activities which are already within the existing ring fence for oil exploration and exploitation. There are two possible legs: new subsection 356L(2)(a) requires that the activities are exploration or exploitation activities which take place as part of the provision of a relevant offshore service, which is defined in new subsection 356L(3). New subsection 356L(2)(b) covers the situation where the activities are carried on alongside the provision of a relevant offshore service.

17. New subsection 356L(3) defines a relevant offshore service.

18. New subsection 356L(4) defines exploration and exploitation activities and requires that those services are in connection with the exploration or exploitation of the natural resources under the sea. ("In connection" takes its natural wide meaning so as to encompass all stages of exploitation and exploration from initial searching for oil to the final decommissioning of extraction plant).

19. New subsection 356L(5) defines "relevant offshore area" for the purposes of new subsection 356L. "Territorial sea" is defined by section 1170 of CTA2010.

20. New section 356LA provides the definition of a "relevant asset" for the purposes of the hire cap. New subsection 356LA(1) identifies three conditions which must all be met for an asset to qualify.

21. New subsection 356LA(2) provides the first of these conditions. New subsection 356LA(2)(a) requires that the asset is a mobile asset. New subsection 356LA(2)(b) restricts the vessels which are a relevant asset by reference to the use to which they can be put. Note that this does not require that they are being so used. New subparagraph 356LA(2)(b)(i) identifies vessels used to drill for oil, whilst new subparagraph 356LA(2)(b)(ii) identifies any vessel used to provide accommodation to workers, **other than those who work on the accommodation providing vessel itself,** where that other structure is itself used in connection with exploration and exploitation activities carried on by anyone whether connected with the accommodation provider or not. These workers are termed "offshore workers" for the purposes of new subsection 356LA(3).

22. New subsection 356LA(3) provides an exception to the class of asset which would otherwise fall within the definition of accommodation provider within new subsection 356LA(2)(b)(ii). Where the provision of accommodation to "offshore workers" is only an incidental part of the use to which the asset is put, then the asset as a whole is not within new subsection 356LA(2)(b)(ii).

23. New subsection 356LA(4) provides further definitions for the purposes of identifying the vessel classes in new subsection 356LA(2).

24. New subsection 356LA(5) provides the second condition (Condition A), which is that the asset or any part of the asset, is leased from an associated person. ("Associated person" is defined in new subsection 356LB). It does not matter to whom the asset is leased.

25. New subsection 356LA(6) provides the third condition (Condition B) which is that the asset is of the requisite value as defined in new subsection 356LA(7).

26. New subsection 356LA(7) provides that the requisite value for Condition B of new section 356LA is that the market value of the asset is £2m or more.

27. New subsections 356LA(8) and (9) provide a power for HM Treasury to amend the operation of Condition B in future.

28. New section 356LB provides the definition of "associated person" for the purposes of new Part 8ZA.

29. New subsection 356LB(1) provides four classes of "associated persons" Those classes include the contractor or contractors carrying out the oil contractor activities (new 356LB(1)(a)) and anyone connected with them or who has been connected with them (new 356LB(1)(b)). Connected has the same meaning here as for the rest of CTA 2010, which is provided by section 1122 of CTA2010. The final two classes of associated person are those who act together with the contractor (new 356LB(1)(c)) as well as those who are connected with the classes in (b) and (c) (new 356LB(1)(d)).

30. New subsection 356LB(2) clarifies that simple leasing of an asset to others who carry out relevant services themselves, is insufficient for those persons to be acting together.

31. New section 356LC provides the definition of the term "lease" for the purposes of new Part 8ZA and new section 285A. This uses the existing wide definition in section 868 CTA 2010 as noted in paragraph 13 above.

32. New section 356LD provides the definition of contractor's ring fence profits for the purposes of new Part 8ZA and new section 285A. This means income arising from oil contractor activities which are themselves defined in new section 356L.

33. New section 356M provides the new contractor's ring fence. It splits a contractor's actual trade into two parts by defining the activities carried on which are to be treated as a separate trade for corporation tax purposes. This applies to oil contractor activities which are defined in new 356L. Additional restrictions on how the profits of that separate trade are computed for corporation tax purposes are provided by new sections 356NA to 356NE. These provisions mirror those in place for the existing ring fence in Part 8 of the CTA 2010.

34. New section 356N makes provision for a hire cap. New subsection 356N(1) identifies the circumstances in which the hire cap is to apply.

35. New subsection 356N(2) limits the amount that can be deducted when computing the contractor's ring fence profits. Any amount otherwise allowable as a deduction is dealt with under new subsections 356NA(3) and (4).

36. New subsection 356N(3) provides the size of that limitation (the hire cap), by reference to the relevant percentage (further defined in new subsection 356N(5)), which is applied to qualifying total costs (as further defined in new subsections (8) to (16)).

37. New subsection 356N(4) applies in the case where more than one lessor would be entitled to a deduction and therefore subject to the hire cap in respect of the same asset. The subsection ensures that the total hire cap does not exceed that which would have been available had there been a single lessor. The hire cap is to be allocated amongst the lessors as a whole in such a way as is just and reasonable.

38. New subsection 356N(5) provides that the relevant percentage is a proportion, calculated according to the formula provided, of 7.5%. The effect of the formula is to reduce the relevant percentage in cases where a relevant vessel is in fact in use somewhere other than the UKCS or territorial waters during an accounting period (the greater the number of days it is used elsewhere, the lower the relevant percentage, and so the lower the hire cap).

39. New subsection 356N(6) confirms that, if the vessel is not used at all anywhere in the world - including UK waters - for the whole of an accounting period, then the hire cap is reduced to nil.

40. New subsection 356N(7) provides that, where the accounting period is less than 12 months, the amount of the hire cap provided by new subsection 356N(2) is reduced proportionately.

41. New subsection 356N(8) provides the formula for computing total qualifying costs (to which the relevant percentage is to applied, under new subsection 285A(3) and new subsection 356N(3)) to determine the hire cap. It is made up of two components, the original cost (OC) which is defined in new subsections 356N(9) to (13) and certain subsequent capital expenditure (CE) which is defined in new subsections 356N(14) to (16).

42. New subsection 356N(9) provides the base rule for determining OC. The amount has two components. The first (new subsection 356N(9)(a)) is the original acquisition cost by an associated person (as defined in new section 356LB). This effectively provides for the cost to the contractor's group as a whole. It does not recognise intra group transfers since the asset was first acquired. The second component (new subsection 356N(9)(b)) is any acquisition expenses incurred at the time of first acquisition, but does not include any finance costs. This is subject to new subsections (12) and (13).

43. New subsections 356N(10) and (11) provide for an alternative computation in certain circumstances. New subsection 356N(12) sets out those circumstances as being when the relevant asset has never been acquired by an associated person, but instead has been leased from a third party. (It follows that a relevant asset which was once owned by an associated person cannot qualify under this section, even if it subsequently leased from a third party).

44. New subsection 356N(11) provides the alternative calculation of OC when making the computation in new subsection 356N(8). OC will be based on the cost that would have arisen at the time the relevant asset was first leased, if the associated person had acquired the asset at that point rather than leased it (new subsection 356N(11)(a)) . That cost is increased by the expected incidental costs of acquisition that would have arisen, other than financing (new subsection 356N(11)(b)). This is also subject to new subsections (12) and (13).

45. New subsection 356N(12) excludes from the calculation of OC, any element of that consideration which it is reasonable to attribute to a part of the asset which has been removed as at the beginning of the accounting period.

46. New subsection 356N(13) makes provision for the calculation of OC for assets newly acquired in an accounting period. It applies a fraction to the value of OC based on the number of days during which the asset was owned or leased. This fraction is applied for the whole of the accounting period.

47. New subsection 356N(14) provides the definition of the CE used in the computation of total cost by new subsection 356N(8). CE includes any subsequent capital expenditure on the asset (such as subsequent modifications).

48. New subsection 356N(15) excludes from the computation of CE any expense related to items which are effectively no longer part of the asset. This includes items which have subsequently been removed or items which, whilst still present, are otiose.

49. New subsection 356N(16) makes provision for new expenditure during an accounting period. It applies a fraction to the value of that new expenditure based on the number of days during which the asset was owned or leased. This fraction is applied for the whole of the accounting period.

50. New section 356NA makes further provisions for the calculation of the hire cap.

51. New subsections 356NA(1) and (2) allow HM Treasury to make regulations to modify the relevant percentage for the purposes of new section 356N or new section 285A in specified circumstances.

52. New subsection 356NA(3) provides that any amount paid in excess of the hire cap will be allowed as deduction from the contractor's total profits; or may be surrendered for use against profits by other members of the paying company's group, as a trading loss.

53. New subsection 356NA(4) prevents any deduction under new subsection 356NA(3) from profits of the existing ring fence for producers (under Chapter 4 of Part 8 of CTA2010) or the new contractor's ring fence.

54. New subsection 356NA(5) provides a targeted anti avoidance rule to prevent arrangements with a tax avoidance main purpose from frustrating the intended application of new subsection 356N(2).

55. New subsection 356NA(6) defines 'arrangements' for the purposes of new subsection 356NA(5).

56. New sections 356NB to 356NG provide rules as to who the new contractor's ring fence operates. These are based on similar rules which operate the existing ring fence in Part 8 CTA2010 (which applies to oil production and is referred to as the "production ring fence", below).

57. New section 356NB modifies the loan relationship rules in the case of a ring fence trade. It is based on section 286 of CTA2010, which applies to the Part 8 CTA10 ring fence for oil producers. New subsection 356NB(1) ensures that non-trading debits from a company's loan relationships cannot be set against the company's contractor's ring fence profits, unless the loan relationship represents money borrowed to finance oil contractor activities under new subsection 356NB(2). The loan relationship rules are in Parts 5 and 6 of CTA 2009.

58. New subsection 356NB(5) provides that where a non-trading debit is restricted in this way the legislation allows the company to have relief for the debit against other profits other than those of the contractor's ring fence.

59. New section 356NC ensures that exchange gains in respect of loan relationships are not treated as part of the contractor's ring fence profits where the exchange gains do not arise from money borrowed to finance oil contractor activities. It is based on section 287 CTA 2010, which applies to the production ring fence. The section operates in a similar way to new section 356NB. Where a credit is excluded from the computation of ring fence profits it is brought into account by new subsection 356NB(5).

60. New section 356ND prohibits a deduction for expenses of management of an investment business against a contractor's ring fence profits.

61. New section 356NE prevents losses that arise in trades outside the contractor's ring fence from being set off against a contractor's ring fence profits.

62. New section 356NF concerns claims for group relief. New subsection 356NF(1) prevents group relief arising from losses, allowances or expenditure outside the contractor's ring fence trade from being set against profits from that ring fence trade.

63. New subsections 356NF(2) and (3) provide that where a company cannot use certain amounts against its contractor's ring fence profits, those contractor's ring fence profits are disregarded in calculating how much the company can surrender as group relief.

64. New subsection 356NF(4) provides the definitions required for group relief claims.

65. New section 356NG ensures that capital allowances arising from "special leasing" cannot be deducted from a company's contractor's ring fence profits.

66. Paragraph 5 inserts the definitions provided by this measure into Schedule 4 of the CTA2010.

67. Paragraph 6 provides the commencement for the measure, which is 1 April 2014.

68. Paragraph 7 provides that activities defined by section 356L (oil contractor activities, relevant offshore services and relevant offshore area) relate to activities carried out on or after 1 April 2014.

69. Subparagraph 8 (1) provides that an accounting period which would otherwise straddle the 1 April 2014 commencement date, is split into two accounting periods with the first treated as ending on 31 March 2014.

70. Subparagraph 8 (2) makes additional provision for group payment arrangements. Where accounts periods have been split under subparagraph 8(1), they can continue to be treated as a single accounting period for the purposes of allowing the surrender and receipt of tax refunds.

71. Paragraph 9 provides the rules which apply to losses which have accumulated before commencement. The only losses which can be used against subsequent profits within the new contractor's ring fence are those which would have been losses within that ring fence, had the ring fence existed when the loss arose. Other losses can continue to be carried forward, but cannot be used against profits of the new contractor's ring fence.

BACKGROUND NOTE

72. As announced in Autumn Statement 2013, the government is concerned about the use of bareboat charters to move significant taxable profit outside the UK tax net. Legislation was introduced alongside Finance Act 2014 to cap the amount allowed as a deduction for companies that provide drilling services or accommodation services on the UK Continental Shelf. The cap applies in respect of lease payments made on or after 1 April 2014. The measure will also ensure that the profits arising from that service are not reduced by unrelated tax relief.

73. Draft legislation was issued on 1 April 2014. The legislation which is now part of Finance Act 2014 largely follows that draft but, in addition, clarifies the definition of accommodation vessel, makes provision for expenditure within an accounting period, adopts an existing approach for the identification of extant capital expenditure and permits group payment arrangements to operate as they would have done previously. None of the changes increase the burden on the taxpayer.

SECTION 74 AND SCHEDULE 17: PARTNERSHIPS (PART 1): LIMITED LIABILITY PARTNERSHIPS: TREATMENT OF SALARIED MEMBERS

SUMMARY

1. This section and Schedule remove the presumption of self-employment for some members of limited liability partnerships (LLPs) to tackle the disguising of employment relationships through LLPs.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new sections 863A to 863G into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 863A provides that the consequences in subsection (2) apply at any time when conditions A to C are met in the case of an individual ("M") who is a member of an LLP to which section 863(1) of ITTOIA 2005 applies. Conditions A, B and C are detailed in new sections 863B, 863C and 863D respectively.

4. Subsection (2) of new section 863A provides the consequences if the circumstances and conditions in subsection (1) are met. It explains that M is to be treated as being employed by the LLP under a contract of service, instead of being a partner, and that, accordingly, M's rights and duties as a member of the LLP are to be treated as arising under that contract of service.

5. Subsection (1) of new section 863B details the times at which condition A needs to be considered. These are the 6 April 2014 or, if later, when M becomes a member of the LLP (if relevant arrangements are in place at those times). Otherwise, the time is any subsequent time when relevant arrangements are put in place or changed, or the time when relevant arrangements for a relevant period were expected to be modified or end but in fact they carry on. These are each a "relevant time".

6. Subsection (2) of new section 863B defines the term "relevant arrangements".

7. Subsection (3) of new section 863B uses a 2 step process to determine the question whether condition A is met at a relevant time.

8. Step 1 requires the identification of the relevant period. This is the period beginning with the relevant time and ending when it is reasonable to expect that the relevant arrangements for the period will end or be changed. The relevant arrangements for the period are those in place at the relevant time.

9. Step 2 provides that condition A is met at the relevant time if it is reasonable to expect that at least 80% of the total amount payable by the LLP for M's performance, during the relevant period, of services for the LLP, in M's capacity as a member, will be disguised salary. The term "disguised salary" is defined in Step 2.

10. Subsection (4) of new section 863B provides that the determination of whether condition A is met at the relevant time continues until such time as the question has to be re-determined because of a change to the relevant arrangements or the end of the period for which the condition was considered.

11. Subsection (5) of new section 863B defines "arrangements" for the purposes of new section 863B.

12. The application of condition A and the process of determining if the condition applies is illustrated in the following example.

13. Example 1: M becomes a member of an LLP on 1 July 2014 and arrangements are made that in return for working for the LLP M will receive a fixed salary for the period from 1 July 2014 to 30 June 2015. It is expected that a new annual arrangement will be put in place from 1 July 2015.

14. The relevant time at which condition A is to be determined is 1 July 2014 being the date when M became a member and the relevant pay arrangements were put in place. The relevant arrangements are the pay arrangements for the period from 1 July 2014 to 30 June 2015. The relevant period is from 1 July 2014 to 30 June 2015. The latter date is the date on which it is expected that the arrangements will end. M's services are the work that M will do for the LLP in the capacity as a member in the period from 1 July 2014 to 30 June 2015.

15. On 1 July 2014, it is expected that M will receive a fixed salary for the period 1 July 2014 to 30 June 2015. It is therefore reasonable to expect that at least 80% of the amount payable for M's services under the arrangements in place for that period will be disguised salary and condition A will be met. The determination will apply until the end of 30 June 2015 unless the arrangements change during the period.

16. New section 863C details condition B which is that M does not have significant influence over the affairs of the LLP.

17. Subsection (1) of new section 863D details condition C which is that, at the relevant time, M's contribution to the LLP is less than 25% of the amount specified by subsection (2).

18. Subsection (2) of new section 863D details the amount that is to be taken into account for the purpose of subsection (1). This is the total amount of disguised salary which, it is reasonable to expect, will be payable by the LLP for M's performance, during the relevant year, of services for the LLP in M's capacity as a member of the LLP. It also explains the meaning of "the relevant tax year" and that "disguised salary" has the meaning given in paragraphs (a) to (c) at Step 2 of new section 863B(3).

19. Subsections (3) and (4) of new section 863D detail when the question of whether condition C is met is to be determined or re-determined.

20. Subsection (5) of new section 863D provides that where condition C is determined to be met, or not met, at the relevant time, it is treated as met, or not met, until the question is re-determined either, at the start of the next tax year, or because there is a change in M's contribution to the LLP or another change of circumstances which might affect the question as to whether condition C is met.

21. Subsections (6) and (7) of new section 863D provide that an increase in M's contribution which would result in condition C not being met is not to have that effect unless it is reasonable to expect that condition C will not be met for the remainder of the tax year in which the increase falls.

22. Subsections (8) to (11) of new section 863D provide for the amount of the contribution to be treated as reduced in certain circumstances.

23. New section 863E explains what is meant by the term "M's contribution to the LLP" and how the basic calculation is to be made. The legislation labels M's contribution to the LLP as "amount A".

24. Subsection (1) of new section 863F details the circumstances in which a deemed contribution is to be taken into account as a contribution to the LLP under subsection (2) of new section 863F. These circumstances are where an existing member at 6 April 2014 gives an undertaking by 6 April 2014 to make a contribution to the capital of the LLP by 5 July 2014, or a new member gives an undertaking, by the date they became a member, to make a contribution by 5 July 2014, or within 2 months of the date of their becoming a member, if later, and the contribution, when made, would be a contribution included in amount A in new section 863E. An undertaking does not have to be legally enforceable.

25. Subsection (2) of new section 863F provides the consequences of new section 863F being met. In determining if condition C is met M is treated as having made the contribution on 6 April 2014, or the date on which M became a member, as appropriate. M is also treated as having made the contribution if there is a re-determination in the 3 month period to 5 July 2014, or the 2 month period from M becoming a member, to the extent that M has not actually made the contribution.

26. Subsection (3) of new section 863F provides that a re-determination of condition C is not triggered when M makes the actual contribution, in whole or in part, in the 3 month period to 5 July 2014, or the 2 month period from M becoming a member, as appropriate.

27. Subsections (4) and (5) of new section 863F provide the consequences of M failing to meet the undertaking to make the contribution, either in whole or in part. If M fails to make all, or part, of the contribution then the determination of whether condition C was met on 6 April 2014, or the date on which M became a member, is revisited without taking into account the deemed contribution or the part not paid. If the re-calculation shows that condition C would have been met it is treated as being met on 6 April 2014, or the date on which M became a member, as appropriate.

28. The following examples illustrate how the deemed contributions rules work.

29. Example 2: M is an existing member of an LLP at 6 April 2014 who has not previously contributed capital to the LLP. On 5 April 2014, M gives an undertaking to the LLP that he will make a contribution of £50,000 by 5 July 2014. The contribution when made would constitute amount A in new section 863E. The question whether condition C is met is determined on 6 April 2014 and takes into account the deemed contribution of £50,000 resulting in condition C not being met. On 30 June 2014, M contributes £50,000 to the LLP. This contribution does not trigger a re-determination and condition C is treated as not met

until the end of the 2014-15 tax year or unless there is a later change that requires a re-determination.

30. Example 3: M is an existing member of an LLP at 6 April 2014 who has not previously contributed capital to the LLP. On 5 April 2014, M gives an undertaking to the LLP that he will make a contribution of £50,000 on 5 July 2014. The contribution when made would constitute amount A in new section 863E. The question whether condition C is met is determined on 6 April 2014 and takes into account the deemed contribution of £50,000 resulting in condition C not being met. M fails to make any of the contribution by 5 July 2014. On 6 July 2014, the question whether condition C was met at 6 April 2014 is revisited. M is not treated as having made a contribution so condition C is met. M also met conditions A and B on 6 April 2014 so is treated as a salaried member from that date.

31. New section 863G contains anti-avoidance rules.

32. Subsection (1) of new section 863G provides that no regard is to be had to any arrangements with a main purpose of securing that new section 863A(2) of ITTOIA 2005 does not apply to an individual member of the LLP.

33. Subsections (2) and (3) of new section 863G detail the circumstances in which the consequences in subsection (4) apply. These are where an individual ("X"), who is not a member of the LLP, performs services under arrangements involving a non-individual member of the LLP ("Y"), a main purpose of the arrangements is to secure that new section 863A(2) of ITTOIA 2005 does not apply to that individual, alone or with other individuals, and an amount arises to Y relating to X's services which would have been employment income of X if X was treated as employed by the LLP.

34. Subsection (4) of new section 863G provides the consequences if the circumstances in subsections (2) and (3) arise. X is treated as a member of the LLP in whose case section 863A(2) of ITTOIA 2005 applies and the amount arising to Y relating to X's services is treated as employment income of X. It also ensures that the amount treated as employment income of X is not to be treated as income of X again for income tax purposes under another charging provision.

35. Subsection (4A) of new section 863G prevents new section 863A(2) of ITTOIA 2005 from applying in the case of a member if it would apply because of arrangements with a main purpose of securing that new section 850C of ITTOIA 2005 (excess profit allocation to non-individual partners) does not apply in relation to that member, alone or with others.

36. Subsection (5) of new section 863G defines "arrangements" for the purposes of new section 863G.

37. Paragraph 2 inserts new section 1273A into Part 17 of the Corporation Tax Act 2009 (CTA 2009).

38. New section 1273A applies at any time when new section 863A(2) of ITTOIA 2005 applies and makes corresponding provision for corporation tax purposes.

39. Paragraph 3(2) inserts new section 94AA into Chapter 5 of Part 2 of ITTOIA 2005.

40. Subsections (1) to (3) of new section 94AA apply where a member ("M") of an LLP is treated as being employed under new section 863A(2) of ITTOIA 2005 and provide for a deduction for expenses paid by the LLP in respect of M's employment under new section 863A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 2 of ITTOIA 2005 and those listed in subsection (3).

41. Paragraph 3(3) applies new section 94AA of ITTOIA 2005 to property businesses.

42. Paragraph 4(2) inserts new section 92A into Chapter 5 of Part 3 of CTA 2009.

43. Subsections (1) to (3) of new section 92A apply where new section 1273A(2) of CTA 2009 applies in the case of a member ("M") of the LLP and provide for a deduction for expenses paid by the LLP in respect of M's employment under new section 1273A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 3 of CTA 2009 and those listed in subsection (3).

44. Paragraph 4(3) applies new section 92A of CTA 2009 to property businesses.

45. Paragraph 4(4) amends Chapter 2 of Part 16 of CTA 2009 and inserts new section 1227A.

46. Subsections (1) and (2) of new section 1227A detail the circumstances in which the section applies and the consequences of it applying. This section provides a deduction for management expenses purposes where a company with investment business is a member of an LLP, expenses of management of the company's investment business are paid in respect of the employment of a member of the LLP to whom new section 1273A(2) of CTA 2009 applies and the expenses paid would not otherwise be referable to any accounting period. The availability of a deduction is subject to the existing prohibitions that apply to deductions for management expenses.

47. Paragraph 5 makes supplementary provision in Chapter 8 of Part 2 of Income Tax (Earnings and Pensions) Act 2003.

48. Paragraph 6 provides for commencement.

BACKGROUND NOTE

49. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

50. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

51. This element of the partnerships review measure is discussed in the consultation document under the heading: *Disguised Employment.*

52. On 19 March 2014, a resolution was made providing for the operation from 6 April 2014 of Pay As You Earn in respect of income tax payable on behalf of Salaried Members. This resolution has statutory effect under the Provisional Collection of Taxes Act 1968.

53. The National Insurance Contributions (NICs) Act 2014 and associated regulations provide for the changes to NICs legislation that will take effect from 6 April 2014.

SECTION 74 AND SCHEDULE 17: PARTNERSHIPS (PART 2): PARTNERSHIPS WITH MIXED MEMBERSHIP

SUMMARY

1. This section and Schedule counter tax advantages arising to individuals in partnership with persons who are not individuals (mixed membership partnerships) by way of excess allocations of profits or losses to certain members.

DETAILS OF THE SCHEDULE

2. Paragraph 7(3) inserts new sections 850C to 850E into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 850C provides that the consequences in subsections (4) and (5) apply in the circumstances where an individual ("A") is a partner in a firm that has a profit for a relevant period of account and a non-individual partner ("B") has a profit share and either of conditions X or Y is met.

4. Subsections (2) and (3) of new section 850C detail conditions X and Y. Condition X relates to where A's profit is deferred. Condition Y relates to where A has the power to enjoy B's profit share.

5. Subsection (4) of new section 850C provides the consequences for A if the circumstances and conditions in subsection (1) are met. It explains how A's profit share is to be increased by the amount of B's profit share that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. The increase in the case of A's power to enjoy B's profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is calculated by reference to B's appropriate notional return on capital (as defined in subsection (11)) and appropriate notional consideration for services (as defined in subsection (15)).

6. Subsection (5) of new section 850C provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit for a period of account adjustments are to be made to reflect the increase in A's profit share on a just and reasonable basis.

7. Subsection (6) of new section 850C defines an "individual partner" and "non-individual partner". A "non-individual" would include, for example, a company or an individual acting as a trustee. It does not include the firm itself where it is treated as a partner under new section 863I (allocation of profit to AIFM firm).

8. Subsection (7) of new section 850C specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

9. Subsection (8) of new section 850C defines the term "A's deferred profit" used in condition X.

10. Subsection (9) of new section 850C defines the term "the relevant tax amount" used in conditions X and Y.

11. Subsection (10) of new section 850C defines the term "the appropriate notional profit" used in condition Y as the sum of the appropriate notional return on capital and the appropriate notional consideration for services.

12. Subsections (11) and (12) of new section 850C define the term "the appropriate notional return on capital" used in subsection 10 and specify how it is to be calculated by reference to B's contribution to the firm.

13. Subsections (13) and (14) of new section 850C specify how the amount of B's contribution to the firm for the purposes of subsections (11) and (12) is to be determined.

14. Subsections (15) to (17) of new section 850C define the term "the appropriate notional consideration for services" used in subsection 10 and specify how it is to be calculated.

15. Subsection (18) of new section 850C details the circumstances in which A has the power to enjoy B's profit share. This is the case if A is a connected person in relation to B other than being connected by reason of being partners in the partnership, or if A is party to arrangements with a main purpose of securing that an amount included in B's profit share is charged to corporation tax rather than income tax or is otherwise subject to corporation tax rules rather than income tax rules, or if any of the enjoyment conditions specified in subsection (20) are met in relation to all or part of B's profit share.

16. Subsection (19) of new section 850C defines the term "arrangements".

17. Subsections (20) and (21) of new section 850C detail the enjoyment conditions including making clear that references to A include any person connected with A apart from B.

18. Subsections (22) and (23) of new section 850C apply where all or part of the increase in A's profit share is allocated by A to the firm under new section 863I of ITTOIA 2005, which modifies the rules for the taxation of partnerships that manage alternative investment funds, and B makes a payment representing income tax to the firm. For income tax purposes, the payment is not to be treated as income of any partner in the firm or to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B.

19. Subsection (1) of new section 850D provides that the consequences in subsections (4) and (5) apply in the circumstances where a non-individual partner ("B") has a profit share for a relevant period of account, and individual ("A") personally performs services for the firm, it is reasonable to suppose that A would have been a partner in the firm but for the rules in new section 850C and either of conditions X or Y is met.

20. Subsections (2) and (3) of new section 850D set out conditions X and Y. Condition X relates to amounts representing A's deferred profit in B's profit share. Condition Y relates to where A has the power to enjoy B's profit share.

21. Subsection (4) of new section 850D provides the consequences for A if the circumstances and conditions in subsection (1) are met. A is treated as a partner in the firm for the relevant period of account, except for the purposes of new section 863I of ITTOIA 2005, and as having a share of the firm's profit for the relevant period of account which is chargeable to income tax. A's share of the profit is the amount of B's profit that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. A's share of the profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is determined in the same way as in new section 850C of ITTOIA 2005.

22. Subsections (5) and (6) of new section 850D provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit share for a period of account adjustments are to be made to reflect A's share of the firm's profit on a just and reasonable basis.

23. Subsection (7) of new section 850D specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

24. Subsection (8) of new section 850D provides an automatic assumption in relation to a member of a partnership which is associated with the firm. The assumption is that it is reasonable to suppose that the member would have been a partner in the firm at a time during the relevant period of account, or an earlier period of account, but for the provision contained in new section 850C of ITTOIA 2005.

25. Subsection (9) of new section 850D provides the circumstances in which a partnership is "associated" with the firm.

26. Subsections (10) to (13) of new section 850D provides definition and interpretation of the terms used in new section 850D: "partnership", "A's deferred profit", "the appropriate notional profit" and "A's power of enjoy B's profit share".

27. Subsection (1) of new section 850E applies subsection (2) if new section 850C(4) of ITTOIA 2005 applies to increase A's profit share, or new section 850D(4) of ITTOIA 2005 applies to treat A as having a share of the firm's profit, and as a result of an agreement in relation to the excess of B's profit share, B makes payment to another person out of the excess part of B's profit share and the payment is not made with a main purpose of obtaining a tax advantage. The "excess part of B's profit share" is the amount of B's profit share that represents the amount of the increase in A's profit share under new section 850C(4) or A's share of the firm's profit under new section 850D(4).

28. Subsection (2) of new section 850E provides that, for income tax purposes, the payment is not to be income of the recipient, is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B, and is not to be regarded as a distribution.

29. Subsection (3) of new section 850E provides definitions relevant to subsection (1).

30. Paragraphs 8(1) and 8(2) amend the overview of Chapter 3 of Part 4 of Income Tax Act 2007 (ITA 2007).

31. Paragraph 8(3) inserts new section 116A into Chapter 3 of Part 4 of ITA 2007.

32. Subsections (1) to (5) of new section 116A provide that no relevant loss relief is to be given to an individual for a loss made in a trade or profession as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section, it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

33. Subsection (6) of new section 116A defines "arrangements" and "relevant loss relief" for the purposes of this section.

34. Paragraphs 9(1) and 9(2) amend the overview in Chapter 4 of Part 4 of ITA 2007.

35. Paragraph 9(3) inserts new section 127C into Chapter 4 of Part 4 of ITA 2007.

36. Subsections (1) to (5) of new section 127C provide that no relevant loss relief is to be given to an individual for a loss made in a property business as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

37. Subsection (6) of new section 127C defines "arrangements" and "relevant loss relief" for the purposes of this section.

38. Paragraphs 10(1) and 10(2) amend Part 17 of the Corporation Tax Act 2009 (CTA 2009).

39. Paragraph 10(3) inserts new section 1264A into Part 17 of CTA 2009.

40. Subsections (1) and (2) of new section 1264A provide for the situation where the income tax provisions in new sections 850C(4) or 850D(4) of ITTOIA 2005 apply to increase individual A's profit share, or to treat A as having a share of the firm's profit, and a company is non-individual B in relation to A. In determining the company's profits from the firm for an accounting period, adjustments are to be made to reflect the increase in A's profit share, or the amount of profit treated as A's share of the firm's profit, on a just and reasonable basis.

41. Subsection (3) of new section 1264A makes corresponding provision for corporation tax in respect of sections 850C(23) and section 850E(2) of ITTOIA 2005.

42. Paragraphs 11 to 14 provide commencement rules. The changes will take effect from 6 April 2014 with the exception of anti-avoidance rules concerning tax-motivated profit allocations. These rules came into force on 5 December 2013 in order to protect against risks to tax revenue.

BACKGROUND NOTE

43. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

44. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

45. This element of the partnerships review measure is discussed in the consultation document under the headings: *Partnerships with mixed membership – profits and Partnerships with mixed membership - losses.*

SECTION 74 AND SCHEDULE 17: PARTNERSHIPS (PART 3): ALTERNATIVE INVESTMENT FUND MANAGERS: DEFERRED REMUNERATION ETC

SUMMARY

1. This section and Schedule introduces a mechanism for members of alternative investment fund managers (AIFM) partnerships (including their delegates and sub-delegates) to allocate certain 'restricted' profits to the partnership.

2. These are profits that those members cannot immediately access because of requirements under the Alternative Investment Fund Managers Directive (AIFMD) (2011/61/EU) to defer remuneration of 'key staff'.

3. The legislation imposes a charge to tax on these profits at the additional rate of tax (45 per cent) to be paid by the AIFM partnership.

4. It also sets out the capital gains treatment where the partner's remuneration is in the form of instruments in the fund under management.

DETAILS OF THE SCHEDULE

5. Paragraph 15 inserts new sections 863H to 863L into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

6. New section 863H(1) states that new section 863I will apply to an AIFM trade of an AIFM firm if the AIFM firm elects for that section to apply.

7. Subsection (2) of new section 863H states that the election must be made within 6 months after the end of the first period of account for which the election is to have effect.

8. Subsection (3) of new section 863H contains definitions. An AIFM firm is a firm, the regular business of which is managing one or more alternative investment funds itself, or carrying out one or more management functions as the delegate or sub-delegate of the manager.

9. Subsection (4) of new section 863H defines the AIFM trade as a trade which involves the activities mentioned in new section 863H(3).

10. Subsection (5) of new section 863H says that subsection (3) is to be construed as if it were contained in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

11. New section 863I sets out a mechanism for collection of income tax if the election is made.

12. Subsection (1) of new section 863I applies to the 'relevant restricted profit' of a partner in an AIFM firm. This includes profit which has been reallocated to the partner under the excess profit allocation rules in the new section 850C in Part 2 (subsection (1)(b) of new section 863I).

13. Subsection (2) of new section 863I allows the partner to allocate all or part of the relevant restricted profit ("the allocated profits") of the AIFM trade earned by that partner to the AIFM firm.

14. Subsection (3)(a) of new section 863I excludes the allocated profit from the partner's taxable profit in the period of account.

15. Subsection (3)(b) of new section 863I treats the AIFM firm as if it was a partner in itself.

16. Subsection (3)(c) of new section 863I states that the income tax provisions will apply subject to subsection (5).

17. Subsections (4) of new section 863I stipulates that the firm is subject to income tax on the allocated profit. The profit is treated as chargeable under Chapter 2 of Part 2 ITTOIA for the tax year in which the firm's relevant period of account ends. The rate of tax payable is the additional rate

18. Subsection (5) of new section 863I provides a power for HMRC to make regulations to modify applicable income tax provisions.

19. Subsection (6) of new section 863I defines 'relevant restricted profit' as including two categories of variable remuneration. The first category is deferred remuneration including remuneration in cash or instruments. The second category is upfront remuneration (i.e. remuneration which is not deferred) which vests in the partner in the form of instruments with a retention period of at least six months.

20. Subsection (7) of new section 863I limits the application of the mechanism to remuneration which is awarded to a partner under arrangements that are consistent with the AIFMD remuneration guidelines.

21. Subsection (8) of new section 863I limits the application of the mechanism in the case of AIFM firms which qualify for the mechanism only because they are delegates of AIFM managers to partners who are 'identified staff' as defined in the guidelines.

22. Subsection (9) of new section 863I states that terms used in subsection (6) to (8) have the same meaning s in the AIFMD remuneration guidelines.

23. New section 863J sets out the tax treatment when the relevant restricted profit vests in the partner who initially allocated it to the partnership.

24. Two situations are covered. The first is where at the time the remuneration vests, the partner is still carrying on the AIFM trade, whether as a partner in the AIFM firm or otherwise (subsection (1) of new section 863J). In this case, under subsection (2) of new section 863J, the amount determined by subsection (5) of new section 863J is treated as a

profit of the relevant tax year, made in the AIFM trade and taxable under Chapter 2 of Part 2 of ITTOIA 2005.

25. The second situation is where the individual in whom the allocated profit vests is no longer carrying on the AIFM trade (subsection (3) of new section 863J). In that case, the individual is not treated as receiving trading income but as in receipt of income liable to income tax in the relevant tax year (subsection (4) of new section 863J). This income tax is not chargeable under Chapter 2 of Part 2 of ITTOIA 2005 but is a stand alone charge on the individual.

26. Subsection (5) of new section 863J states that the amount which is treated as a profit or income is the amount of the allocated profit net of the income tax for which the AIFM firm is liable plus the amount of that income tax paid by the firm by the time when the vesting occurs or, if the tax is payable by the firm in the same tax year in which the individual is chargeable, so much of that tax as is paid.

27. Subsection (6) of new section 863J specifies that the income tax which has been paid by the AIFM firm or is paid on time in the same year as the profits vest is credited to the partner in whom the income vests and is taken into account in determining the income tax payable by, or repayable to, that individual.

28. Subsection (7) of new section 863J defines the 'relevant tax year' as the year of vesting, in the case of deferred remuneration, and, in the case of upfront remuneration in the form of instruments, the tax year in which the allocated profit would otherwise have been chargeable to income tax for the partner.

29. Subsection (8) of new section 863J explains that terms used in this section take their meaning from the AIFMD remuneration guidelines.

30. Subsection (9) of new section 863J provides that the provision in the excess profit allocation rules which permits certain adjusting payments to be made without tax consequences is ignored for the purposes of this provision.

31. New section 863K gives a partner who has allocated profit to an AIFM firm under the mechanism, and in whom the profit then vests, the right to obtain from the firm a statement showing details of the amount of the profits, the tax for which the firm is liable and the tax paid.

32. New section 863L defines the AIFMD remuneration guidelines. The effect of these guidelines and the AIFMD is broadly that certain AIFM firms must defer 40 to 60 per cent of the variable remuneration of key staff by up to three to five years and pay at least 50 per cent of the variable remuneration in units or shares of the funds they manage, or equivalent ownership interests, rather than cash.

33. Paragraph 16 inserts a new section 12ADA into Taxes Management Act 1970 (TMA 1970).

34. Subsection (1) of new section 12ADA provides that where a partnership has made an election under 863H, an officer of HMRC may by notice require the firm to supply such information as the officer may reasonably require for the purposes of the operation of

new sections 863H to 863L in relation to the firm and its members. Subsection (2) of new section 12ADA stipulates that the information must be provided within such reasonable time as is specified.

35. Subparagraph (3) inserts a reference to new section 12ADA into the table in section 98 of TMA 1970.

36. Paragraph 17 inserts new sections 59B and 59C into Taxation of Chargeable Gains Act 1992 (TCGA 1992).

37. Under the new section 59B, where there has been a disposal to the partner of instruments which are partnership assets for the purposes of section 59 TCGA 1992 and, by virtue of that disposal, the variable remuneration vests in the partner, both the persons making the disposal and the partner are to be treated as making the disposal and acquisition respectively for an amount equal to the allocated profit net of the tax for which the partnership was liable.

38. New section 59C has the same effect where there is a disposal of instruments by a company which is a partner in the partnership and the company would, as a partner in the firm, have been charged to tax on the allocated profit but for adjustments under the excess profit allocation provisions.

39. Paragraph 18 inserts a new section 189(2B) into Finance Act 2004. This is to ensure that income charged under new section 863J on vesting is also treated as partnership income for pension purposes.

40. Paragraph 19 inserts the charging of AIFM partnership profits into Step 4 in the calculation of income tax liability under section 23 of Income Tax Act 2007.

41. Paragraph 20 gives power to HMRC to amend any Act by regulations for equivalent provisions to apply in future if necessary to other firms regulated under the Financial Services and Markets Act 2000.

42. Paragraph 21 provides that the amendments made by this Part (Part 3) of the Schedule have effect for the tax year 2014-15 and subsequent tax years.

BACKGROUND NOTE

43. These provisions are part of a wider review of certain parts of the partnership rules announced at Budget 2013.

44. A consultation document *Partnerships: A review of two aspects of the tax rules* was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

45. This element of the partnerships review measure is discussed in the consultation document under the headings: *Partnerships with mixed membership – profits: Profit deferral and working capital arrangements.*

SECTION 74 AND SCHEDULE 17: PARTNERSHIPS (PART 4): DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

SUMMARY

1. This section and Schedule will prevent tax-motivated disposals of income streams or assets within the charge to tax on income through partnerships giving rise to tax advantages.

2. The legislation will impose a charge to tax on income on the person making the disposal.

DETAILS OF THE SCHEDULE

Income tax

3. Paragraph 22 of the Schedule is introductory.

4. Paragraph 23 amends section 809AZF in Chapter 5A of Income Tax Act (ITA) 2007 (transfers of income streams) so that Chapter 5A cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 6 April 2014.

5. Paragraph 24(1) inserts new Chapter 5AA into ITA. The Chapter introduces new section 809AAZA, which covers disposals of income streams by persons within the charge to income tax by or through partnerships.

6. New section 809AAZA(1) provides that the Chapter applies if there are arrangements between a transferor and a transferee as a result of which the conditions set out in new subsections (1)(a) to (1)(d) are met.

7. New section 809AAZA(1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.

8. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.

9. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

10. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

11. New subsection (2) provides that the legislation does not however apply if the disposal is to a spouse or civil partner or relative of the transferor.

12. New subsection (3) defines disposal as including anything that is a disposal for the purposes of Taxation of Chargeable Gains Act (TCGA) 1992. This includes a part disposal.

13. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

14. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

15. New subsection (6) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

16. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

17. New subsection (8) provides definitions. "Relevant receipts" takes its definition from the transfer of income streams legislation in Chapter 5A of Part 13 ITA 2007, which is income that would otherwise have been taxable income of the transferor. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

18. New section 809AAZB(1) sets out the treatment where new section 809AAZA applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.

19. New subsection (2) gives 'relevant amount' the same meaning as in the transfers of income streams legislation in Chapter 5A of Part 13 of ITA 2007, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

20. New subsection (3) states that in subsection (2) to (6) that references to the transfer of the right are to be read as references to the disposal of the right.

21. New subsection (4) explains the interaction of new Chapter 5AA with new Chapter 5D of ITA 2007 (Disposals of assets through partnerships). If both apply then new Chapter 5AA will not apply if the charge under new Chapter 5D is greater.

22. Paragraph 24(2) covers commencement of new Chapter 5AA. The legislation applies where the arrangement referred to in new section 809AAZA(1) is made on or after 6 April 2014.

23. Paragraph 25(1) of the Schedule inserts new Chapter 5D into ITA. The Chapter introduces new section 809DZA, which covers disposals of assets by or through partnerships.

24. New section 809DZA(1) provides that the Chapter applies if both Condition A and Condition B are met.

25. New section 809DZA(2) contains Condition A which is that there are arrangements involving a transferor and a transferee as a result which all of the conditions set out in new subsections (2)(a) to (2)(d) are met.

26. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset.

27. New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

28. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

29. New subsection (2)(d) requires that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

30. New subsection (3) provides that the legislation does not, however, apply if the disposal is to a spouse or civil partner or relative of the transferor.

31. New subsection (4) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

32. New subsection (5) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

33. New subsection (6) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

34. New subsection (7) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

35. New subsection (8) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

36. New subsection (9) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to tax on income would have applied to the "relevant amount" received by the transferee.

37. New subsections (10) to (12) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

38. New subsection (13) provides definitions. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

39. New section 809DZB(1) sets out the treatment where new section 809DZA applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

40. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

41. New subsection (3) explains the interaction of Chapter 5D with new Chapter 5AA (disposals of income streams through partnerships). If both apply then Chapter 5D will not apply if the charge under Chapter 5AA is equal or greater.

42. Paragraph 25(2) covers commencement. The legislation applies where the arrangement is made on or after 6 April 2014.

Corporation tax

43. Paragraph 26 of the Schedule is introductory.

44. Paragraph 27 amends section 756 in Chapter 1 of Part 16 of Corporation Tax Act (CTA) 2010 (factoring of income etc) so that Chapter 1 cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 1 April 2014.

45. Paragraph 28(1) inserts new Chapter 1A into CTA 2010. The Chapter introduces new section 757A, which covers disposals of income streams by companies by or through partnerships.

46. New section 757A(1) provides that the Chapter applies if there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (1)(a) to (1)(d) are met.

47. New subsection (1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.

48. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.

49. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

50. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

51. New subsection (2) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

52. New subsection (3) provides that the disposal might in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

53. New subsection (4) makes clear that the transferor and the transferee do not have to be members of the partnership at the same time.

54. New subsection (5) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

55. New subsection (6) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if, for example, the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

56. New subsection (7) provides definitions. "Relevant receipts" takes its definition from the transfer of income streams legislation in Chapter 1 of Part 16 ITA 2007, which is income that would otherwise have been taxable income of the transferor. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

57. New section 757B(1) sets out the treatment where new section 757A applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.

58. New subsection (2) gives 'relevant amount' the same meaning as in the transfers of income streams legislation, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

59. New subsection (3) stipulates that references to the transfer of the right in the transfers of income streams legislation are to be read as references to the disposal of the right.

60. New subsection (4) explains the interaction of Chapter 1A with new Chapter 4 (Disposals of assets through partnerships). If both apply then Chapter 1A will not apply if the charge under Chapter 4 is greater.

61. Paragraph 28(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

62. Paragraph 29(1) inserts new Chapter 4 into CTA 2010. The Chapter introduces new section 779A, which covers disposal of assets by or through partnerships.

63. New section 779A(1) provides that the Chapter applies if both Condition A and Condition B are met.

64. New section 779A(2) contains Condition A which is that there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (2)(a) to (d) are met.

65. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset.

66. New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

67. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

68. New subsection (2)(d) states that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

69. New subsection (3) defines disposal of an asset as including anything that is a disposal for the purposes of TCGA1992. This includes a part disposal.

70. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

71. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

72. New subsection (6) is intended to put beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

73. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

74. New subsection (8) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to corporation tax on income would have applied to the "relevant amount" received by the transferee.

75. New subsections (9) to (11) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

76. New subsection (12) provides definitions. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

77. New section 779B(1) sets out the treatment where new section 779A applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

78. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

79. New subsection (3) explains the interaction of Chapter 4 with new Chapter 1A (disposals of income streams through partnerships). If both apply then Chapter 4 will not apply if the charge under Chapter 1A is the same or greater.

80. Paragraph 29(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

BACKGROUND NOTE

81. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

82. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

83. This element of the partnerships review measure is discussed in the consultation document under the heading: *Partnership members with differing tax attributes.*

SECTION 75: TRANSFER PRICING: RESTRICTION ON CLAIMS FOR COMPENSATION ADJUSTMENTS

SUMMARY

1. This section introduces amendments to the rules in Chapter 4 of Part 4 of Taxation (International and Other Provisions) Act 2010 limiting the circumstances in which a claim for a compensating adjustment by a disadvantaged person may be made. It also clarifies the tax treatment of interest that has been subject to a transfer pricing adjustment.

DETAILS OF THE SECTION

2. Subsection (3) of the new section inserts new section 174A. This section limits the effect of section 174 so that a claim for a compensating adjustment may not be made by a person (the disadvantaged person) that is within the charge to income tax to the extent that the person that is subject to the transfer pricing adjustment (the advantaged person) is a company.

3. Subsection (4) of the section inserts new section 187A and sets out the tax treatment of interest where new section 174A limits the ability of the disadvantaged person to make a compensating adjustment claim. Where the specified conditions are met, new section 187A treats the non-arm's length interest that is subject to the transfer pricing adjustment as a qualifying distribution.

4. Subsections (5) and (6) state that the amendments will affect amounts arising on or after 25 October 2013 but that they will not apply to interest that is, in accordance with generally accepted accounting practice, referable to a period before that date.

BACKGROUND NOTE

5. The intention to introduce this legislation was announced by the Exchequer Secretary to the Treasury in a Written Ministerial Statement on 25 October 2013. This section and an HMRC technical note were published on the same day. The amendments set take effect from that day.

SECTION 76: RATES OF ALCOHOLIC LIQUOR DUTIES

SUMMARY

1. This section provides for a reduction in the rates of excise duty on general beer duty beer. It also provides for increases in the rates of excise duty charged on wine and made-wine not exceeding 22 per cent and sparkling cider of a strength exceeding 5.5 per cent and high strength beer duty. These changes will have effect on and after 24 March 2014.

DETAILS OF THE SECTION

2. Subsection (2)(a) substitutes a new rate of excise duty for lower strength beer in section 36(1AA)(za) of the Alcoholic Liquor Duties Act 1979 (ALDA) (this is beer of a strength exceeding 1.2 per cent but not exceeding 2.8 per cent). The previous rate of £9.17 is replaced by £8.62.

3. Subsection (2)(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 per cent and is not small brewery beer). The previous rate of £19.12 is replaced by £18.74.

4. Subsection (3) substitutes a new rate of excise duty for high strength beer in section 37(4) of ALDA (this is beer of a strength which exceeds 7.5 per cent). The previous rate of £5.09 is replaced by £5.29.

5. Subsection (4) 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 £258.23 is replaced by £264.61.

6. Subsection (5) substitutes new rates of excise duty for wine and made-wine in Part 1 of the table in Schedule 1 to ALDA. The new rates are as follows:

- Wine or made-wine of a strength not exceeding 4 per cent: £84.21.
- Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent: £115.80.
- Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling: £273.31.
- Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent: £264.61.
- Sparkling wine or sparkling made-wine of a strength of at least 8.5 per cent or more, but not exceeding 15 per cent: £350.07.
- Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent: £364.37.

BACKGROUND NOTE

7. Budget 2014 announced a reduction in the rates of excise duty on beer by 6 per cent for lower strength beer and 2 per cent for the standard rate of beer duty. The duty rate for high strength beer duty will increase by 3.9 per cent, which will result in the total duty rate for high strength beer being reduced by 0.75 per cent. The rates of duty on spirits and other drinks of a strength exceeding 22 per cent, still cider and perry and sparkling cider and perry of a strength of 5.5 per cent or less will be frozen in 2014-15; this does not require legislation. This section also increases the excise duty on wine and made-wine by the rate of inflation (based on the retail price index).

SECTION 77: RATES OF TOBACCO PRODUCTS DUTY

SUMMARY

1. This section 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 6pm on 19 March 2014.

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 changes as follows:

i. Cigarettes – the ad valorem element remains unchanged at 16.5 per cent; the specific duty is increased from £176.22 to £184.10 per 1000 cigarettes.
ii. Cigars – increased from £219.82 to £229.65 per kilogram.
iii. Hand-rolling tobacco – increased from £172.74 to £180.46 per kilogram; and
iv. other smoking tobacco and chewing tobacco – increased from £96.64 to £100.96 per kilogram.

3. Subsection (2) provides for the new table of duty rates to have effect from 6pm on 19 March 2014.

BACKGROUND NOTE

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. This section increases the excise duty on all tobacco products by 2 per cent above the rate of inflation (Retail Price Index). The Government will continue to raise all tobacco duties rates by 2 per cent above inflation each year between 2015-16 and 2019-20 inclusive.

6. The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 24p, a pack of 5 small cigars by 8p, a 25 gram pack of hand-rolling tobacco by 23p; and a 25 gram pack of pipe tobacco by 13p.

SECTION 78: AIR PASSENGER DUTY: RATES OF DUTY FROM 1 APRIL 2014

SUMMARY

1. This section 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 rates of APD to Band A destinations are unchanged. Reduced rates to Bands B and C destinations will rise by £2 and standard rates by £4. The reduced rate to Band D destinations will rise by £3 and standard rate by £6. These changes to the rates of APD come into effect in relation to the carriage of passengers beginning on or after 1 April 2014.

DETAILS OF THE SECTION

2. Subsection 2 amends the APD rates to Band B destinations.

3. Subsection 3 amends the APD rates to Band C destinations.

4. Subsection 4 amends the APD rates to Band D destinations.

BACKGROUND NOTE

5. In response to the airline industry's request for Government to give sufficient advance notice of changes in APD rates, Budget 2013 announced that APD rates for 2014-15 would increase in line with inflation (based on the retail price index (RPI)).

SECTION 79: AIR PASSENGER DUTY: RATES OF DUTY FROM 1 APRIL 2015

SUMMARY

1. This section provides for the number of destination bands to be reduced from four to two by merging bands B, C and D. The new Band B includes destinations that are over 2000 miles from London. The section also provides for the rates of duty for 2015/16 and provides that the higher rate is six times the reduced rate, rather than twice the standard rate. It also makes consequential amendments to the provisions that transferred the setting of long haul rates to the Northern Ireland Assembly and to the Air Passenger Duty (Setting of Rate) Act (Northern Ireland) 2012 (the "NIA Act"). The changes come into effect in relation to the carriage of passengers beginning on or after 1 April 2015.

DETAILS OF THE SECTION

2. Subsection 3 omits the subsections on APD rates to destinations in Bands B and C.

3. Subsection 4 sets the APD rates to destinations that are not in Band A.

4. Subsection 5 sets the APD higher rates and omits the sections on the APD higher rates to destinations in Bands B and C.

5. Subsections 7 to 9 make consequential amendments to the provisions that transferred the setting of long haul rates of APD in Northern Ireland to the Northern Ireland Assembly.

6. Subsection 10 omits Parts 2 and 3 of Schedule 5A which list the destinations in Bands B and C.

7. Subsection 11 makes consequential amendments to the NIA Act to remove references to the sections being omitted by the subsections above.

BACKGROUND NOTE

8. Budget 2014 announced that the number of Air Passenger Duty destination bands will be reduced from four to two. This will contribute to the UK's growth opportunities by cutting APD rates on flights to many emerging market destinations such as China, India and Brazil.

9. The higher rate of APD is applied to aircraft with an authorised take-off weight of 20 tonnes or more and equipped to seat fewer than 19 passengers. These aircraft provide enhanced levels of comfort and will not benefit from the rate cuts as part of the banding reform.

10. The consequential amendments to the NIA Act follow a request from the Northern Ireland Executive to align the NI legislation with the UK legislation. It has no effect on the APD devolved rates which continue to be £0.

SECTION 80: AIR PASSENGER DUTY: ADJUSTMENTS TO PART 3 OF SCHEDULE 5A TO FA 1994

SUMMARY

1. This section updates the list of territories in Part 3 of Schedule 5A to Finance Act 1994. It replaces the Ascension Island and Saint Helena with Saint Helena, Ascension and Tristan da Cunha (as one territory), and the Netherlands Antilles with Bonaire, Curaçao, Saba, Sint Maarten and Sint Eustatius (as separate territories). These changes come into effect at Royal Assent of Finance Act 2014.

DETAILS OF THE SECTION

2. Subsection 1 amends the list of territories in Part 3 of Schedule 5A to Finance Act 1994.

3. Subsection 2 provides for the changes to come into effect at Royal Assent of Finance Act 2014.

BACKGROUND NOTE

4. The list of territories included in the current Band C destination band is set out in Part 3 of Schedule 5A to Finance Act 1994. The changes made by this section do not affect the APD rate applicable to the destinations.

SECTION 81: VED RATES FOR LIGHT PASSENGER VEHICLES, LIGHT GOODS VEHICLES, MOTORCYCLES ETC.

SUMMARY

1. This section 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 2014.

DETAILS OF THE SECTION

2. Subsection (2) amends Schedule 1 to VERA to increase the general rate of duty by £5 to £230 for vehicles with an engine size of more than 1549cc and by £5 to £145 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 £225 for Light Goods Vehicles which are not lower-emission vans.

5. Subsection (5) amends paragraph 2(1) of Schedule 1 to VERA to increase the rate of duty by £1 to £38 for motorbicycles with an engine size of over 150cc but not more than 400cc; by £1 to £58 for motorbicycles with an engine size of over 400cc but not more than 600cc; and by £2 to £80 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. Cars and vans registered prior to 1 March 2001, and all motorcycles, are taxed by reference to the engine size.

8. The Government intends to increase VED rates in 2014-15 by no more than inflation for cars, motorcycles and the main rates for vans.

SECTION 82: VED RATES: RIGID GOODS VEHICLE WITH TRAILERS

SUMMARY

1. This section 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 2014.

DETAILS OF THE SECTION

2. Subsection (1) introduces tables which set rates of VED for rigid goods vehicles that draw trailers when such trailers may weigh 4,000kg or more and the vehicle 12,000kg or more. This includes a rate which is applicable where a vehicle does not fall within the tables introduced by the subsection.

3. Rates for these vehicles are to be determined by reference to the following new factors: the presence of road-friendly suspension on the vehicle; how many axles the vehicle has; the vehicle's HGV road user levy banding; the trailer's plated gross weight; and the total of that weight and the vehicle's revenue weight.

4. Subsection (2) makes a consequential amendment to paragraph 2(2) of Schedule 1 of the HGV Road User Levy Act 2013 to refer to the new definition of relevant rigid goods vehicle which is being introduced by subsection 2.

BACKGROUND NOTE

5. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and in the case of rigid goods vehicles that draw trailers only those drawing trailers weighing 4,000kg or more. It is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

SECTION 83: VED RATES: VEHICLES WITH EXCEPTIONAL LOADS, RIGID GOODS VEHICLES AND TRACTIVE UNITS

SUMMARY

1. This section 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 2014.

DETAILS OF THE SECTION

2. Subsection (2) reduces the rate of VED for a vehicle used to carry or draw a trailer carrying an exceptional load.

3. Subsections (3) and (4) maintain the rates of VED for rigid goods vehicles weighing less than 12,000kg and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

4. Subsections (6) and (7) maintain the rates of VED for tractive units to which semi-trailers may be attached that weigh less than 12,000kg, and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

5. Subsection (8) reduces the rate of VED for tractive units to which semi-trailers may be attached when these are used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin.

6. Subsection (9) removes the rates of VED for certain vehicles without road friendly suspension which were introduced to Schedule 1 of VERA through Section 22 of Finance Act 2011.

BACKGROUND NOTE

7. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

SECTION 84: VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2014

SECTION 85: VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2015

SUMMARY

1. Section 1 of the Vehicle Excise and Registration Act 1994 (VERA) provides for the charging of Vehicle Excise Duty (VED) in respect of mechanically propelled vehicles and Schedule 1 of VERA sets out the rates of duty. Paragraph 1A of Schedule 2 of VERA provides a VED exemption in respect of vehicles constructed before 1 January 1973.

2. Section 84 provides for an extension to the scope of the exemption to include vehicles constructed before 1 January 1974 and will come into force on 1 April 2014. Section 85 provides for further extension to the scope of the exemption to include vehicles constructed before 1 January 1975 and will come into force on 1 April 2015. Both sections amend Paragraph 1A of Schedule 2 of VERA.

DETAILS OF SECTION 84

3. Subsection (1) of section 84 extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1974.

4. Subsection (2) of section 84 provides for the extension of the exemption to come into force on 1 April 2014.

5. Subsection (3) of section 84 provides a transitional provision so that a nil licence does not need to be in force on 1 April 2014 for a vehicle constructed before 1 January 1974 if there is a vehicle licence already in force in respect of that vehicle. However, the vehicle licence will still need to be displayed on the vehicle. When that existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

DETAILS OF SECTION 85

6. Subsection (1) of section 85 extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1975.

7. Subsection (2) of section 85 provides for the extension of the exemption to come into force on 1 April 2015. It also provides a transitional provision so that a nil licence does not need to be in force on 1 April 2015 in respect of a vehicle constructed before 1 January 1975 if there is a vehicle licence already in force in respect of that vehicle. When the existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

BACKGROUND NOTE

8. The Government considers classic vehicles to be an important part of the nation's historical heritage. The VED exemption is, therefore, designed to support classic vehicle industry within the UK.

9. Budget 2013 announced a measure to extend the scope of the VED exemption to classic vehicles by one additional year. From the 1 April 2014, vehicles constructed in 1973 will be added to the exemption for this category.

10. Budget 2014 announced the Government's intention to legislate in each year's Finance Bill to extend the old vehicle exemption by a further year so that vehicles which were constructed 40 years previously will be exempt from paying VED.

11. Budget 2014 announced that the extension to the exemption for vehicles constructed before 1 January 1975 would be included in Finance Act 2014. From the 1 April 2015, vehicles constructed in 1974 will be added to the scope of the exemption.

SECTION 86 SCHEDULE 18: ABOLITION OF REDUCED VED RATES FOR VEHICLES SATISFYING REDUCED POLLUTION REQUIREMENTS

SUMMARY

1. This section introduces Schedule 18 to set the dates from which the availability of reduced rates of Vehicle Excise Duty (VED) for reduced pollution buses and goods vehicles cease by amendment of the Vehicle Excise and Registration Act 1994 (VERA).

DETAILS OF THE SCHEDULE

2. Paragraphs 2 and 3 abolish the procedure for accrediting buses and goods vehicles as meeting reduced pollution requirements and, consequentially, delete all references to the procedure in VERA.

3. Paragraphs 4, 5 and 6 abolish the reduced rates of VED for reduced pollution buses, vehicles used for exceptional loads and haulage vehicles.

4. Paragraphs 7, 8, 9 and 10 abolish the reduced rates of VED for reduced pollution rigid goods vehicles and reduced pollution tractive units.

5. Paragraph 12 sets 1 April 2014 as the date from which reduced rates of VED cease to be available to goods vehicles that meet the reduced pollution requirements and which are inside the HGV Road User Levy.

6. Paragraphs 13 and 14 set 1 April 2016 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro I, Euro II and Euro III reduced pollution requirements.

7. Paragraphs 15, 16 and 17 set 1 January 2017 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro IV, Euro V and Euro VI reduced pollution requirements.

BACKGROUND NOTE

8. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

9. Goods vehicles and buses have qualified for reduced rates of VED when achieving reduced pollution requirements early, ahead of the mandatory adoption of those standards. Reduced rates first became available in 1999.

SECTION 87: SIX MONTH LICENCE: TRACTIVE UNITS

SUMMARY

1. This section makes a six month vehicle licence available to combined transport goods vehicles, even though their annual rate of Vehicle Excise Duty (VED) will be below the £50 threshold that otherwise determines availability. This change is by amendment of the Vehicle Excise and Registration Act 1994 (VERA) with effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE SECTION

2. Subsection (1) maintains the availability of a six month vehicle licence where the applicable annual rate of VED exceeds £50, and introduces a new circumstance where a six month licence is available.

3. The new circumstance is if the vehicle is one that is used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin. Such a vehicle does not have to have an annual rate of VED in excess of £50 to qualify for a six month vehicle licence.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

SECTION 88: VEHICLES SUBJECT TO HGV ROAD USER LEVY: AMOUNT OF 6 MONTH LICENCE

SUMMARY

1. This section provides for the rate of vehicle excise duty (VED) payable for a six month vehicle licence for a vehicle subject to HGV road user levy 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 2014.

DETAILS OF THE SECTION

2. Subsections (2) and (3) introduce subsection (2A) to section 4 of VERA to set the six month rate of VED at fifty per cent of the applicable annual rate where the vehicle licence is being taken out in respect of a vehicle that is subject to HGV road user levy.

BACKGROUND NOTE

3. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and in the case of rigid goods vehicles that draw trailers only those drawing trailers weighing 4,000kg or more. It is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

SECTION 89: PAYMENT OF VEHICLE EXCISE DUTY BY DIRECT DEBIT

SUMMARY

1. This section allows vehicle excise duty (VED) to be paid by direct debit instalments with effect from 1 October 2014 and sets out what is the consequence of defaulting on payment.

DETAILS OF THE SECTION

2. Subsection (2) provides for a new higher rate of VED where a 12-month vehicle licence is taken out and paid for by direct debit in one more than one instalment. Where a 12-month vehicle licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

3. The rate of VED that will apply to six-month vehicle licences paid for by means other than direct debit is 55 per cent of the annual rate of duty applicable to that vehicle. Where a six-month licence is paid for by direct debit, the rate is 52.5 per cent of the applicable annual rate for that vehicle.

4. Subsections (3) and (4) provide for a new higher rate of VED when a trade licence is taken out for a calendar year and paid by more than one instalment by direct debit. Where a 12-month trade licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

5. Where a six-month trade licence is taken out the rate of VED is 52.5 per cent of the applicable annual rate, where payment is by direct debit.

6. Subsection (6) provides for payment of VED to be made by instalments. In addition, it allows for the liability of the instalments to cease following a notification that the vehicle has been stolen, destroyed, a nil licence was obtained, a licence taken out at a reduced rate, notified off road, sold or disposed or exported.

7. Subsection (6) introduces a new provision where a person defaults on an agreement to pay monthly. Where a person defaults the Secretary of State will send a notice requesting payment of the outstanding value of VED. Failure to comply with this notice will result in a further notice being sent advising the person that the licence is void from a time specified in the notice.

8. Subsections (7) and (8) amend section 35A and section 36 of the Vehicle Excise and Registration Act 1994 so that those sections can also apply to failed payments by direct debit.

9. Subsection (9) provides for the amendments made by this section to come into force on 1 October 2014

BACKGROUND NOTE

10. These provisions enable the Driver and Vehicle Licensing Agency (DVLA) to collect VED via direct debit monthly should motorists wish to pay by direct debit. Currently VED can be paid by cash, cheque and credit or debit cards but none of these payment methods allow the cost of VED to be spread.

11. Motorists will be able to pay VED via direct debit in an annual, one-off payment or 12 equal monthly payments. A six month vehicle licence can also be paid for by direct debit. Paying for VED by direct debit does not alter the fact that a new licence may only be taken out provided the customer has a valid MOT in place.

12. At present, paying for a six-month vehicle licence costs 55 per cent of the applicable annual rate for that vehicle. This will reduce to 52.5 per cent if the payment is made by direct debit. Where a 12-month licence is paid by monthly instalments, the cost of the vehicle licence will be 105 per cent of the applicable annual rate for that vehicle.

SECTION 90: DEFINITION OF "REVENUE WEIGHT"

SUMMARY

1. This section amends the definition of vehicle weight in the Vehicle Excise and Registration Act 1994 (VERA), consequent to revised secondary legislation specifying that goods vehicle operating weights are up to, but do not include the exact weight displayed on the plate affixed to a vehicle or a trailer.

DETAILS OF THE SECTION

2. Subsection (2) provides that the confirmed maximum weight of a vehicle, for the purpose of defining the vehicle's revenue weight, is determined if it has a plated gross weight or a plated train weight and meets the conditions introduced to VERA by the subsection.

3. Subsection (3) provides that a reference in VERA to the plated gross weight of a goods vehicle or trailer is a reference to the maximum gross weight which may not be equalled or exceeded.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. To ensure that the cost of the Levy can be offset to the greatest extent, the Road Vehicles (Construction and Use) Regulations 1986 are being amended. This will mean that a goods vehicle with a plated weight will be able to be loaded up to but not including that weight. For example, a vehicle plated at 21,000kg will be able to be loaded to around 20,999.99kg. This section aligns VERA with that change.

5. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

SECTION 91 SCHEDULE 19: VEHICLE EXCISE AND REGISTRATION: OTHER PROVISIONS

SUMMARY

1. This section introduces Schedule 15 which makes amendments to the Vehicle Excise and Registration Act 1994 (VERA) that are required as a consequence of the Driver and Vehicle Licensing Agency's intention to no longer issue paper based vehicle licences, trade licences or nil licences. These amendments to VERA will be followed by changes to secondary legislation which will remove the requirement for vehicle licences, trade licences and nil licences to be displayed in the vehicles to which they relate.

DETAILS OF THE SCHEDULE

2. Paragraph (2) amends section 7 of VERA to remove a regulation-making power which may be used to provide for the return of a vehicle licence when the vehicle licence has been damaged, become illegible or is lost or stolen. As a consequence of no longer issuing a paper based vehicle licence, it removes a requirement for a weight to be shown on a vehicle licence in respect of goods vehicles where a licence is issued at a rate of duty applicable to a lower weight than the vehicle's actual weight.

3. Paragraphs (3), (4), (8) and (10) amend sections 7A, 10, 29 and 31A respectively of VERA so that it will no longer be possible for a vehicle licence to be transferred when there is a change of registered keeper. As a consequence of this, where there is a new registered keeper he/she will be obliged to take out a new vehicle licence when the vehicle to which the vehicle licence relates is transferred to him/her.

4. It is a necessary feature of paperless licences for the vehicle licence to cease to be in force when it is transferred from one registered keeper to another. If it were the case that the vehicle licence did not cease to be in force when transferred then, in the absence of a paper licence confirming the licensed status of the vehicle, the new registered keeper could unknowingly be keeping an unlicensed vehicle.

5. Paragraph (5) repeals section 14(4). This section provided for the issue of a new trade licence where an existing licence has been lost, damaged, etc. Paragraph (5) further amends section 14 so that a holder of a trade licence may request that the Secretary of State may cancel their trade licence at any time.

6. Paragraph (6) amends section 19 so that a person is entitled to a rebate of the duty paid on a licence they have taken out when they notify the Secretary of State their vehicle was stolen, destroyed, a nil licence was obtained, a licence taken out at a reduced rate, notified off road, sold or disposed of, or exported. The amount of the rebate will be calculated by dividing by twelve the amount of duty chargeable on the licence at the time it was taken out, and multiplying that amount by the number of complete months that are unexpired on the licence from the point when a valid notification is received by the Secretary of State. Section 19 is also amended so that where a rebate condition is fulfilled the licence ceases to be in force. Sections 19(8) is amended so where a request is made to cancel a trade

licence, the holder of the trade licence is entitled to a rebate of the duty paid on the licence, when the request is received by the Secretary of State.

7. Paragraphs (9), (11) and (12) amend the sections 31, 31B and 31C respectively of VERA as a consequence of the amendments to section 19.

8. Paragraph (13) repeals section 33 of VERA. As there are no longer paper licences it will no longer be necessary to have an offence of failing to display a vehicle licence, trade licence or nil licence on a vehicle which is used or kept on a public road.

9. As a consequence of repealing section 33, section 33A is repealed (paragraph (14)) so that the now-unnecessary 14 day period of grace for not exhibiting a newly issued vehicle licence, trade licence or nil licence is removed.

10. Paragraph (15) repeals section 35 of VERA. This section provided for an offence where a person knowingly failed to comply with section 10(3) of VERA. However, section 10(3) was repealed by Finance Act 2008. Therefore, this section is no longer required.

11. Paragraph (16) amends section 35A of VERA specifying what happens where payment for VED fails and a notice is served which voids the licence. The notice will no longer require the vehicle licence or trade licences to be returned and instead the notice will only require payment of a sum in respect of the amount of VED which should have been paid. The period of time used to calculate the sum due has been amended.

12. Paragraph (17) amends section 36 of VERA setting out how the amount which may be payable where a court order is made under this section is calculated. The period of time used to calculate the sum due in relation to vehicle licences has been amended.

13. Paragraph (18) amends section 44 to remove the offence of forging, fraudulently altering, using, or lending a vehicle licence, trade licence or nil licence or fraudulently allowing a vehicle licence, trade licence or nil licence to be used by another person.

14. Paragraph (22) provides that the amendments made by the Schedule come into force on 1 October 2014.

BACKGROUND NOTE

15. Currently, a paper based vehicle licence, trade licence or a nil licence is issued by the Driver and Vehicle Licensing Agency (DVLA) or the Post Office on behalf of the DVLA, following a valid application to license a vehicle. Historically, this has provided a visual aid for demonstrating the payment of VED and helped aid the identification of unlicensed vehicles.

16. The DVLA and police now rely on DVLA's electronic vehicle register and use tools like Automatic Number Plate Recognition to ensure that vehicles are correctly licensed and that VED has been paid. Largely due to electronic enforcement, motorists are better informed of their responsibility to ensure that their vehicles are continuously licensed. Enforcement from the record has helped to improve compliance with non-payment of VED

running at a historical low. Current estimate of VED evasion is 0.6 per cent which implies VED is a tax with which people are very compliant.

17. As the benefits of a paper vehicle licence, trade licences and nil licence have significantly diminished over time, the Government now believes that the requirement to display a paper licence is redundant.

18. Various provisions in VERA were drafted on the basis of there being paper based vehicle licences, trade licences and nil licences so now need to be amended.

19. Currently, a person must make a separate application for a rebate after having notified DVLA that a vehicle was stolen, destroyed, a nil licence was obtained, another licence has been taken out at a reduced rate, notified off road, sold or disposed, or exported. The Government now believes that there is no longer a need for a separate qualifying application for a rebate now that there will be no requirement to return the paper tax disc. The requirement is that registered keepers, who have satisfactorily notified the Secretary of State (DVLA) of the relevant events described above, will be entitled to a rebate of their VED.

20. The requirement to display vehicle licences and nil licences is contained in the Road Vehicles (Registration and Licensing) Regulations 2002. Amendments to the Road Vehicles (Registration and Licensing) Regulations 2002 are intended to be made which will remove the requirement to display vehicle licences, trade licences and nil licences.

SECTION 92: HGV ROAD USER LEVY: RATES TABLES

SUMMARY

1. This section revises the rates tables in schedule 1 of the HGV Road User Levy Act 2013 to also include rates of Levy which are applicable to goods vehicles that are in weight categories which are in excess of permitted maximum operating weights.

DETAILS OF THE SECTION

2. Subsection (2) revises paragraph 4 of Schedule 1 to the HGV Road User Levy Act 2013, so that heavy goods vehicles with a revenue weight in excess of 44,000kg are subject to Levy Band G, but for rigid goods vehicles that meet this revenue weight condition when drawing trailers exceeding 4,000kg plated weight, which are subject to Levy Band E(T).

3. Subsection (3) introduces revised tables to the HGV Road User Levy Act 2013. These will allow the Levy to be collected from certain categories of goods vehicle weighing 12,000kg or more when these vehicles operate in excess of permitted maximum operating weights.

4. The applicable categories of goods vehicle are: 2 axle rigid and 3 axle rigid goods vehicles, and the same types of vehicle that draw trailers when such trailers weigh 4,000kg or more; as well as tractive units that draw semi-trailers consisting with any number of axles, or with two or more axles.

BACKGROUND NOTE

5. HGV Road User Levy rates will begin to take effect from 1 April 2014. The Levy is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

6. Operators of UK licensed tractive units are able to gain operational flexibility by licensing these vehicles to draw semi-trailers with any number of axles or two or more axles or three or more axles.

7. Vehicles that are in weight categories which are in excess of permitted maximum operating weights will remain liable to tax.

8. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates.

SECTION 93: HGV ROAD USER LEVY: DISCLOSURE OF INFORMATION BY HMRC

SUMMARY

1. This section provides for an information sharing gateway to enable HM Revenue and Customs (HMRC) to share information for the purposes of the Secretary of States' functions under the HGV Road User Levy Act 2013 (HGVA).

DETAILS OF THE SECTION

2. Subsection 1 inserts a new section 14A into the HGVA .

3. New subsection 14A(1) provides that HMRC information can be disclosed for the purposes of the HGVA.

4. New subsection 14A(2) provides that information disclosed under the gateway provided for in subsection (1) cannot be further disclosed without the consent of the Commissioners unless the disclosure is to someone to whom the information could have been disclosed under the new gateway.

5. New subsection 14A(3) provides that the criminal offence in section 19 of the Commissioners for Revenue and Customs Act 2005 (CRCA) will apply where identifying information has been disclosed in contravention of subsection (2).

6. Subsection 2 removes a previous gateway for disclosure by HMRC for the purposes of the HGVA which was contained in secondary legislation.

BACKGROUND NOTE

7. The Department for Transport (DfT) and its agency the Vehicle and Operator Services Agency (VOSA) require information that HMRC holds about heavy goods vehicles. This information is needed to implement a levy on UK and foreign hauliers, although UK hauliers will have their levy offset by a reduction in Vehicle Excise Duty. The information needed is held on the Freight Targeting System (FTS).

8. HMRC agreed to provide the information to DfT and VOSA by creating a legal gateway in a statutory instrument utilising powers contained in the HGVA. Those powers did not however enable the creation of a criminal offence for wrongful disclosure of identifying information so this was not provided for. Therefore, this section has been included in Finance Act 2014 amending the HGVA. This section ensures that taxpayer confidentiality continues to be safeguarded with the addition of a criminal sanction, as detailed in section 19 CRCA.

SECTION 94: AGGREGATES LEVY: REMOVAL OF CERTAIN EXEMPTIONS

SUMMARY

1. This section suspends the exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are subject to the European Commission's State aid investigation, from 1 April 2014.

DETAILS OF THE SECTION

2. Subsection (3) inserts a new sub-paragraph into section 17(3) of the Finance Act 2001 ('the Act') to provide that aggregate is exempt if it is made up entirely of the by-products from either an industrial combustion process or the smelting or refining of metal. It also repeals the exemptions where aggregate consists wholly of:

- By-products (excluding the overburden) from the extraction or other separation from a quantity of aggregate of any china clay or ball clay; and
- the spoil from a process by which coal, lignite, slate, shale or any of the substances listed in section 18(3) of the Act has been separated from other rock after having been extracted from that rock.

3. Subsection (4) amends section 17(4) of the Act to omit the exemption for coal, lignite, slate, shale, clay and to make a consequential amendment relating to the removal of the exemption for the by-products from an industrial combustion process and the smelting or refining of metal.

4. Subsection (6) amends section 18(1) of the Act to ensure substances listed in section 18(3) are brought into the definition of aggregate in Part 2 of the Act.

5. Subsection (7) adds two new exempt processes to section 18(2) of the Act relating to the production of clay or shale ceramic construction products and of gypsum or anhydrite plaster, plasterboard or related products.

6. Subsections (9) and (10) amend the definition of commercial exploitation in section 19 of the Act. Subsection (10) adds two new sections 19(1A) and (1B). The first defines what is meant by commercial exploitation and the second applies this definition to certain specified materials and processes being brought into tax by this section. Subsection (9) disapplies the existing definition of commercial exploitation set out in section 19 of the Act to these materials.

7. Subsection (11) amends section 22 of the Act to ensure that anyone to whom the materials specified in section 19(1B) are or are to be supplied becomes responsible for their commercial exploitation where that person intended that they be used for construction purposes.

8. Subsection (12) sets out the commencement provisions for the section.

BACKGROUND NOTE

9. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

10. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

11. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

12. Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. All those that registered an interest were sent questions with a deadline of 15 November 2013 for responses. Officials from HM Treasury and HM Revenue and Customs also held a number of meetings with interested businesses, their professional advisers and industry representative bodies. Legislation prepared to give effect to the suspension was then published in draft, for consultation, on 18 December 2013. The deadline for responses was 12 February 2014. This section takes account of the views received during the course of both exercises.

SECTION 95: AGGREGATES LEVY: POWER TO RESTORE EXEMPTIONS

SUMMARY

1. This section provides for secondary legislation to be introduced to enable the Treasury to restore certain exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are being suspended from 1 April 2014 under a separate section in Finance Act 2014. It provides that this restoration can be introduced with effect from a date earlier than the secondary legislation is made.

DETAILS OF THE SECTION

2. Subsection (1) provides that the Treasury may introduce an Order to restore any of the exemptions removed by the section in Finance Act 2014 dealing with the removal of certain aggregates levy exemptions.

3. Subsection (2) provides that any restoration of an exemption introduced under the Order may apply in relation to commercial exploitation of aggregates taking place on a date earlier than the Order is made. It also provides that the Order may include transitional provisions as the Treasury deem fit.

4. Subsection (4) provides that any Order made under this section will be subject to the negative procedure of the House of Commons.

BACKGROUND NOTE

5. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

6. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

7. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

8. This legislation provides for secondary legislation to restore any suspended exemption and for this restoration to take effect earlier than the date the secondary legislation is made. This will mean that tax paid as a result of the suspension of an exemption can be repaid to the person who accounted for it following the conclusion of the Commission's investigation, should the terms of the Commission's final decision allow. HM Revenue and Customs would need to be satisfied that the taxpayer would not be unjustly enriched as a result of receiving the repayment. Businesses may therefore decide to keep records to demonstrate that they would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to their customers to cover all or part of the cost of the levy in the event that the taxpayer is repaid the tax.

SECTION 96: CLIMATE CHANGE LEVY: MAIN RATES FOR 2015-16

SUMMARY

1. This section amends Schedule 6 to the Finance Act ('FA') 2000 to increase the main rates of climate change levy ('CCL') broadly in line with inflation (based on the Retail Prices Index), with effect from 1 April 2015.

DETAILS OF THE SECTION

2. Subsections (1) and (2) replace the table of rates in paragraph 42(1) of Schedule 6 and provide the commencement date.

BACKGROUND NOTE

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 the main rates of CCL were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the main rates have increased the changes have been legislated for in the previous year's FA.

SECTION 97: CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES FOR 2014-15 AND 2015-16

SUMMARY

1. This section amends the carbon price support (CPS) rates of climate change levy (CCL) for coal and other solid fossil fuels with effect from 1 April 2014 and 1 April 2015.

DETAILS OF THE SECTION

2. Subsection (1) provides for Paragraph 42A of Schedule 6 to Finance Act 2000 which sets out the CPS rates of CCL to be amended.

3. Subsection (2) provides a revised CPS rate for coal, lignite, coke and semi-coke of coal and lignite, and petroleum coke and subsection (3) provides for this amendment to be effective from 1 April 2014.

4. Subsection (4) provides a revised CPS rate for the same types of coal and other solid fossil fuels referred to in paragraph 3 above and subsection (5) provides for this amendment to be effective from 1 April 2015.

BACKGROUND NOTE

5. The carbon price floor (CPF) came into effect in Great Britain in April 2013. It is designed to provide an incentive to invest in low carbon generation, 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.

6. CPF is a tax on fossil fuels (gas, liquefied petroleum gas and solid fuels), used to generate electricity. It is made up of the price of carbon from the EU Emissions Trading System (EU ETS) and the headline CPS rate which is the UK-only additional tax per tonne of carbon emitted in the power sector. The headline CPS rate is used to set the individual CPS commodity rates - for fuels covered by CCL these are known as the CPS rates of CCL and are legislated for in the Finance Act.

7. The CPS rates of CCL are legislated two years in advance based on a rate per tonne of carbon set for that year by the Government. An error in published data resulted in the CPS rate for coal and other solid fossil fuels being set too high for 2014-15 and 2015-16 when the rates were legislated in Finance Act 2013. Data on the carbon content of coal used in UK power stations has been significantly improved and consequently the rates have been corrected, bringing them into line with the rate per tonne of carbon, and ensuring that they are proportionate with the CPS rates on other taxable commodities.

SECTION 98: CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES FROM 1 APRIL 2016

SUMMARY

1. This section amends Schedule 6 to the Finance Act 2000 ('Schedule 6') to cap the carbon price support (CPS) rates of climate change levy (CCL) with effect from 1 April 2016.

DETAILS OF THE SECTION

2. Subsection (1) replaces the table of rates in paragraph 42A (3) of Schedule 6.

3. Subsection (2) provides for the change to have effect for supplies treated as taking place on or after 1 April 2016.

BACKGROUND NOTE

4. The carbon price floor (CPF) came into effect in Great Britain in April 2013. It is designed to provide an incentive to invest in low carbon generation, 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.

5. CPF is a tax on fossil fuels (gas, liquefied petroleum gas and solid fuels), used to generate electricity. CPF is made up of the price of carbon from the EU Emissions Trading System (EU ETS) and the headline CPS rate which is the UK-only additional tax per tonne of carbon emitted in the power sector. The headline CPS rate is used to set the individual CPS commodity rates - for fuels covered by CCL these are known as the CPS rates of CCL and are legislated for two years in advance in the Finance Act. These rates are based on a rate per tonne of carbon set for that year by the Government.

6. Since the CPF was introduced the EU ETS carbon prices have fallen, meaning the gap between UK energy prices and energy prices abroad has grown and would continue to do so if the original CPF trajectory was maintained. The introduction of a cap on the UK-only element of the CPF is intended to limit the disparity between UK and non-UK energy costs.

SECTION 99 AND SCHEDULE 20: CLIMATE CHANGE LEVY: EXEMPTIONS FOR METALLURGICAL AND MINERALOGICAL PROCESSES

SUMMARY

1. This section and Schedule amend Schedule 6 to the Finance Act 2000 ('Schedule 6') to introduce new exemptions from the main rates of climate change levy (CCL) for the energy used in mineralogical and metallurgical processes and remove certain existing reliefs from CCL which will be superseded by the new exemptions, all from 1 April 2014.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraph 2 inserts a new paragraph 12A into Schedule 6. New sub-paragraph 12A(1) exempts CCL taxable commodities used in mineralogical and metallurgical processes. New sub-paragraph 12A(2) defines a mineralogical process by reference to Article 2(4)(b) of Council Directive 2003/96/EC of 27 October 2003, which deals with the taxation of energy products. New sub-paragraphs 12A(3) and (4) define a metallurgical process as a process falling within Division 24 (excluding class 24.46), Group 25.5 and Class 25.61 of the NACE Codes Revision 2.

3. Paragraphs 3, 4, 5, 6, and 7 amend paragraphs 42(1) and 101(2)(a)(ii), and omits paragraphs 42(1ZA), 43A, 43B(1)(b)(i), 62(1)(ca) and (cb) and 101(2)(a)(iiia) of Schedule 6, to remove references to the partial relief from CCL for taxable commodities used in scrap metal recycling, since this is superseded by the new exemption for metallurgical processes. The paragraphs also make a number of consequential amendments.

4. Paragraph 8 makes consequential amendments to the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ('the general regulations') to remove various references to the lower rate for scrap metal recycling. Sub-paragraph (8) adds a reference to new paragraph 12A of Schedule 6 into regulation 34 of the general regulations requiring that those carrying out mineralogical and metallurgical processes submit certificates to their energy supplier. Sub-paragraph (12) amends the CCL relief formula in Schedule 1 to the general regulations to take account of the removal of the lower rate for scrap metal recycling and the addition of the new exemptions for mineralogical and metallurgical processes. Sub-paragraph (16) provides that that the changes to sub-paragraphs (8) and (12) are to be treated as having been made under the power given to the Commissioners for Her Majesty's Revenue and Customs under paragraph 22 of Schedule 6.

5. Paragraph 9 makes amendments to Schedule 1 to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (SI 2005/1715) to remove various metals and associated provisions from the CCL fuel use exemption as taxable commodities used to produce these metals will become exempt under the metallurgical exemption. It also provides that the amendments are to be treated as having been made by the Treasury under the power given to it by paragraph 18(2) of Schedule 6.

6. Paragraph 10 sets out the commencement provisions for part 1 of the Schedule.

Part 2

7. Paragraph 12 adds additional sub-paragraphs (5) and (6) to the new paragraph 12A (as inserted by paragraph 2 of this Schedule). Sub-paragraph (5) provides that the Treasury may amend the definition of "mineralogical process" in new paragraph 12A by regulations and sub-paragraph (6) provides that the Treasury may, in relation to the definition of "metallurgical process" in new paragraph12A, amend sub-paragraph (4) of that paragraph by regulations.

8. Paragraph 13 amends paragraph 13A(3) of Schedule 6 so that draft instruments made under paragraph 13A that have to be approved only by the House of Commons have to be laid before that House only, and not Parliament.

9. Paragraph 14 inserts new sub-paragraphs (3A) and (3B) into paragraph 146 of Schedule 6 to require that any regulations made under new paragraph 12A(5) and (6) that removes an exemption in paragraph 12A or narrows its scope are made under the draft affirmative procedure. It also makes amendments to paragraph 146(2) and (3) so that draft instruments that are to be approved only by the House of Commons have to be laid before that House only, and not Parliament.

BACKGROUND NOTE

10. The CCL was introduced on 1 April 2001. Its main rates tax electricity, natural gas, solid fuels and liquid petroleum gas when used as fuels by business and the public sector. The levy's purpose is to encourage energy efficiency.

11. The Government announced at Budget 2013 that it would exempt from the main rates of CCL the energy used in mineralogical and metallurgical processes, from 1 April 2014 and that it would seek views from industry after the Budget to inform the draft legislation. The new exemptions will ensure the UK's tax treatment of these highly energy intensive processes is in line with tax treatments elsewhere in the European Union (EU), thereby reducing any distortion of competition.

12. The exemptions will be defined by reference to the NACE code system, the EU system of classifying economic activity; the codes are widely used in data gathering and statistical reporting.

13. Certain existing reliefs from the CCL will become redundant as they will be covered by the exemptions. This includes the lower rate for taxable commodities used in metal recycling and taxable commodities used in certain fuel uses. As a result, these superseded reliefs will be removed at the same time the new exemptions for mineralogical and metallurgical processes come into force.

SECTION 100: RATES OF LANDFILL TAX

SUMMARY

1. This section amends section 42 of the Finance Act (FA) 1996 to increase the standard and lower rates of landfill tax in line with inflation (based on the Retail Prices Index (RPI)), rounded to the nearest 5 pence, for disposals of relevant waste made (or treated as made) at authorised landfill sites on or after 1 April 2015.

DETAILS OF THE SECTION

2. Subsections (2) and (3a) substitute "£80" with "£82.60" in section 42(1)(a) and (2) of FA 1996. Subsection (3b) substitutes "£2.50" with "£2.60" in section 42(2) of FA 1996.

3. Subsection (4) provides the commencement date for the change.

BACKGROUND NOTE

4. Landfill tax was introduced on 1 October 1996 to increase the cost of disposing of waste by landfill and thereby encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste. There is a lower rate of tax, which applies to less polluting qualifying wastes listed in a Treasury Order, and a standard rate which applies to all other taxable waste disposed of at authorised landfill sites.

5. In the June 2010 Budget, the government announced that the standard rate of landfill tax would rise by £8 per tonne on 1 April each year up to and including 2014. It 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.

6. Budget 2014 clarified that the floor of £80 per tonne in the standard rate should be interpreted in real terms and announced that the lower rate will, in future, also increase each year in line with inflation (based on the RPI).

7. Following industry engagement to address compliance, Budget 2014 announced that the government will introduce a loss on ignition testing regime on fines (residual waste from waste processing) from waste transfer stations by April 2015. Only fines below a 10 per cent threshold would be considered eligible for the lower rate. Full proposals will be set out in a consultation document later in 2014. Budget 2014 also announced that the government intends to provide further longer term certainty about the future level of landfill tax rates once the consultation process on testing regime has concluded.

SECTION 101 AND SCHEDULE 21: GOODS CARRIED AS STORES

SUMMARY

1. This section will update the legislation relating to ship and aircraft stores to provide flexibility to facilitate trade practices and increase controls on areas of revenue risk. This will enable HM Revenue & Customs (HMRC) and Border Force to work with the Industry to improve compliance and is in line with our wider commitment to bring customs and excise law up to date to protect customs and excise revenues

DETAILS OF THE SECTION

2. This section introduces Schedule 21 which contains provision about goods shipped or carried as stores on ships or aircraft.

DETAILS OF THE SCHEDULE

3. Paragraph 1(1) of the Schedule introduces the amendment to section 1 of the Customs and Excise Management Act 1979 (CEMA).

4. Paragraph 1(2) removes the reference to 'relevant journey' in section 1(4)(a)(i) of CEMA and replaces it with a 'journey made by the ship or aircraft'.

5. Paragraph 1(3) removes section 1(4A) of CEMA which defines "relevant journey" for the purposes of section 1(4).

6. Paragraph 2 substitutes subsection (1) to section 39 of CEMA with a new subsection to provide that surplus stores may remain on board a ship or aircraft without payment of duty or be entered for warehousing

7. Paragraph 3 introduces a new section 60A to CEMA, which provides a new power to make regulations about stores.

8. New subsection (1) of section 60A provides that the Commissioners may make regulations in relation to goods for use on a ship or aircraft stores.

9. New subsection (2) of section 60A provides for what can be included in the regulations.

10. New subsection (2)(a) provides that the regulations may specify the circumstances when goods can be shipped or carried as stores without payment of duty or on drawback.

11. New subsection (2)(b) provides that the regulations may include provision requiring authorisation to be obtained, in specified circumstances, for goods to be shipped or carried as stores without payment of duty.

12. New subsection (2)(c) provides that the regulations may include provision about obtaining such authorisation.

13. New subsection (2)(d) provides that the regulations may include provision about the circumstances when such authorisation can be withdrawn.

14. New subsection (2)(e) provides that the regulations may include for the supply, shipping or carriage of goods as stores without payment of duty to be subject to specified conditions or restrictions.

15. New subsection (2)(f) provides that the regulations may include provision about the procedures to be followed when supplying goods to be shipped or carried as stores without payment of duty.

16. New subsection 3 of section 60A provides that where the regulations provide for goods to be shipped or carried as stores without payment of duty they may also include provision requiring duty to be paid on such goods where they are consumed on a journey of a specified description or consumed in specified circumstances in port and provision about the persons by whom such duty is payable and the way in which, and the time at which, it is to be paid. It also provides for the regulations to make provision for goods, in specified circumstances, to be treated as having been consumed on a journey or in port.

17. New subsection 4 of section 60A provides that the regulations may make different provision for different cases and incidental, supplemental, consequential or transitional provisions or savings.

18. New subsection 5 of section 60A provides that 'specified' in the section means specified in the regulations or specified by the Commissioners under the regulations.

19. Paragraph 4 amends the heading to section 61 of CEMA, omits subsections (1) to (4) of that section (which are replaced by the regulation making powers in new section 60A) and makes some consequential amendments.

20. Paragraph 5 amends section 103 of the Finance (No. 2) Act 1987 by removing subsections (1), (2) and (4) to (7).

21. Paragraph 6 introduces a new section 60B to CEMA to provide for penalties when any provision made by or under the regulations, or any condition or restriction imposed under the regulations, are contravened and to provide that any goods in respect of which a person contravenes a provision of the regulations are liable to forfeiture.

22. New subsection 60B(1) provides that the new section 60B to CEMA applies if a person contravenes any provision made by or under the regulations made under section 60A or any condition or restriction imposed under the regulations.

23. New subsection 60B(2) provides that the contravention will attract a penalty under section 9 of the Finance' Act 1994

24. New subsection 60B(3) provides that any goods in respect of which a person fails to comply with a provision, or a condition or restriction, imposed by or the regulations are liable to forfeiture

25. New subsection 60B(4) provides that a person is not liable to a penalty under section 9 of the Finance Act 1994 if that person is liable to a penalty under Schedule 55 or 56 to the Finance Act 2009 .

26. Paragraph 7 amends Schedule 55 to the Finance Act 2009 by inserting a new item 20A in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make a return under regulations under new section 60A of CEMA.

27. Paragraph 8 amends Schedule 56 to the Finance Act 2009 by inserting a new item11GA in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make payments under regulations under new section 60A of CEMA on time.

28. Paragraph 9 amends paragraph 2 of Schedule 5 to the Finance Act 1994 to provide that any decision about granting or withdrawing authorisation for goods to be shipped or carried as stores without payment of duty is a decision which is subject to review and appeal.

29. Paragraph 10 contains commencement provisions and provides that the power to make regulations in the Schedule comes into force on Royal Assent and that the other amendments made by the Schedule come into force in accordance with provisions in an order made by the Commissioners for Her Majesty's Revenue and Customs.

30. Paragraph 11 contains commencement provisions and provides that the amendments to Schedules 55 and 56 to the Finance Act 2009 come into force when paragraphs 7 and 8 of the Schedule are brought into force by an order made by the Commissioners for Her Majesty's Revenue and Customs.

BACKGROUND NOTE

31. The measure will amend the law to clarify that surplus stores can remain on board a ship or aircraft without payment of duty and make provision for the introduction of procedures to account for duty retrospectively on stores consumed in port or on an intra-UK flight and impose penalties for failing to do so. It will also make provision to allow the Commissioners for Her Majesty's Revenue and Customs (HMRC) to make regulations for an authorisation procedure to control goods moving from warehouses to be shipped as stores, in order to address an area of revenue risk, and to specify the circumstances in which goods can be shipped or carried as stores without payment of duty. These circumstances will include the journeys on which stores can be shipped or carried without payment of duty. The measure also imposes a penalty for contravening any provision, or condition or restriction, imposed by or under the regulations.

SECTION 102: PENALTIES UNDER SECTION 26 OF FA 2003: EXTENSION TO EXCISE DUTY

SUMMARY

1. This section will introduce legislation to apply provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of any duty, obligation, requirement or condition imposed by section 78 of Customs and Excise Management Act 1979 (CEMA). The new penalty will then be introduced by amendment to the secondary legislation to describe as a relevant rule a failure to declare goods in excess of the allowance under section 78(1).

DETAILS OF THE SECTION

2. Subsection 1 defines dutiable excise goods as goods subject to excise duty whether or not that duty is charged or paid

3. Subsection 1(a) defines a relevant excise rule to mean any duty, obligation or requirement imposed under section 78 when it relates to dutiable excise goods that a person has obtained outside the United Kingdom where they are not entitled to be exempt from relief of the payment of duty.

4. Subsection 1(b) defines a relevant excise rule to mean any duty, obligation or requirement imposed under section 78 when it relates to dutiable excise goods that a person has obtained in the United Kingdom without payment of duty, where they are not entitled to be exempt from relief of the payment of duty.

5. Subsection 2 provides for the application of the penalty provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of a contravention of a rule under section 78 of CEMA.

BACKGROUND NOTE

6. This measure has been introduced to provide for a customs civil penalty, in cases where there is no allegation of dishonest conduct, when goods are wrongfully imported from a non-EU country.

7. HM Revenue & Customs (HMRC) will provide for the issue of a customs civil penalty to travellers entering the UK from outside the EU who have failed to declare goods in excess of their allowance when stopped before clearing customs controls. This penalty will be used in cases where we find there is no dishonest conduct, as an alternative to existing customs civil evasion penalties and existing criminal penalties, for use in the case of less serious contraventions, and to allow us more flexibility in our treatment of customers. As with all customs civil penalties there will be strict liability subject to reasonable excuse.

SECTION 103: VALUE ADDED TAX: SPECIAL SCHEMES

SUMMARY

1. This section introduces Schedule 18 which provides for the implementation of the optional special accounting schemes for persons making supplies of broadcasting, telecommunication or electronically supplied services (BTE) to non-business customers in the EU.

2. The Schedule implements the provisions for the schemes set out in Council Directive 2008/8/EC and a Transposition Note setting out how the Government will transpose into UK law the main elements of this Directive is annexed to these Explanatory Notes.

DETAILS OF THE SCHEDULE

Part 1

3. Paragraph 1 inserts the new Schedule 3BA into the VAT Act 1994, which contains the provisions establishing the special accounting scheme for persons established in the Member States (MS) supplying BTE services to non-business customers belonging in other MSs, to be known as the Union scheme.

4. New Schedule 3BA Part 1 gives an overview and explains the meaning of scheme services.

5. New Schedule 3BA Part 2 provides for who may register in the UK to use the Union scheme, how they may apply to register, the obligations to notify any changes to the registration, and when a registration may be cancelled.

6. New Schedule 3BA Part 3 sets out the responsibility of a person registered to use the Union Scheme in the UK to submit returns to the Commissioners for the VAT due in the consumers' MS and to pay the VAT due. It specifies when the return and payment are to be made and the way they are to be submitted. It also places an obligation upon the registered business to produce the relevant business records to the Commissioners in electronic format upon request.

7. New Schedule 3BA Part 4 places obligations upon persons registered for another MS's equivalent to the Union Scheme in respect of their UK supplies. It sets out that a person registered for such a scheme is not liable to register in the UK on the basis of the BTE supplies made to UK consumers. It permits the Commissioners to deregister a person who has registered in the UK for such supplies but wishes to use the non-UK scheme provided by another MS. It also imposes a record keeping requirement and sets out the rules for amendments, error corrections, late returns and charges to interest applying to declarations of UK VAT made in a non-UK scheme return.

8. New Schedule 3BA Part 5 sets out the rights of appeal of those persons registered to use the Union Scheme and those declaring UK VAT through a non-UK scheme return.

9. New Schedule 3BA Part 6 details the interpretive provisions.

Part 2

10. Paragraphs 3 to 7 amend the special scheme for supplies of electronic services detailed in the VAT Act 1994 Schedule 3B Part 2 to include supplies of telecommunications and broadcasting services from 1 January 2015. This special scheme will become known as the non-Union scheme and provides an accounting scheme for suppliers of BTE services not established within the EU.

11. Paragraph 8 inserts the new Part 3 of Schedule 3B which contains the provisions for scheme returns that are late or incomplete or need amendment.

12. Paragraphs 9 & 10 include interpretive and consequential amendments to Schedule 3B.

Part 3

13. Paragraphs 11 to 18 introduce amendments to the VAT Act 1994 in section 3A, section 76, section 77, section 80, section 84(6) and Paragraph 12 of Schedule 1A to include the special schemes.

14. Paragraph 19 amends the Table in paragraph 1 of Schedule 24 to the Finance Act 2007 and inserts new sub-paragraphs 4A-C to include the special scheme returns into the penalty regime for errors.

15. Paragraph 20 includes special scheme liabilities within the provision for suspension of penalties during an agreement for deferred payment, and in Schedule 53 to the Finance Act 2009 in relation to interest on amounts payable to HMRC.

16. Paragraphs 21 and 22 include the special scheme returns and payments into Schedules 10 and 11 to Finance (No 3) Act 2010 which prospectively amends Schedules 55 and 56 to Finance Act 2009 to provide for penalties for failure to make returns and payments.

Part 4

17. Paragraphs 23 to 25 make provision for commencement of the special schemes and for when persons may begin to register.

BACKGROUND NOTE

18. These schemes, known collectively as the Mini-One Stop Shop or MOSS, are being introduced as part of the final stage of the 2008 European agreement on changes to the VAT place of supply of services rules (known as the VAT Package) and were announced at Budget 2013. The supply of BTE services to non-business customers is currently taxable where the supplier is located (save for supplies of e-services made by those outside the EU to such customers in the EU). This will change on 1 January 2015 to where the customer belongs.

19. This rule change may increase administration costs of suppliers of BTE services as they are liable to register for VAT in every Member State where they have non-business customers. To mitigate such costs the MOSS IT system will be implemented across the EU from 1 January 2015. MOSS is formed of two parts: the Union Scheme for those that have an establishment in the EU; and the Non Union scheme for those that do not have such an establishment. This Schedule enacts those elements of EU law which are not directly applicable to set up the legal framework for the special schemes.

20. The Union Scheme gives EU BTE suppliers the option to register and to account to the Member State where they are established for the VAT on all their BTE supplies to customers in the other Member States on one MOSS VAT return. If businesses do not register for MOSS they must register in each Member State in which they supply a non-business customer with BTE services.

21. The Non Union Scheme allows suppliers of BTE services which are not established in the EU to register in one Member State of their choosing to account for the VAT on all their BTE supplies within the EU on one MOSS VAT return. The VAT on Electronic Services (VoES) scheme currently allows this treatment for non EU suppliers of electronic services; MOSS will extend this to broadcasting and telecommunication services. Those already registered for the VoES scheme, may transfer over to the Non-Union scheme and continue to get the benefit of this simplification measure.

22. The provisions relating to the correction of declarations made under either scheme seek to apply the rules that would be applicable if the schemes did not exist so that scheme users are subject to the same rights and responsibilities as those who choose not to use the schemes.

Transposition note

With effect from 1 Jan 2015 Council Directive 2008/8/EC Article 5 amends Directive 2006/112/EC (PVD) regarding the place of supply of telecommunications, broadcasting and electronically supplied services (BTE) to non-taxable persons and the optional special accounting scheme for suppliers based outside the Member States (the non-Union scheme) and inserts the special scheme for those based within the EU but not in the same member state as their customers (the Union scheme).

Reference should also be made to Council Regulation (EU) No 967/2012 amending Implementing Regulation (EU) No 282/2011, section 2 of Council Regulation (EU) No 904/2010 and Commission Implementing Regulation (EU) No 815/2012 which contain directly applicable provisions.

The changes to the VAT Act 1994 and subordinate legislation do not go beyond what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Unless otherwise specified the implementation is made by existing provision in or amendment to the VAT Act 1994.*

PVD Amended Article	Objective	Implementation*
58	Moves the place of supply to where the non-taxable person is established, has his permanent address or usually resides.	SI 2014/*** The Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014 and section 104 of the Finance Act 2014.
204(1) 3rd paragraph	Prevents the use of a tax representative by persons not established in the EU using the special scheme for supplies of BTE services.	Sch 3B (Electronic, Telecommunications and Broadcasting services: non-Union scheme) para 19.
358	Defines and amends the services covered by the non-Union scheme, the VAT return and the Member State of consumption (MSC).	Sch 3B para 3.

PVD Amended Article	Objective	Implementation*
358a	Defines a taxable person not established in the Community (NETP) and the Member State of identification (MSI) for the purposes of the non-Union scheme.	Sch 3B para 2.
359	Obliges Member States to allow a NETP making the BTE supplies to register for the special scheme.	Sch 3B para 4 (1).
360	Obliges the NETP to electronically inform the MSI when it starts or ceases making BTE supplies or otherwise ceases to be eligible for the non-Union scheme.	Sch 3B para 4(5) and para 7(3).
361	Defines the information the NETP must provide to the MSI on commencement of BTE supplies to non-taxable persons in the Community and obliges them to inform the MSI of any changes in that information.	Sch 3B para 4(3) HMRC also propose to make regulations regarding registration requests under Sch 3B para 4(5).
362	Obliges the MSI to allocate a unique identification number to the NETP.	Sch 3B para 6.
363	Obliges the MSI to remove the NETP from their VAT register where the NETP has ceased (or can be assumed to have ceased) making BTE supplies; where the conditions for the scheme are no longer met or where the NETP has persistently failed to comply with the special scheme rules.	Sch 3B para 8(1).

PVD Amended Article	Objective	Implementation*
364	Requires the NETP to electronically submit a declaration of BTE supplies (whether or not any have been made) to the MSI on a calendar quarter basis.	Sch 3B para 11 and see Article 4 of Commission Implementing Regulation (EU) No 815/2012.
365	Requires the VAT return to include the NETP's identification number, to identify value, VAT, rate of VAT applied per MSC.	See Article 4 of Commission Implementing Regulation (EU) No 815/2012.
366(1)	Permits VAT returns to be denominated in local currencies where the Euro has not been adopted and specifies the date upon which any currency conversion must take place.	Sch 3B para 12.
367	Requires the NETP to make payment of the VAT due with reference to the relevant return and by the deadline for the submission of the return, payment being made to the bank account specified by the MSI.	Sch 3B para 13.
368	Forbids deduction of input tax through the special scheme. Any refund of VAT incurred on expenses within the EU must be made through the refund system. Certain restrictions within the refund scheme are disapplied for NETPs using the special scheme.	Sch 3B para 10(6) & para 22.
369(1)	Requires the NETP to keep sufficient records of their BTE supplies for the MSC to verify the correctness of the return.	Sch 3B para 14.

PVD Amended Article	Objective	Implementation*
369a	Defines the MSI and the taxable persons eligible to use the Union Scheme, dependent upon where their business is established or, if there is no such establishment, from any fixed establishment located within the EU. If the taxable person has a choice they shall notify the MSI and be bound by that choice for two years.	Sch 3BA (Electronic, telecommunication and broadcasting services: Union scheme) para 4(1)(b) & (c).
369b	Requires Member States to permit a taxable person not established in the MSC to use the Union scheme for BTE supplies to non-taxable persons belonging in the EU.	Sch 3BA para 5 (1).
369c	Requires the taxable person to notify the MSI when BTE supplies to MSCs start, cease or the activity changes so as to be no longer eligible for the scheme and that such information be submitted electronically.	Sch 3BA para 6.
369d	Requires the scheme user to be registered in the MSI only and that the MSI may use their normal VAT register.	Sch 3BA para 3 & 5. HMRC also propose to make regulations regarding registration requests using the powers in Sch 3BA para 5(5).
369e	Requires the MSI to exclude the taxable person from the special scheme where BTE supplies are, or may assumed to be, no longer made, the taxable person is no longer eligible or the scheme conditions are persistently not complied with.	Sch 3BA para 7.

PVD Amended Article	Objective	Implementation*
369f	Requires the scheme user to electronically submit a VAT return on a calendar quarter basis to the MSI whether or not any BTE supplies have been made. The return must be submitted within 20 days of the quarter end.	Sch 3BA para 9; para 10(3)(a).
369g (1st paragraph)	The VAT return is required to show the identification number; the value, VAT and VAT rate per MSC.	Sch 3BA para 10(3)(b). See also Article 4 of Commission Implementing Regulation (EU) No 815/2012.
369g (2nd paragraph)	Where a taxable person has one or more fixed establishments outside the MSI from which BTE supplies are made, the VAT return must also show the information in the 1st paragraph for each MS in which there is an establishment, with reference to the local VAT number and broken down by MSC.	Sch 3BA para 10(3)(b) See also Article 4 of Commission Implementing Regulation (EU) No 815/2012.
369h	Where the MSI has not adopted the Euro the VAT return can be made out in the local currency. Any conversions required are to be made on the last day of the tax period using the rate published by the ECB.	Sch 3BA para 10(2).
369i	Requires the scheme user to make payment of the total VAT due, referring to the relevant VAT return, by the due date for the return and to a bank account specified by the MSI and in the currency specified where the Euro has not been adopted.	Sch3BA para 10(2) & para 11.

PVD Amended Article	Objective	Implementation*
369j (1st paragraph)	The scheme user may not deduct VAT incurred in making BTE supplies through the special scheme but may use the special refund scheme.	Sch 3BA para 8(3) and regulations to be made under section 39 of the VAT Act 1994 in reliance on paragraph 19 of Sch 3BA.
369j (2nd paragraph)	If the scheme user is registered in the MSC for other taxable activities he may use the VAT return to recover VAT incurred in making BTE supplies in that MSC.	Sections 24-26 of the VAT Act 1994.
369k	The scheme user must keep sufficient records of the BTE supplies made to allow the MSC to verify the figures declared on the VAT return. These records must be kept for a period of 10 years and, upon request, made available electronically to the MSI or MSC.	Sch 3BA para 12 and para 31.

SECTION 104: VAT: PLACE OF BELONGING

SUMMARY

1. This section ensures that bodies corporate or legal persons that are not in business are treated as belonging in the place where they are established rather than where they are legally constituted or anywhere else.

2. The section introduces an explicit reference to "permanent address" as the place of belonging for both persons in business and persons not in business in certain circumstances.

BACKGROUND NOTE

3. The Value Added Tax Act 1994 currently treats bodies corporate that are not in business as belonging in the country where they are legally constituted. This provides scope for the use of such entities in certain types of avoidance. The VAT Act 1994 is also inconsistent with the Principal VAT Directive 2006/112/EC. The change will make the place of belonging for the purposes of the VAT Act 1994 the place of establishment. The section also provides that other legal persons who are not in business belong where they are established.

4. Section 9 provides that in certain circumstances a person may be treated as belonging at their usual place of residence. This may be the same as where they have their permanent address, although need not be. This section expressly refers to the concept and better reflects the wording of the Directive.

SECTION 105: VAT: PLACE OF SUPPLY ORDERS: DISAPPLICATION OF TRANSITIONAL PROVISIONS

SUMMARY

1. The purpose of this section is to dis-apply transitional provisions in section 97A of the Value Added Tax Act 1994 ("the Act") to new orders made under section 7A(6) of the Act which take effect from 1 January 2015 and make provision about the place of supply of broadcasting, telecommunications and electronically supplied services.

BACKGROUND NOTE

2. The Act contains transitional provisions in section 97A that apply to orders made under section 7A(6) regarding the place of supply of services. Directly applicable transitional provisions are also contained in Article 2 of Council Implementing Regulation (EU) No 1042/2013 in respect of EU changes made to the place of supply rules for broadcasting, telecommunications and electronically supplied services made to non-taxable persons. Accordingly, this section dis-applies section 97A in respect of new orders made under section 7A(6) in the case of supplies to which Article 2 applies.

SECTION 106: VALUE ADDED TAX: SUPPLY OF SERVICES THROUGH AGENTS

SUMMARY

1. This section disapplies the UK's derogation from Article 28 of the principal VAT Directive 2006/112/EC for telecommunication and electronically supplied services.

BACKGROUND NOTE

2. The UK legislation currently allows HMRC to treat services supplied through agents acting in their own name as either a supply to and by the agent or a supply by the principal. HMRC's practice is to allow such agents to choose how to treat such supplies. This treatment is allowed because the UK derogates from EU VAT legislation that would otherwise see supplies through agents acting in their own name as though they were made by the agent. In order to ensure the effective taxation of telecommunication and electronically supplied services through internet portals and marketplaces the UK is disapplying its derogation for telecommunication and electronically supplied services.

SECTION 107: VAT: REFUNDS TO HEALTH SERVICE BODIES

SUMMARY

1. The Care Act 2014, if passed, will introduce two new NHS bodies: Health Education England and the Health Research Authority. This section adds these new bodies 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 Health Education England and the Health Research Authority to the list of bodies to be regarded as persons exercising functions on behalf of a Minister of the Crown.

BACKGROUND NOTE

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 Care Act 2014 will – if passed - establish the NHS bodies referred to in the section.

7. This measure 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 108: VAT: PROMPT PAYMENT DISCOUNTS

SUMMARY

1. This section replaces paragraph 4 of Schedule 6 to the Value Added Tax Act 1994. It will ensure that where suppliers offer prompt payment discounts to customers that VAT is declared on the consideration actually received.

DETAILS OF THE SECTION

2. Subsection 1 introduces the new paragraph 4 to Schedule 6 to the Value Added Tax Act 1994.

3. Subsections 2 to 4 deal with the commencement provisions.

BACKGROUND NOTE

4. The Principal VAT Directive (PVD) requires VAT to be accounted for on the consideration actually received. Existing UK legislation may be interpreted as being in line with the PVD but has a degree of ambiguity so is being amended to provide clarity on the VAT treatment of prompt payment discounts.

5. This measure will for supplies of telecommunication and broadcasting services where there is no obligation to provide a VAT invoice, have effect for supplies made on and after 1 May 2014. For all other supplies the measure will have effect for supplies made on and after 1 April 2015; unless, for revenue protection purposes, it is necessary to bring forward the implementation date for specified supplies.

SECTIONS 109 - 110: ANNUAL TAX ON ENVELOPED DWELLINGS

SUMMARY

1. These sections extend the Annual Tax on Enveloped Dwellings. From 1 April 2015 there will be a new charge of £7,000 for properties worth more than £1m and up to £2m that are held in corporate structures. From 1 April 2016 there will be an additional band for properties worth more than £500,000 and up to £1m with an annual charge of £3,500.

DETAILS OF THE SECTIONS

SECTION 109: ATED REDUCTION IN THRESHOLD FROM 1 APRIL 2015

2. Subsection (1) provides for an amendment to Part 3 of Finance Act 2013 (Annual Tax on Enveloped Dwellings).

3. Subsection (2) amends the threshold from more than £2 million to more than £1 million.

4. Subsection (3) specifies the annual chargeable amount for residential properties valued at more than £1 million but not more than £2 million as £7,000.

5. Subsection (4) provides for subsections (2) and (3) to come into effect for the chargeable periods beginning on or after 1 April 2015.

6. Subsections (5) to (7) provide for a transitional rule for those persons falling within the "more than £1 million but not more than £2 million" band so that returns for the chargeable period 1 April 2015 to 31 March 2016 must be filed by 1 October 2015 and payment made by 31 October 2015.

SECTION 110: ATED FURTHER REDUCTION IN THRESHOLD FROM 1 APRIL 2016

7. Subsection (1) provides for an amendment to Part 3 of Finance Act 2013 (Annual Tax on Enveloped Dwellings).

8. Subsection (2) amends the threshold from more than £1 million to more than £500,000

9. Subsection (3) specifies the annual chargeable amount for residential properties valued at more than £500,000 but not more than £1 million as £3,500.

10. Subsection (4) provides for subsections (2) and (3) to come into effect for the chargeable periods beginning on or after 1 April 2016.

BACKGROUND NOTE

11. The Annual Tax on Enveloped Dwellings (ATED) was introduced in Finance Act 2013 and came into effect on 1 April 2013. It is payable by companies, partnerships with a corporate member and collective investments schemes that own interests in UK residential property valued at more than £2 million.

12. Most residential properties are owned directly by individuals. But in some cases they may be owned by a company, a partnership with a corporate member or other collective investment vehicle. In these circumstances the dwelling is said to be 'enveloped' because the ownership sits within a corporate 'wrapper' or 'envelope'.

13. ATED is an annual tax and is charged in respect of "chargeable periods" running from 1 April to 31 March. The amount of tax charged is based on the value of the dwelling as at 1 April 2012. Thereafter revaluation occurs at each 1 April at intervals of 5 years. Where a dwelling is acquired the valuation date is the effective date of acquisition. Where there is a substantial disposal of part (but not the whole) interest, the valuation date is the date of disposal.

14. Returns and payments are usually due by 30 April in the chargeable period. The amount of tax charged is calculated using a banding system based on the value of the property. The charges are increased in line with the previous September's Consumer Prices Index (CPI) (rounded down to the nearest £50).

15. There are a number of reliefs available, for example for the purposes of letting, trading or property development. There are also a number of exemptions from the tax, most significantly, charitable companies using the dwelling for charitable purposes.

16. Budget 2014 announced a reduction in the threshold from £2 million to £500,000 to be introduced over 2 years. From 1 April 2015 a new band will come into effect for properties with a value greater than £1 million but not more than £2m million with an annual charge of £7,000. For those persons who fall into this new threshold there is a transitional rule where returns will be due by 1 October 2015 and payment by 31 October 2015. From 1 April 2016 a further new band will come into effect for properties with a value greater than £500,000 but not more than £1 million with an annual charge of £3,500. For future years these charges will be indexed in line with the previous September CPI.

17. This section and the related changes to the 15% SDLT threshold (section 111) are part of a package of measures intended to tackle tax avoidance and to ensure that those wrapping residential property into corporate and other 'envelopes", and not using them for commercial purposes, such as renting them out, pay their fair share of tax.

SECTION 111: STAMP DUTY LAND TAX: THRESHOLD FOR HIGHER RATE APPLYING TO CERTAIN TRANSACTIONS

SUMMARY

1. This section reduces the starting threshold for the 15 per cent higher rate Stamp Duty Land Tax (SDLT) charge from £2 million to £500,000.

DETAILS OF THE SECTION

2. Subsection (1) provides for amendment of Schedule 4A to Finance Act 2003 (higher rate for certain transactions).

3. Subsection (2) amends the definition of "higher threshold interest" for the purposes of Schedule 4A by substituting a threshold of £500,000 for the existing threshold of £2,000,000.

4. Subsection (3) makes consequential amendments wherever the £2,000,000 figure appears.

5. Subsection 4 provides that the measure commences for land transactions where the effective date is on or after 20 March 2014.

6. Subsection 5 provides that (with exceptions set out in subsections (6) and (7)) the £2,000,000 threshold is retained for transactions where contracts were entered into before 20 March 2014.

7. Subsection 6 excludes from the transitional provision at subsection 5 certain transactions where the outcome is different from that provided for in the contract due to an event which occurs on or after 20 March 2014.

8. Subsection 7 applies a transitional rule in cases where a partnership acquires a dwelling and there is a subsequent transfer of a partnership interest or withdrawal of money from the partnership which is treated as a land transaction for SDLT purposes. In these cases the £2,000,000 threshold applies to the subsequent transfer where the effective date of the earlier acquisition is before 20 March 2014.

BACKGROUND NOTE

9. Schedule 4A Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT. This charge applies to acquisitions of a 'higher threshold interest' by a 'non-natural person' – that is, a company, a partnership with a corporate member or a collective investment scheme. A 'higher threshold interest' is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £2,000,000 is attributable. This section reduces the threshold to £500,000.

10. The 15 per cent higher rate charge was introduced in Finance Act 2012 as part of a package of measures affecting residential property wrapped in corporate and other 'envelopes', which is not used for a commercial purpose. The other measures in the package are the Annual Tax on Enveloped Dwellings (ATED) and ATED-related Capital Gains Tax on disposal of property that was subject to ATED.

11. Acquisitions by trustees or for the purposes of letting, trading or redevelopment, trades involving making a dwelling available to the public, providing dwellings for occupation by certain employees or use as a farmhouse are excluded from the higher rate charge.

12. This section and the related changes to the ATED threshold (sections 109-110) are intended to tackle tax avoidance and to ensure that those wrapping residential property in corporate and other 'envelopes' and not using them for a commercial purpose, such as renting them out, pay a fair share of tax.

SECTION 112: SDLT: EXERCISE OF COLLECTIVE RIGHTS BY TENANTS OF FLATS

SUMMARY

1. Section 112 extends the reduction in the starting threshold for the 15% higher rate Stamp Duty Land Tax (SDLT) charge from £2 million to £500,000, introduced by section 111 of Finance Act 2014, to the SDLT relief for the exercise of collective rights by tenants of flats.

DETAILS OF THE SECTION

2. Subsection (1) amends section 74 of Finance Act 2003 by substituting "£500,000" for "£2,000,000" in each place where it occurs.

3. Subsection (2) provides that the measure commences for land transactions where the effective date is on or after 1 July 2014.

4. Subsection (3) provides that (with exceptions set out in subsection (4)) the £2,000,000 threshold is retained for transactions where contracts were entered into before 20 March 2014.

5. Subsection (4) excludes from the transitional provision at subsection (3) certain transactions where the outcome is different from that provided for in the contract due to an event which occurs on or after 20 March 2014.

BACKGROUND NOTE

6. Section 74 Finance Act 2003 provides SDLT relief for lessees of flats who collectively acquire the freehold of their block under rights afforded by the Landlord and Tenant Act 1987 and the Leasehold Reform, Housing and Urban Development Act 1993. The relief sets the rate of SDLT according to the consideration given for the freehold divided by the number of flats. This brings the amount of SDLT paid by lessees more into line with what they might have paid had they been able to acquire the freehold of their flat separately.

7. These acquisitions are commonly undertaken by a company in which the lessees are shareholders. In these circumstances the 15% higher rate SDLT charge at Schedule 4A Finance Act 2003 will apply if the mean consideration exceeds the higher rate threshold.

8. Section 111 of Finance Act 2014 reduces the higher rate threshold from £2,000,000 to £500,000 for transactions where the effective date is on or after 20 March 2014. However section 111 omitted to apply the reduction to the relief at section 74 Finance Act 2003. This section rectifies this omission.

SECTION 113: STAMP DUTY LAND TAX: CHARITIES RELIEF

SUMMARY

1. This section and Schedule introduce amendments to Schedule 8 of the Finance Act 2003 (FA2003) to make it clear that partial relief is available where a charity purchases land jointly, as tenants in common, with a person who does not have charitable status.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts new sub-paragraph (3A) into paragraph 1 of Schedule 8, which defines "qualifying charitable purposes" for the purposes of the schedule as being:

a. For use in furtherance of the charitable purposes of the charity or another charity; or
b. as an investment the profits of which are applied to the charitable purposes of the charity.

3. Paragraph 3 inserts new paragraphs 3A, 3B and 3C into Schedule 8.

4. New paragraph 3A provides for partial relief for joint purchasers.

5. Sub-paragraph 1 provides that sub-paragraphs 3 to 5 apply where –

a. There are two or more purchasers under a land transaction.
b. The purchasers acquire the land as tenants in common (or, in Scotland, owners in common).
c. At least one of the purchasers is a qualifying charity and at least one is not, and
d. the transaction is not being entered into for the avoidance of SDLT, by any of the purchasers or any other person.

6. Sub-paragraph 2 defines a "qualifying charity" as a charity which intends to hold its share in the property for qualifying charitable purposes.

7. Sub-paragraph 3 provides for partial relief to be available by reducing the SDLT due on the transaction by the amount of relief provided for under sub-paragraph (4).

8. Sub-paragraph 4 provides that the relief available is equal to the "relevant proportion" of the tax that would otherwise have been chargeable on the transaction.

9. Sub-paragraph 5 defines the relevant proportion as the lower of:

a. The proportion of the land that is acquired by the qualifying charity or charities, and
b. the proportion of the chargeable consideration for the transaction that is given by the charity or charities.

10. New paragraph 3B provides for withdrawal of the relief given under paragraph 3A.

11. Sub-paragraph 1 provides that paragraph 3B applies where relief has been given under paragraph 3A and a disqualifying event occurs.

12. Sub-paragraph 2 defines a "disqualifying event" as:

a. The charity ceasing to be established for charitable purposes, or
b. the share in the property held by the charity, or any interest derived from it, being used or held by the charity for non-charitable purposes.

13. Sub-paragraph 3 provides that a disqualifying event must occur before the end of three years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that three year period.

14. Sub-paragraph 4 provides that, at the time of the disqualifying event, the charity must hold a chargeable interest in, or an interest derived from, the land that was acquired under the original transaction.

15. Sub-paragraph 5 provides that the relief under paragraph 3A, or an appropriate proportion of it, is withdrawn, and tax becomes chargeable.

16. Sub-paragraph 6 provides that the amount of tax chargeable, in respect of a charity, is the amount of relief given under paragraph 3A, or an appropriate portion of that relief.

17. Sub-paragraph 7 provides that the amount of tax chargeable is dependant on whether the relief given under paragraph 3A(5) was based on P1 or P2.

18. Sub-paragraph 8 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P1 (the proportion of the land acquired by the charities). This is:

$$\frac{p1}{P1} \times R$$

where –
p1 is the proportion of the land that was acquired by the charity;
P1 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

19. Sub-paragraph 9 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P2 (the proportion of the chargeable consideration given by the charities). This is:

$$\frac{p2}{P2} \times R$$

where –
p2 is the proportion of the chargeable consideration given by the charity;
P2 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

20. Sub-paragraph 10 provides that in determining the appropriate proportions, as referred to in sub-paragraphs (5) and (6), account must be taken of –

a. What the charity acquired and what it held at the time of the disqualifying event, and
b. the extent to which what is held by the charity at the time of the disqualifying event is used or held for non-charitable purposes.

21. New paragraph 3C allows for relief to be available where the charity does not fully meet the "qualifying charity" condition.

22. Sub-paragraph 1 provides that paragraph 3C applies where –

a. A charity is acquiring land jointly as tenants in common (or, in Scotland, owners in common) with a non-charity purchaser.
b. The charity does not meet the qualifying charity condition in relation to the land.
c. Partial relief would apply if that condition were met, and
d. the charity intends to hold the greater part of its share in the property for qualifying charitable purposes.

23. Sub-paragraph 2 provides that in such a case paragraph 3A applies but that, for the purposes of withdrawal of the relief under paragraph 3B, "additional disqualifying events" apply.

24. Sub-paragraph 3 defines "additional disqualifying transactions" as –

a. Any transfer by the charity of a major interest in the whole or any part of its share in the property, and
b. any grant by the charity at a premium of a low-rental lease if the whole or any part of its share in the property.

25. Sub-paragraph 4 imports the definitions of "at a premium" and "low-rental" from paragraph 3(3).

26. Sub-paragraph 5 provides that for the purposes of paragraph 3B the date of the disqualifying event is the effective date of the transaction.

27. Sub-paragraph 6 sets out some modifications that apply to paragraph 3B in its application to an additional disqualifying event.

28. Paragraph 4 makes consequential amendments to paragraph 4 of Schedule 8.

29. Paragraph 5 provides that the amendments made by paragraphs 1 to 4 will have effect for transactions with an effective date on or after the date of Royal Assent of Finance Act 2014.

BACKGROUND NOTE

30. These changes are being made as a result of the Court of Appeal judgement in the cases of The Trustees of the Pollen Estate Company Limited and Kings College London v HM Revenue and Customs. The Court ruled that, where a charity purchased property jointly, as tenants in common, with a non-charity purchaser, relief from SDLT is available on the charity's share of the property.

31. Amending the legislation to provide for partial relief will provide clarity for taxpayers on how partial relief will apply. In addition, to ensure that that the availability of partial relief cannot be exploited to avoid SDLT, the SDLT relief that the charity can claim will be restricted to the lower of:

- The percentage share which the charity holds in the property, and
- the percentage of the purchase price paid by the charity for its share in the property.

SECTION 114: ABOLITION OF STAMP DUTY RESERVE TAX ON CERTAIN DEALINGS IN COLLECTIVE INVESTMENT SCHEMES

SUMMARY

1. This section abolishes the special stamp duty reserve tax (SDRT) charge on UK unit trusts and open-ended investment companies in Part 2 of Schedule 19 to the Finance Act 1999.

DETAILS OF THE SECTION

2. Subsection (1) is the substantive repeal of the charging provisions.

3. Subsection (2) amends section 90(1B) of the Finance Act 1986 in two ways. Firstly, it restricts the scope of this subsection to *in specie* redemptions that are pro rata, meaning that non-pro rata *in specie* redemptions will no longer be exempt. Secondly, it defines the term "surrender" since the definition in Schedule 19 to the Finance Act 1999 is being repealed.

4. Subsection (3) makes consequential amendments to primary legislation.

5. Subsection (4) is the commencement provision. The abolition is effective from a Sunday so as to minimise any computational difficulties.

6. Subsection (5) allows consequential amendments to secondary legislation to be made with retrospective effect. This is to allow the amendments to secondary legislation to have the same effective date as the changes to primary legislation.

BACKGROUND NOTE

7. There is a special SDRT charge (known as the "Schedule 19" charge) on UK unit trusts and open-ended investment companies. This is a 0.5 per cent charge on the value of surrenders, by investors, of units or shares in a fund to the fund manager, although this charge may be reduced in two different ways when the amount of tax is calculated. The tax is generally accounted for by the fund manager but ultimately borne by investors.

8. The Government announced at Budget 2013 that the Schedule 19 charge would be abolished in Finance Act 2014 as part of a package of measures to make the UK more attractive as a domicile for investment funds.

SECTION 115 AND SCHEDULE 24: ABOLITION OF STAMP DUTY AND STAMP DUTY RESERVE TAX (SDRT): SECURITIES ON RECOGNISED GROWTH MARKETS

SUMMARY

1. This section introduces an exemption from stamp duty and stamp duty reserve tax (SDRT) for transfers of securities admitted to trading on recognised growth markets.

DETAILS OF THE SCHEDULE

Part 1

Stamp Duty Reserve Tax (SDRT)

2. Paragraph 1 introduces changes to Part 4 Finance Act 1986.

3. Paragraph 2 inserts new sub-sections (4B) and (4C) into section 99 Finance Act 1986 and amends the definition of chargeable securities for SDRT purposes to exclude securities admitted to trading on a recognised growth market but not listed on any market.

4. Paragraph 3 inserts new section 99A into Finance Act 1986.

5. New section 99A(1) provides that new section 99A is for the purposes of new sub-section (4B) of section 99.

6. New section 99A(2) provides that 'listed' means the same as it does in the Income Tax Acts.

7. New section 99A(3) defines what is meant by 'recognised growth market'.

8. New section 99A(4) provides that HMRC will be responsible for recognising a market as a growth market on the basis of evidence provided by the market upon application for recognition.

9. New section 99A(5) sets out the criteria for qualification as a recognised growth market. The market must be a recognised stock exchange, where the majority of companies admitted to trading on the market have a market capitalisation of less than £170 million (new section 99A(5)(a)) and/or the market's admission criteria require companies to demonstrate a recent record of growth in either gross revenue or employment over the three periods of account immediately preceding the date of the application (new section 99A(5)(b)).

10. New section 99A(6) defines 'period of account' and 'recognised stock exchange' for the purposes of new section 99A(5).

11. New section 99A(7) – (10) explain how a company's market capitalisation for the purposes of new section 99A(5)(a)) is to be calculated.

12. New section 99A(11) – (12) sets out the formula by which compounded annual growth is to be demonstrated for the purposes of new section 99A(5)(b).

13. New section 99A(13) – (15) give the Treasury power, under regulations, to make provision for revocation of a market's recognition, or to amend the rules under which HMRC can recognise a growth market.

14. New section 99A(16) provides that new section 99A is to be construed as one with the Stamp Act 1981.

15. Paragraph 4 brings into force the changes in Paragraph 2 for agreements to transfer securities that are made, or become unconditional, on or after 28 April 2014; brings into force the changes in Paragraph 3 as coming into force on 28 April 2014; and that where HMRC has formally recognised a market as a growth market before that date, the recognition will have effect from 28 April 2014.

Part 2

Stamp Duty

16. Paragraph 5 exempts from stamp duty transfers of stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

17. Paragraph 6 exempts from stamp duty a purchase of its own shares by a company where the shares are admitted to trading on a recognised growth market but not listed on any market.

18. Paragraph 7 provides that an Act of Parliament that vests stock or marketable securities does not attract stamp duty where the stock or securities are admitted to trading on a recognised growth market but not listed on any market.

19. Paragraph 8 provides that 'listed' and 'recognised growth market' in Paragraphs 5 – 7 are to be construed as set out in new section s99A.

20. Paragraphs 9 – 10 remove a stamp duty charge from instruments that transfer, to a depositary receipt regime or clearance service, stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

21. Paragraph 11 amends the rules for transfers of partnership interests in Schedule 15 to Finance Act 2003 to ensure that stamp duty is not chargeable to the extent that the partnership property includes stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

22. Paragraph 12 brings into force the stamp duty provisions in Paragraphs 5 – 11 with effect from 28 April 2014 but ensures that a transfer executed after 28 April 2014, but pursuant to an agreement made before that date, will not be exempt.

BACKGROUND NOTE

23. This exemption has been introduced to support the Government's policy of encouraging growth in smaller companies.

24. Transfers of shares and securities of UK registered companies on sale generally attract stamp duty or SDRT charges at the rate of 0.5 per cent. Stamp duty is charged if the transfer is effected by the execution of a written instrument. SDRT applies to transfers in respect of which no written instrument is executed.

25. The new provisions ensure that transfers of shares and securities admitted to trading on markets specifically designed for smaller companies, or for companies that can demonstrate a sustained record of growth, will no longer attract stamp tax charges.

SECTION 116: TEMPORARY STATUTORY EFFECT OF HOUSE OF COMMONS RESOLUTION

SUMMARY

1. This section amends section 50 Finance Act 1973 (FA 1973) to ensure that, following the change to spring to spring parliamentary sessions, it will remain effective and continue to enable the Government to vary or abolish stamp duty on a provisional basis.

DETAILS OF THE SECTION

2. Subsection 3 substitutes a new section 50(2)(d) FA 1973, which provides that a resolution can have statutory effect for a maximum period of seven months.

3. Subsection 4 inserts new sub-sections (2A) to (2D) to section 50 FA 1973. The effect is that, if Parliament is prorogued at the end of a session, a resolution will cease to have statutory effect; unless proceedings on a Bill containing an equivalent provision, which have begun but have not been completed, are to be resumed in the next session, and re-introduced in the first thirty sitting days.

4. New sub-section (2A) provides that new sub-section (2B) will apply where Parliament is prorogued at the end of a session and lists at (a) to (c), the specific circumstances.

5. New sub-section (2B) allows a resolution to retain its statutory effect, provided a Bill containing equivalent provisions is presented to the House within the first thirty sitting days of the next session.

6. New sub-section (2C) defines ‘sitting day’.

7. New sub-section (2D) makes it clear that if a Bill has been amended as envisaged in new sub-section (2A)(a), it does not matter if an order to resume the proceedings in the next session, is made before the amendment.

BACKGROUND NOTE

8. Section 50 FA 1973 provides temporary statutory effect to House of Commons resolutions for stamp duty. The principal practical application of this is to allow the Government to vary or abolish stamp duty on a provisional basis between the Budget and the enactment of the Finance Bill.

9. Under current legislation, such a resolution will fall if Parliament is prorogued. This became an issue when the Government moved to spring to spring parliamentary sessions, as it is now more likely that Parliament will be prorogued in May, between Budget Day and Royal Assent to the Finance Bill.

10. These changes will ensure that a resolution for stamp duty will remain effective until replaced by an Act of Parliament. It will bring the provisions regarding resolutions for stamp duty into line with the changes made for other taxes in the Provisional Collection of Taxes Act 1968 by Finance Act 2011.

SECTION 117 AND SCHEDULE 25: INHERITANCE TAX

SUMMARY

1. This Schedule makes a number of amendments to the Inheritance Tax Act 1984 (IHTA). The Schedule:

a. Extends the freeze on the inheritance tax (IHT) nil-rate band at £325,000 until 2017-18.
b. Ensures that funds in foreign currency accounts in UK banks which are disregarded for inheritance tax (IHT) purposes in determining the value of a person's estate on death are treated in a similar way to excluded property for the purposes of restricting the deduction of a liability.
c. Introduces a new provision to treat income arising in "Relevant Property" trusts which remains undistributed for more than five years as part of the trust capital when calculating the ten year anniversary charge; and
d. changes the dates by which trustees must deliver an Inheritance Tax (IHT) account and pay tax due for charges arising under Chapter 3 of Part 3 of IHTA.

DETAILS OF THE SCHEDULE

Rate bands for tax years 2015-16, 2016-17 and 2017-18

2. Paragraph 2 disapplies section 8 of IHTA for the tax years 2015-16, 2016-17 and 2017-18. Section 8 applies if the consumer prices index (CPI) for September is higher than it was for the previous September, and provides for an increase in the nil-rate band from the following April by the same percentage as the increase in CPI (rounded up to the nearest £1,000). The effect of the section is that the nil-rate band is not increased for the years 2015-16 to 2017-18 inclusive.

Treatment of certain liabilities

3. Paragraph 3(1) inserts new section 162AA into IHTA.

4. New section 162AA sets out how liabilities attributable to financing non-residents' foreign currency accounts will be treated.

5. New section 162AA(1) explains that the section applies where a balance on a qualifying foreign currency account (the "relevant balance") is to be left out of account under section 157 IHTA in determining the value of a deceased person's estate, and that person had borrowed money which was held in that account or had a liability which indirectly financed the funds held in that account. Section 157 provides that balances on UK bank accounts denominated in a foreign currency held by an individual who is not domiciled and not resident in the UK immediately before death will not be taken into account in determining the value of that person's estate.

6. New section 162AA(2) provides that the liability may only be allowed as a deduction to the extent permitted in subsection (3). This subsection therefore disallows the liability if the borrowed money financed the relevant balance, unless it is allowed by subsection (3).

7. New sections 162AA(3) and (4) provide that if the if the liability exceeds the relevant balance, the excess may be allowed as a deduction as long as the excess has not arisen as a result of tax avoidance arrangements as defined in subsection (5) or due to manipulation of the value of the liability.

8. Paragraph 3(2) makes amendments to section 162C of IHTA which contain supplementary provisions for sections 162A and 162B.

9. Paragraph 3(3) and (4) make consequential amendments as a result of the insertion of new section 162AA.

10. Paragraph 3(5) inserts new subsection 162C(1A) which provides a priority order for how a partial repayment of the liability before death should be applied when determining the value of an estate on death. The repayment is applied first to any part of the liability that was not attributable to excluded property or to property which qualifies for relief (relievable property) or to relevant balances, then to any part used to finance relievable property, then to any part attributable to relevant balances, and finally to any part attributable to excluded property. The effect of this subsection is that any part of the liability which might be allowable as a deduction is treated as paid off before any part which would be restricted or disallowed.

11. Paragraph 3(6) makes consequential amendments to section 162C(2) which provides a similar priority rule for partial repayment of the liability in cases other than on death. In these cases, section 157 does not apply so any part of a liability that was attributed to financing a relevant balance is treated as paid off before any part which would be restricted or disallowed.

12. Paragraph 3(7) inserts new paragraph 175A(7)(aa) into section 175A of IHTA which deals with partial repayment of liabilities after death. Where a liability has been partially repaid after death, the new paragraph specifies that any part of the liability attributable to relevant balances is taken to be repaid after any part which is attributable to excluded property, but before any part which is attributable to relievable property.

13. Paragraph 3(8) explains that the amendments have effect for transfers of value made, or treated as made, on or after the date of Royal Assent to Finance Act 2014.

Ten year anniversary charge

14. Paragraph 4 adds new subsections (1A), (1B) and (1C) to section 64 of IHTA.

15. New subsection (1A) sets out the conditions for treating property held by the trustees of a settlement as part of the trust capital when calculating the ten year charge (the deeming rule). Those conditions are that the property is income of the settlement, it arose before the start of the five years ending immediately before the ten year anniversary, it arose from relevant property comprised in the settlement and when the income arose no person was beneficially entitled to an Interest in Possession in the underlying property.

16. New subsection (1B) excludes from the deeming rule (in the case of settlements made by persons not domiciled in the UK) income which arose from relevant property but is at the ten year charge represented by property situated outside the UK or is represented by a holding in an Authorised Unit Trust or Open-Ended Investment Company.

17. New subsection (1C) excludes from the deeming rule income which arose from relevant property but which is reinvested in exempt gilts which would (if properly treated as accumulated income) be excluded property.

18. New subsection (1C)(b) ensures that that exempt gilts within a settlement will only be excluded property where all the beneficiaries who could ever become entitled to capital or income from the settled property meet the necessary condition.

19. Paragraph 4(2) amends section 66 of IHTA and adds new subsection 2A. The effect of the amendment is that income brought within the charge as a result of s 64(1A) is charged to tax at the full rate in section 66(1).

20. Paragraph 4(3) provides for the changes to apply to tax charges arising under section 64 IHTA on or after 6 April 2014.

Delivery of account and payment of tax

21. Paragraph 5(1) adds a new paragraph (ad) to subsection 216(6) of IHTA. The effect of paragraph (ad) is that trustees of settlements on which tax is chargeable under Chapter 3 of Part 3 of IHTA, must deliver the IHT account six months after the end of the month in which the chargeable event occurs.

22. Paragraph 5(2) adds a new subsection (3C) to section 226 of IHTA. The effect of subsection (3C) is that the due date for payment of tax chargeable under Chapter 3 of Part 3 of IHTA 1984, is six months after the end of the month in which the chargeable transfer is made. Subsection (3C) does not affect the provision at section 226(3B) which sets out the payment date where a settlor dies within seven years of a transfer and additional liability arises under Chapter 3 of Part 3 IHTA.

23. Paragraph 5(3) amends section 233 IHTA (interest on unpaid tax) to bring it into line with the new payment date.

24. Paragraph 5(4) provides for the changes to apply to tax charges arising on or after 6 April 2014.

BACKGROUND NOTE

Rate bands for tax years 2015-16, 2016-17 and 2017-18

25. The rates of IHT are set out in the Table in Schedule 1 of IHTA. The IHT nil-rate band is the amount below which no IHT is charged. It is automatically indexed in line with inflation each year unless the Government decides otherwise and has generally increased every year up to 2009-10.

26. Section 8 of Finance Act 2010 set the limit of the nil-rate band at £325,000 for the years 2010-11 to 2014-15 inclusive.

27. At Budget 2013 the Government announced that the nil-rate band would remain frozen until 2017-18. This supersedes previous announcements.

Treatment of certain liabilities

28. 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. 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. New provisions in section 162A IHTA introduced by Schedule 36 of Finance Act 2013 disallow a deduction for a liability if it has been used directly or indirectly to acquire excluded property, or to maintain or enhance such property, except in a few specified circumstances, because the excluded property is not chargeable to IHT.

30. Balances in a UK bank account which is denominated in a foreign currency and which are not taken into account in determining the value of a person's estate on death are not chargeable to IHT yet are not excluded property. They would therefore not be affected by the provisions in section 162A and could still be used to allow an individual to secure a debt against property situated in the UK to reduce its value for IHT purposes, but retain the borrowed money in such a way that it was not subject to IHT.

31. The amendments made by this section will prevent the use of foreign currency accounts held by an individual who is not domiciled and not resident in the UK as a means of sidestepping the new provisions in section 162A.

Ten year anniversary charge

32. Where income is regularly or formally accumulated there is little doubt about the correct treatment of the accumulations within the calculation of relevant property charges. But it can be different where income remains undistributed for long periods and the trustees have not made any formal accumulation. In such cases there can be uncertainty about how the calculations should be undertaken, resulting in questions to, or correspondence with, HMRC to establish an acceptable treatment.

33. New s64(1A) will treat income that has remained undistributed for more than five years at the date of the ten year anniversary as if it was part of the trust capital for the purposes of the ten year anniversary charge. To avoid the need for trustees to keep very detailed records, tax would be charged on the ten year anniversary at the full rate on any such undistributed income without any proportionate reduction to reflect the period during which the income has been retained.

Delivery of account and payment of tax

34. The time limits for reporting IHT periodic and exit charges arising under chapter 3 part 3 of IHTA that trustees are accountable for differ from the time limits for paying any IHT due under chapter 3 part 3 IHTA.

35. The time limit for delivering an account is currently 12 months from the end of the month in which the transfer is made or if later, three months from the date when the trustee first becomes liable for the tax.

36. The time limits for paying IHT charges are:

- For chargeable events after 5 April and before 1 October, on 30 April in the following year, and
- for chargeable events after 30 September and before 6 April, six months after the end of the month in which the chargeable event took place.

37. This change aligns and simplifies the filing and payment dates for these charges.

SECTION 118: GIFTS TO THE NATION: ESTATE DUTY

SUMMARY

1. This section corrects a technical flaw in the legislation and will ensure that the Cultural Gifts Scheme works in line with the publicly stated policy.

DETAILS OF THE SECTION

2. Subsection 1 introduces new paragraph 32A to schedule 14 to FA 2012. New paragraph 32A(1) provides that it applies to a gift of an object which, if it had been a sale, would give rise to a charge to estate duty under section 40 of FA 1930. This is to ensure that it catches only objects where there is still latent estate duty.

3. New sub-paragraph 32A(2) provides that estate duty becomes chargeable on such a gift as if it were a sale, subject to the limitation imposed by paragraph 33(2) of Schedule 14, which stipulates that where the rate of tax on the disposal is higher than the maximum rate of inheritance tax the donor will need to only pay the difference.

4. New sub-paragraph 32A(3) applies the new paragraph 32A to Northern Ireland.

5. Subsections 2 and 3 provide for the removal of the latent estate duty liability in cases where objects with the latent liability are gifted under the scheme prior to the date the amendment to the legislation receives Royal Assent. This will avoid any unintended consequences for receiving institutions.

6. Subsection 4 states that a "qualifying gift" referred to in subsection 2 has the same meaning as in Schedule 14 to FA 2012.

7. Subsection 5 applies the provisions in subsections 2 and 3 to Northern Ireland.

BACKGROUND NOTE

8. The Cultural Gifts Scheme was introduced by Schedule 14 to the Finance Act (FA) 2012 and commenced on 1 April 2013 by virtue of the Finance Act 2012, Schedule 14 (Appointed Day) Order 2013.

9. Paragraph 33 of Schedule 14 provides a partial exemption from estate duty on exempt objects which would otherwise have become chargeable under Schedule 5 of the Inheritance Tax Act 1984 on a gift of property under the scheme.

10. The exemption is intended to be limited to the amount that would be chargeable if the rate of tax were the same as the rate of Inheritance Tax, currently 40 per cent. Where the rate of estate duty attached to the exempt object is more than the rate of inheritance tax, the policy intention is that the excess amount should become chargeable.

11. The technical flaw in the existing legislation meant that in some cases the latent estate duty would not have come into charge on a gift, and hence remained with the gifted object. New paragraph 32A ensures that the intended amount of estate duty comes into charge and extinguishes any further liability in the future.

SECTION 119: BANK LEVY: RATES FROM 1 JANUARY 2014

SUMMARY

1. This section amends the rate at which the bank levy is charged from 1 January 2014 onwards.

DETAILS OF THE SECTION

2. Subsection (2) increases the bank levy rates from 1 January 2014.

3. Subsection (3) introduces into the table of rates at paragraph 7(2), Schedule 19 to Finance Act 2013 the new bank levy rates for the period 1 January 2014 onwards.

4. Subsection (4) removes section 203 of FA 2013 which contained the previous rates applicable from 1 January 2014 (old rates).

5. Subsection (5) provides that the new rate changes made by subsections (2) to (4) are treated as having come into force on 1 January 2014. As a consequence of this, section 203 of FA 2013 is treated as never having come into force.

6. Subsections (6) to (12) provide transitional provisions for collecting the additional amounts of bank levy that arise from the introduction of the new rates. Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent of Finance Act 2014 (17 July 2014), the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

7. Subsection (13) provides definitions of terms used in this section.

BACKGROUND NOTE

8. 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.

9. 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.

10. 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 120 AND SCHEDULE 26: THE BANK LEVY: MISCELLANEOUS CHANGES

SUMMARY

1. This Schedule introduces changes to the bank levy arising from a review of the operational efficiency of the levy.

DETAILS OF THE SCHEDULE

2. Paragraphs 2 -7 remove the existing rules in paragraphs 15, 17, 19, 21 and 27, Schedule 19 Finance Act 2011 that require items that qualify as High Quality Liquid Assets to be deducted firstly from long term liabilities. This rule is replaced by a new rule, which restricts the reduction in respect of items that qualify as High Quality Liquid Assets to half, where they are set against short term liabilities.

3. Paragraph 8 amends the rule for calculating protected deposits. It removes the provisions in paragraph 29(4) – (6), Schedule 19, Finance Act 2011 which allow protected deposits to be calculated by reference to the amount of deposit, or other amount, on which the deposit protection fee or premium is calculated.

4. Paragraph 9(2) replaces the existing definition of Tier 1 capital at paragraph 30(2), Schedule 19, Finance Act 2011 with a new definition of Tier 1 capital based upon Article 25 of the Capital Resources Directive ("CRR") including the transitional provisions in Part 10. This ensures that the bank levy definition of equity and liabilities that are excluded as Tier 1 capital remains aligned with the regulatory definition. Paragraph 9(2) also introduces new paragraph 30(3).

5. New paragraph 30(3)(a) ensures that when calculating Tier 1 capital equity and liabilities, that for the purposes of the CRR the Prudential Regulation Authority ("PRA") is the competent authority in all cases.

6. New paragraph 30(3)(b) ensures that when calculating Tier 1 capital equity and liabilities, the only determinations and discretions that can be taken into account are those that have been published in accordance with the requirements in the CRR. Any determination and discretions that are not published cannot be taken into account when calculating Tier 1 capital equity and liabilities.

7. New paragraph 30(3)(c) provides that the CRR will apply as if all entities and groups were subject to the PRA handbook before 1 January 2014, ensuring that the transitional rules within the CRR that apply to the "old" PRA Handbook rules can be applied fully.

8. As part of the regulatory reform agenda, there is a drive to introduce central clearing of derivatives and securities via regulated central counterparties. Paragraph 10 introduces new paragraph 38A which excludes liabilities that arise on banks' balance sheets in respect of collateral provided as Qualifying Central Counterparty ("QCP") margin that banks have passed on to a central counterparty, authorised or recognised under European Markets Infrastructure Regulations.

9. New paragraph 38A(2) determines the amount that can be excluded as QCP margin. It provides that QCP margin is the cash collateral that exceeds the fair value of the underlying traded instrument, and relates to an asset (or reduced liability) arising from collateral passed on to the QCP.

10. Paragraph 11 prevents derivative contract liabilities from being long term for bank levy purposes. As a result any un-netted derivative contract liabilities will be deemed to be short term.

11. Paragraph 12 widens the scope of the power at paragraph 81, Schedule 19, Finance Act 2011, so that it can be used to make secondary regulations where new regulatory requirements are introduced by any EU or other domestic legislation.

12. Paragraph 13 provides transitional provisions for collecting additional amounts of bank levy that may arise from the bank levy review changes that have effect from 1 January 2014 (Tier 1 regulatory capital definition and client clearing exclusion). Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent of Finance Act 2014 (17 July 2014), the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

BACKGROUND NOTE

13. The Government announced when it introduced the bank levy that it would review the design of the levy in 2013. A consultation document was published on 4 July 2013 setting out various areas where the Government sought views. The consultation closed on 26 September 2013. A consultation response document was published on 10 December 2013 and is available on the GOV.UK website.

14. The changes above arise as a result of this consultation and were introduced in Finance Act 2014.

SECTION 121: RATES OF GAMING DUTY

SUMMARY

1. This section increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2014.

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.

3. Subsection (2) provides for this change to have effect for accounting periods on or after 1 April 2014.

BACKGROUND NOTE

4. 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 £2,302,000 of GGY, then 20 per cent for the next £1,587,000 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.

5. The change made by this measure 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 2013. In this case the RPI was calculated at 2.64 per cent.

SECTION 122: RATE OF BINGO DUTY

SUMMARY

1. This section provides for a reduction in the rate of bingo duty for accounting periods beginning on or after 30 June 2014.

DETAILS OF THE SECTION

2. Subsection (1) reduces the rate of bingo duty in section 17(1)(b) of the Betting and Gaming Duties Act 1981 from 20 per cent to 10 per cent.

3. Subsection (2) provides that this has effect in relation to bingo duty accounting periods beginning on or after 30 June 2014.

BACKGROUND NOTE

4. Bingo duty is currently charged at the rate of 20 per cent of a person's bingo promotion profits for an accounting period. The amount of a person's bingo promotions profits is the amount of bingo receipts minus the amount of expenditure on bingo winnings. This amendment reduces the rate to 10 per cent.

SECTION 123: EXEMPTION FROM BINGO DUTY: SMALL-SCALE AMUSEMENTS PROVIDED COMMERCIALLY

SUMMARY

1. This section provides for an amendment to the bingo duty exemption provision affecting adult gaming centres (AGC).

DETAILS OF THE SECTION

2. Subsection (1) substitutes the reference to an amusement machine licence in paragraph 5(1) of Schedule 3 to the Betting and Gaming Duties Act 1981 with a reference to machine games duty.

3. Subsection (2) provides that the amendment made by this section shall apply to games of bingo which begin to be played on or after the date of Royal Assent.

BACKGROUND NOTE

4. The law providing for exemption from bingo duty is to be found in Part 1 of Schedule 3 to the Betting and Gaming Duties Act 1981. Paragraph 5 deals with the exemptions available to small-scale amusements provided commercially.

5. Paragraph 5(1)(b) describes the conditions that must be met for small-scale amusements provided commercially to be exempted from bingo duty. One condition is that an amusement machine licence should be in force. However, amusement machine licence duty was repealed by the Finance Act 2012 when it was replaced by machines games duty. The reference to an amusement machine licence in paragraph 5 (1) (b) became redundant at that point. This section replaces the reference with an equivalent requirement in relation to machine games duty.

SECTION 124: RATES OF MACHINE GAMES DUTY

SUMMARY

1. This section amends the machine games duty (MGD) legislation in Schedule 24 to Finance Act 2012 by introducing a third type of machine for duty purposes and a higher rate of duty.

DETAILS OF THE SECTION

2. Subsection (2) substitutes a new paragraph 5 of Schedule 24 to FA 2012 to make provision for three types of machine to be defined by reference to the highest charge payable for playing a game and the highest cash prize that can be won from playing a game, and to provide that the specified values may be increased by secondary legislation.

3. Subsection (3) amends paragraph 6 of Schedule 24 to FA 2012, which describes how the duty is charged, to introduce a third type of machine, "type 3 machines", into the equation..

4. Subsection (4) substitutes a new paragraph 9 of Schedule 24 to FA 2012, which provides the MGD rates, to introduce a higher rate.

5. Subsection (5) makes a consequential revocation of secondary legislation.

BACKGROUND NOTE

6. The MGD legislation has been amended to introduce a high rate of 25 per cent that will apply to the net takings from a specific type of high stake and high prize gaming machine. Under the Gambling Act 2005 these machines are regulated as Category B2 gaming machines and are typically found in betting shops.

SECTIONS 125–198 AND SCHEDULES 27–29: BETTING AND GAMING DUTIES

SUMMARY

1. These sections and Schedules make provision for changing the scope of general betting duty, pool betting duty and remote gaming duty so that they are charged on a place of consumption basis. They replace the taxing, administration and enforcement provisions for these duties in the Betting and Gaming Duties Act 1981.

DETAILS OF THE SECTIONS AND SCHEDULES

Part 3 – General betting duty, pool betting duty and remote gaming duty

Chapter 1 General betting duty

2. Chapter 1 contains sections 125 to 142 which make provision for general betting duty.

3. Section 126 defines a general bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at section 187.

4. Section 127 describes how a bookmaker's profits are calculated for the purpose of charging duty on general bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

5. Section 128 defines a spread bet, describes when such bets are to be treated as "financial spread bets" or "non-financial spread bets", and allows HM Revenue & Customs (HMRC) to provide by secondary legislation whether a bet is or is not to be treated as a financial spread bet.

6. Section 129 provides for general betting duty to be charged on financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how a bookmaker's profits are calculated for the purpose of charging duty on financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

7. Section 130 provides for general betting duty to be charged on non-financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how a bookmaker's profits are calculated for the purpose of charging duty on non-financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

8. Section 131 describes how a bookmaker's "ordinary profits" are calculated for the purpose of charging duty under sections 127, 129 and 130. These are stakes that fall due in a period minus amounts paid as winnings) in the accounting period.

9. Section 132 describes a bookmaker's "retained winnings profits" for the purpose of charging duty under sections 127, 129 and 130. These are amounts which have previously been transferred to the account of a person ("P") as winnings under section 140, but which P is subsequently prevented from withdrawing.

10. Section 133 provides that where a person (a "bet-broker") provides facilities in the course of a business (other than a betting exchange under section 141) that allows a "bettor" to make bets with a "bet taker", or acts as an agent for the bettor, the bet-broker will be treated as a bookmaker and will have the same liability as the bet taker to account for duty on those bets.

11. Section 134 defines a "Chapter 1 pool bet" as one that relates only to horse racing or dog racing, is made by any person at a place in the United Kingdom where bets are taken, is made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at section 187.

12. Subsections 134(5) and (6) divide Chapter 1 pool bets into "pooled stake" and "ordinary" bets and describe pooled stake Chapter 1 bets as bets where the bookmaker assigns some, or all, of the customers' stake money to a fund from which winnings will be paid.

13. Section 135 describes how a bookmaker's profits are calculated for the purpose of charging duty on Chapter 1 pool bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

14. Section 136 describes how a bookmaker's profits from pooled stake Chapter 1 bets are calculated for the purpose of charging duty under section 135. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant stake money".

15. Section 137 describes how a bookmaker's profits from ordinary Chapter 1 pool bets are calculated for the purpose of charging duty under section 135. These are stakes due in the accounting period minus winnings paid in an accounting period.

16. Section 138 describes a bookmaker's profits on retained winnings on Chapter 1 pool bets for the purpose of charging duty under section 135. These are amounts which have previously been transferred to the account of a person ("P") as winnings under section 140 and been included in the duty calculations at sections 136 or 137, but which P is subsequently prevented from withdrawing.

17. Section 139 makes provision about stake money for the purposes of Chapter 1 of this Part. Subsection (3) provides that where a person knows how much they stand to lose when they make a bet, the bookmaker must account for the stake when the bet is made regardless of whether the money has actually been paid; subsection (4) provides that where a bookmaker offers free or cut price bets, the full notional value of the stake will be deemed to be due to the bookmaker at the time the bet is made; subsection (5) provides that any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise; and subsection (6) prevents a bookmaker from making any deductions to reduce the value of dutiable stakes,

18. Section 140 makes provision about winnings for the purposes of Chapter 1 of this Part. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Subsection (3) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.

19. Section 141 defines a betting exchange as a business that allows one person to make a bet with another person but does not provide premises for use by those persons, and provides that general betting duty will be charged on any commissions from a UK person.

20. Section 142 provides that all general betting duty that is chargeable shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

Chapter 2 Pool betting duty

21. Chapter 2 contains sections 143 to 153 which make provision for pool betting.

22. Section 143 defines a Chapter 2 pool bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Bets made for community benefit are described at section 153, and excluded bets are defined at section 187.

23. Subsections 143 (5) and (6) divide Chapter 2 pool bets into "pooled stake" and "ordinary" bets and describe pooled stake Chapter 2 bets as bets where the bookmaker assigns some, or all, of the customers' stake money to a fund from which winnings will be paid.

24. Section 144 describes how a bookmaker's profits are calculated for the purpose of charging duty on Chapter 2 pool bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

25. Section 145 describes how a bookmaker's profits from pooled stake Chapter 2 bets are calculated for the purpose of charging duty under section 144. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and

allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant stake money".

26. Section 146 describes how a bookmaker's profits from ordinary Chapter 2 pool bets are calculated in an accounting period for the purpose of charging duty under section 144. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.

27. Section 147 describes a bookmaker's profits on retained winnings on Chapter 2 pool bets for the purpose of charging duty under section 144. These are amounts which have previously been transferred to the account of a person ("P") as winnings under section 149 and been included in the duty calculations at sections 145 or 146, but which P is subsequently prevented from withdrawing.

28. Section 148 makes provision about stake money for the purposes of Chapter 2. Stake money is the aggregate of all amounts due in respect of a bet. Any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise. Subsections (6) and (7) make provision about the timing of when stakes fall due, subject to any regulations made under subsection (8).

29. Section 149 makes provision about winnings for the purposes of Chapter 2. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Under subsection (3) no account is to be taken of winnings that relate to free bets, and subsection (4) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.

30. Section 150 provides that specified payments will be treated as bets.

31. Section 151 provides that all pool betting duty that is chargeable on Chapter 2 pool bets shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

32. Section 152 provides that notice must be given to HM Revenue & Customs when someone relies on the "community benefit" provisions at section 153 for an exemption from pool betting duty. Subsection (2) allows the Commissioners to publish a notice setting out how and when such notifications are to be made, and it allows the Commissioners to waive the requirement to notify in certain situations.

33. Section 153 describes the circumstances under which a pool bet may be regarded as a bet made "for community benefit". Such bets are excluded from any liability to pool betting duty.

Chapter 3 Remote gaming duty

34. Chapter 3 contains sections 154 to 162 which make provision for remote gaming.

35. Section 154 defines "remote gaming". Subsections (2) and (3) separate it into "pooled prize gaming" and "ordinary gaming" and describe pooled prize gaming as remote gaming where the provider assigns some, or all, of the customers' gaming payment to a gaming prize fund from which prizes will be provided.

36. Section 155 provides that duty will be charged when a "chargeable person" participates in remote gaming. Subsection 2 defines a chargeable person as being any UK person, and any non-UK corporate body if the gaming provider knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Subsections (4) and (5) describe how a provider's profits are calculated for the purpose of charging duty, and provide that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

37. Section 156 describes how a gaming provider's profits from pooled prize gaming are calculated for the purpose of charging duty under section 155. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant gaming payment".

38. Section 157 describes how a gaming provider's profits from ordinary gaming are calculated for the purpose of charging duty under section 155. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.

39. Section 158 describes a gaming provider's profits on retained prizes for the purpose of charging duty under section 155. These are amounts which have previously been transferred to the account of a person ("P") as winnings under section 160 and been included in the duty calculations at sections 156 or 157, but which P is subsequently prevented from withdrawing.

40. Section 159 provides that any amounts that are paid in connection with, or that entitle a UK person to participate in, remote gaming will be treated as a "gaming payment". Payments will be treated being made no later than the time when a person begins to participate in the gaming, and, by means of secondary legislation, where a provider offers free or cut-price gaming, the Treasury may require full notional value to be taken into account.

41. Section 160 provides that the calculation of expenditure on prizes shall include the payment of winnings to a customer's account, and also allows for the return of any part of customers' gaming payments to be regarded as an expenditure on prizes. This section further provides valuation provisions in respect of non-money prizes.

42. Section 161 specifies the circumstances under which remote gaming duty will not apply and provides for additional exemptions to be granted, or existing exemptions to be amended through secondary legislation.

43. Section 162 describes the persons who are liable for the duty, and those from whom it may be recovered.

Chapter 4 General

44. Chapter 4 contains sections 163 to 198 which make provision relating to administrative matters, security and enforcement, offences and evidence, reviews and appeals, definitions and supplementary matters.

45. Section 163 provides that the Commissioners are responsible for the collection and management of general betting duty, pool betting duty and remote gaming duty. Commissioners' regulations may: require the manner and time in which the duties are to be accounted for and paid, and; provide as appears necessary for the administration, enforcement of and protection of revenue from the duties.

46. Section 164 provides for registration for the duties. The Commissioners must keep registers, those carrying on relevant businesses or entering into relevant arrangements may not do so without registering and the Commissioners may make regulations about registration. Inter alia, these regulations may provide that: the Commissioners can, in specified circumstances require the appointment of a United Kingdom representative responsible for making returns and/ or discharging liability, and; for the registration of groups including that group members are jointly and severally liable for each others' liabilities for the duties.

47. Section 165 provides that an accounting period is three consecutive months or another period as provided for by Commissioners' regulations. The first day of an accounting period is as directed by the Commissioners. With the agreement of the Commissioners, a person may have accounting periods longer or shorter than three months and/ or periods may begin on days other than that specified in the Commissioners' direction on the matter. The Commissioners may make transitional arrangements by direction.

48. Section 166 provides for Commissioners' regulations about returns for the duties.

49. Section 167 provides for Commissioners' regulations about payment of the duties and that, subject to these regulations, section 12 of the Finance Act 1994 applies in relation to assessments to duty.

50. Section 168 provides for Commissioners' regulations about the provision and display of information and records by specified persons.

51. Section 169 provides for the Treasury to make regulations about when stake money and gaming payments are or are not treated as assigned to a stake fund or gaming prize fund. The Commissioners may, by notice, make provision about stake funds and gaming prize funds.

52. Section 170 provides that the Commissioners, may by notice, require a registrable person to give security or further security in the following circumstances: there is a serious risk that the duty will not be paid, or: the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

53. Section 171 provides that the Commissioners may, by notice, require a registrable person to appoint a UK representative, who must be approved by them, in circumstances where the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. This notice may be combined with a notice under section 170, and the appointment of a representative may remove the need for a security under that section. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

54. Section 172 provides for the review and appeal of a Commissioners' notice requiring a person to give security or to appoint a UK representative.

55. Section 173 provides that a person who does not comply with a notice requiring them to give security or to appoint a UK representative is guilty of a summary offence.

56. Section 174 provides that the fraudulent evasion of general betting duty, pool betting duty or remote gaming duty is an offence and further provision is made in respect of penalties for such an offence.

57. Section 175 makes provision for specified failures and contraventions to attract penalties under the Finance Act 1994.

58. Section 176 makes provision for any interest that may be charged under the Finance Act 2009 on general betting duty, pool betting duty or remote gaming duty may be enforced as if it were an amount of duty.

59. Section 177 introduces Schedule 27 which sets out the process under which the Commission may direct the Gambling Commission to revoke a person's Remote Operating Licence. The process may be begun where the person: is required to register for a duty but has not done so; does not comply with conditions or requirements relating to registration; has not paid a duty, or; is required to give security but has not done so. The Commissioners' decision is subject to review and appeal; following the review and appeal procedures in Finance Act 1994. Provision is made for a Remote Operating Licence to be suspended as a stage before final revocation – a suspended licence may be reinstated if, for example, the Commissioners' decision to seek revocation is upheld at one stage in the appeal process but overturned at a subsequent stage. This Schedule further provides for the Gambling Commission to seek the Commissioners' consent before issuing a licence to the holder of a licence that has been suspended or revoked under the provisions of this Schedule.

60. Section 178 provides that an offence committed by a body corporate is also committed by any officer of that body corporate (except in certain circumstances).

61. Section 179 prevents HMRC officers from committing offences in the course of enforcing these duties under the instructions of the Commissioners.

62. Section 180 provides for the circumstances in which a Commissioners' certificate that something has or has not happened, constitutes evidence of that occurrence until the contrary is proved, and that copies of documents certified by the Commissioners as such are admissible in proceedings.

63. Section 181 provides that, in proceedings, on the question of whether relevant gambling facilities were capable of being used in or from the United Kingdom, the burden of proof lies on the person claiming that the facilities were not capable of being so used.

64. Section 182 provides for certain decisions to be treated as if they were appealable under FA 1994.

65. Sections 183 - 189 define terms used in this Part of the Act.

66. Section 190 provides an index to some of the expressions used in this Part.

67. Section 191 provides that if an amount of money (stake money, gaming payment etc.) is in a currency other than sterling it must be converted into sterling using the London closing exchange rate for the previous day. If such an exchange rate does not exist, the rate to be used is that as set out in a Commissioners' notice.

68. Section 193 provides that this Part does not cause anything unlawful to be lawful (except insofar as the Part makes specific provision).

69. Section 196 introduces Schedule 28 which contains consequential amendments to other Acts that flow from this new legislation.

70. Section 197 introduces Schedule 29 provides for transitional arrangements about the tax treatment of bets etc. that are made before 1 December 2014 but where receipts are not due, or winnings are not paid until after that date.

71. Section 198 makes provision for these changes to come into effect on the dates specified.

BACKGROUND NOTE

72. These amendments have been made to ensure that general betting duty, pool betting duty and remote gaming duty will be charged in relation to transactions made with bookmakers or remote gaming providers by UK persons, or on premises in the UK.

SECTIONS 199 TO 233 AND SCHEDULES 30-33: FOLLOWER NOTICES AND ACCELERATED PAYMENTS

SUMMARY

1. These sections and Schedules introduce two new consequences for certain users of tax arrangements.

2. The first is a power for HMRC to issue a 'follower notice' where those tax arrangements have been shown in a relevant judicial ruling not to give the asserted tax advantage. The legislation sets out the steps that a taxpayer should take to settle their dispute with HMRC in response to the 'follower notice', and what happens if a taxpayer elects not to take those steps, including the possibility of a penalty. The taxpayer has a right of appeal against any penalty charged under these provisions.

3. The second is a requirement to pay the amount of the asserted tax advantage to HMRC on receipt of an 'accelerated payment notice'. This notice can be given in three cases:

   i. Where a follower notice is issued, as described above.
   ii. Where the tax arrangements are discloseable under the Disclosure of Tax Avoidance Scheme (DOTAS) rules; or
   iii. where HMRC is taking counteraction under the General Anti-Abuse Rule (GAAR).

4. The measure applies to Income Tax (IT); Capital Gains Tax (CGT); Corporation Tax (CT), including amounts chargeable as or treated as CT; Inheritance Tax (IHT); Stamp Duty Land Tax (SDLT); and the Annual Tax on Enveloped Dwellings (ATED). The legislation provides for further taxes to be added to the measure by Treasury Order.

DETAILS OF THE SECTIONS

Chapter 1 Introduction

Overview

5. Section 199 is introductory.

Main definitions

6. Sections 200 to 203 contain definitions that apply across the whole Part.

Chapter 2 Follower Notices

Giving of follower notices

7. Section 204 defines the conditions which must apply for HMRC to issue a follower notice to a person.

8. Subsection (2) provides the first condition that there is an open tax enquiry into that person's return or claim, or the person has made a tax appeal.

9. Subsection (3) provides the second condition that the return or claim subject to the enquiry, or the appeal, is made on the basis that the person obtains a tax advantage from the use of tax arrangements.

10. Subsection (4) provides the third condition that there has been a judicial ruling relevant to the person's return/claim or appeal.

11. Subsection (5) provides the fourth condition, that no previous follower notice has been given to the person in respect of the same tax arrangements and tax advantage, unless it was withdrawn.

12. Section 205 sets out the conditions in which a judicial ruling is treated as 'relevant'.

13. Subsection (3) provides that a judicial ruling in another party's litigation is relevant to a person if the ruling relates to tax arrangements; the principles or reasoning behind the ruling would, if applied to those arrangements, deny the advantage claimed or part of it; and it is a final ruling.

14. Subsection (4) defines a ruling as final if it is made by the Supreme Court or, if made by a lower court or tribunal, no appeal is made against it, permission to appeal is refused or, if an appeal is made, it is abandoned or otherwise disposed of before it was determined.

15. Section 206 provides that a follower notice must identify the judicial ruling on which it is based, explain why HMRC consider it is relevant to the person's tax arrangements, and set out the consequences of the taxpayer's action in response to the notice.

Representations

16. Section 207 provides that a person may make representations to HMRC within 90 days of a follower notice being issued. The person may object to a follower notice because there is no open tax enquiry or appeal or no tax advantage was obtained by the return/claim; that he has already been given a follower notice in respect of the tax arrangements or tax advantage; that the judicial ruling is not relevant to his circumstances; or that HMRC did not issue the notice within the time allowed following the relevant judicial ruling. HMRC must consider the representations and notify the person that the follower notice is confirmed or amended, or withdrawn.

Penalties

17. Section 208 sets out the steps a taxpayer would need to take in response to a follower notice in order to be regarded as having taken the necessary corrective action. The taxpayer is not compelled to take those steps, but the section sets out the consequences where those steps are not taken.

18. Subsection (2) provides that a person who is issued with a follower notice becomes liable to a penalty if he does not take corrective action before the specified time.

19. Subsection (5) defines the first step of the corrective action as the taxpayer amending his return or claim to counteract the tax advantage claimed if the follower notice is in respect of an open tax enquiry, or taking all necessary action to reach agreement with HMRC to relinquish the denied advantage if the notice is issued in respect of a tax appeal.

20. Subsection (6) defines the second step of the corrective action as the taxpayer confirming to HMRC that he has taken the first step and advising them of the advantage that will be denied and the further tax due as a result of the amendment to his return or claim.

21. Subsection (8) sets out the time limits for taking the necessary corrective action.

22. Subsection (9) provides that any time limit applied to prevent a taxpayer amending his return or claim before the end of the tax enquiry is disregarded for the purposes of this section.

23. Subsection (10) provides that a taxpayer may not appeal against a notice closing an enquiry into his return or claim where that notice gives effect to any amendment made by the taxpayer in response to a follower notice.

24. Section 209 sets out the amount of a penalty under section 208.

25. Subsection (3) makes clear that where the taxpayer takes corrective action, within the required time, to counteract or relinquish part of the denied advantage, any penalty under section 208 is to be based on the amount not counteracted or relinquished.

26. Section 210 sets out how a penalty may be reduced for co-operation.

27. Subsection (3) sets out how the taxpayer can provide the co-operation required for HMRC to reduce the penalty. The penalty can be reduced if the taxpayer:

- Gives reasonable help to HMRC to quantify the tax advantage;
- Counteracts the tax advantage (but after the time specified in section 208);
- Provides sufficient information for HMRC to counteract the tax advantage or to reach agreement with the taxpayer to relinquish the tax advantage; and/or
- Gives HMRC access to records to allow HMRC to ensure the advantage is counteracted.

28. Section 211 sets out how a penalty under this Chapter is assessed.

29. Subsection (2) requires HMRC to notify the taxpayer when a penalty is assessed, and requires that the notice must state the tax period to which the penalty relates.

30. Subsection (5)(a) provides that in the case of a follower notice issued in respect of an open tax enquiry, the penalty must be notified no later than 90 days after the enquiry is closed.

31. Subsection (5)(b) provides that in the case of a follower notice issued in respect of a pending appeal case, the penalty must be notified no later than 90 days after the taxpayer takes the necessary action to agree his case with HMRC or withdraws his appeal. If the litigation proceeds, the penalty must be issued no later than 90 days after the final ruling is made.

32. Section 212 deals with situations where more than one penalty may arise in respect of the same amount, and one of those penalties is a penalty under this Chapter.

33. Subsection (2) establishes a limit on the total amount of penalties where penalties may apply under more than one penalty provision to the same amount of tax, and include a penalty under section 208.

34. Subsection (2)(a) sets the general rule – that the aggregate amounts of the penalties cannot exceed the "relevant percentage", defined in subsection (5).

35. Subsection (2)(b) applies if one of the penalties applying is issued under Schedule 55 to the Finance Act 2009 (Penalty for Failure to Make Returns) because a return is more than 6-months or 12-months outstanding. In such cases the maximum amount of penalties aggregated under this section must not exceed the "relevant percentage", or £300 if greater.

36. Subsection (5) sets the "relevant percentage" applicable in each case by reference to the penalty provision under which the other penalty is imposed reflecting the seriousness of the default and whether the penalty concerns an offshore matter.

37. Section 213 sets out that HMRC may alter an assessment to a penalty, either to increase it where the denied advantage was underestimated, or to reduce it where the denied advantage was overestimated.

38. Section 214 provides that a person may appeal against HMRC's decision that a penalty is payable and against the amount of any penalty. A person does not have to pay a penalty before the appeal is determined. The grounds for appeal under this section include an appeal on the basis that there was no judicial ruling relevant to the taxpayer's arrangements or that it was reasonable, taking all circumstances into account, for the taxpayer to take no action in respect of the denied advantage. If a Tribunal finds that it was reasonable for the taxpayer to take no such action, it may cancel the penalty but the follower notice and any related accelerated payment notice remain valid.

Partners and partnerships

39. Section 215 makes reference to Schedule 31, which sets out how the rules of Chapter 2 apply to partners and partnerships.

Appeals out of time

40. Section 216 sets out what happens when there is a late appeal against a final judicial ruling, so that the judicial ruling is no longer final. This could happen some time after HMRC issues a 'follower notice', at a time when that decision was regarded as final.

41. Subsection (2) provides for a follower notice to be suspended if an appeal is accepted by a court out of time in respect of a relevant ruling, until HMRC notifies the taxpayer that the appeal has been abandoned or has reached a final ruling.

42. Subsection (3) states that the limits of 90 days, or where appropriate 30 days, for the taxpayer to comply with a follower notice do not include the period during which a notice is suspended. This also applies to the 'payment period' for an accelerated payment.

43. Subsection (6) provides that unless cancelled a follower notice continues once HMRC notifies the taxpayer that the suspension is over and, if relevant, that the new judicial ruling is now the final one for the purposes of the notice.

44. Subsection (7)(b) requires HMRC to include in a notice issued under subsection (2) any changes to the final notice needed to take account of a new final ruling.

45. Subsection (8) prevents the issue of further follower notices to other taxpayers in respect of the matter under appeal, unless that appeal is abandoned or otherwise disposed of before it is determined. If the late appeal results in a new final ruling, subsection (9) permits follower notices to be issued in relation to that new ruling.

46. Subsection (10) provides that when such an appeal is abandoned, the period between when the person was given leave to appeal and the abandonment of the appeal does not count towards the limit of 12 months from the date of the final ruling for HMRC to issue a follower notice.

Transitional provision

47. Section 217 provides that where a judicial ruling was made before the date this Act was passed, a follower notice may not be issued later than a date two years from the day this Act was passed or one year from the day the return or claim was submitted or appeal made, if later.

Defined terms

48. Section 218 contains definitions.

Chapter 3 Accelerated Payments

Accelerated payment notices

49. Section 219 explains the circumstances in which an accelerated payment notice may be given. Three conditions must be met.

50. Subsection (2) sets out Condition A, which stipulates that there must be a tax enquiry or a tax appeal.

51. Subsection (3) sets out Condition B, which stipulates that a tax advantage has been claimed that results from the arrangements in question.

52. Subsection (4) sets out Condition C, which has three alternatives. Any one of these is sufficient to trigger a notice (provided that Conditions A and B are also satisfied) but more than one of them may be relevant and may be specified in the notice.

53. Subsection (5) explains what is meant in subsection (4) by "DOTAS arrangements". The starting point is that HMRC has issued a Scheme Reference Number (SRN) under section 311 of FA 2004. In order to do so, HMRC must have received a disclosure of notifiable arrangements or a notifiable proposal under Part 7 of FA 2004, or must have successfully taken proceedings to require such a disclosure. Subsection 5(c) addresses the situation under section 312(2)(b) of FA 2004 where the promoter must also provide the SRN to clients of arrangements that are substantially the same as those that were the subject of the notified arrangements or notified proposal.

54. Subsection (6) provides that the DOTAS criterion ceases to be satisfied if HMRC gives notice under section 312(6) of FA 2004 that a promoter is no longer required to notify a client of the SRN.

55. Section 220 sets out the contents of an accelerated payment notice given while an enquiry is in progress.

56. Subsection (3) requires that the amount of any accelerated payment must be determined by a designated HMRC officer.

57. Subsections (4) and (5) set out how the amount is to be determined. For those cases linked to a notice under Chapter 2, the amount is the same as would be required if the taxpayer were to have taken the necessary action to settle the dispute. For cases subject to the GAAR, the amount will be the same as specified in the GAAR counteraction notice. Where DOTAS is the only criterion, the amount must be determined to the best of the designated officer's information and belief.

58. Subsection (6) deals with the situation where more than one Condition C under section 219(4) may be relevant. In such a case, HMRC must stipulate which of them is being applied to determine the amount of the accelerated payment. See section 227(5) and (6) for circumstances where HMRC subsequently amends a notice where more than one Condition C initially applied, but the Condition specified under this subsection or section 221(5) falls away, and an alternative Condition C is still applicable.

59. Section 221 sets out how an accelerated payment notice is given for cases that are under appeal. The 'disputed tax' is all or part of the tax charged in the assessment or determination, or arising in consequence of a conclusion stated in a closure notice that is the subject of the appeal.

60. Section 222 explains how representations may be made to HMRC about an accelerated payment notice, the time limit for making those representations, and what HMRC must do in response.

Forms of accelerated payment

61. Section 223 explains the consequences of an accelerated payment notice given while a tax enquiry is in progress.

62. Subsection (3) explains that the accelerated payment is to be treated as a payment on account of the tax in dispute. When the final liability is agreed, this payment will be set against it, and any interest payable on that final liability will be adjusted so that no interest will be charged on the amount of the accelerated payment from the date that it is paid. If the final liability is lower than the accelerated payment any excess will be repaid with interest.

63. Subsections (4) and (5) set out the time limits for making an accelerated payment.

64. Subsection (6) deals with the special case where Inheritance Tax is payable by instalments. The due date for an accelerated payment that relates to those instalments cannot be earlier than the due date for paying the instalment to which it relates.

65. Subsection (7) deals with the situation where the taxpayer pays some or all of the tax in dispute before an accelerated payment is made. The amount paid will reduce the amount of the accelerated payment that is outstanding.

66. Section 224 sets out how an accelerated payment notice operates for cases under appeal. It operates by amending section 55 of TMA 1970, which applies to income tax, PAYE, corporation tax and capital gains tax; and the equivalent rules for IHT, SDLT and ATED. Any tax that is the subject of an accelerated payment notice cannot be postponed under section 55 of TMA 1970 (and the equivalents), and if the tax has already been postponed the accelerated payment notice has the effect that it is no longer postponed. The time limits for making the payment are the same as in section 223.

67. Section 225 amends the rule in section 56 of TMA 1970 (and its parallels for SDLT and ATED) which directs that the tax in dispute should be paid to the successful litigant pending any further appeal. The amendment permits HMRC to apply to the tribunal or court for an order not to repay the tax where HMRC pursues a further appeal and HMRC considers there would be risk to the Exchequer in making the repayment at that stage.

Penalties

68. Section 226 establishes a late payment penalty in respect of an accelerated payment. The rates and structure are based on Schedule 56 to FA 2009, and a number of paragraphs of that Schedule are applied with any necessary modification.

Withdrawal etc of accelerated payment notice

69. Section 227 explains the process for and consequences of the withdrawal or amendment of an accelerated payment notice.

70. Subsections (3) to (5) explain that where a particular Condition C ceases to apply, the related accelerated payment notice must be withdrawn, but only to the extent that it was given on the basis of that Condition. If another Condition C remains in effect the accelerated payment notice also continues to have effect.

71. Subsections (6) and (7) explain what happens where more than one Condition C was originally applicable, and one of them was referenced as the basis of the accelerated payment notice. Where that Condition no longer applies, HMRC must amend the notice to state the alternative Condition C and must make any consequent reduction in the amount of the accelerated payment.

72. Subsections (8), (9), (10) and (11) explain what happens when a notice given under Chapter 2 is suspended while application is made for a late appeal against a relevant judicial ruling. The accelerated payment notice is also suspended, but where the notice is also given under an alternative Condition C the notice remains in effect in relation to that Condition.

73. Subsection (12) covers the situation where an accelerated payment notice is withdrawn. Any amount paid is to be repaid with interest.

74. Subsection (13) covers the situation where the accelerated payment notice remains in place, but the amount is reduced. If the taxpayer has paid more than the amount specified in the modified notice any excess is repaid with interest.

Partners and partnerships

75. Section 228 refers to the provisions for partners and partnerships in Schedule 3.

Defined terms

76. Section 229 contains definitions for the purposes of Chapter 3.

Chapter 4 Miscellaneous and general provision

Stamp duty land tax and annual tax on enveloped dwellings

77. Section 230 makes specific modifications to apply these rules to Stamp Duty Land Tax (SDLT).

78. Subsections (2) to (8) bring in the effect of existing SDLT rules to different types of joint purchaser, including partnerships and bodies of trustees.

79. Subsection (2) applies the general principle of joint and several liability for SDLT in the case of joint purchasers, apart from members of a partnership or trustees of a settlement, to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

80. Subsections (4) and (5) apply the general principle of joint and several liability for SDLT in the case of members of a partnership to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

81. Subsections (6) and (7) apply the general principle of joint and several liability for SDLT in the case of trustees of a settlement to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

82. Section 231 makes specific modifications to apply these rules to the Annual Tax on Enveloped Dwellings (ATED).

83. Subsection (2) applies the general principle of joint and several liability for ATED in the case of members of a partnership to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to an ATED liability.

84. Subsection (3) applies the general principle of joint and several liability for ATED to the penalty that may arise under Chapter 2 in relation to an ATED liability.

85. Subsection (4) applies the general principle of joint and several liability for ATED to an accelerated payment and any related late payment penalty in relation to an ATED liability.

86. Subsection (5) requires HMRC to issue a notice under Chapter 2 and/or Chapter 3 to all persons who may be jointly and severally liable for a penalty or payment under these rules that relates to ATED.

Extension of Part by order

87. Section 232 provides for the Treasury to make an order to add other taxes to the scope of the measure. This must be approved by Parliament under the affirmative procedure.

Consequential amendments

88. Section 233 introduces Schedule 33, which contains consequential amendments.

DETAILS OF THE SCHEDULES

Schedule 30: Section 208 Penalty: Value of the denied advantage

89. Paragraph 2(1) defines the value of the denied advantage as the additional amount of tax due or payable resulting from the advantage being counteracted.

90. Paragraph 2(3) excludes two specific items from the calculation of the denied advantage in respect of Corporation Tax. These are group relief and relief under section 458 of CTA 2010 in respect of repayment of loans, where that relief is deferred under section 458(5) of CTA 2010.

91. Paragraph 3(2)(b) provides that 10 per cent of any part of a loss not used to reduce the amount of tax due and payable shall be included in the value of the denied advantage.

92. Paragraph 3(4) provides that where a group of companies has an aggregate loss (for Corporation Tax) group relief is not disregarded when quantifying the relevant denied advantage.

93. Paragraph 3(5) provides that where the nature of the loss is, or the person's circumstances are, such that there is no reasonable prospect of the loss being used to reduce a tax liability of any person, there will be no penalty.

94. Paragraph 4 provides a special rule for quantifying a tax advantage which comprises the deferral of tax.

Schedule 31: Follower notices and partnerships

95. Paragraph 3(3) states that in respect of partnership returns, a tax advantage arises from tax arrangements if the arrangements increase or reduce any of the items required to be included in a partnership return, and result in a tax advantage for at least one of the partners.

96. Paragraph 3(4)(a) provides that any follower notice given to a representative partner or his successor is not treated as a notice given to that person in any other capacity.

97. Paragraph 3(4)(b) provides that a representative partner and his successor are to be treated as the same person in respect of any follower notice given to them in that capacity.

98. Paragraph 4(2) provides that a penalty for not taking corrective action within the specified time is payable by each relevant partner.

99. Paragraph 5(2)(b) provides that each partner's share of the total penalty is the appropriate share.

100. Paragraph 5(3) defines the appropriate share as the same share of profits or losses apportioned to that partner in the accounting period, but if that information is not available to HMRC, any such share as an officer of HMRC may determine.

101. Paragraph 5(4) provides that any reduction to the penalty for co-operation under section 210 is calculated and applied to the total amount of penalties issued to the partners.

102. Paragraph 5(6) provides that for the purposes of applying the maximum sum of aggregated penalties under section 212, a penalty charged to a relevant partner is to be treated as if it were calculated by reference to the amount of tax due from the partner and so be subject to the aggregation limits.

103. Paragraph 5(7) states that an appeal may be made against a decision that the partners are liable to penalties or against the sum total of those penalties.

104. Paragraphs 5(11) and 5(12) provide for the Treasury to make an order using the negative procedure to vary the rates applied under this paragraph.

Schedule 32: Accelerated payments and partnerships

105. Paragraphs 2 to 8 provide rules on when an accelerated payment notice can be sent to partners in a partnership, in a case where there is an open enquiry, or a live appeal, which relates to the partnership return given under section 12AA of TMA 1970 (but not to any other partnership circumstance, such as SDLT or ATED – for which, see sections 223 and 224 respectively). These rules mirror the general position, but adapted as appropriate for this special case.

106. Paragraph 2(2) makes clear that an accelerated payment notice may not be given to the representative partner in that capacity. An accelerated payment notice may be given to that person if they are also a relevant partner (defined in paragraph 1(4)).

107. Paragraph 3 makes clear that although the open enquiry or appeal relates to the partnership return, an accelerated payment will be required from each of the partners individually, in the same way as the tax that they each pay on their share of the partnership profits. As a result, all other provisions and consequences, such as the right to make representations and the provision for a late payment penalty, apply to each partner individually.

108. Paragraph 4 sets out the necessary modifications for the contents of a 'partner payment notice', and sets out the meaning of 'understated partner tax'.

109. Paragraph 5 makes clear that the right to make representations applies to each partner individually.

110. Paragraph 6 makes clear that it is each partner individually who must make the accelerated payment.

111. Paragraph 7 makes clear that the late payment penalty rules of section 226 apply in respect of each partner individually, and applies section 226 with appropriate modifications.

112. Paragraph 8 applies, with appropriate modifications, the provisions of section 227 concerning withdrawal or modification of an accelerated payment notice to partner payment notices.

Schedule 33 Consequential amendments

113. Paragraph 1 extends the ability of a taxpayer under section 9B of TMA 1970 to amend their return during an enquiry to enable an amendment to be made for the purposes of this Part.

114. Paragraph 2 disapplies the assessment provisions for penalties in sections 100 to 103 of TMA 1970 as the penalties under this Part either have their own assessing provision (see section 211) or adopt other provisions (see section 226(7), adopting provisions in Schedule 56 to FA 2009).

115. Paragraph 3 disapplies the interaction provision in Schedule 24 to FA 2007 (penalties for errors) so that a penalty under that Schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

116. Paragraph 4 disapplies the interaction provision in Schedule 41 to FA 2008 (penalties for failure to notify and certain VAT and excise offences) so that a penalty under that schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

117. Paragraph 5 disapplies the interaction provision in Schedule 55 to FA 2009 (penalties for failure to make returns) so that a penalty under that schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

BACKGROUND NOTE

118. HMRC sometimes have to deal with a large number of taxpayers' returns that claim a tax advantage from the same or similar tax arrangements, or large numbers of appeals against HMRC's conclusion that the arrangements do not work. This measure gives HMRC the power to issue a notice to a taxpayer to the effect that they should settle their case with HMRC once a tribunal or court has concluded in another party's litigation that the arrangements do not produce the asserted tax advantage.

119. Under current legislation, HMRC may deny a claimed repayment of tax while a dispute is resolved, but in the general scheme of self assessment the taxpayer is able to claim the effect of the tax advantage while the enquiry and any subsequent tax appeal is unresolved. This measure gives HMRC the power to issue a notice to require an accelerated payment of the amount in dispute, in certain defined circumstances, while an enquiry is in progress or while there is an open appeal.

SECTIONS 234-283 PROMOTERS OF TAX AVOIDANCE SCHEMES

SUMMARY

1. These sections and the related Schedules introduce new legislation applying to certain promoters of tax avoidance schemes. In broad outline, the provisions define promoters of avoidance schemes, identify when they have triggered "threshold" conditions targeting specified behaviours, and provide for a "conduct" notice to be applied to these promoters. Those who fail to comply with a conduct notice may be issued with a "monitoring" notice, which requires pre-approval by a Tribunal. Names of promoters subject to a monitoring notice will be published by HMRC, including details of how the conduct notice was breached, and the promoter will be required to publish its monitored status to clients. Information requirements will apply to monitored promoters, and intermediaries and clients of monitored promoters.

DETAILS OF THE SECTIONS

Introduction

2. Section 234 is the first of a series of sections defining terms in the legislation. It defines the tax avoidance schemes classed as "relevant arrangements" and "relevant proposals" in relation to which a person may be a promoter. "Relevant arrangements" enable, or might be expected to enable, someone to obtain a tax advantage. Obtaining the tax advantage must be the main benefit or one of the main benefits of entering into the arrangements. "Tax advantage" is defined in subsection (3). "Arrangements" is widely defined to include agreements, schemes, arrangements and understanding, whether or not they are legally enforceable. "Relevant proposal" is a proposal for something which, if entered into, would be relevant arrangements and may relate to a single person or to a number of people.

3. Section 235 defines "promoter" in similar terms to sections 306 and 308 Finance Act 2004 (Disclosure of Tax Avoidance Schemes), but is not restricted to providers of tax or banking services. A person is a promoter only in respect of relevant proposals and relevant arrangements. Subsection (2) provides that a person is a promoter in respect of a relevant proposal if, at any time, the person is responsible for the design of the proposed arrangements, makes a "firm approach" to someone with a view to making the proposal available for implementation by that person or another, or makes the relevant proposal available for implementation by others. Subsection (3) of section 235 defines a promoter in relation to relevant arrangements as a person who at any time is a promoter for a relevant proposal which becomes the relevant arrangements, or is responsible for the design, organisation or management of the arrangements.

4. Subsections (4) and (5) of section 235 define "firm approach". This is concerned with communicating information about the relevant proposal, at a stage when it has been "substantially designed" and includes an explanation of the expected tax advantage, to another person with a view to that person entering into the arrangements. Subsection (5) of section 235 explains when proposed arrangements have been "substantially designed". This is when the transactions forming part of the proposed arrangements have been sufficiently

developed, so that someone wanting to obtain the tax advantage could enter into those or similar transactions.

5. Subsections (6) and (7) contain a power to allow the definition of promoter to be amended to exclude persons from being a promoter in prescribed circumstances with retrospective effect. Regulations to exclude from the definition of promoter those providing advice on the commercial aspects of a proposal or arrangement are planned for later in 2014 with retrospective effect to Royal Assent.

6. Section 236 defines intermediary for the purposes of these provisions. There are three differences between the definition of promoter and intermediary. The first two are that the promoter definition includes the design of the proposed arrangements and making the relevant proposal available for implementation by others. The third difference is that a person who explains about the tax advantage is a promoter; an intermediary for the purposes of this legislation does not. Instead an intermediary is defined as a person who communicates information about the relevant proposal to another person with a view to that other person entering into the proposed arrangements. Anyone who does this is an intermediary unless they are also a promoter.

Conduct notices

7. Section 237 describes the circumstances under which an authorised officer can issue a conduct notice and introduces Schedule 34 which includes the threshold conditions. A conduct notice can be issued if the promoter has, within the previous three years, triggered a threshold condition, and there is not an extant conduct notice or monitoring notice. The threshold conditions are described in the related Schedule. Subsections (2), (4) and (5) allow the authorised officer to ignore insignificant breaches of threshold conditions or cases where little tax is at risk. However a breach of a threshold condition cannot be considered "insignificant" if it is one of those listed in subsection (6).

8. Section 238 is concerned with the contents of the conduct notice. When a conduct notice is issued the recipient must comply with the conditions specified in the notice (subsection (1)). Subsection (2) allows the potential recipient an opportunity to comment on the proposed terms of the notice before it is issued. Subsection (3) lists the purposes for which issues can be included as conditions in the conduct notice. Each conduct notice will be tailored to the promoter. For example, if the promoter does not provide sufficient information about its proposals and arrangements to its clients there may be a condition in the conduct notice that it does so. If the promoter requires clients to enter into confidentiality agreements or contribute to a fighting fund while preventing them from settling their cases independently with HMRC, then a condition to address that may be included in the conduct notice.

9. Subsections (4) and (5) provide further explanation of the terms "adequate information" and "specified disclosure provision" in subsection (3). Subsection (6) enables a conduct notice to be issued to a promoter in a personal capacity or on a partnership. Subsection (8) includes a power to amend the definition of disclosure provisions for subsection (5) by regulation.

10. Section 239 provides definitions of "adequate", "client" and "promotes".

11. If a promoter abides by its conduct notice so that some conditions are no longer required or there is evidence that the underlying reason for the conduct notice has been addressed Section 240 allows an authorised officer of HMRC to amend or withdraw the conduct notice. Section 241 provides that the maximum length for a conduct notice is two years and provides that a conduct notice ceases to have effect once the promoter is subject to a monitoring notice.

Monitoring notices: procedure and publication

12. If a promoter fails to comply with a conduct notice then section 242 requires the authorised officer to apply to the Tribunal for approval to give a monitoring notice. A monitoring notice can only be issued if approval is granted by the Tribunal. The promoter must be given notice of the application. If the breach of the conduct notice related to the provision of information to customers or intermediaries, or to the promoter's duty to supply information to HMRC, is insignificant then the authorised officer is not under a duty to apply to the Tribunal for approval and consequently a monitoring notice is not issued (subsection (3)). The monitoring notice will state the reasons for its issue, in particular the condition in the conduct notice that the promoter breached. An effect of a monitoring notice is that the promoter may be subject to specific information notices with penalties for non-compliance.

13. Section 243 provides that the Tribunal may only approve a monitoring notice if it is satisfied that it is justified. The promoter has the opportunity to make representations to the Tribunal including representations about the reasonableness of the conditions in the conduct notice which HMRC considers it to have breached. The Tribunal may amend the proposed monitoring notice. Subsection (3) allows the monitored promoter to include in its representations to the Tribunal about the proposed monitoring notice its view that a condition in the conduct notice was unreasonable. If the Tribunal decides that a condition in the conduct notice is unreasonable subsections (3) and (4) operate so that the Tribunal will not approve the giving of a monitoring notice for a breach of only that condition. If the proposed monitoring notice identifies a breach of more than one condition of the conduct notice then the Tribunal will only refuse to approve the giving of a monitoring notice if it holds that all of the conditions were unreasonably imposed (assuming it is accepted that there was a breach on the facts and that the giving of the monitoring notice would be a justified response to that breach).

14. Section 244 describes the content of the monitoring notice and how it is issued. The monitoring notice is issue by an authorised officer of HMRC. All monitoring notices must explain the effect of the monitoring notice (including the date it takes effect) and the right of the recipient to request the withdrawal of the monitoring notice. In addition a monitoring notice being issued for the first time must include the condition or conditions of the conduct notice that it is has been determined that the promoter has breached. If them monitoring notice is a replacement monitoring notice then it must refer to the original monitoring notice. A promoter who is subject to a monitoring notice is referred to as a monitored promoter.

15. Section 245 provides the monitored promoter with the right to request that the monitoring notice should be withdrawn. For example the promoter may consider that it has complied with all of its obligations as a monitored promoter and has satisfied all the conditions of the preceding conduct notice, so that the monitoring notice is no longer necessary. Subsection (2) ensures that all the consequences of a monitoring notice runs for at least 12 months. An authorised officer has 30 days to respond to the request and when

considering whether or not to reject the request, takes into account the behaviour of the promoter while it was being monitored (subsection (5)), the promoter's likely future behaviour and its compliance with this Part. In addition the authorised officer can, when deciding to withdraw the notice, decide to issue a follow-on conduct notice so that the promoter continues to be subject to some supervision.

16. The notification of the authorised officer's decision on withdrawal of the monitoring notice is made under section 246. The authorised officer may decide to accept or reject the request for withdrawal, but if they do the latter they must give their reasons. A right to appeal against a refusal to withdraw a monitoring notice is in section 247.

17. Section 248 allows an authorised officer to publish the fact that a person is a monitored promoter. Publication can include the promoter's name, address, the nature of its business and other appropriate information, including the conditions in the conduct notice that were breached. A promoter's details cannot be published until their right to appeal against the Tribunal's approval has been exhausted (subsections (5) and (6)). Additionally if a monitoring notice is withdrawn it is incumbent on the authorised officer to publish the fact of the withdrawal in the same way.

18. Section 249 complements section 248 by requiring a promoter to publish to its clients that it is a monitored promoter and which of the conditions in the conduct notice have been breached. For existing clients the promoter must publish that it is monitored within 10 days of its right to appeal the Tribunal's approval being exhausted (subsections (4) and (5)). For new clients the ten day period applies from the date that they became new clients (subsection (9)). HMRC may make regulations requiring a promoter to publish on the Internet or in other publications or correspondence, such as marketing material and communications with clients, that it is a monitored promoter, the conditions in the conduct notice that it has breached and its promoter reference number (subsections (3) and (10)). The form and manner of the publication is to be prescribed in regulations.

Allocation and distribution of promoter reference number

19. Section 250 requires HMRC to issue the monitored promoter with a promoter reference number. This can only be done after the promoter's right to appeal against the Tribunal's approval decision on an original monitoring notice is exhausted or if later the date that a replacement monitoring notice takes effect. The promoter reference number will enable HMRC to identify the monitored promoter's clients so that its compliance efforts can be suitably directed. If the monitored promoter is offshore HMRC must issue the promoter reference number to intermediaries of the monitored promoter.

20. Within thirty days of receipt of the promoter reference number from HMRC, section 251 requires the promoter to pass on the promoter reference number to their clients and relevant intermediaries. If the monitoring notice is an original monitoring notice then the definition of clients also includes those who, from the date that the conduct notice took effect, have entered into transactions which enable or are likely to enable the person to obtain a tax advantage during the time that the monitoring notice has effect. There are two time limits for passing on the promoter reference number to the client depending on whether or not the client is a current client or a new client of the promoter. The time limit for providing the promoter reference number to relevant intermediaries is 30 days beginning with the later of the date that the promoter is notified by HMRC of the promoter reference number and the date that

monitored promoter could reasonably be expected to know that the person was a relevant intermediary.

21. Section 252 requires clients of a promoter, within thirty days of receiving the promoter reference number, to pass on the promoter reference number to anyone who they know, or might reasonably be expected to know, is likely to be a client of the monitored promoter. This obligation also applies to intermediaries. This requirement will ensure that as many clients or people likely to be clients as possible are given the promoter reference number.

22. Section 253 requires the person notified of the promoter reference number to report the number to HMRC if they expect to obtain a tax advantage from the monitored promoter's relevant arrangements. If the person makes a tax return then the promoter reference number should be included on the return. If the person does not make a tax return or the tax advantage arises in respect of stamp duty land tax, stamp duty reserve tax, inheritance tax or petroleum revenue tax then the promoter's reference number should be notified to HMRC in the form and manner prescribed in regulations. Notification of the promoter reference number will enable HMRC to track taxpayers who have used the monitored promoter's products and to target their compliance efforts accordingly.

Obtaining information and documents

23. Section 254 defines "monitored proposals" and "monitored arrangements" for the purposes of the information requirements that apply to monitored promoters. Monitored proposals and arrangements are those where certain actions take place after the date that the monitoring notice comes into effect. For example subsection (1) (a) defines monitored proposals as proposals for which the promoter makes a firm approach to another person after the date that the monitoring notice took effect. Subsection (2) defines monitored arrangements and includes arrangements which may have been entered into before the date that the monitoring notice takes effect but where the tax advantage generated arises on or after the date that the monitoring notice took effect (subsection (2) (c)).

24. Section 255 is the targeted information power for monitored promoters and relevant intermediaries. It is to be operated by, or with the approval of, authorised HMRC officers only and applies only if the information or documents are requested in writing. The information or documents requested must be reasonably required to meet certain purposes, specified in subsection (3), which includes considering the tax consequences of implementing a monitored proposal and to check the "tax position" of any person who is reasonably believed to have implemented monitored proposals or monitored arrangements. Only intermediaries who, having been notified of the promoter's reference number, continue to communicate the promoter's proposals are subject to the information requirement (subsection (4)). "Tax position" is widely defined in subsections (6) and (7). The time limit for providing the information or documents is a minimum of ten days but may be longer as directed by the officer giving the notice (subsection (10)).

25. If an HMRC officer wishes to use section 255 to obtain information which relates to a person other than a monitored promoter, their intermediary, or a subsidiary undertaking of either, section 256 requires the officer to obtain prior approval of the Tribunal. This is similar to paragraph 3 of Schedule 36 to Finance Act 2008.

26. Section 257 provides for the ongoing duty of the monitored promoter to provide information to HMRC. It takes effect once HMRC has notified the monitored promoter. This enables HMRC to obtain information about all monitored proposals and monitored arrangements that were in existence at the time the monitoring notice comes into effect and throughout the period that the promoter is monitored. Unlike DOTAS, which relies on identifying proposals or arrangements using hallmarks, this power is not limited to specific proposals or arrangements. The time limit for provision of the information and documents is variable and will be specified in the notification from HMRC. The information and documents to be provided under this duty will be detailed in secondary legislation.

27. If the monitored promoter is offshore and has failed to provide the information required under sections 255 and 257 about monitored proposals or monitored arrangements then HMRC may approach an intermediary to provide the information under section 258. In the absence of an intermediary then HMRC may require the person who has implemented the monitored proposal or all or part of the monitored arrangements to provide the information. The minimum period for the provision of the information is ten days.

28. Section 259 is concerned with the provision of information about the clients of the monitored promoter. HMRC may serve a notice under this section, after which time the monitored promoter has to make returns supplying names and addresses for its clients (as well as other prescribed information) on a calendar quarterly basis. The first return must contain details about current clients, and thereafter there is an on-going duty to file returns with details of new clients. The clients are those to whom the promoter has made a firm approach, made a relevant proposal available for implementation or those in relation to whom the promoter has taken part in the organisation or management of relevant arrangements. Clients that are entering into transactions for arrangements that the promoter has previously promoted are included in the information requirement if the tax advantage arises in a relevant period (subsection (8)). The information provided by the monitored promoter can be cross-checked against its client's returns and notifications to HMRC for compliance purposes. Once the HMRC notice has been issued the duty to make returns continues until the promoter is no longer monitored.

29. Section 260 is the equivalent provision for intermediaries. HMRC may issue a notice to the intermediary requesting details of its clients in relation to a monitored proposal of the monitored promoter for a relevant period. The relevant period cannot begin before the intermediary received the promoter reference number (subsection (3)) and comes to an end once the monitoring notice ceases to have effect for that promoter. The intermediary has to provide the names and addresses (and other prescribed information) of the clients to whom it communicated information about the monitored proposal on an ongoing basis for each relevant period.

30. Section 261 only applies where a client return has been provided under section 259 or 260 and an authorised officer suspects that a person not included in the return is party to transactions implementing a proposal or arrangement. In these circumstances the officer can require the monitored promoter to provide prescribed information about that person. This will allow the officer to confirm or dismiss relevant suspicions. The minimum time for the provision of the information is ten days.

31. Section 262 applies to promoters who are subject to a conduct notice. The section allows HMRC to request information or documents that are reasonably required to enable HMRC to monitor the conduct notice. Any information or documents provided under section 262 may provide evidence to support the amendment or withdrawal of the conduct notice.

32. Section 263 places an obligation on the monitored promoter to inform an authorised officer of its current address within 30 days of the end of each calendar quarter for the period that the monitoring notice has effect.

33. If a promoter provides information under sections 255, or 257 to 262, but an authorised officer suspects that not all of the information or documents have been provided then section 264 enables the authorised officer to apply to the Tribunal for an order requiring the promoter to provide specified information or documents. The Tribunal needs to be satisfied that the authorised officer has reasonable grounds for suspecting that the information or documents are reasonably required or will support or explain information already required. The time limit for the provision of the information or documents is ten days or any longer period as the authorised officer directs.

34. Section 265 is equivalent to a similar DOTAS provision requiring a client to provide the promoter with their national insurance number and unique taxpayer reference. This will enable the promoter to provide this information to an authorised officer if required to do so under section 259 and will assist HMRC in tracking the promoter's clients.

Obtaining information and documents: appeals

35. Appeal rights against the information notices are provided for in section 266. The time limit for an appeal is thirty days and the Tribunal can confirm or vary the notice or its requirement or set it aside.

Obtaining information and documents: supplementary

36. Sections 267 to 271 are administrative provisions for the information notice sections 255 to 264. They are equivalent to similar provisions in Schedule 36 Finance Act 2008. Section 267 allows the Commissioners to specify the form and manner in which information and documents are to be provided. Section 268 allows the person who has received the notice to provide a copy of a document unless required to provide the original. Section 269 exempts certain documents from the information notice and section 270 limits the production of documents to those in the person's possession or power and excludes certain old documents. Section 271 exempts from disclosure any privileged information. This is information subject to legal professional privilege, or for Scotland, confidentiality of communications.

37. Section 272 only applies to notices under section 258 – the duty of a person dealing with a monitored promoter outside the UK. It provides an exemption where the person to whom the authorised officer serves the information notice under section 258 is a tax adviser. The exemption applies to information and documents about or which are relevant communications between the tax adviser and its clients or another tax adviser of that client (subsections (2) and (5)).

38. Section 273 enables clients and intermediaries to ignore a non-disclosure agreement they have with the monitored promoter if they want to provide information or documents to HMRC. The information can be about the monitored promoter itself or its relevant proposals and relevant arrangements. The information is not restricted to proposals and arrangements that the client or intermediary has used or communicated about; it can be information about other proposals or arrangements of the monitored promoter.

Penalties

39. Section 274 introduces Schedule 35 which contains provisions about the penalties for this Part.

40. Section 275 introduces a higher standard of reasonable excuse and reasonable care for monitored promoters and their clients for certain obligations under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. A reasonable excuse for failing to comply with an obligation under the Taxes Acts can be, for example an unforeseen event or illness that prevents the person from meeting that obligation. What constitutes reasonable excuse in any particular case depends on the specific facts of that case. Sometimes a person will obtain professional advice about whether or not they are required to meet that obligation. They may then want to rely on the existence of that advice to argue that they have a reasonable excuse for not meeting it. Whether or not this advice is sufficient to provide a reasonable excuse will depend on such factors as the competency of the adviser and the relevance of the advice to the facts. There is a requirement to take reasonable care when submitting returns and other information to HMRC. What is reasonable care for a person will vary according to the circumstances of the case; again someone may argue that they have taken reasonable care because they have obtained professional advice. There is detailed guidance on reasonable excuse and reasonable care in HMRC's Compliance Handbook.

41. The higher standard of reasonable excuse and reasonable care for clients in these sections ensures that the client cannot rely on legal advice provided to them by the monitored promoter in order to claim that they had a reasonable excuse or took reasonable care. This does not meant that the person cannot have a reasonable excuse at all, there may be other circumstances or they may have obtained independent legal advice that will allow HMRC or the Tribunal to consider if they have a reasonable excuse.

42. The higher standard of reasonable excuse and reasonable care for promoters is different. The higher standard is based on the relevance of the legal advice and it ensures that the monitored promoter cannot rely on legal advice for the defences of reasonable excuse and reasonable care if the advice was not based on a full and accurate description of the facts or if the conclusions in the advice were unreasonable.

43. Section 275 introduces the higher standard for reasonable excuse for a client by inserting new subsection (2EA) into section 98C Taxes Management Act 1970 (the DOTAS penalty provisions). It applies where the client of an offshore promoter has failed to comply with their obligation to provide information about notifiable arrangements either under section 309 or 310 Finance Act 2004. If the client wishes to argue that they have a reasonable excuse under section 118 Taxes Management Act 1970 then they cannot rely on legal advice given to them or obtained by the monitored promoter.

44. New subsection (2EB) introduces the higher standard of reasonable excuse for a monitored promoter's DOTAS obligations. For example this applies to the monitored promoter's duty to notify proposals and arrangements under DOTAS, to provide clients with scheme reference numbers and to provide details of clients. Section 276 introduces the higher standard of reasonable care for clients' tax returns and accounts (as listed in paragraph 1 of Schedule 24 Finance Act 2007). The higher standard is as described in paragraph 41 above and ensures that the client cannot rely on legal advice provided to them by the monitored promoter in order to claim that they had a reasonable excuse or took reasonable care.

45. Where tax is lost due to the client's failure to notify HMRC of the monitored promoter's reference number section 277 provides for an extended time limit of 20 years for raising assessments in respect of income tax, capital gains tax, corporation tax, inheritance tax, petroleum revenue tax, stamp duty land tax, and the annual tax on enveloped dwellings.

Offences

46. Sections 278 to 280 mirror the provisions in Part 8 Schedule 36 Finance Act 2008 for offences in relations to information notices. Section 278 applies if a person conceals, destroys or disposes of or arranges for the concealment, destruction or disposal of a document that is subject to an information notice under section 255. Section 279 contains a similar provision where the person has been informed by HMRC that they are likely to be given an information notice under section 255 and HMRC is going to apply to the Tribunal for permission to issue the information notice. Section 280 provides that the penalties for such offences are a fine or imprisonment for a maximum of two years or both.

Supplemental

47. Section 281 introduces Schedule 36 which contains provisions for partnerships.

48. Section 282 allows regulations to be made for the purposes of the legislation. Apart from statutory instruments to make regulations to add new disclosure provisions, threshold conditions, to change the amount of a penalty or the definition of control which are made under the affirmative procedure, all other regulations are made under the negative procedure. Finally section 283 provides a number of definitions to support the sections.

DETAILS OF THE SCHEDULES

Schedule 34, Part 1

49. Part 1 includes the threshold conditions. If a promoter has met any one of the 11 conditions in Schedule 34 in the last three years it is to be considered for a conduct notice.

50. Paragraphs 2 to 12 set out the 11 conditions.

51. Paragraph 2 sets out the first condition which relates to the publication of information about the promoter as deliberate tax defaulter.

52. Paragraph 3 sets out the second condition which relates to the promoter being named in a report for a breach of the Code of Practice on Taxation for Banks.

53. Paragraph 4 sets out the third condition which relates to the promoter receiving a conduct notice as a dishonest tax agent.

54. Paragraph 5 sets out the fourth condition which is that the person has failed to comply with an obligation either to disclose a tax avoidance scheme or to provide details of clients to HMRC. Subparagraph (2) provides that the condition is met even if the person had a reasonable excuse for failing to meet the obligation.

55. Paragraph 6 sets out the fifth condition which is that the promoter has been charged with a specified tax offence. Subparagraphs (2) and (3) make provision about acquittals and similar matters. Subparagraph (4) sets out the offences which are to be taken into account.

56. Paragraph 7 sets out the sixth condition which is that the majority of a sub-panel of the General Anti-Abuse Rule Advisory Panel has given an opinion that entering into one of the promoter's tax avoidance schemes is not a reasonable course of action.

57. Paragraph 8 sets out the seventh condition which is that the promoter has been found guilty of misconduct by a professional body. Subparagraph (2) restricts the type of misconduct to which the paragraph can apply. Subparagraph (3) lists relevant professional bodies and paragraph 15 allows additions to the list by regulations. HMRC will be consulting with professional bodies to identify the relevant offences so that they may be prescribed in regulations.

58. Paragraph 9 sets out the ninth condition which is that a regulatory authority has imposed a sanction on the promoter. Subparagraph (2) requires HMRC to specify the sanctions to which the paragraph applies. Subparagraph (3) lists relevant regulatory authorities and paragraph 15 allows additions to the list by regulations. HMRC will be consulting with regulatory authorities to identify the relevant offences so that they may be prescribed in regulations.

59. Paragraph 10 sets out the ninth condition which is that the promoter has failed to comply with an information notice issued by HMRC.

60. Paragraph 11 sets out the tenth condition which is that the promoter has required a client to keep details of a tax avoidance scheme confidential from HMRC or to contribute to a fighting fund. Subparagraphs (2) and (3) set out the circumstances in which a person is regarded as having required a client to keep details of a scheme confidential. Subparagraph (4) sets out what is meant by requiring a client to contribute to a fighting fund and includes requiring a client to take out an insurance policy. Subparagraph (5) provides that the condition is only met in respect of a contribution to a fighting fund if the client is also prevented from settling with HMRC without the promoter's permission. Subparagraphs (6) and (7) contain definitions.

61. Paragraph 12 sets out the eleventh condition which is that the promoter has continued to market or make available a tax avoidance scheme after being given a notice to stop following a judicial ruling. Subparagraph (2) explains which tax avoidance schemes are affected. Subparagraph (3) explains when a stop notice may be given. Subparagraph (4) sets

out what a stop notice must contain. Subparagraphs (5) and (6) make provision for the withdrawal of a stop notice. Subparagraph (7) makes provision about when a stop notice takes effect. Subparagraph (8) gives the meaning of terms used.

Schedule 34, Part 2

62. Part 2 describes how a body corporate meets the threshold conditions. Paragraph 13 makes provision about when a person's breach of a threshold condition may be imputed to a body corporate which that person controls.

Schedule 34, Part 3

63. Part 3 includes the power to amend the threshold conditions. Paragraph 14 allows the Treasury to amend any of the conditions or to add new ones. HMRC will be drafting a threshold condition for associated and successor businesses of a monitored promoter. Draft regulations will be issued for comment in due course for this threshold condition and for the relevant offences for paragraphs 8 and 9 (disciplinary action by a professional or regulatory body).

Schedule 35

64. Paragraph 1 explains what is meant by an information duty.

65. Paragraph 2 sets out the maximum penalties for failing to comply with the various obligations in the legislation. Subparagraph (2) makes it clear that for certain of the penalties the maximum can be imposed in respect of each person to whom or about whom information has not been provided. Subparagraph (3) provides for increasing penalties where there is repeated failure to provide HMRC with a promoter's reference number. Subparagraph (4) sets out the considerations to be taken into account by the Tribunal when determining the amount of the penalty and in particular provides for the level of fees or the amount of tax advantage to be taken into account.

66. Paragraph 3 provides for daily penalties where a failure to comply continues after an initial penalty has been imposed. Subparagraph (2) sets out the maximum daily penalties.

67. Paragraph 4 provides for a penalty where inaccurate information or an inaccurate document has been provided. Subparagraph (2) covers the situation where the inaccuracy is careless or deliberate. Subparagraph (3) explains what is meant by careless. Subparagraphs (4) and (5) set out circumstances in which legal advice cannot be relied upon. Subparagraph (6) covers the situation where HMRC is not informed of an inaccuracy in a document. Subparagraph (7) covers the situation where an inaccuracy is discovered subsequently but HMRC is not informed. Subparagraph (8) sets out the maximum penalties for inaccuracies. Subparagraph (9) makes it clear that there is only a single penalty although there may have been multiple inaccuracies in the same document or information.

68. Paragraph 5 allows the Treasury to adjust the maximum penalties by regulations.

69. Paragraph 6 provides for penalties where a promoter or intermediary destroys or conceals documents that it has a duty to produce under certain of the provisions in the legislation. Subparagraphs (2) and (3) set out circumstances in which a penalty will not apply. Subparagraph (4) provides that the destruction or concealment of a document will count as a failure to produce the document. Subparagraph (5) sets out the priority rules if a document is required under more than one provision.

70. Paragraph 7 provides for penalties where documents are destroyed or concealed after HMRC has given informal notification that the documents will be required.

71. Paragraph 8 provides for cases where HMRC or the Tribunal extend the time limit for complying with an obligation.

72. Paragraph 9 provides that there is no penalty where there is a reasonable excuse. Subparagraph (2) makes provision about what does and does not constitute reasonable excuse. The subparagraph includes the higher standards of reasonable excuse for monitored promoters and their clients.

73. Paragraph 10 brings the assessment of the penalties within the provisions of part 10 of the Taxes Management Act 1970. In particular this has the consequence that all penalties except daily default penalties under paragraph 3(2)(b) are assessed by Tribunal rather than HMRC, and it provides promoters with the ordinary rights of appeal against penalties.

74. Paragraph 11 provides for the penalties to carry interest.

75. Paragraph 12 prevents a penalty being charged where someone has been convicted for the same offence.

76. Paragraph 13 prevents the duplication of penalties where a promoter reference number has been omitted from a tax return.

Schedule 36 – Partnerships Part 1

77. Part 1 describes how partnerships are to be treated as persons.

78. Paragraph 1 provides that where persons are carrying on a business in partnership the partnership is regarded as a person for the purposes of the legislation and imports the meaning of partnership from the Partnership Act 1890. Partnerships that are not separate legal entities are not subject to Schedule 36.

79. Paragraph 2 provides that a partnership is regarded as the same partnership and same person despite changes in the members of the partnership as long as there is at least one person who was a member of the partnership before and after the change.

80. Paragraph 3 describes the acts and omissions which are treated as acts or omissions of the partnership. Subparagraphs (2) and (3) explain which partners are relevant for the purposes of the paragraph. Subparagraph (4) imports the meaning of firm from the Partnership Act 1890.

81. Paragraph 4 provides that if a controlling partner or a managing partner of a partnership meets a threshold condition in a personal capacity the partnership is treated as having met that threshold condition. Subparagraph (3) explains which threshold conditions are relevant for the purposes of the paragraph.

Schedule 36 - Partnerships Part 2

82. This part applies the main sections to partnerships with relevant modifications.

83. Paragraph 5 permits a conduct notice to impose conditions on both current and future members of the partnership. This paragraph also requires that a conduct notice given to a partnership must state it is a partnership conduct notice; paragraph 6 has the same provision for monitoring notices.

84. Paragraph 7 is the first paragraph dealing with the continuity of conduct notices and monitoring notices when a partner leaves a partnership or a partnership breaks up. It applies where a partnership breaks up and the business is carried on by an ex-partner as a sole trader. In these circumstances the monitoring notice or conduct notice continue to have effect in relation to the sole trader just as they did for the partnership.

85. Paragraph 8 applies where a controlling member of a partnership that is subject to a conduct notice leaves the partnership. Subparagraphs (2) and (3) give an authorised officer the power to give P a conduct notice, or if P is a controlling member of a new partnership, give the new partnership a conduct notice. Subparagraphs (4) and (5) provide for two circumstances where the conduct notice ceases to have effect. The first is where P leaves the new partnership; the second is if the term of the original conduct notice has expired.

86. Paragraph 9 makes similar provision where the controlling member of a partnership that is subject to a monitoring notice leaves the partnership.

87. Paragraph 10 applies where a partner leaves a partnership that is subject to a conduct notice or monitoring notice (the original notice) and takes part of the partnership business ("the transferred part") with them when they depart. Under subparagraphs (3) and (4) an authorised officer may give an equivalent notice (the replacement notice) to the departing partner or to the departing partner's new partnership if that partnership is carrying on the transferred part of the promotion business. The new conduct notice or monitoring notice ceases to have effect on the new partnership if P leaves the partnership or the original notice ceases to have effect.

88. Paragraph 11 provides the definitions of "original conduct notice", "original monitoring notice", "replacement conduct notice" and "replacement monitoring notice". It also provides that the replacement conduct notice will have no effect after the termination date of the original conduct notice. Paragraph 12 provides that a replacement conduct notice cannot survive the termination of the original notice which preceded it.

89. Paragraph 13 provides that a replacement conduct notice or monitoring notice cannot be given to a person if an original notice still has effect in relation to them.

90. Paragraph 14 provides that where a monitored promoter is in partnership the details to be published by HMRC are to relate to the partnership and not the partners.

Schedule 36 - Partnerships Part 3

91. This part of the Schedule provides for the responsibilities of the partners for meeting the obligations imposed under this Part of the Act. Paragraph 15 provides that all responsible partners are required to comply with notices given under the legislation. Subparagraph (1) gives the meaning of responsible partners. Subparagraph (4) sets out which partners can exercise a right of appeal.

92. Paragraph 16 provides that the responsible partners are jointly and severally liable to penalties and interest on penalties. Subparagraph (2) explains from which partners penalties and interest cannot be recovered. Subparagraph (3) defines relevant time for the purposes of subparagraph (2).

93. Paragraph 17 explains to which partners or partner HMRC may serve a notice. Subparagraph (2) gives the meaning of representative partner for the purposes of the paragraph. Subparagraph (3) explains when a designation (or revocation of a designation) of a representative partner by HMRC has effect.

94. Paragraph 18 allows the partners to nominate a partner (the "nominated partner") to meet the obligations of the responsible partners on their behalf.

Schedule 36 - Partnerships Part 4

95. This part of the Schedule contains the definitions for the Schedule. Paragraph 19 provides the definition of "controlling member" and paragraph 20 the definition of "managing partner". This part also includes in paragraph 21 a power to amend paragraphs 19 and 20.

BACKGROUND NOTE

96. This legislation is designed to tackle the particular behaviours which have been identified amongst certain promoters of tax avoidance schemes (e.g. failure to comply with DOTAS or respond to HMRC information notices) and in doing so improve the transparency of certain promoters with HMRC with appropriate sanctions if the promoter does not want to comply voluntarily.

SECTION 284: DISLCOSURE OF TAX AVOIDANCE SCHEMES: INFORMATION POWERS

SUMMARY

1. This section gives HM Revenue and Customs (HMRC) further powers to obtain information about avoidance schemes.

DETAILS OF THE SECTION

2. Subsection 2 adds section 310A to Finance Act 2004 (section 310A) which provides that where a person has disclosed a proposal or arrangement that provides a main benefit or one of the main benefits a tax advantage, HMRC may require that person to provide documents or more information about the proposal or arrangement.

3. Subsection 2 also adds section 310B to Finance Act 2004 (section 310B) which provides that where a person has failed to provide information or documents required under section 310A HMRC may ask the tribunal for an order requiring the information or documents to be provided.

4. Subsection 3 amends section 316 (2) of Finance Act 2004 so that information required under section 310A has to be provided in the form and manner specified by HMRC.

5. Subsection 4 adds a definition of "working day" to section 318(1) of Finance Act 2004 for the purposes of determining when information or documents have to be provided under section 310A or section 310B.

6. Subsections 5-10 amend section 98C of Taxes Management Act 1970 to provide for penalties where a person has failed to provide information or documents required under section 310A.

7. Subsection 11 contains the commencement provisions.

BACKGROUND NOTE

8. The disclosure of tax avoidance schemes legislation in Part 7 of Finance Act 2004 (Part 7) is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work.

9. Part 7 requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.

SECTIONS 285 - 288: THE CODE OF PRACTICE ON TAXATION FOR BANKS SUMMARY

1. These sections require HMRC from 2015 to publish an annual report on the operation of the Code of Practice on Taxation of Banks (the Code).

DETAILS OF THE SECTIONS

SECTION 285: HMRC TO PUBLISH REPORTS

2. Subsections (1), (2) and (3) provides that HMRC must publish a report on the operation of the Code and if the Commissioners conclude that a group or entity has breached the Code during a reporting period they may name the group or entity. Subsection (3) deals with the circumstance where the Commissioners determine that there has been a breach of the Code and it is impractical to name the group or entity in the report for the period.

3. Subsections (4), (5) and (6) sets out those groups and entities that will be listed in the annual report. These are those groups and entities that are chargeable to bank levy, would be chargeable if it were not for the £200 million de minimis exemption, or those groups and entities which meet the definition of a bank in section 991 of Income Taxes Act 2007 other than where the entity is a building or friendly society. In the case of a group or entity in which either there is a UK or foreign bank(s) but where the wider group is a non-banking group, subsection (5) ensures that the annual report will only list the UK or foreign banks or UK banking sub-groups and not the wider group.

SECTION 286: "PARTICIPATING" GROUPS OR ENTITIES

4. Subsections (1) and (2) define 'participating groups or entities' for the purposes of section 285.

5. Subsections (3) and (4) set out what participating groups or entities must do if they no longer want to be participating groups or entities, or if they wish to be so again.

6. Subsections (5), (6) and (7) set what happens where a participating group or entity is named in an annual report and what it must do subsequently to become a participating group or entity in a later report.

SECTION 287: OPERATION & BREACHES OF THE CODE

7. Subsections (1), (2), and (3) provide that the Commissioners will publish and follow a governance protocol in relation to the Code, and that before they reach a decision to name a bank they must appoint an independent reviewer. The independent reviewer must take into account any representations by the group or entity and provide a copy of the report to the group or entity concerned. The identity of the independent reviewer has yet to be decided but will be a person of suitable stature who is independent of both HMRC and the group or entity such as for example a retired high court judge.

8. Subsections (4) and (5) provide that where the group or entity has received a GAAR advisory panel opinion notice(s) the independent reviewer will only be required to report upon whether the group or entity should be named in a report.

9. Subsections (6), (7) and (8) set out the procedure for and matters that the Commissioners must take into account when deciding to name a group or entity in an annual report.

10. Subsections (9), (10) and (11) set out the two limited grounds on which the Commissioners may reach a different determination than that of the independent reviewer. That is where they decide that the independent reviewer's determination was unreasonable or where exceptionally there are compelling reasons for reaching a different determination. It also sets out that where the group or entity decides to judicially review the Commissioners determination, the onus will be the Commissioners to show that they acted reasonably in reaching their determination.

11. Subsection (12) sets out the time limit for making a claim to judicial review and provides that unless the Court is satisfied that there are exceptional circumstances which would warrant a public hearing, the judicial review in subsection (11) will be held in private.

12. Subsection (13), (14), (15) and (16) set out what the Commissioners must include in an annual report where they have reached a different determination than the independent reviewer and the timing of that report. Subsections (15) and (16) set out the information that the Commissioners must disclose to the independent reviewer and the basis on which the independent reviewer can use that information.

SECTION 288: DOCUMENTS RELATING TO THE CODE

13. This section sets out that changes to any document published by HMRC in relation to the Code must be consulted upon and HMRC must take account of any consultation responses. This does not apply to the first publication of the governance protocol on 5 December 2014 or any documents published before Royal Assent of Finance Act 2014 (17 July 2014).

BACKGROUND NOTE

14. The Code was introduced in 2009. The names of the top 15 banks that had adopted the Code were published in November 2010. The Code is one element of the Government's anti-avoidance strategy and is designed to change the attitudes and behaviour of banks towards avoidance given their unique position as potential users, promoters and funders of tax avoidance.

15. The Code describes the approach expected of banks with regard to governance, tax planning and engagement with HMRC. It aims to encourage banks, building societies and organisations providing banking services operating in the UK to adopt best practice in relation to their tax affairs.

SECTION 289: UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES AND ALTERNATIVE INVESTMENT FUNDS

SUMMARY

1. This section extends the application of section 363A Taxation (International and Other Provisions) Act 2010 (TIOPA) to Alternative Investment Funds (AIFs).

DETAILS OF THE SECTION

2. Subsection 2 substitutes subsections (1) and (2) of section 363A.

3. New subsection (1) removes the requirement for a fund within the scope of section 363A to come within the definition of an offshore fund at section 355 TIOPA, and amends it so that it applies to Undertakings For Collective Investment In Transferable Securities (UCITS) and to AIFs, provided that they are not 'excluded entities'.

4. New subsection (2) no longer requires that a body corporate is treated as resident in a State for the purposes of any tax imposed on income and applies the provisions to entities within the extended scope of section 363A.

5. New subsection (2A) provides a definition of the term 'excluded entity', and lists entity types within that definition.

6. New subsection (2B) provides a power for The Treasury to add to, subtract from or vary the list at subsection (2A).

7. Subsection (3) replaces the reference in subsection (3) of section 363A to "offshore fund" with "UCITS or AIF", and subsection (4) defines those and other terms used in the section.

8. Subsection 5 makes various consequential amendments to TIOPA.

9. Subsection 6 provides for the changes, which are wholly relieving, to come into force from 5 December 2013. Entities within the extended scope of amended section 363A will therefore be treated as not resident (as provided by that section) from that date.

BACKGROUND NOTE

10. Currently, section 363A treats offshore funds (as defined at section 355 TIOPA) that are authorised under article 5 of the UCITS Directive (Directive 2009/65/EC of the European Parliament and of the Council), as not being resident in the United Kingdom if they are resident in another Member State for the purposes of any tax imposed under the law of that State on income.

11. Section 363A was introduced in Finance Act 2011, with effect from 19 July 2011, to maintain the competitiveness of the UK fund management industry following the introduction of the UCITS IV Directive, which provided a "management company passport". The effect of section 363A is that managing a fund within its scope from the UK will not cause the fund to be treated as resident in the UK as a result of central management and control being deemed to be located here.

12. The amendments made by this section follow the announcement of the UK's Investment Management Strategy (IMS) at Budget 2013. The IMS included a range of measures to improve the competitive position of the UK investment management industry.

13. A consultation document entitled 'Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010' was published on 22 July 2013 setting out the Government's proposals. A draft clause was published as part of the draft Finance Bill at Autumn Statement 2013. This section takes account of concerns expressed in response to the draft clause, to clarify its scope.

SECTION 290 & SCHEDULE 37: COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

SUMMARY

1. This section and Schedule introduce a relief from capital gains tax and an exemption from income tax relevant to the creation and operation of legal structures in which a trading company is owned by a particular sort of trust for the benefit of employees.

2. Part 1 of the Schedule introduces a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

3. Part 2 of this Schedule introduces an exemption from income tax for up to £3,600 per employment on a qualifying bonus payment in any tax year. The qualifying bonus payment must be one made to its employees (and any qualifying former employees) by a company which is owned directly or indirectly by a trust of the type specified in Part 1 at the time of the payment and which meets the qualifying conditions. A qualifying bonus payment will be an award other than regular salary or wages that is paid to all employees of the company (or the group of which it is a member) on equal terms, although bonus amounts can be set by reference to a percentage of salary or length of service or hours worked.

4. Part 3 of this Schedule makes amendments to inheritance tax provisions to support the creation and operation of the trust. It ensures that transfers to the trust and the trust itself are exempt from inheritance tax charges in cases where the conditions for the existing exemptions which apply to employee benefit trusts are not met.

5. Part 4 of this Schedule makes miscellaneous amendments consequent upon Parts 1-3.

DETAILS OF THE SCHEDULE

Part 1: capital gains tax relief

6. Part 1 of the Schedule makes changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992) to introduce a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

7. Paragraph 1 inserts new sections 236H to 236U into TCGA 1992.

8. Subsection (1) of new section 236H summarises the circumstances in which the section applies and relief is due. It refers to the relief requirements which are described more fully in subsection (4).

9. Subsections (2) and (3) of new section 236H override the 'market value rule' which would normally apply, and instead require that the consideration received by the person disposing of the shares and given by the trust acquiring the shares be taken to be an amount which results in no gain and no loss arising on the disposal.

10. Subsection (4) of new section 236H introduces five 'relief requirements' all of which must be met in order for the capital gains tax relief to be due. Four of these requirements are described in detail in other new sections of the TCGA:

- The trading requirement must be met by the company whose shares are acquired by the trustees at the time of the disposal and until the end of the tax year in which that disposal is made: see new section 236I, paragraph 15 below.
- The all-employee benefit requirement must be met by settlement the trustees of which acquire the shares, see new sections 236J, 236K and 236L, paragraphs 19, 26 and 29 below.
- The controlling interest requirement must also be met by that settlement, see new section 236M, paragraph 34 below.
- The limited participation requirement is an anti-avoidance provision, referring to the shareholders and other participators in the company, see new section 236N, paragraph 36 below.

11. Subsections (4)(e) and (6) of new section 236H contain the fifth relief requirement. This is that neither the claimant nor anyone connected with him has received relief under section 236H in an earlier year on a disposal of either shares in the same company or shares in a company which was at that time a member of the same group as the company whose shares are the subject of the present claim.

12. Subsection (5) of new section 236H explains how the alternative mechanism alternative mechanism at section 236L, by which a settlement may be treated as meeting the all-employee benefit requirement, works for the purposes of the relief requirements in section 236H(4). A settlement which ceases to meet the conditions of the all-employee benefit requirement cannot rely on section 236L (ie on the behaviour of its trustees and other factors) to ensure that it is treated as continuing to meet that requirement, and hence meet the relevant relief requirement. Likewise, a settlement which was treated as meeting the all-employee benefit requirement by virtue of section 236L but later came to actually meet it by virtue of satisfying the conditions of section 236K cannot revert to relying on section 236L in order to meet it and hence meet the relevant relief requirement.

13. Subsection (7) of new section 236H requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim.

14. Subsection (8) of new section 236H directs the reader to new section 236O where there are further conditions relevant to making a claim to relief under section 236H, and provisions for relief given to be withdrawn in certain circumstances.

15. New section 236I provides details of the trading requirement which must be met by the company ('C') whose shares are acquired by the trust. If C is not in a group then it must be a trading company. Otherwise C must be the parent company of a trading group.

16. Subsection (2) of new section 236I defines a trading company: C may be a trading company even if it carries on some non-trading activities, providing those activities are not substantial in relation to all its activities taken together.

17. Subsection (3) of new section 236I defines a trading group: at least one member of the group must carry on a trade and the activities of all the members taken together must not include to a substantial extent activities which are either non-trading or unrelated to the trade of another group member.

18. Subsection (5) of new section 236I provides for all the activities of the members of a group to be treated as one business and for businesses carried on by a company in its capacity as a member of a partnership not to be treated as trading activities or related to the trade of another group member. The latter is to ensure that control of the company by the trustees carries with it control of the company's business: if the company is in a partnership it is not generally possible to say that it controls the partnership's business. In this context, 'partnership' takes its meaning from the Partnership Act 1890 and the Limited Partnerships Act 1907. Members of limited liability partnerships may also be treated as partners for the purposes of the TCGA 1992.

19. New section 236J provides details of the all-employee benefit requirement which must be met by the settlement whose trustees acquire the shares in company 'C'. Subsection (1) says that the settlement meets the requirement if the trusts

- Only permit the settled property to be used for the benefit of all 'eligible employees' on the same terms (this is the equality requirement - see section 236K).
- Do not permit the trustees to create any sub trusts, to transfer property to the trustees of any other settlement (except by means of an 'authorised transfer', defined at subsection (7), which is effectively a transfer to a trust which itself will be an EOT immediately after the transfer).
- Do not permit the trustees to make loans to beneficiaries of the trust.
- Do not permit the trustees or anyone else to amend the trusts so that any of these restrictions are removed.

If a settlement does not satisfy these conditions, it will nonetheless be treated as meeting the all-employee benefit requirement if it, the trusts and the trustees satisfy the alternative conditions at section 236L (see paragraph 29 below).

20. Subsections (3) and (4) of new section 236J define the 'eligible employees' who must be beneficiaries of the trust. Subject to the exceptions described in subsection (5), every employee of C and (where C is the parent company of a group) every employee of every member of the group headed by C is an eligible employee. The parent company of a group is a member of that group. If the trusts permit office-holders as well as employees to be beneficiaries then all the office-holders who may be beneficiaries are treated as eligible employees for the purposes of this section.

21. Subsection (4) of new section 236J provides a special definition of eligible employee in cases where C has ceased to meet the trading requirement (see section 236I) or where the trustees no longer hold any shares in C: in order to permit equitable distribution of the trust's property in these circumstances, 'eligible employees' will include individuals who were eligible employees at any time in the two years immediately preceding either the disposal of C's shares or C ceasing to meet the trading requirement (whichever is the earlier).

22. Subsection (5) of new section 236J lists individuals who are 'excluded participators', and as such cannot be eligible employees for the purposes of subsections (3) and (4). These individuals may therefore not be beneficiaries of the settlement, though they may be eligible to receive qualifying bonus payments (see paragraph 68 below). An individual is an excluded participator if he or she:

- Is a participator in C or in any company which is a member of the group of which C is the parent (the parent company of a group is a member of that group).
- Is a participator in a close company which has transferred property to the trustees of the settlement and that transfer would have given rise to an inheritance tax charge but for the exemption in section 13 or new section 13A of the Inheritance Tax Act 1984 (see paragraph 99 below).
- Has been a participator in any of those companies during the ten years before either the creation of the settlement or 10 December 2013, whichever is the later, or
- is connected with any participator identified under the preceding rules in this subsection. (In this context, 'connected with' takes its meaning from section 286 TCGA 1992, and is extended to include uncles, aunts, nephews and nieces. See section 236U(3), paragraph 54 below).

For these purposes, 'participator' has a restricted meaning - see subsection (6) at paragraph 23 below.

23. Subsection (6) of new section 236J applies a special definition of 'participator' for the purposes of deciding whether a person is an excluded participator. A person who does not own, or is not entitled to acquire, 5% or more of any class of share in a company and who would not be entitled to 5% or more of the company's assets available for distribution to members on its winding-up is not treated as a participator and therefore cannot be an excluded participator.

24. Subsection (7) of new section 236J defines terms used in this section such as 'authorised transfer', 'relevant group company', 'close company' and 'relevant group company'.

25. Subsection (8) of new section 236J ensures that the restrictions on how the settled property of the trust may be applied refer also to income arising from that property.

26. New section 236K explains the 'equality requirement' which is introduced as an element of the all-employee benefit requirement by section 236J(1). This ensures that, with a few specific exceptions, every eligible employee benefits from the trust's income and property, though they need not benefit by exactly the same amounts.

27. Subsections (1) and (2) of new section 236K list five things the trustees may be permitted or prevented by the trusts from doing, without jeopardising the equality requirement's being met. The trusts may:

- Permit the trustees to apply settled property for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee.
- Permit the trustees to comply with a written request from an individual not to receive the benefit of the settled property.
- Permit the trustees to apply settled property for charitable purposes as well as for the benefit of eligible employees.
- Prevent the trustees from applying settled property for the benefit of individuals who have not been continuously employed by the company or by the group for a minimum period (not exceeding 12 months) preceding the payment.
- Prevent the trustees from applying settled property for the benefit of individuals who only qualify as eligible employees because they are office-holders in the company.

For these purposes, 'eligible employee' has the same meaning as in section 236J and 'settled property' includes the income arising from such property.

28. Subsections (3) (4) (5) and (6) of new section 236K permit differing amounts to be paid to eligible employees on certain specific grounds, notwithstanding the equality requirement, but not so that some employees receive nothing at all. An individual's benefit from the trust may be computed by reference to his or her remuneration, length of service, or hours worked, but entitlement on account of each factor must be computed separately and the total payment must be sum of such relevant components. These specific grounds are separate from and in addition to the freedoms which may be permitted the trustees under subsections (1) and (2).

29. New section 236L provides an alternative mechanism by which some existing settlements created before 10 December 2013 (when the draft legislation was published) may meet the all-employee benefit requirement at section 236J. This alternative mechanism can only apply where the trust cannot meet the all-employee benefit requirement on the terms of section 236J.

30. Subsection (1) of new section 236L states the conditions which must be met for this alternative mechanism to apply and for the settlement to be deemed to meet the all-employee benefit requirement. The principal conditions are that on 10 December 2013:

- The trusts of the settlement must be of a description specified in section 86 Inheritance Tax Act 1984 (trusts for the benefit of employees), and
- the trustees held a significant interest in the company which they would later control: see subsection (2) and paragraph 34 below.

In addition, the trustees of the settlement must act throughout the 12 months preceding the disposal of shares to the trustees of that settlement in respect of which CGT relief is claimed under section 236H as though the trusts of their settlement met

the terms of the all-employee benefit requirement at section 236J(1)(c) (this is the 'the behaviour requirement').

31. Subsection (2) of new section 236L gives more detail about the 'significant interest' which the trustees must hold at 10 December 2013 in order for section 236L to apply. The definition is based closely on the 'controlling interest requirement' at section 236M - see paragraph 34 below - but requires the trustees to have a shareholding of 10% or more in the company which the trustees directly control. There are special rules at new section 236T (paragraph 65 below) to prevent trustees failing these conditions as a result of certain common commercial provisions.

32. Subsections (3) to (9) of new section 236L support the behaviour requirement by applying relevant definitions from new section 236J (the all-employee benefit requirement) and defining what is and is not compliant behaviour in terms consistent with section 236K (the equality requirement) (see paragraphs 26-28 above).

33. Subsection (4) contains provisions corresponding to those in subsection (1) of section 236K. Subject to the terms of the trusts of the settlement, the trustees may do the following without infringing the behaviour requirement:

- Apply settled property for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee.
- Comply with a written request from an individual not to receive the benefit of the settled property.
- Apply settled property for charitable purposes as well as for the benefit of eligible employees.
- Apply settled property only for the benefit of individuals who have been continuously employed by the company or by the group for a minimum period (not exceeding 12 months) preceding the payment.
- Not apply settled property for the benefit of individuals who only qualify as eligible employees because they are office-holders in the company, provided this is because the trustees are prevented by the trusts from doing so.

For these purposes, 'eligible employee' has the same meaning as in section 236J and 'settled property' includes the income arising from such property.

34. New section 236M provides details of the controlling interest requirement which must be met by the settlement, trustees of which acquire the shares in company 'C', at the end of the tax year in which the relevant disposal is made and which may not cease to be met once it has begun to be met. The requirement has three conditions, each of which must be satisfied, plus a fourth general condition which ensures the continuation of the controlling interest. There are special rules at new section 236T (paragraph 65 below) to prevent trustees failing these conditions as a result either of certain common commercial provisions, or provisions which are often found in trust deeds. For the purposes of the controlling interest requirement, Chapter 6 of Part 5 of the Corporation Tax Act 2010 applies to give the meaning of terms such as 'equity holder' (see new section 236T).

35. Subsection (1) of new section 236M requires the trustees:

- To hold a majority of the ordinary share capital of C and that they also have voting powers which represent a majority of votes on questions affecting C as a whole.
- to be entitled to a majority of the profits available for distribution to equity holders of C, and
- to be entitled to a majority of C's assets available for distribution to equity holders in the event of C's winding-up.

Even if the three conditions above are met, subsection (1)(d) provides that the controlling interest requirement will not be met if there are any provisions in any agreement or document affecting C's constitution or management or its shares or securities, for any of the conditions to cease to be met without the consent of the trustees. New section 236T (paragraph 65 below) ensures that trustees do not fail to meet these conditions as a result either of certain common commercial provisions, or provisions which are often found in trust deeds.

36. Subsection (1) of new section 236N explains the limited participation requirement. It will be met if there was no time during the year ending immediately after the disposal when the claimant was a participator in the company C and at that time the 'participator fraction' exceeded 2/5 (see subsection (5)). In this context 'participator' has a special meaning given at subsection (6).

37. Subsection (4) of new section 236N permits a 'grace period' of up to six months during which the participator fraction may exceed 2/5 without the limited participation requirement being failed on that account. In order for this treatment to apply, the fraction must exceed 2/5 as a result of events beyond the reasonable control of the trustees, such as sudden changes in commercial circumstances.

38. Subsection (5) of new section 236N defines the 'participator fraction'. The numerator NP is the total of (i) the number of persons who are both participators in C and either employees of, or office-holders in, C and (ii) the number of persons who are both employees of, or office-holders in C (or, as the case may be, of any member of the group headed by C) and connected with anyone included in (i). The denominator NE is the total number of persons who are employed by C (or as the case may be, the group headed by C) immediately after the disposal. In this context 'participator' has a special meaning given at subsection (3). For these purposes, the meaning of 'connected' is given by section 236U, see paragraph 70 below.

39. Subsections (6) and (7) of new section 236N define 'participator' for the purposes of the limited participation requirement. The meaning is as given by section 454 of the Corporation Tax Act 2010, but it does not include any person who does not hold, or is not entitled to acquire, five percent or more of any class of C's share capital and who is also not entitled to five percent or more of C's assets available for distribution to its members on a winding-up. Where the word is used in connection with a company which is not a close company, 'participator' includes a person who would be a participator in the company if it were a close company.

40. New section 236O withdraws relief already given and prevents further claims to relief when specified events occur before the end of the tax year following the tax year in which the disposal is made.

41. Subsection (1) of new section 236O states that the section applies when a disposal has been made on which relief under section 236H is available, whether or not a claim to relief has in fact been made, and when subsequent to such a disposal a 'disqualifying event' occurs in the tax year following the year in which the disposal occurs.

42. Subsection (2) of new section 236O defines 'disqualifying events' for the purposes of subsection (1).

43. Subsection (3) of new section 236O states that where the section applies no claim for relief may be made on or after the day of the disqualifying event in respect of the disposal.

44. Subsection (4) of new section 236O states that any claim for relief which has been made before the disqualifying event is revoked, and the gains or losses of any person for any period are computed as though that claim had never been made.

45. Subsection (6) of new section 236O explains how the alternative mechanism at section 236L, by which a settlement may be treated as meeting the all-employee benefit requirement, works for the purposes of the disqualifying events rules. Section 236H(5) applies in this context as it does for section 236H(4)(b): section 236L (which provides for the all-employee benefit requirement to be treated as met in certain circumstances) cannot be relied upon to prevent there being a disqualifying event where the all-employee benefit requirement has previously actually been met.

46. Subsection (7) of new section 236O explains how the disqualifying event concerning the participator fraction works. The rule at section 236N(2) applies in this context. There is normally a disqualifying event if the fraction exceeds 2/5. However, there is a 'grace period' of up to six months during which the fraction may exceed 2/5 without there being a disqualifying event on that account. In order for this treatment to apply, the fraction must exceed 2/5 as a result of events beyond the reasonable control of the trustees, such as sudden changes in commercial circumstances

47. New section 236P makes provisions for gains or losses to accrue to the trustees on the occurrence of a 'disqualifying event' after the end of the tax year following that in which the relieved disposal took place. Disqualifying events largely correspond to the relief requirements in 236H ceasing to be met at a time after a disposal to the trust in respect of which relief has been given on a disposal to the trust.

48. Subsection (2) of new section 236P lists the disqualifying events. These are that:

- The company C ceases to meet the trading requirement, or
- the settlement ceases to meet the all-employee benefit requirement,
- the settlement ceases to meet the controlling interest requirement; or
- the participation fraction exceeds 2/5 (subject to a six month grace period, as for the limited participation requirement in section 236N),
- the trustees act in a way contrary to what is permitted by the all-employee benefit requirement.

49. Subsection (3) of new section 236P directs that when a disqualifying event occurs, the trustees are treated as disposing of the shares they hold in C immediately before that event and reacquiring the same shares for their then market value. This deemed disposal and reacquisition applies only to shares acquired in circumstances where CGT relief was given under section 236H, and to which this section has not applied before. Gains and losses latent in the shares concerned will accrue and may be taxed or relieved subject to the relevant provisions of the Taxes Acts.

50. Subsection (4) of new section 236P provides special rules for deciding whether a settlement has ceased to meet the all-employee benefit requirement. A settlement which ceases to meet the conditions of section 236K cannot rely on section 236L (i.e. on the behaviour of its trustees and other factors) to ensure that it continues to meet the all-employee benefit requirement. Likewise, a settlement which originally met the requirement by virtue of section 236L but later came to meet it by virtue of meeting the conditions of section 236K cannot revert to relying on section 236L without triggering a disqualifying event.

51. Subsection (5) of new section 236P ensures that the limited participation requirement at section 236N works properly for the purposes of identifying disqualifying events under section 236P.

52. New section 236Q contains special provisions which apply when trustees of a settlement (the acquiring settlement) become entitled to shares in a company which is settled property against the trustee of that property in another settlement (the transferring settlement). Section 71 of TCGA 1992 provides for a disposal and reacquisition to be deemed to occur on that event by the trustees of the transferring settlement, and section 236Q ensures that the trustee of the transferring settlement may claim relief on the deemed disposal, subject to the same conditions as apply on actual disposals of shares to a trust.

53. Subsections (2) and (3) of new section 236Q allow the relief in the same way as section 236H where section 236Q applies.

54. Subsection (4) of new section 236Q ensures that the provisions of section 236P (concerning the consequences of disqualifying events) apply to the acquiring settlement where section 236Q applies, by treating the acquisition as one made in circumstances where section 236H applies.

55. Subsection (5) of new section 236Q ensures that the terms of sections 236H to 236T are applicable to the acquiring settlement.

56. Subsection (6) of new section 236Q requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim. This requirement corresponds to section 236H(7).

57. Subsection (7) of new section 236Q directs the reader to new section 236R where there are further conditions relevant to making a claim to relief under section 236Q, and provisions for relief given to be withdrawn in certain circumstances.

58. New section 236R withdraws relief already given under section 236Q and prevents further claims to relief when specified events occur before the end of the tax year following the tax year in which the deemed disposal under section 71 is treated as made. It is a counterpart to new section 236O.

59. Subsection (1) of new section 236R states that the new section applies when a deemed disposal has arisen on which relief under section 236Q is available, whether or not a claim to relief has in fact been made, and when subsequent to such a disposal a 'disqualifying event' occurs in the tax year following the tax year in which the deemed disposal is treated as made.

60. Subsection (2) of new section 236R states that where the section applies no claim for relief may be made on or after the day of the disqualifying event in respect of the disposal.

61. Subsection (3) of new section 236R states that any claim for relief which has been made before the disqualifying event is revoked, and the gains or losses of any person for any period are computed as though that claim had never been made.

62. Subsection (4) of new section 236R ensures that HMRC may make any and all adjustments necessary to give effect to a revocation of a claim under subsection (3).

63. Subsection (5) of new section 236R explains what is meant by a 'disqualifying event' for the purposes of section 236R. The definition in section 236O is used, with minor modifications necessary to make it applicable to the circumstances in which section 236Q has applied.

64. New section 236S applies where trustees hold both shares in respect of which the CGT relief applied on acquisition (known as EOT exempt shares) and other shares which would be treated as of the same class but for section 104(4A) (see paragraph 125 below). In these cases, when they make a disposal, the trustees may determine what proportion of the shares disposed of are EOT exempt shares (subject to their holding sufficient EOT exempt shares prior to the disposal). This prevents the trustees' gain or loss being distorted by the acquisition cost deemed to apply to the EOT exempt shares. However, the trustees may not use this provision to mitigate the effect of a disposal deemed to take place on a disqualifying event under section 236P.

65. New section 236T provides further rules which apply when deciding whether trustees have the necessary interest in a company for the purposes of the controlling interest requirement at section 236M or for the behaviour requirement at section 236L(2).

66. Subsection (2) of new section 236T applies the relevant part of the Corporation Tax Act 2010 for the purposes of identifying equity holders, ordinary shares etc.

67. Subsection (3) of new section 236T says that when ascertaining the trustees' interest they are to be treated as entitled to dividends on shares which they hold even if they are required or permitted to waive the dividends on those shares.

68. Subsections (4) and (5) of new section 236T allow trustees to use their shares in company C as security for borrowing from third parties. Without this provision, the mere possibility that the trustees could involuntarily to lose control of their shares (in the event of a default) could prevent the controlling interest requirement in section 236M or the significant condition in section 236L being met the behaviour requirement from applying. However in the event that the trustees do actually lose control of the shares under such an arrangement, the controlling interest requirement will cease to be met.

69. Subsection (5) of new section 236T defines the terms 'close company' and 'participator' for the purposes of the section. It also gives a special definition of 'third party' which excludes persons who are or have in the preceding 12 months been a participator in the employee-owned company controlled by the trustees, and persons connected with them.

70. New section 236U defines 'company', 'ordinary share capital' and 'trade' as they are used in sections 236H to 236T. It also provides for references to a group, to membership of a group and to the principal company of a group to be read in a manner consistent with their definitions in section 170 TCGA 1992. References to a group are to be construed with any necessary modifications where applied to a company which is not incorporated in the UK. This section also applies section 286 TCGA for the purposes of deciding whether one person in 'connected with' another, subject to the definition of a relative used in that section being extended to include uncle, aunt, nephew and niece.

71. Paragraph 2 of Part 1 of the Schedule provides for the relief to have effect in relation to disposals made in tax year 2014-15 or later years, subject to paragraph 3.

72. Paragraph 3 of Part 1 of the Schedule ensures that disposals which took place on or after 6 April and before 26 June 2014 are not subject to the rules for the withdrawal of relief on the occurrence of a disqualifying event, but are instead subject to special rules. In summary, in these cases a disqualifying event causes a gain or loss to accrue to the trustees of the settlement, based on a deemed disposal and reacquisition of shares at their market value immediately after the event.

73. Paragraph 3 of Part 1 of the Schedule creates special rules which apply to disposals made on or after 6 April and before 26 June 2014. The effect is that these disposals are subject to the rules as originally published in the Finance Bill in March 2014. Specifically, claims to relief in respect of such disposals will not be revoked if there is a disqualifying event:

- The relief requirements in section 236H are modified in relation to these disposals.
- The limited participation requirement at section 236N is also modified.
- Section 236O and section 236R, which revoke or prevents a claim to relief when there has been a disqualifying event in the tax year following the tax year in which the disposal is made, will not apply.
- Section 236P, which deems a gain or loss to accrue to the trustees when a disqualifying event occurs, applies, subject to the event taking place at a specified time.

74. Paragraph 4 of Part 1 of the Schedule refers to the means by which a settlement may be deemed to meet the all-employee behavioural requirement through new section 236L(1)(c) (paragraph 29 above). It provides for the trustees' actions before 10 December 2013 to be disregarded when deciding whether the all-employee behavioural requirement may be deemed to be met for the purpose of determining whether the CGT relief is available (but not for determining whether the income tax exemption is available as mentioned in Part 2).

Part 2: employment income exemption

75. Paragraph 5 of Part 1 of the Schedule inserts new Chapter 10A to Part 4 of the Income Tax (Earnings and Pensions) Act 2003, which contains the following provisions.

New Section 312A

76. New subsection (1) provides that the income tax exemption applies to qualifying bonus payments made in a tax year to employees or former employees of a company.

77. New subsection (2) sets the maximum amount of the qualifying bonus payment that is exempt from income tax (the "exempt amount") at £3,600.

78. New subsection (3) provides that, where an employee receives a qualifying bonus from more than one employer in a tax year, the exempt amount in subsection (2) applies separately to the total payments made by each employer.

79. New subsection (4) provides an exception to subsection (3). Where an employee or former employee receives a bonus from two or more employers who first make a bonus payment when they are part of the same group, the exempt amount applies to the total amount of the bonuses received from all employers in the group, instead of applying separately in relation to each employer.

80. New subsection (5) provides that where an employee has received a qualifying bonus from a company which was a member of a group of companies at the time it first made a payment for the year, that employer will be treated as remaining a member of the group until the end of that tax year even if it subsequently leaves the group. This is relevant in determining if the aggregate of qualifying bonus payments received in a tax year from the group exceeds the exempt amount (see subsection (4) above).

81. New subsection (6) sets out how the exempt amount should be applied when more than one qualifying bonus is received in the same tax year by an employee. It provides that the exempt amount should be applied to each bonus in the order they were made to determine if and when the exempt amount has been exceeded.

82. New subsection (7) explains how the exempt amount should be applied when two (or more) qualifying bonuses are made on the same day. It provides that the exempt amount (or the unused amount of the exempt amount) should be shared equally between each of the payments received on the same day.

83. New subsection (8) provides that where a qualifying bonus is paid by different employers (who are not members of the same group) ordering rules in subsections (6) and (7) apply separately.

84. New subsection (9) provides an Order-making power enabling the Treasury to increase or reduce the exempt amount. However, where the amount is to be reduced, new subsection (10) specifies that the draft statutory instrument must be laid before and approved by the House of Commons.

85. New subsection (11) defines the term "chargeable amount" as being the amount of the bonus payments that would have been taxable if not for the exemption. This term is referred to in subsection (2).

New Section 312B

86. New subsection (1) introduces all the conditions which must be met for a payment to be a qualifying bonus payment, and, where necessary, cross-references the sections in which detail of how those conditions apply is provided for.

87. New subsection (2) provides that the qualifying period is the 12 months ending with the day on which the payment is made. However, new subsection (3) specifies two situations where the qualifying period may not be the full 12 months. Paragraph (a) provides that the qualifying period does not include any days before the settlement first met the all-employee benefit requirement as defined in section 236J of TCGA 1992. Paragraph (b) provides that the qualifying period does not include any days prior to the date when the settlement first met the controlling interest requirement provided for in section 236M of TCGA 1992.

88. The 'office holder' condition set out in subsection (1)(e) specifies that the condition must be met for "a requisite number of days", which recognises that in some cases, for reasons beyond the employer's control, the condition might not be met. New subsection (4) defines this term as the number of days in the qualifying period less 90 days. Where the qualifying period is shorter than 12 months by virtue of new subsection (3) the requisite number of days is the number of days in the qualifying period, less the corresponding fraction of 90 days.

New Section 312C

89. New subsection (1) provides the detail of the participation and equality requirements which form one of the conditions set out in section 312B(1). For a bonus scheme to meet the participation requirement all persons in relevant employment must be eligible to be awarded a bonus under the scheme. Paragraph (b) provides that to meet the equality requirement every employee who is awarded a bonus under the scheme must do so on the same terms. That does not mean they must necessarily be awarded the same amount.

90. New subsection (2) defines when a person is in "relevant employment". This is when the person is employed by the company paying the bonus or where the company paying the bonus is a member of a group, the person is employed by any company which is a member of the group.

91. New subsection (3) sets out an exception to the participation requirement. It permits employers to exclude employees from the bonus award if those employees have less than a specified minimum period of continuous service at the time of the award which can be no longer than 12 months.

92. New subsection (4) provides for further exceptions to the participation requirement in respect of employees subject to a finding of gross misconduct or summary dismissal. Paragraph (a) provides that where a finding of gross misconduct has been made in the period 12 months immediately before the bonus is determined, the employee can be excluded from participating in the award. Paragraph (b) allows the award of a bonus to be conditional if at the time it is determined the employee is subject to disciplinary proceedings, depending on the outcome. Finally, paragraph (c) provides that if disciplinary proceedings initiated after determination of the award lead to a finding of gross misconduct before payment is made, or if the employee is summarily dismissed before payment is made, the employee is treated as if they were never eligible to participate.

93. New subsection (5) provides that only those factors set out in subsection (6) can be used to determine the amount of the award. New subsection (6) provides that if these refer to the employee's remuneration, length of service, or hours worked, the equality requirement will not be infringed.

94. New subsection (7) provides that the equality requirement is infringed if some of the participating employees receive nothing.

95. New subsection (8) provides that where the amount of a participating employee's share of an award under the scheme is determined by reference to more than one of the factors mentioned in subsection (6) the equality requirement will not be satisfied unless each of those factors gives rise to a separate bonus amount and the employee's total bonus is the sum of those separate amounts. This means that the entitlements cannot be multiplied together or used in any other kind of mathematical formula.

96. New subsection (9) prevents the equality requirement from being met if any feature of the scheme has or is likely to have the effect of disproportionally rewarding directors or former directors, higher paid employees, employees from specific parts of the business, or employees carrying out specific types of activity. This has to be read in conjunction with subsection (6), but is intended to prevent an employer from paying an extra amount of bonus in addition to whatever is determined through use of the allowable factors.

97. New subsection (10) provides that any references to an employee in subsections 1(b), (5), (6), (7) and (9) include a former employee and similarly references to remuneration and other factors in the case of former employees are to be read as relating to the former employment.

New Section 312D

98. New subsections (1) to (5) provide for the definition of 'trading requirement' and related terms, as referred to in section 312B(1). This requirement must be met throughout the qualifying period (see 312B(1)).

New Section 312E

99. New subsection (1) provides that a company meets the indirect employee ownership requirement referred to in section 312B(1) if, throughout the qualifying period, the settlement meets the controlling interest requirement and the all-employee benefit requirement.

100. New subsection (2) provides the meaning of the controlling interest requirement and all-employee benefit requirement by reference to sections 236M, and 236J - 236K respectively. These are both subject to the modification in subsection (3).

101. New subsection (3) provides that if a settlement does not meet the all-employee benefit requirement throughout the qualifying period, it is treated as meeting that requirement if the behaviour requirement section 236L of TCGA 1992 applies. However, if the settlement has previously met the all-employee benefit requirement at any time since 10 December 2013, the settlement will not meet the behaviour requirement in section 236L. This means that once a settlement has met the all-employee benefit requirement it must continue to do so in order for the income tax exemption for the bonus to apply.

102. New subsection (4) clarifies the context in which sections 236I to 236M TCGA 1992 are to be read for purposes of subsections (2) and (3). This provides that for the purposes of applying section 236L, it does not matter, if, because of another provision (section 312B(3)), the qualifying period is less than 12 months.

New Section 312F

103. New subsection (1) provides that a company meets the office holder requirement referred to in section 312B(1) if the appropriate fraction does not exceed two fifths. New subsection (2) defines the appropriate fraction as the number of persons who are one or both of a director or office holder of the company or an employee of the company connected with a director or office holder, divided by the total number of employees of the company.

New Section 312G

104. One of the conditions of section 312B(1) for the exemption to apply is that the company must not be a service company. New subsection (1) provides definitions of a 'service company' as either being a managed service company within section 61B or a company which meets Conditions A and B.

105. Conditions A and B are provided for in new subsections (2) and (3) respectively. The company will be a service company if most of the business carried on by the company is the provision of the services of its employees and it meets the definition of a person (or persons) described in subsection (4) who is not a member of the same group as the company paying the bonus.

106. New subsection (4) specifies that the persons or companies referred to in subsection (3) are those who have previously had control over the company, have employed all or most of the employees of the company or the company's group in the past, or a subsidiary of a company which has done so previously.

107. New subsection (5) provides that subsection (4) should be applied in a similar way in relation to partnerships.

108. New subsection (6) lists the three legislative provisions that apply for the purposes of interpreting specified terms used within this section.

New Section 312H

109. New subsections (1) and (2) provide that payments will be excluded if they are made in return for the employee (or former employee) giving up an amount of general earnings, specific employment income or other description of employment income.

New Section 312I

110. New subsections (1) and (2) define the words and phrases used in Chapter 10A by cross reference to other tax legislation.

111. New subsection (3) defines when a payment is made.

112. New subsection (4) provides that in the case where an employee has died, his or her personal representatives are still able to benefit from the exemption to the same extent (if at all) as if the employee had not died, as long as the payment is made within 12 months of the death.

113. New subsection (5) provides that the order-making power for Treasury to increase or reduce the exempt amount is not subject to annulment in pursuance of a resolution of the House of Commons.

114. New subsection (6) inserts the updated reference to 'company (in Chapter 10A of Part 4)', 'ordinary share capital (in Chapter 10A of Part 4)' and 'trade (in Chapter 10A of Part 4)' in Part 2 of Schedule 1.

115. New subsection (7) provides the date from which the amendments made to ITEPA apply and the date from which qualifying bonus payments are eligible for the income tax exemption.

Part 3: minor amendments

Inheritance Tax Act 1984

116. Paragraph 9 makes amendments to Inheritance Tax Act 1984 (IHTA).

117. Paragraph 10(1) inserts new section 13A into IHTA which provides for an exemption for transfers (dispositions) of cash or other assets by a close company ("C") to the trust. This provides for an alternative exemption where the condition in section 13(1) that the trust property must be applied for the benefit of 'all or most' employees is not met because of the application of the provisions in section 236K(1) TCGA.

118. New section 13A(1) provides that a transfer to the trust by C is not a transfer of value, and hence is not subject to inheritance tax, if C meets the trading requirement, the trust meets the all-employee benefit requirement, and the trust meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

119. New sections 13A(2) and (3) specify the provisions which apply to determine whether the requirements in section 13A(1) are met and explain the meaning of "close company" and "tax year".

120. Paragraph 10(2) provides that this amendment takes effect for transfers made on or after 6 April 2014.

121. Paragraph 11(1) inserts new section 28A into IHTA which provides for an exemption for transfers of shares in a company ("C") by an individual to the trust. This provides for an alternative exemption where the condition in section 28(1)(b) that the trust property must be applied for the benefit of 'all or most' employees is not met because of the application of the provisions in section 236K(1) TCGA.

122. New section 28A(1) provides that a transfer by the individual is exempt if C meets the trading requirement, the trust meets the all-employee benefit requirement, and the trust meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

123. New sections 28A(2) and (3) specify the provisions which apply to determine whether the requirements in section 28A(1) are met and explain the meaning of "tax year".

124. Paragraph 11(2) provides that this amendment has effect for transfers made on or after 6 April 2014.

125. Paragraph 12(1) makes consequential amendments to section 29A(6) to bring the new provisions within the scope of section 29A. Section 29A applies where the estate on death is attributable wholly or in part to an exempt gift, including a transfer of shares to an employee benefit trust exempt under section 28, and the beneficiary of that gift settles a claim against the estate out of their own resources. The transfer is chargeable to the extent that the beneficiary's estate is less through settling the claim. This paragraph extends the treatment to a transfer of shares which is exempt under new section 28A.

126. Paragraph 12(2) provides that this amendment takes effect for transfers made on or after 6 April 2014.

127. Paragraph 13(1) makes amendments to section 72 of IHTA, which applies where settled property ceases to be subject to trusts to which section 86 applies.

128. Paragraph 13(3) inserts new section 72(3A) which provides for an exemption from the charge under section 72(2)(a) which would otherwise apply when settled property continues to be held on trust, but in such a way that it ceases to be exempt under section 86. This ensures that there is no charge if the trust ceases to be exempt under new section 86(3)(d) because the trading requirement or controlling interest requirement (or both requirements) are no longer met.

129. Paragraph 13(4) provides that this amendment is treated as coming into force on or after 6 April 2014.

130. Paragraph 14(1) inserts new section 75A into IHTA.

131. New section 75A(1) provides an exemption from the charge under section 65 when shares in a company ("C") which are already held in a trust become held in a trust to which section 86(1) applies if certain conditions are met.

132. New section 75A(2) sets out the conditions that have to be met, which are that C meets the trading requirement, the trusts of the settlement meet the all-employee benefit requirement, and the settlement meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

133. New section 75A(3) and (4) specify the provisions which apply to determine whether the requirements in section 75A(2) are met and explain the meaning of "tax year".

134. Paragraph 14(2) provides that this amendment is treated as coming into force on 6 April 2014.

135. Paragraph 15(1) makes amendments to section 86 of IHTA.

136. Paragraph 15(2) inserts new section 86(3)(d) so that the trust qualifies for the same exemption from inheritance tax which applies to employee benefit trusts providing that it holds shares in a company which meets the trading requirement, and the trust meets the controlling interest requirement and the all-employee benefit requirement.

137. Paragraph 15(3) inserts new section 86(3A) which specifies the provisions that apply to determine whether the trading requirement, all-employee benefit requirement and controlling interest requirement are met, and defines ordinary share capital.

138. Paragraph 15(4) provides that these amendments are treated as coming into force on 6 April 2014.

139. Paragraph 16(1) makes consequential amendments to section 144 to include new section 75A.

140. Paragraph 16(2) provides that this amendment is treated as coming into force on 6 April 2014.

Part 4. Miscellaneous amendments

Finance Act 1986

141. Paragraph 17(1) amends the provisions in section 102(5) Finance Act 1986 so that the reservation of benefit provisions does not apply to a gift which is exempt from tax under section 28A.

142. Paragraph 17(2) provides that this amendment has effect for disposals on or after 6 April 2014.

Taxation of Chargeable Gains Act 1992

143. Paragraph 18 amends the share pooling and identification rules so that shares which were most recently acquired on a disposal to which section 236H applied are treated as being of a different class from other shares of the same company held by the trustees (if they would otherwise be treated as being of the same class). This means that EOT exempt shares (see paragraph 46 on new section 236S TCGA above) are pooled separately from other shares and the other share identification rules which apply on disposals are applied separately to EOT exempt shares. The new rules apply to any disposal on or after 6 April 2014.

Income Tax (Earnings and Pensions) Act 2003

144. Paragraphs 19 to 21 amend rules concerning the type of shares that can be awarded under three of the Government's tax-advantaged employee share schemes: Share Incentive Plan (SIP), Save As You Earn Option Scheme (SAYE) and Company Share Option Plan Scheme (CSOP). They provide that shares in a company that is subject to an employee-ownership trust may be awarded under these schemes, and also provide that a company that is subject to an employee-ownership trust is not a close company for the purposes of certain eligibility conditions in relation to shares. "Subject to an employee-ownership trust" is defined at paragraph 19, sub-paragraph (3) by reference to conditions provided elsewhere in this Schedule. These changes apply with effect from 1 October 2014.

145. Following these changes, shares in a company ("C") will be "eligible shares" for the purposes of SIP, SAYE and CSOP where:

- C is subject to an employee-ownership trust; or
- in the case of SIP and SAYE, C is controlled by a listed company which is itself subject to an employee ownership trust.

146. Paragraph 22 amends the independence requirement for the Enterprise Management Incentives (EMI) tax advantaged employee share scheme to accommodate companies that are subject to an employee-ownership trust. The change to EMI will be commenced by order.

Corporation Tax Act 2009 ("CTA2009")

147. Paragraph 23 ensures that a company which would otherwise be entitled to a corporation tax deduction in respect of a qualifying bonus payment is not prevented by section 1290 of the CTA 2009 (Employee benefit contributions) from claiming such deduction by virtue of all or part of such payment being exempt from income tax. It does this by amending section 1292 CTA 2009 (provision of qualifying benefits) so as to provide that if, and to the extent that the qualifying bonus payment is exempt from income tax under new Section 312A of ITEPA, it will be treated as a qualifying benefit.

BACKGROUND NOTE

148. The Government announced in Autumn Statement 2013 that it would provide £70 million annually from 2014-15 to support employee ownership models in order to incentivise growth of the sector. This will be in addition to the existing tax-advantaged share schemes.

149. The support is targeted at legal structures in which a trading company or group is owned by trustees which must act for the benefit of all employees (and any qualifying former employees). Structures of this kind have not until now received as much support as is given to arrangements under which employees own shares in their employer directly.

150. The CGT relief and income tax and inheritance tax exemptions further the Government's policy of supporting existing employee-owned companies and promoting the creation of new employee-owned companies. The capital gains tax relief and inheritance tax exemption will encourage the creation of new structures through which employees can benefit from the success of their employer's business. The income tax exemption will allow those businesses to share their successes with employees through tax-advantaged payments.

151. The Government is considering reviewing this exemption in five years' time to monitor take up, effectiveness and whether the spend is at the appropriate level.

SECTION 291: TRUSTS WITH VULNERABLE BENEFICIARY: MEANING OF "DISABLED PERSON"

SUMMARY

1. This section extends from 6 April 2014 the definition of "disabled person" used in relation to trusts with a vulnerable beneficiary to include those in receipt of the mobility component of disability living allowance at the higher rate, or the mobility component of personal independence payment at either the standard or enhanced rate.

DETAILS OF THE SECTION

2. Subsection (2)(a) extends that part of the definition of "disabled person" at Schedule 1A to Finance Act 2005 that applies to recipients of disability living allowance to include those in receipt of the mobility component at the higher rate (as well as those in receipt of the care component at the highest or middle rate); and subsection (2)(b) extends that part that applies to recipients of personal independence payment to include those in receipt of the mobility component (as well as those in receipt of the daily living component).

3. Subsections (3) and (4) make consequential amendments to paragraphs 3 and 4 of Schedule 1A to ensure that a person is treated as a disabled person if he or she would be entitled to receive the relevant disability living allowance or personal independence payment were it not for them being resident outside the UK or in a care home, hospital or prison.

4. Subsection (5) provides for commencement.

BACKGROUND NOTE

5. Special tax rules exist for trusts with a disabled beneficiary. The rules:

- Reduce 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; and
- ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.

6. Finance Act 2013 introduced a common definition of "disabled person" at Schedule 1A to Finance Act 2005.

7. Disability living allowance consists of a care component and a mobility component. The care component is payable at three rates – highest, middle and lowest. The mobility component is payable at two rates – higher and lower. Following the introduction of the Welfare Reform Act 2012, the allowance is being phased out for those of working age.

8. Personal independence payment consists of a daily living component and a mobility component. Both the daily living component and the mobility component are payable at two rates – standard and enhanced.

SECTION 292: AMOUNTS ALLOWED BY WAY OF DOUBLE TAXATION RELIEF

SUMMARY

1. This section amends two provisions of Taxation (International and Other Provisions) Act 2010 (TIOPA).

2. Firstly, the section extends the existing rule that relief for foreign tax is to be reduced if a payment is made by a tax authority by reference to that tax to the claimant or a person connected with the claimant. The new rule will also apply where a payment is made to a person who has made arrangements to receive the payment.

3. Secondly, the section limits the amount of relief for foreign tax on a non-trading credit from a loan relationship or intangible fixed asset to the amount of UK tax on that net amount of the credit after deducting related debits. It responds to avoidance schemes that seek to exploit mismatches between the amounts of UK and foreign income.

DETAILS OF THE SECTION

4. Subsection 2 extends section 34(1)(b) TIOPA so that it applies where a person claims credit for foreign tax and a payment is made by a tax authority to that person, to a connected person or another person who has entered into a scheme to receive the payment, the foreign tax credit must be reduced by the amount of the payment.

5. Subsection 3 inserts a new section 34(4) to define what is meant by "scheme" in section 34(1)(b).

6. Subsection 4 amends section 112(3)(b) TIOPA so that where a deduction has been given to a person for foreign tax and a payment by reference to that tax is made by a tax authority to the person, to a connected person or another person who has entered into a scheme to receive the payment, the amount of the deduction is to be reduced accordingly. It is the equivalent to subsection 2 in the circumstances where there is no claim to relief for foreign tax and instead a deduction for foreign tax is allowed.

7. Subsection 5 inserts a new section 112(8) to define "scheme" in identical terms to new section 34(4).

8. Subsection 6 adds a signpost to section 42(4) to show that in applying the limit on credit for foreign tax in section 42(2), that rule must be read with the new section 49B.

9. Subsection 7 inserts the new section 49B into TIOPA.

10. New section 49B(1) sets out the circumstances where the operative rule in new section 49B(2) applies. These are where a company has a non-trading credit (as defined in new section 49B(4)) relating to an item where credit for foreign tax is allowable against UK tax under either a treaty arrangement or as unilateral relief. A simple example would be where the company receives interest from a foreign source after deduction of withholding tax.

11. New section 49B(2) is the main operative rule. It states that any credit for foreign tax against UK tax in respect of a non-trading credit on an item cannot exceed the amount of corporation tax on the amount of the non-trading credit less an amount of certain non-trading debits ("D") which is given by the formula in new section 49B(3).

12. New section 49B(3) sets out the calculation of "D". The subsection identifies non-trading debits in respect of the same loan relationship, derivative contract or intangible fixed asset that gives rise to the non-trading credit, and for the same accounting period. The total of these debits is reduced by any amounts that have already been deducted under the new rule from other non-trading credits. "D" is then taken as the smaller of this remaining amount and the amount of the non-trading credit to ensure that the calculation in new section 49B(2) does not produce a negative amount.

13. The purpose of new sections 49B(2) and (3) taken together is to identify the amount of 'profit' within the wider non-trading profit that directly relates to the non-trading credit on the loan relationship or other thing giving rise to a claim for relief for foreign tax. The relief is then limited to the amount of corporation tax on that amount. In practice, there will often not be any debits within the scope of new section 49B(3) so this amount will simply be the amount of the non-trading credit in question, but the rule is there to deal with the circumstances where debits do arise.

14. New section 49B(4) defines "non-trading credit" and "non-trading debits". There are two types of non-trading credits. Firstly, non-trading credits for the purposes of the loan relationship rules in Part 5 of the Corporation Tax Act 2009 (CTA09) (which will include all non-trading credits brought into account under Part 5 CTA09 through other provisions such as Part 6 CTA09, and on derivative contracts arising under Part 7 CTA09). Secondly, non-trading credits for the purposes of the intangible fixed assets rules in Part 8 of CTA09. "Non-trading debits" are defined in similar terms.

15. Subsection 8 is the commencement provision for the amendments to section 34. The changes take effect for payments made by a tax authority on or after 5 December 2013.

16. Subsections 9 and 10 are the commencement provisions for new section 49B(2). Subsection 9 says that the new rule applies for accounting periods beginning on or after 5 December 2013, subject to subsection 10, which applies where an accounting period straddles that date. In those circumstances the new rule applies as if the accounting period is split into two separate accounting periods, one relating to the period before 5 December 2013 and one relating to the period on or after that date.

BACKGROUND NOTE

17. The existing legislation in section 34 TIOPA applies where credit for foreign tax is allowed to a person and the foreign tax authority makes a payment by reference to that tax to that person, or to someone connected with that person. The rule requires the relief for foreign tax to be reduced by the amount of that payment.

18. The amendments to sections 34 extend the circumstances where there will be a reduction in credit following payments by the foreign tax authority. The rule will also apply where the payment is made to another person as a consequence of a scheme that has been entered into. This will stop attempts to get around the existing legislation.

19. A non-trading profit arises under the loan relationship rules where the total amount of the non-trading credits brought into account exceed the total amount of non-trading debits. Where the non-trading credit relates to an item such as interest that has suffered foreign tax then relief for some or all of that foreign tax may be available to set against UK tax on the non-trading profit.

20. The section provides for a limit on the amount of such relief to the amount of corporation tax on the amount of the non-trading credit, after deduction of any related debits, to which the foreign tax relates. This will make clear that schemes that attempt to exploit mismatches between the foreign and UK tax treatment of items of income in order to effectively cross-credit the foreign tax against UK tax on other income are not effective.

SECTIONS 293 & 294: CONTROLLED FOREIGN COMPANIES: QUALIFYING LOAN RELATIONSHIPS

SUMMARY

1. These sections introduce two amendments to the Controlled Foreign Companies (CFC) regime at Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA). Both amendments are to Chapter 9 of Part 9A.

2. The first section prevents a CFC's non-trading finance profits benefiting from the partial or full exemption under Chapter 9 if they are connected with an arrangement that has a main purpose of artificially diverting into a CFC non-trading finance profits that are currently received by a UK resident company.

3. The second section closes a loophole in an existing rule under Chapter 9 that prevents a creditor relationship of a CFC benefitting from partial or full exemption when third party debt of a non-UK resident group company is repaid and effectively replaced with new UK debt.

4. The amendments have effect from 5 December 2013.

DETAILS OF THE SECTIONS

5. Section 293 contains amendments to Part 9A TIOPA.

SECTION 293

6. Subsection 1 inserts new subsections 371IH(9A), (9B), (9C), (9D) and (9E) into section 371IH of Chapter 9.

7. New subsection 371IH(9A) applies new subsection 371IH(9B) to a creditor relationship of a CFC if three conditions are met. These are that there must be a loan, made by a connected UK resident company to a connected non-UK resident company; subsequently an arrangement is made directly or indirectly in connection with this loan (the relevant arrangement); and the main purpose, or one of the main purposes, of the relevant arrangement is to achieve a reduction in relevant UK credits or increase in relevant UK debits of a UK connected company in comparison to what credits or debits would have been if the relevant arrangement had not been made.

8. New subsection 371IH(9B) prevents the creditor relationship of a CFC being a qualifying loan relationship under Chapter 9 if it is, or is connected (directly or indirectly) to, a relevant arrangement which falls within new subsection (9A). The result of this is that the profits from that creditor relationship of a CFC cannot benefit from the partial or full exemption in Chapter 9 of Part 9A TIOPA.

9. New subsection 371IH(9C) applies new subsection 371IH(9D) for the purposes of specifying the assumptions to be made in determining the relevant credits or debits of UK connected companies for the purpose of making the comparison required by new subsection 371IH(9A)(c) (i) and (ii).

10. New subsection 371IH(9D) requires that it is assumed that if the relevant arrangement had not been made then at all times after the relevant time the UK creditor relationship referred to by subsection 371IH(9A)(a) would have continued and had the same terms as it had at the relevant time. The relevant time is defined in new section 371IH(9E).

11. New subsection 371IH(9E) defines the terms used in new subsection 371IH(9A) as follows. A "corporation tax accounting period" is an accounting period for corporation tax purposes. "The relevant time" is the time immediately before the time when a relevant arrangement is made, or if earlier, the time when the UK creditor relationship ends. "Relevant UK credits" and "relevant UK debits" are defined as the credits and debits which a UK connected company has under the rules in Parts 5 or 7 CTA 2009 (loan relationships and derivative contracts), which include credits and debits to which Part 5 applies by virtue of Part 6 CTA 2009. A "UK connected company" is a UK resident company which is either connected with the CFC, or was connected with a company with which the CFC is connected.

12. Example:

> A UK parent company has lent £100 million to a US subsidiary company. Interest of £5 million is received annually and subject to corporation tax as part of the profits of the UK parent company. The UK parent company enters into an arrangement in order to transfer the loan made to the US subsidiary to a new CFC in exchange for shares in the CFC. The relevant UK credits of the UK parent company are reduced as a result of the arrangement compared to what they would have been if the existing loan had continued on the same terms, and it is established that a main purpose of the arrangement made was to achieve this reduction. The arrangement therefore falls within new section 371(IH)(9A). Accordingly, the creditor relationship of the CFC cannot be a qualifying loan relationship by virtue of new section 371(IH)(9B). The profits of £5 million arising in the CFC in respect of its creditor relationship with the US company fall within Chapter 5 CFC charge gateway for non-trading finance profits, but cannot benefit from the partial or full exemption under Chapter 9. The overall effect is that the interest that was previously subject to corporation tax becomes subject to a CFC charge so that there is no change in the amount of UK tax paid.

13. Subsection 2 provides for the commencement of the new rules, stating that new subsections 371IH(9A), (9B), (9C), (9D) and (9E) apply to relevant arrangements which are made on or after 5 December 2013.

SECTION 294

14. Subsection 1 amends subsection 371IH(10)(c) (exclusions from the definition of qualifying loan relationships), replacing the phrase "wholly or mainly used" with "used to any extent (other than a negligible one)". This sub-section provides that a loan cannot be a qualifying loan relationship where it is used to repay third party debt of a non-UK resident

group company and that debt is effectively replaced with new UK debt, as part of an arrangement where one of the main purposes is to obtain a tax advantage for any person. The rule is directed at arrangements that give rise to an increase in debt in the UK whether provided by a UK third party or by a non-UK resident person.

15. In modifying the wording to say "…the relevant loan is *used to any extent (other than a negligible one)* to repay wholly or partly another loan…" it will apply in circumstances where there is a larger intra-group loan, so that the element that is applied to repay the external debt of the non-UK resident group company is a minority of the total amount of the loan.

16. Subsections 2 to 5 provide for commencement. Subsection 2 states that the amendments to section 371IH(10)(c) will have effect for accounting periods of CFCs beginning on or after 5 December 2013.

17. Subsection 3 stipulates that the modified section 371IH(10)(c) will also apply to accounting periods of the CFC which begin before 5 December 2013, but end on or after that date. Such an accounting period is termed "the straddling period". Sections 3, 4 and 5 apply the amended section 371IH(10)(c) to such periods, so as to exclude the profits arising after 5 December 2013 from the qualifying loan relationship profits of the CFC.

18. Subsection 4(a) provides that any apportionment for qualifying loan relationship profits of accounting periods which straddle 5 December 2013 should be made in accordance with section 1172 of CTA 2010 (an apportionment on a time basis). Where a time basis apportionment produces a result that is unjust or unreasonable, subsection 4(b) provides for apportionment on a just and reasonable basis.

19. Subsection 5 specifies that the profits from the qualifying loan relationships apportioned to the period falling on or after 5 December 2013 are to be excluded from the CFC's qualifying loan relationship profits.

BACKGROUND NOTE

20. Compared to the UK's previous CFC rules, the CFC rules at Part 9A TIOPA (introduced in Finance Act 2012) better reflect the way that businesses operate in a global economy whilst maintaining protection against artificial diversion of UK profits. This Schedule amends Chapter 9 of Part 9A in order to ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base.

SECTION 295: TAX CONSEQUENCES OF FINANCIAL SECTOR REGULATION

SUMMARY

1. This section makes changes to an existing Regulation making power to ensure that it allows further Regulations to be made to deal with the tax consequences of future European Union or UK regulatory requirements. In particular it will allow Regulations to prescribe the tax treatment of insurer's Solvency II compliant instruments issued in advance of agreement to Solvency II.

DETAILS OF THE SECTION

2. This section inserts new subsections (1) and (4A) into section 221 of Finance Act 2012. These ensure that the Regulation making power in section 221 applies to regulatory requirements which are likely to be imposed in the future.

BACKGROUND NOTE

3. UK regulatory authorities may, for financial stability reasons, encourage financial service firms to issue regulatory capital with certain features to comply with future European Union or UK regulatory requirements. The power in section 221 Finance Act 2012 allows the Treasury to make Regulations prescribing the tax consequences of regulatory requirements which are in force at the date that the Regulations are made. This change ensures that the power will allow the Treasury to make Regulations in advance of the relevant legislation coming into force.

SECTION 296 AND SCHEDULE 38: SCOTTISH BASIC, HIGHER AND ADDITIONAL RATES OF INCOME TAX

SUMMARY

1. This section introduces Schedule 38 which amends the structure of the income tax legislation setting out how the Scottish rate of income tax is applied in calculating the overall rates of tax applicable to the non-savings income of Scottish taxpayers and makes other consequential changes.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraph 2 sets out that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 (ITA) will be omitted. This removes the rates of income tax applied to the non-savings income of a Scottish taxpayer that were inserted by the Scotland Act 2012 and inserts a new subsection (2)(za) which signposts the Scottish, basic, higher and additional rates.

3. Paragraph 3 inserts new section 6A(1) setting out the calculation to determine the Scottish basic, higher and additional rates of income tax. The UK basic, higher and additional rates will be reduced by 10 percentage points and the Scottish rate, set by the Scottish Parliament, added across the (reduced) rates. (This is exactly the same calculation method as was inserted by the Scotland Act 2012.) So a Scottish rate of 10 per cent would mean the rates paid by Scottish taxpayers were the same as elsewhere in the UK, a rate of 9 per cent would mean the rates were slightly lower and a rate of 11 per cent would mean they were slightly higher. Section 6A(2) points to Chapter 2 of Part 4A of the Scotland Act 1998, which describes how the Scottish rate is set.

4. Paragraph 4 inserts an entry for new section 11A in section 10 of ITA, which signposts provisions that apply different rates of tax to certain types of income.

5. Paragraph 5 inserts new section 11A into ITA which sets out income liable to the Scottish basic, higher and additional rates of income tax.

6. New section 11A(1)-(3) sets out that the Scottish basic, higher and additional rates apply to "non-savings income" that would otherwise be chargeable at the main basic, higher and additional rates if the individual were not a Scottish taxpayer.

7. New section 11A(4) defines "non-savings income" for the purposes of this section. The effect is that the Scottish basic, higher and additional rates do not apply to savings income as defined in section 18.

8. New section 11A(5) and (6) makes new section 6A subject to section 13 of ITA and other cases where income may be charged at a different rate.

9. Paragraph 6 amends section 13 of ITA, which applies the dividend rates to dividend income. The effect is that dividend income continues to be charged at the dividend ordinary, upper and additional rates rather than the Scottish rates.

10. Paragraph 7 confirms that section 16 of ITA has effect for determining which rate applies to a Scottish taxpayer's non-savings income. Section 16 provides the ordering rules for income tax rates. In essence section 16 determines that income that is not savings or dividends is the first slice of taxable income; savings income is the second slice; dividend income is the third slice. The effect of paragraph 7 is that a Scottish taxpayer's non-savings income will be subject to the Scottish rates first; their savings income will then be subject to the appropriate UK main rate(s) and then their dividend income will be subject to the appropriate UK dividend rate(s).

11. Paragraph 8 amends section 809H of ITA to exclude the Scottish rates of income tax in calculating the charge on non-UK residents for using the remittance basis.

12. Paragraph 9 amends section 828B of ITA. Sections 828A-828D of ITA provide for an income tax exemption for low income employees working in the UK who are resident (but not domiciled) in the UK and meet certain conditions (set out in section 828B). Such individuals will typically be migrant workers employed in seasonal work in the agricultural or service sectors in the UK and in other countries in the same tax year and whose overseas income is subject to tax where it is earned. This amendment ensures that any such individuals who are Scottish taxpayers will continue to benefit from that exemption

13. Paragraphs 10 and 11 amend section 989 of and Schedule 4 to ITA to include the definitions of the Scottish basic, higher and additional rates of income tax as separate entries. This means that, unless otherwise provided for, references to the basic, higher and additional rates mean the UK main rates in section 6 of ITA. The paragraphs also clarify that the definition of a Scottish taxpayer is the one set out in the Scotland Act 1998.

14. Paragraph 12 sets out the commencement of these amended provisions – they will be introduced alongside the rest of the Scottish rate of income tax provisions, which are expected to be implemented in April 2016.

Part 2

15. Paragraph 13 removes the amendment to section 1 of the Provisional Collection of Taxes Act 1968 made by section 26 of the Scotland Act 2012, as this is no longer required under the restructured Scottish rate provisions.

16. Paragraph 14 amends section 7 of the Taxes Management Act 1970 (TMA). This section imposes requirements on individuals to notify HMRC if they are chargeable to income tax in a year. Section 7(6) of TMA includes an exemption from the requirement to notify for individuals whose income has either had (or been treated as having) income tax paid on it or who have received dividend income, and who are not "liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings" for that year. The amendment made by paragraph 14 ensures Scottish taxpayers will continue to benefit from this exemption.

17. Paragraph 15 amends the Taxation of Chargeable Gains Tax 1992 (TCGA). Section 4 of TCGA sets out the rate of Capital Gains Tax (CGT) that an individual pays – this can be affected by the rate of income tax at which an individual is liable. Sub-paragraphs (2) and (3) therefore make amendments to sections 4 and 4A of TCGA to ensure that Scottish taxpayers continue to pay CGT at the appropriate rate.

18. The amendments made by paragraphs 14 and 15 will have effect at the same time as the rest of the Scottish rate provisions are introduced (expected to be April 2016).

19. Paragraph 16 sets out amendments to the Scotland Act 1998. Sub-paragraph (2) amends the cross reference in section 80C (which determines the rules for making a Scottish rate resolution) so that it refers to sections 6A and 11A of ITA (inserted by this Schedule), rather than the repealed section 6(2B) of ITA. Sub-paragraphs (3)-(7) change the power to make further amendments in section 80G. This is to update the power to reflect the insertion of new section 11A of ITA, ensure that the power works as intended (including addressing the consequences for the operation of the PAYE system if no Scottish rate is passed) and limit the scope of the power to more specific types of amendment. Sub-paragraph (8) amends section 110 to ensure that the power here for the Department for Work and Pensions to make regulations concerning Scottish taxpayers will continue to work as intended (these amendments are to be commenced by order by the Secretary of State). Sub-paragraphs (9)-(11) make other consequential amendments, including providing for (at sub-paragraphs (10)(a) and (11)) the repeal of section 79 (the equivalent of section 80G under the Scottish variable rate provisions). Sub-paragraph (13) gives the Treasury the power to determine the timing of the repeal of section 79 by order

20. Paragraph 17 repeals section 26 of the Scotland Act 2012, which has been replaced by the provisions in the Schedule.

BACKGROUND NOTE

21. The Scotland Act 2012 legislates for the Scottish rate of income tax, which is expected to be introduced in April 2016. The annual basic, higher and additional rates of income tax set by the UK Government will be reduced by 10 pence in the pound for Scottish taxpayers. Annually the Scottish Parliament will levy a new Scottish rate of income tax which will apply equally to all of the reduced main UK income tax rates. The application of the Scottish rate is achieved by amendments to ITA which determines the rate of tax paid by Scottish taxpayers on their non-savings income and dividends.

22. The Scottish rate has implications for particular aspects of the income tax system, for example Gift Aid and pensions tax relief. HMRC consulted external organisations to agree a suitable way forward and published a Technical Note in May 2012 setting out how it intended to manage these issues. The Schedule makes amendments to the Scottish rate provisions in ITA so that the wider consequential changes can be made in a more straightforward manner by secondary legislation.

SECTION 297: REPORT ON ADMINISTRATION OF THE SCOTTISH RATE OF INCOME TAX

SUMMARY

1. This section amends the Scotland Act 1998 to require the Comptroller and Auditor General (C&AG) to make an annual report direct to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax.

DETAILS OF THE SECTION

2. Subsection (1) inserts the requirement to produce the report as new section 80HA in Chapter 2 of Part 4A of the Scotland Act 1998.

3. New section 80HA(2) sets out the scope of the annual report to be laid before the Scottish Parliament. The C&AG will report on the adequacy of the additional rules (which has the same meaning as "regulations" in section 2(1) of the Exchequer and Audit Departments Act 1921) and processes which HMRC have put in place to administer and collect the Scottish rate. The C&AG will also report on HMRC's calculation of the amount of Scottish rate income tax to be paid over to the Scottish Government and on the accuracy and fairness of costs reimbursed to HMRC by the Scottish Government for the administration of the Scottish rate.

4. New section 80HA(3) explains that the "Scottish rate provisions" are those set out in Chapter 2 of the Scotland Act 1998 (or made under powers in that Chapter) and any other provision made elsewhere in the Income Tax Acts relating to the Scottish basic, higher or additional rates of income tax. The Interpretation Act 1978 defines the "Income Tax Acts" as meaning all enactments relating to income tax.

5. New section 80HA(4)-(5) provides that the C&AG has the discretion to include in the report an analysis of whether HMRC is using its resources in administering the Scottish rate in an effective, efficient and economic manner.

6. New section 80HA(6) requires that HMRC provide the C&AG with information necessary to complete the annual report.

7. Subsection (2) of the section brings the measure into effect for the financial year ending 31/03/15. As a result of new section 80HA(7), the first report will therefore need to be produced before 31 January 2016.

BACKGROUND NOTE

8. The Scotland Act 2012 amended the Scotland Act 1998 to introduce the Scottish rate of income tax, which is expected to commence in April 2016.

9. The Scottish rate will be set each year by the Scottish Parliament and will be operated by HMRC as part of the UK income tax system; HMRC's costs in implementing and administering the Scottish rate will be reimbursed by the Scottish Government.

10. The Command Paper, "Strengthening Scotland's Future", published alongside the Scotland Bill in November 2010 set out that the Comptroller and Auditor General would, as head of the National Audit Office (NAO), be invited to prepare a report to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax as part of the NAO's annual report on HMRC's overall performance.

11. This section clarifies the legal basis for this by requiring the C&AG to prepare a report covering these matters and lay it before the Scottish Parliament on an annual basis.

SECTION 298: CO-OPERATIVE SOCIETIES ETC AND SCHEDULE 39: TAXATION OF COOPERATIVE SOCIETIES ETC.

SUMMARY

1. Section 298 and Schedule 39 reword various provisions about the tax treatment of Co-operative, Community Benefit and Industrial and Provident Societies and Credit Unions.

DETAILS OF THE SCHEDULE

2. Paragraph 1 of the Schedule adds Northern Ireland Credit Unions to the list of bodies in S217D (3) Taxation of Chargeable Gains Act (TCGA) 1992 which can take advantage of no gain/no loss rules on the union, amalgamation or transfer of engagements from one body to another.

3. Paragraphs 2 to 14 amend consequential amendments made by Schedule 4 of the Co-operative and Community Benefit Societies Act 2014.

4. Paragraph 6 and 7 reverse a narrowing of the definition of companies which can take advantage of S170 and Schedule 7AC TCGA 1992. They also clarify where the definition of the societies to which those sections can apply is to be found.

5. The remaining paragraphs correct various errors which have over time been incorporated into the definitions of societies to which other tax provisions apply.

6. Paragraph 13 adds Northern Ireland Credit Unions to the definition in S1119 Corporation Tax Act 2010 (CTA 2010).

7. Paragraphs 8, 10 and 12 add European Co-operative Societies (SCE) to the definitions in Schedule 2, Paragraph 28 Income Tax (Earnings and Pensions) Act 2003, S151 Income Tax Act 2007 (ITA 2007) and S90 CTA 2010.

8. Paragraphs 9 and 11 add both Northern Ireland Credit Unions and SCE to the definitions in S379 Income Tax (Trading and Other Income) Act 2005 and S887 ITA 2007.

9. Paragraphs 3 to 5 and 14 ensure that the provisions in S140E, S140F, and S140G TCGA 1992 and in S118 Taxation (International and Other Provisions Act 2010 can apply to SCE formed both in GB and Northern Ireland.

BACKGROUND NOTE

10. The Cooperative and Community Benefit Societies Act 2014 made changes to the legislative framework for and the naming of GB Industrial and Provident Societies which necessitate consequential amendments to the Taxes Acts. Schedule 39 corrects one of these consequential amendments which has narrowed the provision in the Taxes Acts. In considering the various consequential amendments it became clear that various errors and omissions had, over time, been incorporated to the Taxes Acts. Schedule 39 corrects the Taxes Acts provisions where necessary to ensure they cover the appropriate types of society. These amendments ensure that the Taxes Acts provisions relating to taxation of both the societies and their members are current and accurate.

SECTION 299: REMOVAL OF EXTENDED TIME LIMIT RESTRICTION FOR EU CASES

SUMMARY

1. This section removes the direct tax restriction on extended time limits for actions for relief from the consequences of a mistake of law if the tax was charged contrary to European Union (EU) law.

DETAILS OF THE SECTION

2. Subsection (1) inserts two new subsections into section 107 of FA 2007 (removal of extended time limits for mistakes of law in taxation matters).

3. New subsection (5A) disapplies the claims restriction in section 107 where tax has been charged contrary to EU law.

4. Subsection (2) treats the amendment as having always had effect.

BACKGROUND NOTE

6. Section 107 of FA 2007 was introduced to ensure the time limit for direct tax recoverable by reason of a mistake of law was six years from the date of payment for all actions brought before 8th September 2003 which were not subject to a judgment of the House of Lords before December 2006. S.32(1)(c) of the Limitation Act 1980 was disapplied in respect of such actions.

7. The Supreme Court held in *Franked Investment Income Group Litigation v CIR [2012] UKSC 19* that s.107 FA 2007 was incompatible with EU law and cannot apply to actions to recover tax paid contrary to EU law.

8. This provision amends s.107 FA 2007 to reflect the Supreme Court's decision so that the restriction does not apply to actions to recover tax paid contrary to EU law. The amendment is retrospective so that s.107 will be treated as always having been subject to this exception.

SECTION 300: INCREASE IN LIMIT FOR LOCAL LOANS

SUMMARY

1. This section provides powers to increase the Public Works Loan Board ('PWLB') statutory lending limit (currently set at £70 billion) to £85 billion at an appropriate date in the future, and for that limit to be changed to another (lower or higher) amount not exceeding £95 billion via secondary legislation.

DETAILS OF THE SECTION

2. Section 3(1) of the National Loans Act 1968 ('the 1968 Act') enables the Treasury to issue out of the National Loans Fund such sums required by the PWLB in making loans under that Act and any future Act. The power to make local loans under the 1968 Act includes a power to enter into undertakings to make loans (section 3(5) of the 1968 Act).

3. Both powers are subject to the limit for local loans out in section 4(1) of the 1968 Act. That section currently provides that the aggregate of – (a) any commitments of the PWLB to grant local loans, and (b) any amount outstanding in respect of the principal of any local loans – must not exceed £55,000 million or such lower or higher sum not exceeding £70,000 million as the Treasury may from time to time specify by order.

4. This section replaces the amounts £55,000 million and £70,000 million with the amounts £85 billion and £95 billion respectively. The new limit of £85 billion will come into effect at an appropriate date in the future via commencement order. This limit can be changed to another (lower or higher) amount not exceeding £95billion at a later date via secondary legislation.

BACKGROUND NOTE

5. The PWLB's main function is to make loans to local authorities for the purpose of capital spending and collecting the repayments. The PWLB account for about 75% of local authority borrowing in the UK.

6. This is an administrative measure to update the PWLB's statutory limit which will allow the PWLB to accommodate future applications for local authority loans. The Finance Act is the legislative vehicle used by the government to increase the PWLB limit in the past.

SECTION 301, 302 & 303: FINAL PROVISIONS

SECTION 301

1. This section will allow any index of defined terms contained in an Act relating to taxation, to be amended by secondary legislation.

SECTION 302

2. This section provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "BGDA 1982" as an abbreviation for the Betting and Gaming Duties Act 1981.

SECTION 303

3. This section provides for the Bill to be known as the "Finance Act 2014" upon Royal Assent.

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 2014	No debate
Second Reading	1 April 2014	Vol. 578 Cols. 743 – 856
Committee of Whole House	8, 9 April 2014	Vol. 579 Cols. 140 – 237 and Cols. 272 - 384
Public Bill Committee	29 April, 01, 06, 08, 13 May, and 10, 12, 17 June 2014	Hansard – Finance Bill 2013 Public Bill Committee
Report	1, 2 July 2014	Vol. 583 Cols. 766 - 863 and 901 - 1041
Third Reading	2 July 2014	Vol. 583 Cols. 1041 - 1045
House of Lords		
First Reading	3 July 2014	No Debate
Second Reading	16 July 2014	Vol. 747 Cols. 665 - 690
Third Reading	16 July 2014	Vol. 747 Col. 690
Royal Assent – 17 July 2014		**House of Lords Hansard Vol. 755 Col. 774** **House of Commons Hansard Vol. 584 Col. 1118**

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