FINANCE BILL

EXPLANATORY NOTES

Table of Contents

Introduction 13

Part 1: Income Tax, Corporation Tax and Capital Gains Tax 15

Clause 1: Income tax charge for tax year 2021-22 16

Clause 2: Main rates of income tax for tax year 2021- 22 17

Clause 3: Default and savings rates of income tax for tax year 2021-22 19

Clause 4: Starting rate limit for savings for the tax year 2021-22 21

Clause 5: Basic rate limit and personal allowance for future tax years 24

Clause 6: Charge and main rate for financial years 2022 and 2023 27

Clause 7 and Schedule 1: Small profits rate chargeable on companies from 1 April 2023 . 29

Clause 8: Increase in the rate of diverted profits tax 46

Clause 9: Super-deductions and other temporary first-year allowances 48

Clause 10: Further provision about super-deductions etc....57
Clause 11: Reduced super-deduction 61
Clause 12: Disposal of assets where super-deduction made 65
Clause 13: Disposal of assets where SR allowance made....72
Clause 14: Counteraction where arrangements are contrived etc....77
Clause 15: Extension of temporary increase in annual investment allowance 81
Clause 16: Meaning of "general decommissioning expenditure" 86
Clause 17: Extensions of plant or machinery leases for reasons related to coronavirus 91
Clause 18 and Schedule 2: Temporary extension of periods to which trade losses may be carried back....95
Clause 19 and Schedules 3 and 4: R&D tax credits for SMEs 111
Clause 20: Extension of social investment tax relief for further two years 119

Clause 21: Workers' services provided through intermediaries 121
Clause 22: Payments on termination of employment 131
Clause 23: Cash equivalent benefit of a zero emissions van 137
Clause 24: Enterprise management incentives 140
Clause 25: Cycles and cyclist's safety equipment 144
Clause 26: Exemption for coronavirus tests. 148
Clause 27: Optional remuneration arrangements: statutory parental bereavement pay 152
Clause 28: Freezing the standard lifetime allowance 156
Clause 29 and Schedule 5: Pension schemes: collective money purchase benefits 158
Clause 30 and Schedule 6: Construction industry scheme 186
Clause 31: Covid-19 support scheme: working households receiving tax credits 198

Clause 32: Self-employment income support scheme 201
Clause 33: Deduction where business rates etc repaid 205
Clause 34: Repeal of provisions relating to the Interest and Royalties Directive 209
Clause 35: Payments made to victims of modern slavery etc 212
Clause 36 and Schedule 7: Hybrid and other Mismatches 214
Clause 37 and Schedule 8: Relief from corporation tax for losses etc 286
Clause 38: Corporate interest restriction: minor amendments 301
Clause 39: Northern Ireland Housing Executive 305
Clause 40: Annual exempt amount 307
Clause 41: Hold-over relief for foreign-controlled companies 309
Part 2: Plastic Packaging Tax 311
Clause 42: Plastic packaging tax 312

Clause 43: Charge to plastic packaging tax..315
Clause 44: Liability to pay plastic packaging tax 317
Clause 45: Rate 319
Clause 46: Payment.....321
Clause 47: Chargeable plastic packaging components.....323
Clause 48: Meaning of “plastic packaging component” 326
Clause 49: Meaning of “plastic” and “recycled plastic” 330
Clause 50: Time of importation 334
Clause 51: Plastic packaging components intended for export.....336
Clause 52: Exempt plastic packaging components.....340
Clause 53: Tax credits.....343
Clause 54: The register 347
Clause 55: Liability to register: producers and importers 349

Clause 56: Notification of liability and registration 353
Clause 57: Cancellation of registration 356
Clause 58: Correction of the register 360
Clause 59 and Schedule 9: Notices imposing secondary or joint and several liability 362
Clause 60: Measurement of weight etc 389
Clause 61 and Schedule 10: Payment, collection, recovery 392
Clause 62 and Schedule 11: Reviews and appeals 408
Clause 63: Records 423
Clause 64 and Schedule 12: Information and evidence 426
Clause 65: Security for tax 432
Clause 66: Unincorporated bodies 434
Clause 67: Service 436
Clause 68: Statements for business customers 439
Clause 69: Tax representatives of non-resident taxpayers 442

Clause 70: Adjustment of contracts.....447
Clause 71 and Schedule 13: Groups of companies 450
Clause 72: Prevention of artificial separation of business activities: directions 460
Clause 73: Prevention of artificial separation of business activities: effect of directions 464
Clause 74: Death, incapacity or insolvency of person carrying on a business: regulations..468
Clause 75: Transfer of business as a going concern: regulations 471
Clause 76: Isle of Man: import and export of chargeable plastic packaging components...474
Clause 77: Fraudulent evasion.....477
Clause 78: Misstatements.....480
Clause 79: Conduct involving evasions or misstatements.....483
Clause 80 and Schedule 14: Penalty for contravening relevant requirements.....486
Clause 81: Criminal proceedings.....495

Clause 82 and Schedule 15: Minor and consequential amendments.....497
Clause 83: Interpretation.....503
Clause 84: Regulations 505
Clause 85: Commencement etc 510
Part 3: Other Taxes.....512
Clause 86: Rate bands etc for tax years 2021-22 to 2025-26.....513
Clause 87: Temporary period for reduced SDLT rates on residential property.....516
Clause 88 and Schedule 16: Increased rates for non-resident transactions 523
Clause 89 and Schedule 17: Relief from higher rate charge for certain housing co-operatives etc 550
Clause 90: Relief for certain housing co-operatives.....562
Clause 91: Repayment to certain housing co-operatives: 2020-21 chargeable period.....569
Clause 92: Extension of temporary 5% reduced rate for hospitality and tourism sectors.....573

Clause 93: Temporary 12.5% reduced rate for hospitality and tourism sectors 575
Clause 94: Extending digital record-keeping for VAT purposes to all businesses.....578
Clause 95 and Schedule 18: Deferring VAT payment by reason of the coronavirus emergency 580
Clause 96: VAT refunds to S4C.....587
Clause 97 and Schedule 19: Customs duty on steel removed to Northern Ireland.....589
Clause 98 and Schedule 20: Restriction of use of rebated diesel and biofuels 597
Clause 99: Rates of tobacco products duty ..612
Clause 100: Rates for light passenger or light goods vehicles, motorcycles etc.....615
Clause 101: Rebates of vehicle excise duty where higher rate of duty paid.....620
Clause 102: HGV road user levy (extension of suspension) 623
Clause 103: Rates of air passenger duty from 1 April 2022.....625

Clause 104: Amounts of gross gaming yield charged to gaming duty.....628
Clause 105: Rates of climate change levy from 1 April 2022 to 31 March 2023.....630
Clause 106: Rates of climate change levy from 1 April 2023.....634
Clause 107: Rates of landfill tax.....638
Clause 108: Repeal of carbon emissions tax.641
Part 4: Miscellaneous and Final.....643
Clause 109: Designation of freeport tax sites 644
Clause 110 and Schedule 21: Capital allowances for freeport tax sites.....647
Clause 111 and Schedule 22: Relief from stamp duty land tax for freeport tax sites.....670
Clause 112 and Schedules 23 and 24: Penalties for failure to make returns etc.....690
Clause 113 and Schedule 25: Penalties for failure to pay tax.....716
Clause 114 and Schedule 26: Penalties for failure to make returns etc or pay tax: consequential provision.....729

Clause 115 and Schedule 27: Follower notice penalties 738
Clause 116 and Schedule 28: Late payment interest and repayment interest: VAT 751
Clause 117 and Schedule 29: Promoters of tax avoidance schemes 757
Clause 118 and Schedule 30: Disclosure of tax avoidance schemes 806
Clause 119: Penalties for enablers of defeated tax avoidance 829
Clause 120 and Schedule 31: The GAAR and partnerships 837
Clause 121 and Schedule 32: Licensing authorities: requirements to give or obtain tax information 849
Clause 122: Financial institution notices 862
Clause 123: Collection of tax debts.....870
Clause 124 and Schedule 33: Miscellaneous amendments of Schedule 36 to FA 2008.....875
Clause 125: International arrangements for exchanging information on the gig economy 890

Clause 126: Unauthorised removal or disposal of seized goods 894
Clause 127: Temporary approvals etc pending review or appeal 899
Clause 128: Replacement of LIBOR with incremental borrowing rate 908
Clause 129: Tax consequences of reform etc of LIBOR and other reference rates 912
Clause 130: Powers of the Treasury to amend legislation relating to banks 916
Clause 131: Interpretation 923
Clause 132: Short title 924
Territorial extent and application in the United Kingdom 925

Explanatory notes

Introduction

1. These explanatory notes relate to the Finance Bill as introduced into Parliament on 12 May 2021. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or part of a section does not seem to require any explanation or comment, none is given.
3. This Bill has been carried over from the 2019-21 Parliamentary session and was previously known as Finance (No. 2) Bill during that session. Government amendments were made to Finance (No. 2) Bill affecting clauses (or the Schedules

introduced by clauses) 18, 29, 36, 111 and 116. Further details of the amendments made can be found in the relevant explanatory notes for those clauses.

Part 1: Income Tax, Corporation Tax and Capital Gains Tax

Clause 1: Income tax charge for tax year 2021-22

Summary

1. This clause imposes a charge for income tax for the year 2021-22

Details of the clause

2. Clause 1 imposes a charge to income tax for the year 2021-22.

Background note

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

Clause 2: Main rates of income tax for tax year 2021- 22

Summary

1. This clause sets the main rates of income tax for the tax year 2021-22.

Details of the clause

2. Clause 2 sets the basic, higher and additional rates of income tax for 2021-22.

3. This clause provides that the main rates of income tax for 2021-22 are: the 20% basic rate, the 40% higher rate and the 45% additional rate.

Background note

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

5. This clause sets the "main rates", which will apply to "non-savings, non-dividend" income of taxpayers in England and

Northern Ireland. Income tax rates on non-savings, non-dividend income for Welsh taxpayers are set by the Welsh Parliament. The UK the main rates of income tax are reduced for Welsh taxpayers by ten pence in the pound on this income and the Welsh Parliament sets the Welsh Rates of income tax which are added to the reduced UK rates. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 3: Default and savings rates of income tax for tax year 2021-22

Summary

1. This clause sets the default rates and savings rates of income tax for the tax year 2021-22.

Details of the clause

2. Subsection (1) provides the default rates of income tax for 2021-22: the 20% default basic rates, the 40% default higher rate and the 45% default additional rate.

3. Subsection (2) provides the savings rates of income tax for 2021-22: the 20% savings basic rate, the 40% savings higher rate and the 45% savings additional rate.

Background note

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

5. This clause sets the "savings rates" which

will apply to savings income of all UK taxpayers and the "default rates" which apply to non-savings, non-dividend income of taxpayers who are not subject to the main rates of income tax, Welsh rates of income tax or the Scottish rates of income tax.

6. Income tax rates on non-savings, non-dividend income for Welsh taxpayers are set by the Welsh Parliament.

7. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 4: Starting rate limit for savings for the tax year 2021-22

Summary

1. This clause sets the starting rate limit for savings for 2021-22 tax year.

Details of the clause

2. Clause 4 provides that for the tax year 2021-22 section 21 of the Income Tax Act (ITA) 2007 (indexation) does not apply to the starting rate limit for savings set out in section 12(3) of the Income Tax Act (ITA) 2007. The starting rate limit for savings for the tax year 2021-22 therefore remains at £5,000.

Background note

3. 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). If an individual's non-savings income is more than their personal allowance and exceeds the starting rate limit for savings, the starting rate is not available for that tax year. 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.

4. Income tax is charged at the 0% starting rate for savings, rather than the basic rate of income tax, on that element of an individual's income up to the starting rate limit which is savings income.

5. This clause sets the starting rate limit for savings for 2021-22 at £5,000. This clause does not override section 21 of the Income Tax Act (ITA) 2007 in relation to the

starting rate limit for savings for 2022-23 and subsequently.

6. The starting rate of income tax and the starting rate limit are not devolved matters.

Clause 5: Basic rate limit and personal allowance for future tax years

Summary

1. This clause sets the amount of the basic rate limit for income tax at £37,700 and sets the amount of the personal allowance at £12,570 for the tax years 2022-23, 2023-24, 2024-25 and 2025-26.

Details of the clause

2. Subsection (1) sets the amount of the basic rate limit at £37,700 in section 10(5) of the Income Tax Act 2007 (ITA) for the tax years 2022-23, 2023-24, 2024-25 and 2025-26.

3. Subsection (2) sets the amount of the personal allowance in section 35(1) of the ITA at £12,570 for the tax years 2022-23, 2023-24, 2024-25 and 2025-26.

4. Subsection (3) (a) and (b) disapplies the indexation of the basic rate limit and personal allowances for the tax years 2022-

23, 2023-24, 2024-25 and 2025-26.

Background note

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

5. The basic rate limit is subject to indexation (an annual increase based on the percentage increase to the CPI). Parliament can override the indexed amounts by a provision in the Finance Bill.

6. Budget 2021 announced that the basic rate limit will be set at £37,700 for 2022-23, 2023-24, 2024-25, and 2025-26. The effect of this clause is to override the anticipated indexed amount for the basic rate limit for these years.

7. An individual is entitled to a personal allowance for income tax. Income tax personal allowances are subject to indexation (an annual increase based on the percentage increase to the CPI). Parliament can override the indexed

amounts by a provision in the Finance Bill.

8. Budget 2021 announced that the personal allowance will be increased to £12,570 for 2022-23, 2023-24, 2024-25, and 2025-26. The effect of this clause is to override the anticipated indexed amount for the personal allowance for these years.

Clause 6: Charge and main rate for financial years 2022 and 2023

Summary

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2022 and the financial year beginning 1 April 2023. The clause also sets the main rate of CT for the financial year 2022 at 19% and sets the main rate of CT for the financial year 2023 at 25%.

Details of the clause

2. Subsection 1 charges CT for the financial years beginning 1 April 2022 and 1 April 2023.

3. Subsection 2(a) sets the CT main rate for the financial year beginning 1 April 2022.

4. Subsection 2(b) sets the CT main rate for the financial year beginning 1 April 2023.

Background note

5. Parliament charges CT for each financial

year. This clause charges CT for the financial years beginning 1 April 2022 and 1 April 2023 and sets the main rate of CT for financial year 2022 at 19% and for financial year 2023 at 25%.

Clause 7 and Schedule 1: Small profits rate chargeable on companies from 1 April 2023

Summary

1. This clause and Schedule introduce a small profits rate for non-ring fence profits that will take effect from 1 April 2023. A company's profits will be chargeable at a lower rate of Corporation Tax (CT) than the main rate where those profits fall below the lower limit. Where a company's profits fall above the upper limit, those profits are chargeable at the main rate of CT. Where profits fall between these limits, the profits are chargeable at the main rate of CT and that sum is then reduced by an amount of marginal relief.

Details of the clause

2. Subsection 1 sets out Schedule 1 which makes provision for; tax to be charged at the standard small profits rate, for marginal relief to be given by reference to

the standard marginal relief fraction, for corresponding amendments to Chapter 3A of Part 8 of Corporation Tax Act 2010 (CTA 2010) and for other consequential amendments to provisions made by the Corporation Tax Acts.

3. Subsection 2(a) sets the standard small profits rate of CT for the financial year beginning 1 April 2023.

4. Subsection 2(b) sets the standard marginal relief standard fraction.

Details of the Schedule

Part 1

5. Paragraph 1 introduces amendments to CTA 2010.

6. Paragraph 2 amends section 3 CTA 2010 (which introduces the rates of CT) by inserting subsection (2) that provides that tax may chargeable at the standard small profits rate instead of the main rate in certain cases.

7. Paragraph 3 inserts new Part 3A (Companies with Small Profits) to CTA 2010.

New Part 3A to CTA 2010

8. Part 3A contains sections 18A to 18N which provides for the application of the standard small profits rate for non-ring fence profits. It is based on Part 3 of CTA 2010 that was repealed by Finance Act 2014.

9. New section 18A sets out the conditions for the application of the standard small profits rate (that is lower than the main rate) which are:

    a. the company is resident in the UK in the accounting period,

    b. it is not a close investment-holding company as defined in new section 18N, and

    c. its augmented profits (as defined in new sections 18L and 18M) of the accounting do not exceed 'the lower

limit'.

10. New section 18B provides the rules for marginal relief for companies without ring fence profits which are the same as the first two conditions for the entitlement to the standard small profits rate but with two further conditions. First, the augmented profits (defined in new section 18N) must exceed 'the lower limit' but must not exceed 'the upper limit'. These limits are defined in new section 18D. Secondly, the company must not have any ring fence profits. The CT charged on the company's profits are reduced by the amount given by the formula in subsection (2).

11. New section 18C signposts that marginal relief for companies with ring fence profits is given in accordance with sections 279B and 279C CTA 2010.

12. New section 18D defines 'the lower limit' and 'the upper limit'. Where there are no associated companies subsection (2)

provides that these limits are £50,000 and £250,00 respectively. Subsection (3) provides that the limits are divided equally by the total number of associated companies. Subsection (4) proportionately reduces the limits for accounting periods that are less than 12 months long.

13. New section 18E defines 'associated company' for the purposes of section 18D.

- A company is an associated company for an accounting period if it is associated for any part of that accounting period.
- Where two or more companies are associated for different parts of the accounting period they are included in the total number of associates.
- An associated company that has not carried on a trade or business at any time in the accounting period is disregarded.
- Subsection (4) provides the main

rule; that a company is an associated company of another if one has control of the other or both are controlled by the same person or persons. Control has the same meaning as sections 450 and 451 CTA 2010.

14. New section 18F is supplementary to section 18E(3) and provides for the treatment of certain non-trading companies. A company that carries on a business of making investments is ignored for the purposes of section 18D if it carries on no trade, has one or more 51% subsidiaries and is a passive company. Subsection (3) describes a passive company as one that;

- has no assets other than shares in its 51% subsidiaries,
- has no income other than dividends,
- where income is received in the form of dividends, they are passed

to shareholders and must be exempt distributions.

- no chargeable gains arise in the period,
- no management expenses are incurred in the period, and
- no qualifying charitable donations are deducted from the total profits of the period.

15. New section 18G modifies the control rule in section 18E(4) and (5) where there is no substantial commercial interdependence between the two companies so that, in determining whether a person has control of two companies, the rights and powers of that person's associates (including spouses and business partners) as required by section 451(4) and (5), are not taken into account.

16. New section 18H provides that, in determining whether a company is under the control of another company, fixed-rate

preference shares are ignored where the company holding them is not a close company, takes no part in the management or conduct of the issuing company or in the management or conduct of its business and it subscribed for the shares in the ordinary course of a business which includes the provision of finance.

17. New section18I provides that two companies are not associated where one is a loan creditor of the other or both are controlled by the same loan creditor provided that; the loan creditor is not a close company, there is no past or present connection between the companies and the loan creditor relationship arose in the ordinary course of its business.

18. New section 18J provides that where two companies are associated because they are controlled by the same trustees, the rights and powers of the trustees are ignored provided there is no other

connection between the companies.

19. New section 18K allows an officer of HM Revenue and Customs to require information about any bearer securities issued by the company.

20. New sections 18L and 18M define 'augmented profits' which are compared with the lower and upper limits in section 18D to determine whether a company is entitled to the standard small profits rate and is based on the repealed sections 279G and 279H CTA 2010.

21. New section 18N defines 'close investment-holding companies' (CIHC) which are excluded from the small profits rate by sections 18A(1)(b) and 18B(1)(b). This is based on the repealed section 34 CTA 2010. CIHCs are defined by exclusion; all close companies are CIHCs unless they exist wholly or mainly for the permitted purposes as defined in subsection (2). A company exists for a permitted purpose if it is a trading

company, a property investment company where the property is commercially let to unconnected parties or a service or holding company in relation to a 'qualifying company'. A qualifying company is defined as a company which is under the control of the relevant company or of a company which controls the relevant company and exists wholly or mainly for the purpose of carrying on a trade.

Part 2: Amendments of Chapter 3A of Part 8 of CTA 2010

22. Part 2 amends Chapter 3A of Part 8 CTA 2010.

23. Paragraph 4 introduces the amendments to Chapter 3A of Part 8 CTA 2010.

24. Paragraphs 5, 6 and 7 provide that close investment-holding companies are charged at the main ring fence rate and are

not entitled to the small ring fence profits rate. They also amend the definition of 'R' in the marginal relief formula so that it now refers to the 'ring fence marginal.'

25. Paragraph 8 inserts New section 279DA which provides the formula for calculating the marginal relief on the non-ring fence 'remaining amount' referenced in section 279C(2).

26. Paragraph 9 substitutes the references to the 'related 51% group company' rules in section 279E with references to 'associated company' rules and aligns the lower and upper limits for the small ring fence profits rate with those in new section 18D.

27. Paragraph 10 inserts new section 279EA which points to the associated company rules and definitions of 'augmented profits' and 'close investment-holding company' in Part 3A for the purposes of determining the lower and upper limits for the small ring fence

profits rate.

28. Paragraph 11 omits sections 279F to 279H which provide the definition of 'related 51% group company.'

Part 3: Consequential Amendments

29. Part 3 makes consequential amendments to CTA 2010 and other Acts that flow from this new legislation. Many of these are minor changes ensuring that references to the standard small profits rate and marginal relief are introduced where appropriate. For example:

- Paragraph 12 amends paragraph 8 subsection (1) Schedule 18 FA 1998 (company tax returns, assessments and related matters) so that the reference to Chapter 3A of Part 8 of CTA 2010 (marginal relief for companies with small ring fence profits etc) is replaced by "Part 3A or Chapter 3A Part 8 CTA 2010

(marginal relief fort companies with small profits)."

- Paragraphs 22 to 26 amend sections 534 and 535 CTA 2010 (Real Estate Investment Trusts (REITS): tax treatment of profits and gains) so that the references to sections 18A and 18B CTA 2010 (companies with small profits) are inserted. REITs are chargeable to tax at the main rate and are not entitled to the small profits rate or marginal relief.

30. Paragraphs 13, 16, 20 and 21 make more substantial changes substituting the references to the 'related 51% group company' rules with references to 'associated company' rules.

- Paragraph 13 (in addition to pointing to the new definition of 'augmented profits' at sections 18L and 18M) amends The Corporation Tax (Instalment Payment) Regulations 1998 so that the

associated company rules in sections 18E to 18J are used to determine whether or not a company is a large or very large company for the purposes of the Regulations.

- Paragraphs 16 amends section 99 Capital Allowances Act (CAA) 2001 so that the 'associated company' rules are used to determine the amount of the monetary limit in computing capital allowances on long life assets.

  Paragraphs 20 and 21 amend sections 357BN and 357BNB CTA 2010 so that the 'associated company' rules are used to determine the profit limit for companies electing for small claims treatment under the Patent Box legislation.

Part 4: Commencement etc

31. Part 4 makes commencement provisions.

32. Paragraph 33 provides that changes to the Corporation Tax (Instalment Payment) Regulations 1998, Capital Allowances Act and the Patent Box legislation will apply for accounting periods beginning on or after 1 April 2023.

33. Paragraph 34 provides that all other changes will apply with effect from the financial year 2023 onwards.

Background note

34. This Schedule makes changes to legislation to introduce a small profits rate of tax for non-ring fence profits from the Financial Year 2023. The rate of tax is to be known as "the standard small profits rate" distinguishing it from the "small ring fence profits rate".

35. The introduction of the standard small profits rate is introduced alongside an

increase in the CT main rate ensuring that the majority of businesses are protected from the rate rise.

36. The "related 51% group companies test" (previously in Part 8 CTA 2010) has been replaced by the "associated companies" rules in the new Part 3A CTA 2010. These are anti-fragmentation rules for computing entitlement to the small profits rate and marginal relief. The upper limit of £250,000 and lower limit of £50,000 will now be divided amongst the claimant company and its associated companies. These limits will also apply for the purposes of determining entitlement to the small ring fence profits rate.

37. The "related 51% group companies" rule was also used in the Corporation Tax (Instalment Payment) Regulations 1998, 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 357NB and 357BNB CTA 2010). These rules have also been replaced by the "associated companies" rules.

Clause 8: Increase in the rate of diverted profits tax

Summary

1. This measure will increase the rate of diverted profits tax from the current rate of 25% to 31% from 1 April 2023.

Details of the clause

2. This clause amends section 79 of Finance Act (FA) 2015 which defines the charge to diverted profits tax and makes provision for that change to take effect from 1 April 2023.

3. Subsection 1 amends section 79 FA 2015 to increase the rate of diverted profits tax to 31%.

4. Subsection 2 provides that this amendment will take effect for accounting periods beginning on or after 1 April 2023.

5. Subsections 3, 4 and 5 contain transitional arrangements.

Background note

6. With effect from 1 April 2023, the rate of corporation tax will increase from 19% to 25%.

7. The rate of diverted profits tax has been changed (with effect from 1 April 2023) to maintain the current differential between the diverted profits tax rate and the corporation tax rate.

Clause 9: Super-deductions and other temporary first-year allowances

Summary

1. This clause introduces new temporary first-year allowances, including a 130% super-deduction for expenditure that would normally qualify for main rate writing down allowances and a 50% first-year allowance for special rate expenditure, with expenditure subject to certain exclusions. It has effect for expenditure incurred from 1 April 2021 up to and including 31 March 2023, and excludes contracts entered into prior to 3 March 2021.

Details of the clause

2. Subsection 1 provides new first-year allowances to be included in the list of provisions at section 39 Capital Allowances Act (CAA) 2001 and the amounts of the first-year allowances in the

table at section 52(3).

3. Subsection 2 specifies the conditions which must be met in order for expenditure on plant or machinery to qualify for the super-deduction, which is a first-year allowance. The conditions are:

   a. The expenditure is incurred on or after 1 April 2021 but before 1 April 2023,

   b. it is incurred by a company within the charge to Corporation Tax,

   c. the plant or machinery is unused and not second-hand,

   d. the expenditure is not within any of the eight general exclusions in section 46(2) of CAA 2001, which include exclusions for expenditure on cars and on the provision of plant and machinery for leasing,

   e. it is not special rate expenditure (which is defined at section 104A CAA 2001), and

   f. the plant or machinery is not for use

wholly or partly for the purposes of a ring fence trade, which means a trade in respect of which tax is chargeable under section 330(1) Corporation Tax Act 2010.

4. Subsection 3 specifies the conditions which must be met in order for expenditure on plant or machinery to qualify for the 50% first-year allowance. The conditions are:

   a. The expenditure is special rate expenditure (which is defined at section 104A CAA 2001),

   b. it is incurred on or after 1 April 2021 but before 1 April 2023,

   c. it is incurred by a company within the charge to Corporation Tax,

   d. the plant or machinery is unused and not second-hand, and

   e. the expenditure is not within any of the eight general exclusions in section 46(2) of CAA 2001, which includes

exclusions for expenditure on cars and on the provision of plant and machinery for leasing.

5. Subsection 4 specifies the conditions which must be met in order for expenditure on the provision of plant or machinery for use partly for the purposes of a ring fence trade to qualify for 100% first-year allowance. The conditions are:

   a. The expenditure is incurred on or after 1 April 2021 but before 1 April 2023,

   b. it is incurred by a company within the charge to Corporation Tax,

   c. the expenditure is not within any of the eight general exclusions in section 46(2) of CAA 2001, which includes exclusions for expenditure on cars and on the provision of plant and machinery for leasing, and

   d. it is not special rate expenditure (which is defined at section 104A CAA 2001).

6. Subsection 5 provides that the part of the first-year allowance made as a result of expenditure qualifying under subsection (4) is attributable to the ring fence trade on a just and reasonable basis.
7. Subsection 6 provides that the section has effect as if the provisions within this clause were contained within Chapter 4 Part 2 of CAA 2001. Among other things, this means that sections 5 and 50 CAA 2001 are relevant for determining when capital expenditure is incurred for the purpose of the new allowances, except for instances where the contract was entered into before 3 March 2021 (see subsection 7).
8. Subsection 7 provides that where a contract has been entered into for the provision of plant or machinery before 3 March 2021, expenditure incurred as a result of this contract is excluded from the super-deduction and 50% first year allowance for special rate expenditure.

9. Subsection 8 amends section 67(1)(b) by substituting it with Conditions A and B in section 1129 CTA 2010 for the purpose of determining whether a person is entitled to first-year allowances in respect of the super-deduction for main rate plant and machinery and 50% first-year allowance for special rate expenditure. This applies to hire purchase and similar contracts, where possession of plant or machinery transfers to the acquirer but not ownership.

10. Subsection 9 provides that section 130(1) CAA 2001, which provides for postponement of first-year allowances on the provision of a ship, does not apply to the super-deduction or 50% first-year allowance for special rate assets.

11. Subsection 10 sets out the definition of "ring fence trade".

Background note

12. As announced at Spring Budget 2021,

to stimulate investment in the economy temporary capital allowances were introduced. These provide an increased incentive to invest in plant and machinery though generous rates of relief in the period the expenditure is incurred.

13. These reliefs are only available for companies within the charge to Corporation Tax. Unincorporated businesses can claim the full cost of expenditure through the Annual Investment Allowance, up to the relevant limit.

14. Capital allowances allow the cost of capital assets to be written down against a business's taxable profits. They are available in place of commercial depreciation provided for in commercial accounts. The main rate of writing down allowance for main rate plant and machinery is 18% a year on a reducing balance basis. The special rate of capital allowances, which applies to certain

spending on plant and machinery including integral features, long-life assets, thermal insulation, is 6% a year on a reducing balance basis.

15. The super-deduction is a 130% first-year allowance for qualifying plant and machinery expenditure which would ordinarily be relieved at the main rate writing down allowance at 18%. The 50% special rate first-year allowance provides relief for qualifying expenditure that would ordinarily be relieved at the special rate writing down allowance.

16. There are exclusions to these reliefs, which include expenditure on cars, second-hand assets, connected party transactions (as per existing legislation for first-year allowances in Chapter 17, Part 2 CAA 2001) and expenditure on assets for leasing.

17. Expenditure on assets which are used partly for a ring fence trade qualifies for a temporary 100% allowance for

investments that ordinarily qualify for 18% writing down allowances. Special rate expenditure for use partly in a ring fence trade qualifies for the 50% first-year allowance.

Clause 10: Further provision about super-deductions etc

Summary

1. This clause contains further provisions in connection with the super-deduction for main rate expenditure and 50% first-year allowance for special rate expenditure.

Details of the clause

2. Subsection 1 specifies that sections 11 to 14 contain further provisions in connection with the 130% super-deduction and 50% first-year allowance for special rate assets.
3. Subsection 2 provides that section 11 contains provisions that modify the percentage of the 130% first-year allowance for the super-deduction in certain circumstances. These are:
    a. Where super-deduction expenditure is incurred in a chargeable period that ends on or after 1 April 2023.

b. Where an additional VAT liability accruing in a chargeable period that ends on or after 1 April 2023 is regarded as super-deduction expenditure as a result of section 236(2) of CAA 2001.

4. Subsection 3 provides that section 12 contains provisions about the disposal of plant or machinery in respect of which a super-deduction claim was made and section 13 contains a similar provision in relation to plant or machinery in respect of which a 50% first-year allowance for special rate assets was made.

5. Subsection 4 provides that section 14 contains provision about counteracting tax advantages in connection the super-deduction or 50% first-year allowance for special rate assets. This is in addition to existing provisions in Chapter 17 of Part 2 of CAA 2001, which contains provisions for first-year allowances that apply to the super-deduction and 50% first-year

allowance for special rate assets.

6. Subsection 5 provides that sections 11, 12 and 13 have effect as if they were contained in Chapter 5 of Part 2 of CAA 2001.

7. Subsection 6 sets out explanations, for the purposes of this section and sections 11 to 14, of the terms "super-deduction expenditure", "super-deduction", "SR allowance expenditure", "SR allowance" and "additional VAT liability".

Background note

8. As announced at Spring Budget 2021, to stimulate investment in the economy the temporary super-deduction, a 130% first-year allowance and a 50% first-year allowance for special rate assets, were introduced. These provide an increased incentive to invest in qualifying plant and

machinery through generous rates of relief in the period the expenditure is incurred.

9. This clause sets out the further provisions which apply to the super-deduction and the 50% first-year allowance for special rate assets.

Clause 11: Reduced super-deduction

Summary

1. This clause applies to the super-deduction and amends the rate of the 130% first-year allowance for qualifying expenditure when certain circumstances occur.

Details of the clause

2. Subsection 1 provides that subsection (2) applies when a company within the charge to Corporation Tax incurs qualifying expenditure for the super-deduction in a chargeable period that ends on or after 1 April 2023.
3. Subsection 2 provides that (in the circumstances detailed in subsection (1)), the 130% rate of relief at section 9(1)(b) is substituted by the relevant percentage, which is defined at subsection (5).
4. Subsection 3 provides that subsection 4 applies where a company within the charge to Corporation Tax incurs, in a

chargeable period that ends on or after 1 April 2023, an additional VAT liability which qualifies for first-year allowances under section 236 CAA 2001 and is in respect of plant or machinery which qualified under section 9(2).

5. Subsection 4 provides that (in the circumstances detailed in subsection (3)), the 130% rate of relief at section 9(1)(b) is substituted by either:

    a. the relevant percentage, which is defined at subsection (5), if the company within the charge to Corporation Tax incurs the additional VAT liability before 1 April 2023, or

    b. 100%, if the additional VAT liability is incurred on or after 1 April 2023.

6. Subsection 5 provides the calculation of the relevant percentage for the purposes of subsections (2) and (4)(a). For example, if a company has a 12-month accounting period to 31 December 2023, then, due to subsection (2), the rate of relief should be

amended and calculated by:

a. Taking the total number of days in the period prior to 1 April 2023, which is 90 days, and dividing by the total number of days in the entire period, which is 365 days.

b. then multiplying 90/365 by 30, which equals 7.4, and

c. adding 100 to the result, which gives a relief of 107.4% for qualifying expenditure incurred in the period up to and including 31 March 2023.

Background note

7. As announced at Spring Budget 2021, to stimulate investment in the economy, the temporary super-deduction was introduced; providing an increased incentive to invest in qualifying plant and machinery through generous rates of relief

in the period the expenditure is incurred.

8. To qualify for the super-deduction, expenditure must be incurred from 1 April 2021 and up to and including 31 March 2023. Although expenditure has to be incurred in this period to qualify, relief may be claimed in chargeable periods which end on or after 1 April 2023.

9. The rate of relief is amended under the following circumstances:

    a. Where a company within the charge to Corporation Tax incurs qualifying expenditure in a chargeable period that ends on or after 1 April 2023

    b. Where a company within the charge to Corporation Tax incurs an additional VAT liability, as defined by section 547(1) CAA 2001, in a chargeable period that ends on or after 1 April 2023, and the additional liability qualifies for the 130% first-year allowance by virtue of section 236 CAA 2001.

Clause 12: Disposal of assets where super-deduction made

Summary

1. This clause applies when there is a disposal of plant or machinery and a previous super-deduction claim was made in respect of that plant and machinery. It has effect for all disposals of plant or machinery subject to previous super-deduction claims.

Details of the clause

2. Subsection 1 specifies that if a claim to the super-deduction was made in a previous chargeable period on some or all qualifying plant or machinery expenditure then this section applies.

3. Subsection 2 provides that where this section applies, the person who disposes of plant or machinery which was subject to a previous claim to the super-deduction, is liable to a balancing charge

in the chargeable period when that plant or machinery asset is disposed.

4. Subsection 3 provides that the balancing charge is the relevant proportion of the disposal value (the disposal value is determined by ss61-63, CAA01) subject to subsection (6). Subsection 6 applies if the disposal event occurs in a chargeable period that commences before 1 April 2023.

5. Subsection 4 provides that the relevant proportion of the disposal value is determined by dividing the amount of relevant super-deduction expenditure incurred in respect of the plant and machinery by the total relevant expenditure in relation to it.

6. Subsection 5 provides that super-deduction expenditure is "relevant super-deduction expenditure" if a super-deduction was made in respect of it; and that "total relevant expenditure" is the total of (a) the "relevant super-deduction

expenditure”; (b) any other first-year allowance made in respect of the plant and machinery; and (c) any expenditure on the asset which has been allocated to a pool.

7. Subsection 6 specifies that if the disposal occurs in in a chargeable period that commences before 1 April 2023, the amount of the balancing charge is the amount determined by subsection (3) (the relevant proportion of the disposal value) multiplied by the relevant factor.

8. Subsection 7 provides that the relevant factor is 1.3 if the disposal occurs in a chargeable period that ends before 1 April 2023.

9. Subsection 8 provides that if the disposal occurs in a chargeable period that commences before 1 April 2023 and ends on or after that day, the relevant factor of 1.3 is amended based on an apportionment of the number of days in the period before 1 April 2023 over the

total number of days in that period.

10. Subsection 9 provides that the balance of super-deduction expenditure for which a super-deduction was made is to be treated as 'nil' for the purpose of section 58(5)(b) and (6), CAA01, which concerns the allocation of first-year qualifying expenditure to a pool. This subsection is for the avoidance of doubt, to make it clear that a company is not entitled to allocate a negative balance of expenditure to the pool because the allowance was greater than the expenditure.

11. Subsection 10 provides that where a balancing charge applies, the total disposal receipt which is required to be taken to the main pool is reduced by the amount of the relevant proportion of the disposal value of the plant or machinery. The effect of this subsection is that if the entire disposal receipt is treated as a balancing charge, then there is effectively a nil disposal receipt to take to the pool.

However, if only a portion of the disposal receipt gives rise to a balancing charge, then the remainder of the disposal receipt has to be taken to the pool.

12. Subsection 11 provides that section 135(1), CAA01, which allows ship owners to defer balancing charges, does not apply in relation to balancing charges arising under this section.

13. Subsection 12 states this section applies for disposals occurring on or after 1 April 2021.

Background note

14. As announced at Spring Budget 2021, to stimulate investment in the economy the temporary super-deduction, a first-year allowance, was introduced; providing an increased incentive to invest in qualifying plant and machinery through generous rates of relief in the period the expenditure is incurred.

15. To qualify for the super-deduction,

expenditure must be incurred from 1 April 2021 and up to and including 31 March 2023 and must not fall within any of the exemptions.

16. If a company within the charge to Corporation Tax makes a claim to this allowance, and then later disposes of the plant or machinery, then the rules within this section apply. All or some of the disposal value is treated as a balancing charge, a taxable profit, in the chargeable period the disposal event occurs.

17. The amount of the disposal value subject to the balancing charge is reduced if a company claims a super-deduction for only part of its qualifying expenditure on the plant or machinery and pools other expenditure incurred on the asset or claims another first-year allowance in respect of it. This might happen, for example, if a company incurs expenditure in stages on plant or machinery that is constructed over a period of time and part

of the expenditure is incurred after 1 April 2023.

18. If the relevant amount is less than the total disposal value for the item, then the remaining amount of the disposal value is taken to the main rate pool.

Clause 13: Disposal of assets where SR allowance made

Summary

1. This clause applies when there are disposals of special rate plant or machinery where a previous 50% first-year allowance claim was made. It has effect for all disposals of plant or machinery subject to previous claims.

Details of the clause

2. Subsection 1 specifies that if the 50% first-year allowance was made in a previous chargeable period on some or all qualifying plant or machinery expenditure, then this section applies to the plant or machinery.

3. Subsection 2 provides that where this section applies, the person who disposes of plant or machinery which was subject to a previous 50% first year allowance

claim is liable to a balancing charge in the chargeable period when that plant or machinery is disposed.

4. Subsection 3 provides that the balancing charge is the relevant proportion of the disposal value of the plant or machinery. The disposal value is determined in accordance with sections 61-63, CAA01.

5. Subsection 4 provides that the relevant proportion of the disposal value, for an item of plant or machinery, is determined by dividing the amount of relevant special rate allowance expenditure which was subject to a 50% first-year allowance by 2, and then dividing that amount by the amount of total relevant expenditure in relation to it. For example, if a company has claimed a 50% SR allowance for the plant or machinery and has pooled the 50% balance of the qualifying expenditure after the SR allowance has been made (without pooling or claiming any other qualifying expenditure on the asset), the

balancing charge would be 50% of the disposal value.

6. Subsection 5 provides that "SR allowance" expenditure is "relevant" if a 50% first-year allowance was made in respect of it. "Total relevant expenditure" in relation to plant or machinery is the total of (a) the relevant 50% first-year allowance expenditure, (b) any expenditure in respect of which any other first-year allowance was made and (c) any expenditure in relation to the asset that is not relevant SR allowance expenditure and was allocated to a pool for any chargeable period.

7. Subsection 6 provides that the total disposal receipt which is required to be taken to the special rate pool is reduced by the amount of the balancing charge.

8. Subsection 7 provides that section 135(1) of CAA 2001, which allows ship owners to defer balancing charges, does not apply to balancing charges that arise as a result of

this section.

9. Subsection 8 states this section applies for disposals occurring on or after 1 April 2021.

Background note

10. As announced at Spring Budget 2021, to stimulate investment in the economy the temporary 50% first-year allowance for special rate assets, was introduced; providing an increased incentive to invest in qualifying plant and machinery through generous rates of relief in the period the expenditure is incurred.

11. To qualify for the special rate allowance, expenditure must be incurred from 1 April 2021 and up to and including 31 March 2023 and must not fall within any of the exemptions.

12. If a company within the charge to Corporation Tax makes a claim to this allowance, and then later disposes of the plant or machinery, then the rules within

this section apply. The rules treat part of the disposal proceeds as a balancing charge, a taxable profit, in the chargeable period the disposal event occurs.

13. The amount of the disposal receipt subject to the balancing charge is reduced in proportion to the total qualifying expenditure that has been claimed or pooled in relation to the relevant plant or machinery.

14. The amount remaining of the total disposal receipt is pooled due to section 58(6) CAA 2001.

Clause 14: Counteraction where arrangements are contrived etc

Summary

1. This clause applies if a company enters into relevant arrangements which give rise to a relevant tax advantage, in connection with any super-deduction or the 50% first-year allowance for special rate expenditure. It has effect for any relevant arrangements entered into on or after 3 March 2021.

Details of the clause

2. Subsection 1 provides that a just and reasonable adjustment applies if a relevant tax advantage arises from relevant arrangements.

3. Subsection 2 provides that a relevant tax advantage is an advantage connected with a super-deduction for main rate expenditure or 50% allowance for special rate expenditure. For example, this can

apply to the claim to the first-year allowance or the avoidance or reduction of a balancing charge on disposal of plant or machinery on which one of these allowances was claimed.

4. Subsection 3 provides that arrangements are relevant if the purpose or one of the main purposes of the arrangements is to obtain a relevant tax advantage, and taking account of all the relevant circumstances it is reasonable to conclude that either:

    a. the arrangements are or include steps that are contrived or abnormal or lack a genuine commercial purpose, or

    b. the arrangements can be regarded as circumventing the intended limits of relief under CAA 2001 or otherwise exploiting shortcomings in that Act.

5. Subsection 4 provides that if this section applies, then an adjustment can be made by way of an assessment, modification of an assessment, or amendment or

disallowance of a claim or otherwise.

6. Subsection 5 defines arrangements and tax advantage for the purpose of this section.

7. Subsection 6 provides that the section has effect for any relevant arrangement entered into on or after 3 March 2021.

Background note

8. As announced at Spring Budget 2021, to stimulate investment in the economy the temporary super-deduction, a first-year allowance and a 50% first-year allowance for special rate assets, was introduced. These provide an increased incentive to invest in qualifying plant and machinery through generous rates of relief in the period the expenditure is incurred. The reliefs are available to companies within the charge to Corporation Tax.

9. This section is an anti-avoidance rule which applies to any claims to these allowances, or any reduced balancing charges on the disposal of plant or

machinery where a previous claim was made, providing there is a relevant tax advantage which arises from relevant arrangements.

10. There are existing anti-avoidance provisions within Chapter 17, CAA 2001 which also apply to these reliefs.

Clause 15: Extension of temporary increase in annual investment allowance

Summary

1. This clause extends the temporary increase to £1,000,000 of the maximum amount of annual investment allowance ("AIA") to 31 December 2021. It has effect for qualifying expenditure incurred on or after 1 January 2021.

Details of the clause

2. Subsection 1 amends section 32(1) of the Finance Act 2019 (FA 2019) to extend the period in which the £1,000,000 maximum amount of AIA is available by one year.
3. Subsection 2 amends provisions about chargeable periods that straddle the end of the period in which the £1,000,000 maximum amount of AIA is available ("second straddling period") to reflect the one-year extension.
4. Paragraph 2(a) amends the date specified

in section 32(2) FA 2019 for the second straddling period to 1 January 2022.

5. Paragraph 2(b) amends references to the date specified in paragraph 2 of Schedule 13 to FA 2019 for the second straddling period to 1 January 2022.

6. Paragraph 2(c) amends the reference to the period in which the £1,000,000 maximum amount of AIA is available in paragraph 3(3)(b) of Schedule 13 FA 2019 to three years.

Background note

7. The AIA is a 100 percent capital allowance available for the cost of most plant and machinery incurred by most businesses up to a specified annual amount. It was introduced for expenditure incurred from April 2008, and from 1 January 2016 that annual amount was permanently set at £200,000.

8. At Budget 2018, it was announced that the annual amount would be temporarily

increased to £1,000,000 from 1 January 2019 for a two-year period, to incentivize businesses to increase or bring forward their investment in plant and machinery.

9. At L-day in November 2020, a one- year extension to this temporary increase was announced to support businesses during the pandemic and provide them with the confidence to invest during 2021.

10. Businesses can claim AIA for their expenditure on most plant and machinery, the most notable exception being expenditure on cars. AIA can be claimed for plant and machinery which would be categorized as 'special rate expenditure' and otherwise only eligible for writing down allowances at the special rate (6%).

11. Where businesses incur expenditure that exceeds the specified annual amount of AIA, then the excess is eligible for writing down allowances at either the main rate (18%) or special rate (6%).

12. AIA is only available to those persons

carrying on a qualifying activity who are individuals, companies or partnerships where all the partners are individuals. Qualifying activities mainly include trades, professions, vocations, property businesses, and employments or offices.

13. Companies are also limited to being eligible to a single AIA in the following circumstances:

a. where a company carries on more than one qualifying activity;

b. between companies in a group; or

c. between two or more groups or companies controlled by the same person, where the qualifying activities share the same premises or are similar in nature.

14. Unincorporated businesses are also limited to being eligible to a single AIA across all qualifying activities carried on and controlled by the same person(s), where those activities share the same

premises or are similar in nature.

Clause 16: Meaning of "general decommissioning expenditure"

Summary

1. This clause provides that certain expenditure incurred by oil and gas companies on decommissioning plant and machinery prior to the approval of an abandonment programme qualifies for tax relief.

Details of the clause

2. Subsection 1 amends Chapter 13 of Part 2 of the Capital Allowances Act (CAA) 2001.
3. Subsections 2-4 introduce a new condition to be met at Section 163(1) CAA and make consequential amendments (see 6 below).
4. Subsection 5 adds a new subparagraph (d) to Section 63(3A) CAA which allows expenditure to meet the "qualifying decommissioning expenditure" definition if it is incurred "otherwise in anticipation of a decommissioning measure".

5. Subsection 6 inserts new Section 163(3AA) which defines the term "otherwise in anticipation of a decommissioning measure". The two types of costs are expenditure incurred in:

    - Preserving plant and machinery which it is reasonably anticipated will be required to be demolished by:
        - an approved abandonment programme;
        - a condition to which the approval of an abandonment programme is subject; or
        - a condition or agreement with the Secretary of State
    - Doing anything else which it is reasonably anticipated will be required by:
        - an approved abandonment programme;
        - a condition to which the

approval of an abandonment programme is subject; or

- a condition or agreement with the Secretary of State

6. Subsection 7 inserts new Section 163(3AB) which provides details of the new condition now referred to at Section 163(1) CAA (see 3 above). The condition is met if expenditure was incurred in the preparation of an abandonment programme and it is reasonable to anticipate that the programme will relate to the decommissioning of plant and machinery as set out in Section 163(3) CAA.
7. Subsection 8 makes consequential amendments. The restrictions in subsections (4ZB) and (4ZC) which reduce the amounts allowable do not apply to expenditure which is incurred in the preparation of an abandonment programme as set out at subsection (3AB).

8. Subsection 9 inserts a new Section 163A CAA. This section provides a clawback mechanism in respect of expenditure incurred "otherwise in anticipation of a decommissioning measure" which qualified for relief by meeting the condition at Section 163(3AB)(b) (see the second bullet at 5 above). The clawback does not apply to expenditure incurred on the preservation of plant or machinery which meets the condition at (3AB)(a) (see the first bullet at 5 above).

9. This clawback applies when the anticipated abandonment programme has not been approved, an anticipated condition has not been imposed by the Secretary of State or an anticipated approval has not been given by the Secretary of State, within a specified period (five years from the last day of the accounting period during which the expenditure was incurred). If there has been no approval of an abandonment

programme, imposition of a condition or agreement made there is an obligation to notify HM Revenue and Customs of the fact and set out how any relevant returns are to be amended

10. Subsection 10 provides that the clause applies in relation to expenditure incurred on or after 3 March 2021.

Background note

11. These changes have been made to treat certain types of expenditure incurred before the formal approval of an abandonment programme as qualifying decommissioning expenditure and therefore available for decommissioning expenditure relief (see Section 40 of the Corporation Tax Act 2010).

Clause 17: Extensions of plant or machinery leases for reasons related to coronavirus

Summary

1. This clause introduces an easement for plant or machinery leases caught by anti-avoidance legislation when extended due to coronavirus. The easement has the effect of turning off the anti-avoidance legislation under specific circumstances. It applies where, on or after 1 January 2020, there is (or was) a change in payments under the lease which would have been payable on or before 30 June 2021.

Details of the clause

2. Subsection 1 introduces new subsection 70YCA and Subsection 70YCB to Capital Allowances Act 2001.

New subsection S70YCA CAA2001

3. Subsection 1 disapplies S70YB(1) and S70YC(2) CAA 2001 where certain

conditions apply:

4. Subsection 2 sets out the conditions.
5. Subsection 3 permits either party to the lease to elect that subsection (2) does not apply.
6. Subsection 4 permits the Treasury to amend the second date by which any relevant change in lease payments must have taken place for the purposes of S70YCA.
7. Subsection 5 defines 'coronavirus' and 'relevant lease'.

New subsection S70YCB CAA2001

8. Subsection 1 defines the format and time limits to elect for S70YCA(2) not to apply.
9. Subsection 2 explains that the party making the election must notify the election to the other party to the lease and must provide a copy of the notification to the other party to the lease with the notice of election to HMRC
10. Subsection 3 explains the information

to be included in the notice as specified by an officer of Revenue and Customs

11. Subsection 4 makes the election irrevocable

12. Subsection 5 requires the election to be included with any subsequent return or amended return in which the election takes effect.

13. Subsection 6 disapplies other tax legislation applicable to claims and elections made outside a return.

14. Subsection 7 extends the provisions to partnerships.

Background note

15. Many lessors of plant or machinery made concessions to allow lessees to defer rental payments during the COVID-19 pandemic. Where those deferrals resulted in an extension to the lease, they may have triggered anti-avoidance rules.

16. The easement is applied

automatically, where the conditions are met, restoring leases to their pre-COVID-19 position to protect those who haven't realised they have triggered the anti-avoidance provisions at S70YB and S70YC of CAA 2001 and to minimise the administrative burden of renegotiating contracts and/or dealing with capital allowances disposals and acquisitions mid lease.

17. HMRC recognise that some people will benefit from the application of S70YB and S70YC and therefore either party to the lease can elect to disapply the easement.

18. A Public Notice will be issued to define the detail required in order to make a valid election to disapply the easement.

Clause 18 and Schedule 2: Temporary extension of periods to which trade losses may be carried back

Summary

1. This clause and Schedule provide a temporary extension to the carry back of trading losses from one year to three years, for losses up to £2,000,000 per 12-month period for both companies and unincorporated businesses. This has effect for companies with accounting periods ending between 1 April 2020 and 31 March 2022 and for the tax years 2020-21 and 2021-22 for unincorporated businesses.

Details of the clause

2. Clause 18 introduces Schedule 2. Part 1 includes the provisions relevant to unincorporated businesses that are charged to Income Tax (IT) and Part 2 includes the provisions relevant to

companies within the charge to Corporation Tax (CT).

Details of the Schedule

Part 1: Income Tax

3. Paragraph 1(1) provides that a person who has made a loss in a trade for the tax year 2020-21 may make a claim under the paragraph if the person is entitled to make a claim under section 64 of the Income Tax Act 2007 (ITA) in respect of some or all of the loss (or would be entitled if they had sufficient income to make such a claim) and either of two conditions are met. For this purpose a loss in a profession or vocation is treated in the same way as a loss in a trade (see paragraph 3(2)).

4. Paragraph 1(2) sets out "condition A" which is that the person makes a claim under section 64 of ITA for the loss.

5. Paragraph 1(3) sets out "condition B" which is that the person's total income in both the year in which the loss is made

and the preceding tax year is either nil, or does not include any income from which a deduction could be made under a section 64 claim.

6. Paragraph 1(4) sets out the amount of the loss that may be relieved ("the deductible amount"), which is the unrelieved loss following the section 64 claim where "condition A" applies, or the whole loss where "condition B" applies. The deductible amount that may be deducted from the profits of the tax years 2017-18 and 2018-19 is subject to the £2,000,000 limit in paragraph 1(9).

7. Paragraph 1(5) provides that a claim for relief is for the deductible amount to be deducted in calculating the person's net income. The ways in which it may be deducted are set out in sub-paragraphs (6) to (8).

8. Paragraph 1(6) provides that a deduction is only to be made from profits of the trade.

9. Paragraph 1(7) explains how the deductions are to be made where the person makes a claim for relief under section 64 of ITA for tax year 2019-20. The deductible amount (see paragraph 1(4)) is deducted firstly from the profits of the trade for the tax year 2018-19 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2017-18. The total amount that may be deducted for 2017-18 and 2018-19 cannot exceed £2,000,000.

10. Paragraph 1(8) explains how deductions are to be made in any other case. The deductible amount is deducted firstly from the profits of the trade for 2019-20 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2018-19 and thirdly from the profits of the trade for the tax year 2017-18.

11. Paragraph 1(9) provides that the total amount that may be deducted in a claim

under the paragraph from the profits of the trade for the tax years 2017-18 and 2018-19 is £2,000,000.

12. Paragraph 1(10) provides that a claim under the paragraph must be made by 31 January 2023.

13. Paragraph 2(1) provides that a person who has made a loss in a trade for the tax year 2021-22 may make a claim under this paragraph if the person is entitled to make a claim under section 64 of the Income Tax Act 2007 (ITA) in respect of some or all of the loss (or would be entitled if they had sufficient income to make such a claim) and either of two conditions are met. For this purpose a loss in a profession or vocation is treated in the same way as a loss in a trade (see paragraph 3(2)).

14. Paragraph 2(2) sets out "condition A" which is that the person makes a claim under section 64 of ITA for the loss.

15. Paragraph 2(3) sets out "condition B" which is that the person's total income in

both the year in which the loss is made and the preceding tax year is either nil, or does not include any income from which a deduction could be made under a section 64 claim.

16. Paragraph 2(4) sets out the amount of the loss that may be relieved ("the deductible amount"), which is the unrelieved loss following the section 64 claim where "condition A" applies, or the whole loss where "condition B" applies. The deductible amount that may be deducted from the profits of the tax years 2018-19 and 2019-20 is subject to the £2,000,000 limit in paragraph 2(9).

17. Paragraph 2(5) provides that a claim for relief is for the deductible amount to be deducted in calculating the person's net income. The ways in which it may be deducted are set out in sub-paragraphs (6) to (8).

18. Paragraph 2(6) provides that a deduction is only to be made from profits

of the trade.

19. Paragraph 2(7) explains how the deductions are to be made where the person makes a claim for relief under section 64 of ITA for tax year 2020-21. The deductible amount (see paragraph 2(4)) is deducted firstly from the profits of the trade for the tax year 2019-20 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2018-19. The total amount that may be deducted for 2018-19 and 2019-20 cannot exceed £2,000,000.

20. Paragraph 2(8) explains how deductions are to be made in any other case. The deductible amount is deducted firstly from the profits of the trade for 2020-21 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2019-20 and thirdly from the profits of the trade for the tax year 2018-19.

21. Paragraph 2(9) provides that the total

amount that may be deducted in a claim under the paragraph from the profits of the trade for the tax years 2018-19 and 2019-20 is £2,000,000.

22. Paragraph 2(10) provides that a claim under the paragraph must be made by 31 January 2024.

23. Paragraph 3(1) confirms that the various sections of ITA which apply to section 64 of ITA also apply to the relief in this paragraph.

24. Paragraph 3(2) extends the application of paragraphs 1 and 2 to losses incurred in a profession or vocation.

25. Paragraph 3(3) provides that paragraphs 1 and 2 are subject to paragraph 2 of Schedule 1B to the Taxes Management Act 1970 which sets out the rules that apply where loss relief is given for an earlier tax year to that in which the claim to the relief is made.

26. Paragraph 3(4) provides that sections

61 (Non-partners: losses of a tax year), 62 (Partners: losses of a tax year etc) and 63 (Prohibition against double counting) of ITA apply to paragraph 1 and 2 in the same way as they apply to trade loss reliefs in Chapter 2 of Part 4 of ITA.

27. Paragraph 3(5) ensures that any deduction under paragraph 1 or 2 which reduces profits chargeable to income tax also reduces profits in respect of which Class 4 National Insurance Contributions are payable.

Part 2: Corporation Tax

28. Paragraph 4 provides for a temporary extension of the CT rules for carrying back trade losses in relation to a maximum £2,000,000 trading losses incurred in relevant accounting periods ending between 1 April 2020 and 31 March 2021 and a maximum £2,000,000 trading losses incurred in relevant accounting periods ending between 1 April 2021 and 31

March 2022. Section 37 of the Corporation Taxes Act (CTA) 2010 continues to allow a one-year carry back for trading losses of a relevant accounting period which are not relievable under this part.

29. Paragraph 4(1) provides that the extended three-year carry back of company trading losses applies instead of the twelve-month period otherwise allowed under sections 37(3)(b) and 38(1) and (3) of CTA 2010 subject to the following parts of paragraph 4.

30. Paragraph 4(2) provides that extended loss carry back for companies applies for trading losses of a relevant accounting period.

31. Paragraph 4(3) defines a 'relevant accounting period' as one ending in the two years from 1 April 2020 to 31 March 2022.

32. Paragraphs 4(4) and (5) provide that losses unrelated to decommissioning expenditure are relieved before those

attributable to decommissioning expenditure. This ensures that where a company's loss-making trade falls within the ring-fenced North Sea Oil & Gas tax regime, the company's ability to obtain relief under section 40 CTA 2010 (in respect of losses arising as a result of allowances made under section 164 Capital Allowances Act 2001 in respect decommissioning expenditure) is unaffected, and such claims are not limited by the amount of relief otherwise available under this paragraph.

33. Paragraph 4(6) provides that under section 42(1)(b) CTA 2010, a claim may be made under this Part in addition to claims to 3 year carry back relief for either terminal losses or general decommissioning losses in a ring-fence trade.

34. Paragraph 5 provides that the cap on 2020 claims for a company that is not a member of a 2020 group is £2,000,000. A

separate £2,000,000 cap applies for 2021 claims for a company that is not a member of a 2021 group. 2020/2021 claims and 2020/2021 groups are defined at paragraph 13.

35. Paragraph 6 provides that non-de minimis 2020 and 2021 claims (that is those exceeding £200,000) may not be made before 31 March 2021 and 31 March 2022 respectively.

36. Paragraph 7 requires non-de minimis claims to be made in a company tax return.

37. Paragraph 8 defines 2020 and 2021 de minimis claims. This provides that the cumulative total amount of relief given for all claims for a relevant period does not exceed £200,000. This is subject to sub-paragraph (3) that requires that a company takes into account any and all claims that are available to it such as capital allowances, that no surrenders of losses for group relief are made and that

maximum permissible loss carry back claims are made.

38. Paragraph 9 provides the group cap of £2,000,000. A company in a 2020 or 2021 group may not make a non-de minimis 2020 or 2021 claim (i.e. a claim that exceeds £200,000) unless the total of all other claims (including de minimis claims) made by the company and other members of the group does not exceed £2,000,000.

39. Paragraph 10 provides that a non-de minimis claim made by a company that is a member of a 2020 or 2021 group is of no effect unless it is specified on a loss carry-back allocation statement submitted in accordance with the relevant regulations.

40. Paragraph 11 provides the regulation-making power for the requirements for the submission of loss carry-back allocation statements.

41. Paragraph 12 is an anti-avoidance provision that denies a claim under these provisions to a company that leaves a

group before the end of the accounting period where the main purpose or one of the main purposes of doing so is to increase the amount of the loss carry-back cap available to it. For this paragraph a 'group' has the same meaning given by section 269ZZB CTA 2010.

42. Paragraph 13 defines 2020 and 2021 claims as loss carry-back claims made in accordance with paragraph 4 for losses of accounting periods ending the period 1 April 2020 to 31 March 2021 and the period 1 April 2021 to 31 March 2022. A 2020 group and 2021 group are determined by the members of a group in place (as defined at section 269ZZB CTA10) at 31 March 2021 and 31 March 2022.

43. Paragraph 14 provides for the amendment of certain paragraphs by way of retrospective secondary legislation.

Background note

44. The clause and Schedule extend the trade loss carry back rules for corporation tax and income tax. This has been introduced in response to the COVID-19 pandemic to assist businesses that have suffered economic harm as a result of restrictions placed upon them. This provides a cash flow benefit to affected businesses by providing additional relief for trading losses.

45. For corporation tax, the extension applies to trading losses arising in a relevant accounting period ending from 1 April 2020 to 31 March 2022. For income tax the rules are extended in relation to a trade loss (including a loss in a profession or vocation) made in tax years 2020/21 and 2021/22.

46. Schedule 2 as introduced was amended in Public Bill Committee on 22 April 2021 to clarify that relief is not available to a furnished holiday lettings

business that is treated as a trade under section 127 of ITA.

Clause 19 and Schedules 3 and 4: R&D tax credits for SMEs

Summary

1. This clause and Schedules introduce a new restriction to the payable element of the research and development (R&D) tax credit for companies which are small or medium sized enterprises (SMEs). The restriction – referred as the cap – is based upon the Pay-As-You-Earn (PAYE) and National Insurance Contributions (NIC) that the company is required to pay for its own employees, as well as some PAYE and NIC of connected companies. The change has effect for accounting periods beginning on or after 1 April 2021.

Details of the clause

2. Clause 19 introduces Schedule 3 and Schedule 4. Schedule 3 applies the new cap to the payable R&D tax credit for SME companies. Schedule 4 makes similar

changes to the legislation for R&D tax credits that would apply if the Northern Ireland Assembly were to vary the rate of Corporation Tax for Northern Ireland companies,

Details of Schedule 3: R&D tax credits for SMEs

3. Subsection 1 and Schedule 3 amend Chapter 2 of Part 13 of Corporation Tax Act (CTA) 2009 which contains the rules for the research and development tax credit for SMEs.

4. Paragraph 2 of the Schedule amends Section 1058 CTA 2009, which defines the amount of payable tax credit that a company may claim, introducing the new cap.

5. The level of the cap for an accounting period is set in new subsection (1A) of s1058. It is calculated by adding together a minimum amount of £20,000, 300 per cent. of the company's own PAYE and NIC and,

potentially, three hundred per cent. of some PAYE and NIC of connected companies. (The total of the PAYE and NIC to which the multiplier is applied, is referred to as the company's relevant expenditure on workers for payment periods ending in the accounting period).

6. New subsection (1C) provides an exception to the cap where conditions set out in new section 1058D are met.

7. Relevant expenditure on workers for a payment period is defined in new section 1058A. It is the sum of

    - The company's own total PAYE and NIC liabilities (defined in new section 1058B) less any amounts used by another company in calculating that company's own cap (defined in new section 1058C)
    - Where the company pays another, connected, company for providing it with externally provided workers (EPWs) to carry out R&D, the

relevant portion of the PAYE and NIC staffing costs incurred by the connected company, and

- Where the company contracts out R&D activities to another, connected, company, any PAYE and NIC staffing costs incurred by the connected company in performing those activities.

8. Subsection (2) of new section 1058A defines the relevant portion of any staffing costs incurred by the EPW provider on an EPW. This is the fraction of the claimant company's qualifying expenditure on the EPW that is used to claim relief under Chapter 2, multiplied by the PAYE and NIC that the connected company is required to pay in respect of the EPW.

9. New section 1058B defines the company's total PAYE and NIC liabilities as needed by new section 1058A. This is the amount of income tax which the company must pay to HM Revenue & Customs (HMRC)

under PAYE regulations, plus the amount of Class 1 NIC that it must pay, during the accounting period. Amounts that may be deducted by the employer to fund certain payments to employees are though disregarded so that these do not reduce the cap.

10. New section 1058C is a rule to prevent amounts of PAYE or NIC from being included in the calculation of two different companies' caps. This could happen where, for example, Company A subcontracts R&D activities to connected Company B which also carries out R&D its own right for which it claims tax credit. Company B would be calculating its cap based on its total PAYE and NIC while Company A might also be including part of Company B's PAYE and NIC (i.e. that relating to the subcontracted work) when calculating its cap. This could also happen where B supplies A with EPWs. New section 1058C ensures that in these

circumstances, it is Company A that includes the overlapping PAYE and NIC when it calculates its cap.

11. New Section 1058D provides an exemption to the cap. For this to apply, a company must meet two conditions.

- Condition A requires the company to be creating or preparing to create intellectual property, or managing intellectual property which it holds. These activities must be undertaken largely by employees of the company, and the company must have the right (alone or with others) to exploit the intellectual property.
- Condition B requires that the total of the company's qualifying expenditure with connected persons on EPWs and on subcontracting R&D activities is no more than 15 per cent. of its qualifying expenditure.

Details of Schedule 4: R&D tax credits for SMEs: Northern Ireland companies

12. Subsection 2 and Schedule 4 amend the separate legislation for the R&D tax credits for SMEs that would apply if the Northern Ireland Assembly were to vary the rate of Corporation Tax for Northern Ireland companies. That separate legislation ensures that the value of the relief would be the same for Northern Ireland and non-Northern Ireland companies.

13. As a consequence, however, there is a separate provision at s357PD CTA 2010 defining the amount of tax credit which parallels s1058 CTA 2009. It is necessary to amend this to introduce the cap. Schedule 4 therefore amends s357PD CTA 2010 in a similar fashion to the amendments made by Schedule 3 to s1058 CTA 2009.

Background note

14. The R&D tax reliefs, including the SME R&D tax credit, incentivise firms to invest in R&D. They are a core part of the government's support for innovation, supporting the Industrial Strategy target of the UK spending 2.4 per cent. of GDP on R&D by 2027.

15. However, the SME tax credit has become a target for fraud and abuse, in particular through companies claiming payable tax credit for work carried on by others in circumstances where they have very little substance in the UK. This legislation responds to that, ensuring the relief goes to those who should receive it.

16. The proposed change was first announced at Budget 2018 and the Government consulted on detailed design in 2019. There was a further consultation in Spring/ Summer 2020, to ensure that the impact on genuine companies was minimized.

Clause 20: Extension of social investment tax relief for further two years

Summary

1. This clause amends the sunset provisions ending the Social Investment Tax Relief (SITR) and in doing so extends the operation of the scheme to investments made in enterprises on or before 5 April 2023.

Details of the clause

2. Clause 20 replaces the dates of 6 April 2021 within Section 257K(1)(a)(iii) Income Tax Act 2007 and paragraphs 1(3)(b) and 2(2)(b) of Schedule 8B to Taxation of Chargeable Gains Act 1992 with 6 April 2023.

3. This defers the latest date by which investments can be made in social enterprises under the SITR. Investments made before 6 April 2023 can now qualify for income tax relief and gains accrued

before that date are eligible for a claim to capital gains hold-over relief if re-invested in a social enterprise.

Background note

4. SITR was introduced in 2014 to encourage individuals to invest in qualifying social enterprises and trading charities. It does so by offering investors a range of tax reliefs, including income tax relief and CGT hold-over relief on gains reinvested in qualifying enterprises, and originally contained sunset provisions that terminated these reliefs on 6 April 2019.

5. Finance (No. 2) Act 2017 introduced changes to increase the scope of the SITR scheme and alongside these changes the sunset clauses were initially extended to 6 April 2021. The decision to further extend the sunset clauses to 6 April 2023 follows the consultation undertaken in 2019, "Social Investment Tax Relief: call for evidence".

Clause 21: Workers' services provided through intermediaries

Summary

1. This clause introduces amendments to the off-payroll working legislation in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to address an unintended widening of the conditions which determine when a company is an intermediary that is subject to Chapter 10. The clause also introduces a Targeted Anti-Avoidance Rule (TAAR) to prevent avoidance arrangements seeking to circumvent the conditions for a company or partnership to be an intermediary for the purposes of Chapter 10. Two further minor technical changes are also introduced to improve the operation of the rules. The first change makes it easier for parties in a contractual chain to share information relating to the

off-payroll working rules. The second change places the liability for the tax on the party in the labour supply chain providing fraudulent information. These amendments will have effect from 6 April 2021.

Details of the clause

2. Subsection (1) introduces amendments to Chapter 10 of Part 2 of ITEPA 2003.
3. Subsection (2) makes consequential amendments to section 61N to account for the introduction of new section 61WA.
4. Subsection (3)(a) substitutes new paragraph (b) for the existing paragraph (b) in section 61O(1) of ITEPA 2003 to introduce two conditions which determine when a company is an intermediary subject to Chapter 10. New subsection 61O(1A) refers to the material interest condition, which has not changed. New subsection 61O(1B) introduces a new condition to capture engagements where

the worker has a non-material interest in the intermediary and receives, or will receive, a chain payment that does not, or will not, wholly constitute employment income of the worker.

5. Subsection (3)(c) inserts new subsections 61O(4A) to (4C), which define a non-material interest.

6. Subsection (4) makes a consequential amendment to section 61S(4) to account for the amendments being made to section 61U.

7. Subsection (5) makes a consequential amendment to section 61T(3) to account for the introduction of new section 61WA.

8. Subsection (6) amends section 61U to extend the requirement to provide information as to whether one of the conditions A to C in section 61N is met to the intermediary where the worker has not done so. Previously, only the worker was required to provide this information. Where neither the worker or the

intermediary provides this information, the subsection 61U(2) treats one of conditions A to C in section 61N as being met and the client organisation will need to consider whether the rules apply to the engagement.

9. Subsection (7) amends section 61V to extend the consequences of providing fraudulent information to another person in the labour supply chain to include a UK-based person in the chain. Previously, the provision only related to the services-provider (i.e. the worker), a person connected with them or, if the intermediary is a company, an office-holder in that company.

10. Where a "relevant person" provides fraudulent information, they will be treated as the person making a deemed direct payment to the worker. If more than one relevant person has provided information, the first person to have made that information available will be treated

as the person making the deemed direct payment to the worker.

11. Subsection (8) inserts new section 61WA which introduces a Targeted Anti-Avoidance Rule (TAAR). This TAAR will apply to avoidance arrangements where the main purpose, or one of the main purposes, is to secure a tax advantage by securing that any one of the conditions in sections 61O and 61P are not met in relation to an intermediary.

12. Where a relevant avoidance arrangement is entered into, the TAAR will seek to counteract the arrangement by treating the "participating person" as the deemed employer for the purposes of Chapter 10. As the deemed employer, the participating person will be liable to operate PAYE on the deemed direct payment to the worker.

13. New subsection 61WA(4) defines a participating person as the "relevant person" who participates in the relevant

avoidance arrangement. The relevant person may be the worker or a person who is UK resident or has a place of business in the UK.

14. Where more than one relevant person in the labour supply chain participates in the avoidance arrangement, HMRC will treat the highest relevant person in the chain who is involved in the avoidance and from whom HMRC considers there is a realistic prospect of recovering the tax within a reasonable period as the deemed employer. In some cases, this may be the intermediary or the worker (for example, if the person above them in the supply chain has dissolved).

15. Subsection (9) makes a consequential amendment to section 688AA(2)(a) of Part 11 of ITEPA 2003. The amendment disapplies provisions enabling HMRC to recover unpaid debts from a client or the highest agency in a supply chain under The Income Tax (Pay As You Earn)

Regulations 2003/2682 where the debt arises from a relevant avoidance arrangement under new section 61WA.

16. Subsection (10) states that these amendments will take effect for deemed direct payments treated as made on or after 6 April 2021, for services provided on or after this date.

Background note

17. The off-payroll working rules were amended in Finance Act 2020 to move certain responsibilities under the off-payroll working rules in Part 2 of ITEPA 2003 from a worker's intermediary to a client organisation outside the public sector where that client organisation has a UK connection and does not qualify as "small".

18. As part of this, an amendment was introduced to section 61O of Chapter 10 of

Part 2 of ITEPA 2003, which sets out the conditions to determine whether an intermediary which is a company is subject to Chapter 10. The amendment was made to prevent potential avoidance of the rules by workers diluting their shares in the intermediary so that they do not have a material interest. This amendment widened the determining conditions applicable to a company beyond the policy intent.

19. This clause limits the scope of this condition by removing those engagements that would have been unintentionally caught by the rules, restoring the original policy intent. The clause introduces a new and more precise condition in section 61O to apply to cases where the worker has a less than material interest in the intermediary and the payment received by the worker for the services provided is not already taxed wholly as employment income. This change will not affect those

organisations who were intended to be within the scope of the rules and have been preparing for the reform on this basis.

20. A TAAR has also been introduced to prevent future avoidance of the conditions. Where triggered, the TAAR will place the liability that would have been due, had it not been for the avoidance arrangement, onto the person who entered the avoidance. Where more than one person has entered the avoidance, the liability will rest with the highest person in the chain involved in the avoidance and from whom HMRC is able to recover the liability.

21. Two further minor related technical changes were identified in response to feedback from stakeholders, and the Government has taken the opportunity to make these changes now. The first of these changes relates to the provision of information in the labour supply chain to

allow an intermediary to provide the information required to establish whether the rules should be considered, where the worker has not done so. This ensures that the rules are only applied to engagements that meet the relevant conditions, including the new condition at section 61O. The second change is required to ensure that those providing information in the labour supply chain face a consequence if the information they provide is fraudulent. Overall, these changes will improve the operation of the rules.

Clause 22: Payments on termination of employment

Summary

1. This clause amends the income tax treatment of termination payments in two ways. The clause provides a new calculation for Post-Employment Notice Pay (PENP) for employees paid by equal monthly instalments whose post-employment notice period is not a whole number of months. The clause also brings PENP within the charge to UK tax for individuals who are non-resident in the year of termination of their UK employment. The clause will take effect from 6 April 2021. The clause will apply to those individuals who both have their employment terminated and receive a termination payment on or after 6 April 2021.

Details of the clause

2. Subsection 1 amends section 27 of ITEPA 2003 (UK-based earnings for year when employee not resident in UK) in accordance with subsection (2) to (5).

3. Subsection 2 inserts a new paragraph (c) to section 27 (1) of ITEPA 2003 to include 'general earnings to which section 402B ITEPA 2003 applies'. Section 402B treats Post-Employment Notice Pay as earnings; this amendment brings those earnings within the scope of section 27 with the effect that those earnings are 'taxable earnings'.

4. Subsection 3 amends subsection 27(2) of ITEPA to provide that it only applies to existing subsections 27 (1) (a) and (b). The new subsection 2A will have effect in relation to the new subsection 27 (1) (c).

5. Subsection 4 inserts new subsection 2A into section 27 of ITEPA. New subsection 2A provides that the amount of general

earnings which fall within subsection 27(1)(c) of ITEPA, that is to be considered an amount of "taxable earnings" should be calculated in accordance with the amount of general earnings that would have constituted "taxable earnings" within the scope of section 27 (1) (a) or (b) of ITEPA; had the employee worked during their notice period.

6. Subsection 5 amends subsection 27(3) of ITEPA to ensure that the tax charge imposed by new subsection 2A applies whether or not the employment is held when the earnings are received.

7. Subsection 6 amends section 402B(1) of ITEPA to clarify that PENP earnings are not subject to subsections 27(1)(a) or (b). This prevents the same amount of PENP from being considered as "taxable earnings" within the scope of both subsection 27(c) and subsection 27(a) or (b) of ITEPA, which may result in an

excessive charge to tax.

8. Subsection 7 amends section 402D of ITEPA ("post-employment notice pay").

9. Subsection 7(a) provides that the definitions at subsection 402D(3) of ITEPA are also subject to the new subsection 6A of section 402D of ITEPA.

10. Subsection 7(b) amends subsection 402D(6) of ITEPA to provide that it should only apply where the employee's basic pay is paid in equal monthly instalments. Where the employee's basic pay is not paid in equal monthly instalments subsection 402D(6) of ITEPA will not apply, to account for variations in the amount of pay resulting from the number of days in the last pay period.

11. Subsection 7(c) amends section 402D of ITEPA to insert the new subsection (6A). This provides for an alternative PENP calculation for certain employees. Where the employee's last pay period

before the trigger date is a month, the employee is paid in equal monthly instalments, and the notice period or post-employment notice period is not a whole month, new subsection (6A) provides that instead of using the number of days in that pay period, 30.42 (being the mean average number of days in a month) can be used as 'P' in the PENP calculation. This ensures that PENP does not vary according to the number of days in the monthly pay period preceding the trigger date where the remuneration for that period would not have so varied.

12. Subsection 8 provides that the amendments made by this clause will have effect for termination payments that are received on or after 6 April 2021 and in connection with an employment that is terminated on or after that date.

Background note

13. Changes were made to the taxation of

termination payments in Finance (No.2) Act 2017, with effect from 6 April 2018. This included the introduction of PENP to ensure that all contractual, customary and non-contractual payments in lieu of notice (PILONs) are subject to income tax and National Insurance Contributions as earnings consistently.

14. This clause is intended to improve the fairness and clarity of the PENP legislation by removing two known inconsistencies in the tax treatment of PENP.

15. Since October 2019, HM Revenue and Customs (HMRC) has exercised managerial discretion available under the Commissioners for Revenue and Customs Act 2005 to provide for an alternative calculation for PENP for use where the known inconsistency arises, and the alternative calculation is advantageous to the employee. This will continue to apply until 6 April 2021.

Clause 23: Cash equivalent benefit of a zero emissions van

Summary

1. This clause amends section 155 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 in respect of taxable vans which cannot emit CO_2 under any circumstances when being driven. The provisions apply from 6 April 2021. The clause also amends section 170 ITEPA to allow the cash equivalent of the benefit to be increased by secondary legislation for specified tax years.

Details of the clause

2. Subsection 1 introduces amendments to section 155 ITEPA.

3. Subsection 2 amends subsection (1B)(a) and inserts new paragraph (aa), which provides that the cash equivalent of the benefit of vans which cannot emit CO_2 under any circumstances when being

driven is nil in the tax year 2020-21 and subsequent tax years.

4. Subsection 3 removes subsection (1C)(g) as it becomes otiose following the amendments set out above.

5. Subsection 4 makes consequential amendments to the order-making powers contained in section 170(1A) which allow the cash equivalent of the benefit for zero emission vans to be increased by secondary legislation for future specified tax years.

Background note

6. From 2021-22, the cash equivalent of the van benefit charge for zero emission vans is nil. This applies only to those vans which cannot emit CO_2 under any circumstances when being driven. The government announced its intention to introduce this policy change at spring Budget 2020.

7. This clause supports the uptake of less

polluting goods vehicles by reducing the level of the tax charge that would otherwise be applicable. It also supports the government's objectives on decarbonisation and air quality initiatives. The government will continue to review taxable benefits so that they support the sustainability of public finances.

Clause 24: Enterprise management incentives

Summary

1. This clause extends the time limited exception for participants of enterprise management incentives (EMI) schemes who are not able to meet the necessary working time commitment as a result of the coronavirus pandemic and its impact on employee working patterns. The exception takes effect from 19 March 2020 and will come to an end on 5 April 2022.

Details of the clause

2. The clause substitutes section 107 of the Finance Act 2020 as set out below:

3. Subsection 1 of new section 107 of Finance Act 2020 provides for modifications to Schedule 5 to Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

4. New subsection 2 modifies paragraph 26 of Schedule 5 ITEPA 2003, regarding the

requirement as to commitment of working time for EMI schemes. The modification provides for a new time limited exception, "not being required to work for reasons connected to coronavirus", which can apply so that employees continue to meet the committed time requirements for EMI. "Coronavirus" is defined as having the meaning given by the Coronavirus Act 2020.

5. New subsection 3 makes a consequential modification to paragraph 27 of Schedule 5 ITEPA 2003 in order to include the time limited exception, at paragraph 26 at subsection (3) to the working time requirement for employees.

6. New subsection 4 modifies Section 535 of ITEPA 2003 to provide that the new exception applies to the "reckonable time in relevant employment" requirement for EMI schemes.

7. New subsection 5 provides that the modifications made by the clause have

effect from 19 March 2020 and will come to an end on 5 April 2022.

Background note

8. Those participating in an EMI scheme are required to meet the "working time requirement". This means that the employee's time committed to their employer must be equal to or exceed the statutory threshold of 25 hours per week or if less, 75% of their working time.

9. This clause ensures that new and existing participants of EMI schemes do not suffer a disqualifying event and lose tax advantages as a result of taking unpaid leave, being furloughed or working reduced hours because of coronavirus.

10. The clause ensures that participants are not forced to exercise their options earlier than planned and guarantees that participants can be granted options while taking unpaid leave, working reduced hours or while furloughed because of

coronavirus.

Clause 25: Cycles and cyclist's safety equipment

Summary

1. The tax exemption for the employer provision of cycles and cyclist's safety equipment was introduced to support employers in promoting healthier journeys to work and to encourage green commuting. Many employers offer this in the form of Cycle to Work schemes. This clause will introduce a time limited rule to treat Condition B as met for certain employees, which states that cycles and cyclist's safety equipment, where obtained through a Cycle to Work scheme, must be used mainly for qualifying journeys (to or from work or in the course of work). The rule which treats Condition B as met will apply to existing users of a cycle scheme who have received a cycle or cyclist's safety equipment on or before 20 December 2020, and will allow those

employees to continue to benefit from the employer provided cycle tax exemption without needing to meet the qualifying journeys condition for the period between 16 March 2020 and 5 April 2022.

Details of the clause

2. This clause provides for a new rule which applies to section 244 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) for the tax years 2020-21 and 2021-22.

3. Subsection 1 provides that, in certain cases, Condition B in section 244(3) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA will be treated as met in relation to the provision to an employee of a cycle or equipment.

4. Condition B is the requirement that the employee uses the cycle or equipment in question for "qualifying journeys". A qualifying journey is defined at section 249 of ITEPA 2003, as whole or part of a journey either between the employee's

home and workplace, or between one workplace and another.

5. Subsection 1 provides that, where an employee was provided with a cycle or cyclists' safety equipment on or before 20 December 2020, Condition B will be treated as met for that employee during the period commencing with 16 March 2020 and ending with 5 April 2022.

6. Subsection 2 provides that, in this clause, "cycle" and "cyclist" have the same meanings as they have in section 244(5) of ITEPA 03.

Background note

7. One of the conditions of the employer-provided cycles exemption is that the cycle or cycling equipment provided by an employer should be used mainly for qualifying journeys (to or from work or in the course of work).

8. However, the government's COVID-19 restrictions have required employees to

work from home where possible. Therefore, many existing users of the scheme are not travelling to work and may be unable to meet the condition for qualifying journeys.

9. This clause is designed to minimise the financial burdens for employees who joined a Cycle to Work scheme expecting to meet the qualifying criteria for the employer provided cycles exemption, but due to the government's COVID-19 restrictions, now find themselves unable to do so.

10. The easement will mean that employees who have received a cycle or cyclist's safety equipment on or before 20 December 2020, will not have to meet the qualifying journeys condition until after 5 April 2022.

11. This clause will have effect on and after the date of Royal Assent to Finance Bill 2021 and will apply retrospectively.

Clause 26: Exemption for coronavirus tests

Summary

1. This clause introduces a new Income Tax exemption to ensure that employees who are provided with or reimbursed for the cost of a relevant coronavirus antigen test by their employer, will not be liable to an Income Tax charge. The exemption will have effect for the tax years 2020-21 and 2021-22.

Details of the clause

2. This clause provides for a new income tax exemption for relevant coronavirus antigen tests.

3. Subsection 1 provides that there will be no Income Tax liability for the employee or employer where:

    a. An employer provides their employee with a relevant coronavirus antigen test, or

b. An employer reimburses the cost of an employee purchasing their own antigen test.

4. Subsection 2 sets out the definition of a relevant "coronavirus test", which means a test which detects the presence of a viral antigen or viral ribonucleic acid (RNA) specific to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

5. Subsection 3 provides that the clause will take effect as if it were contained in Part 4 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

6. Subsection 4 provides that the exemption will apply for the tax years 2020-21 and 2021-22, and where applicable, it will supersede the Income Tax (Exemption of Minor Benefits) (Coronavirus) Regulations 2020 (S.I.2020/1293).

7. Subsection 5 provides a Treasury Order power, so that the clause may take effect in relation to subsequent tax years as may be specified in future regulations.

Background note

8. This exemption has been introduced to support businesses and individuals through the coronavirus pandemic and is designed to minimize the financial burdens on employees, and the income tax liability and reporting requirements on employers who provide, or reimburse employees for the cost of, a relevant coronavirus antigen test.

9. To be eligible for the exemption, a relevant coronavirus antigen test is defined as a test which can detect the presence of a viral antigen or viral ribonucleic acid (RNA) specific to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This includes any variants that are identified via a coronavirus antigen test.

10. The Income Tax exemption will apply to the provision, advance payment or any reimbursements made to an employee for the cost of a relevant coronavirus antigen test made for the tax years 2020-21, and

2021-22.

Clause 27: Optional remuneration arrangements: statutory parental bereavement pay

Summary

1. Statutory Parental Bereavement Pay (SPBP) was introduced in April 2020. This measure has been introduced to ensure that the payment will not be treated as a variation in contract for certain long-term salary sacrifice arrangements, in line with other Statutory Payments so that recipients of these payments are not disadvantaged. The relevant long-term arrangements include: certain employer provided vehicles, employer provided living accommodation and relevant school fees arrangements.

Details of the clause

2. Subsection (1) introduces new changes to Schedule 2 to Finance Act 2017 (Optional Remuneration arrangements).

3. In paragraph 62(9), Statutory Parental Bereavement Pay will be added to the list of statutory payments that do not amount to a variation under paragraph 62(6).
4. Subsection (2) gives retrospective effect to subsection (1).

Background note

5. The Optional Remuneration Arrangement (OpRA) legislation, introduced on 6 April 2017, largely removed the Income Tax and National Insurance contributions (NICs) advantages for most employment related benefits provided through salary sacrifice schemes.
6. Transitional rules for relevant long-term benefits (employer provided living accommodation, relevant school fees arrangements and certain employer provided vehicles), allow for the previous benefit valuation rules to continue to apply until 5 April 2021, provided there is no variation in an employee's

employment contract.

7. Statutory payments are normally treated as a variation in contract. However, these were specifically listed and disregarded from the 2017 OpRA legislation.

8. On 6 April 2020, a new statutory payment, SPBP, was introduced through the Parental Bereavement (Leave and Pay) Act 2018. The SPBP is payable to employed parents or partners of a parent who loses a child (biological, adoptive or born to a surrogate) under the age of 18 or suffers a stillbirth from 24 weeks.

9. This statutory payment is not listed within the 2017 OpRA legislation as one that can be disregarded for the purposes of making contractual changes as it did not exist at the time.

10. Therefore, where an employee is in receipt of SPBP and one or more of the relevant long-term benefits through a salary sacrifice arrangement, the variation to their employment conditions within the

OpRA legislation meant they would lose their entitlement to the Income Tax and NICs advantages of receiving the benefit in this manner.

11. This measure therefore includes SPBP as a statutory payment that will be disregarded from the 2017 OpRA legislation.

12. This measure will be commenced upon the date of Royal Assent to this Bill and will have retrospective effect for the tax year 2020-21.

Clause 28: Freezing the standard lifetime allowance

Summary

1. This clause freezes the standard lifetime allowance by removing the indexation of the standard lifetime allowance for the tax years 2021 to 22 through to 2025 to 2026.

Details of the clause

2. This clause provides that section 218(2C) and (2D) Finance Act 2004 (indexation of standard lifetime allowance) do not apply in relation to the standard lifetime allowance for the tax years 2021 to 22 through to 2025 to 26. This means the amount of the standard lifetime allowance for each of these tax years will be maintained at £1,073,100, which is the 2020 to 21 amount.

Background note

3. The lifetime allowance is the maximum

amount of tax relieved pension savings that an individual can build up over their lifetime.

4. The level of the standard lifetime allowance has been linked to the Consumer Price Index since the tax year 2018 to 2019.

5. The standard lifetime allowance increased in line with the Consumer Price Index for tax years 2018 to 2019, 2019 to 2020 and 2020 to 2021.

6. Removing the link to the Consumer Price Index and freezing the standard lifetime allowance will have effect from 2021 to 2022 and will finish in the tax year 2025 to 2026. The change is effective from 6 April 2021.

Clause 29 and Schedule 5: Pension schemes: collective money purchase benefits

Summary

1. This clause and Schedule set out the tax treatment of collective money purchase arrangements and benefits, a new type of pension provision introduced by the Pension Schemes Act 2021. These provisions have effect for collective money purchase benefits on a date to be set out in Treasury regulations.

Details of the clause

2. Clause 29 introduces Schedule 5, which sets out how collective money purchase arrangements and benefits will be taxed.

Details of the Schedule

3. Paragraph 1 introduces amendments to Part 4 of the Finance Act 2004 (FA 2004).

4. Paragraph 2 amends section 152 of FA 2004.

5. Sub-paragraph 2 inserts the new term "collective money purchase benefits" into section 152(2) of FA 2004.

6. Sub-paragraph 3 inserts new subsection 3A into section 152 of FA 2004. New subsection 3A defines a collective money purchase arrangement as a money purchase arrangement that provides collective money purchase benefits.

7. Sub-paragraph 4 inserts new subsection 4A into section 152 of FA 2004. New subsection 4A provides for the collective nature of collective money purchase benefits to be taken into account when calculating the amount available for the provision of benefits to or in respect of the member.

8. Sub-paragraph 5 amends section 152(5) of FA 2004, this ensures that collective money purchase benefits cannot be cash

balance benefits.

9. Sub-paragraph 6 inserts new subsection 5A into section 152 of FA 2004. New subsection 5A defines collective money purchase benefits as benefits within Part 1 or 2 of the Pension Schemes Act 2021.

10. Sub-paragraphs 7 to 9 amend the meaning of 'hybrid arrangement' to include the option of collective money purchase benefits.

11. Sub-paragraph 9 inserts new subsection 10 into section 152 of FA 2004. New subsection 10 specifically defines the term 'varieties of benefits' and includes collective money purchase benefits.

12. Paragraph 3 amends section 165(1) of FA 2004 to set out what pension benefits a collective money purchase arrangement can provide.

13. Sub-paragraph 2 amends pension rule 3 so that collective money purchase

arrangements can provide the same pension benefits as defined benefits arrangements.

14. Sub-paragraph 3 amends pension rule 4 so that collective money purchase arrangements do not provide the same pension benefits as other types of money purchase arrangements.

15. Paragraph 4 amends section 167(1) of FA 2004 to set out what pension death benefits a collective money purchase arrangement can provide.

16. Sub-paragraph 2 amends pension death benefit rule 2 so that collective money purchase arrangements can provide the same pension death benefits as defined benefits arrangements.

17. Sub-paragraph 3 amends pension death benefit rule 3 so that collective money purchase arrangements do not provide the same pension death benefits as other types of money purchase

arrangements.

18. Paragraph 5 amends section 172C of FA 2004 to exclude collective money purchase arrangements and benefits from the rules on allocating unallocated employer contributions.

19. Sub-paragraph 2 amends section 172C(2) to FA 2004 so that collective money purchase arrangements and benefits are excluded from the rules on the allocation of unallocated employer contributions in the same way as cash balance arrangements and benefits.

20. Paragraph 6 amends section 182 of FA 2004 so that the unauthorised borrowing rules for money purchase arrangements do not apply to collective money purchase arrangements.

21. Sub-paragraph 3 amends section 182(1) of FA 2004 to disapply the unauthorised borrowing rules for money purchase arrangements to collective

money purchase arrangements.

22. Sub-paragraph 4 amends section 182(8) of FA 2004 to disapply the unauthorised borrowing rules for money purchase arrangements to hybrid arrangements so far as they may provide collective money purchase benefits.

23. Paragraph 7 amends the heading of section 183 of FA 2004 as the unauthorised borrowing rules for money purchase arrangements under section 182 do not apply to collective money purchase benefits.

24. Paragraph 8 amends section 184 of FA 2004 so that the unauthorised borrowing rules for arrangements other than money purchase arrangements apply to collective money purchase arrangements.

25. Sub-paragraph 2 amends subsection 184(1) of FA 2004 so that the section applies to a 'relevant' arrangement, rather than an arrangement that is not a money

purchase arrangement.

26. Sub-paragraph 3 inserts new subsection 1A to section 184 of FA 2004. New subsection 1A defines "relevant arrangement" as an arrangement that is not a money purchase arrangement or is a collective money purchase arrangement.

27. Sub-paragraphs 4 and 5 substitute the term "relevant arrangement" in section 184(2) and (3) of FA 2004 so that the provisions of section 184 apply to collective money purchase benefits as well as arrangements that are not money purchase arrangements.

28. Paragraph 9 amends section 212 of FA 2004 so that uncrystallised rights that form collective money purchase benefits as part of a hybrid arrangement, are valued correctly.

29. Sub-paragraph 2 amends section 212(3) of FA 2004 so that uncrystallised rights under a collective money purchase

arrangement are valued in the same way as uncrystallised rights under defined benefits arrangements, and not other money purchase arrangements.

30. Sub-paragraph 3 substitutes new subsections 7 to 9 for subsections 7 to 10 of section 212 of FA 2004

31. New subsection 7 sets out the steps to reach the value of uncrystallised rights under a hybrid arrangement, incorporating the concept of 'relevant' variety of benefits provided as part of a hybrid arrangement.

32. New subsection 8 sets out the meaning of 'relevant' variety of benefits as those that can be provided as part of a hybrid arrangement.

33. New subsection 9 uses the same definition of 'variety of benefits' as in section 152(10) of FA 2004, introduced by paragraph 2(9) of this Schedule.

34. Paragraph 10 amends section 216 of FA 2004 so that an individual who reaches age 75 has their rights under a collective money purchase arrangement calculated on the basis of the prospective benefits rather than remaining unused funds.

35. Sub-paragraph 2 amends column 1 of the table in section 216(1) of FA 2004 so that collective money purchase arrangements are valued under benefit crystallisation event 5 rather than 5B when an individual reaches age 75. This means that they are valued on the basis of the prospective benefits under the arrangement and excluded from valuation on the basis of the remaining unused funds.

36. Paragraph 11 amends section 223 of FA 2004 to ensure the lifetime allowance non-residence factor works correctly in relation to a hybrid arrangement with collective money purchase benefits.

37. Sub-paragraph 2 amends subsection 5 to ensure that the extension of the lifetime allowance works correctly for pension saving within a hybrid arrangement during a period of non-residence.

38. Sub-paragraph 2 inserts new subsection (5)(aa), which enables collective money purchase benefits to be an additional money purchase option within a hybrid arrangement that can be used to calculate the value of the extension of the lifetime allowance in relation to a period of non-residence.

39. Paragraph 12 amends section 226 of FA 2004 to ensure the lifetime allowance relevant relievable amount works correctly in relation to a hybrid arrangement with collective money purchase benefits.

40. Sub-paragraph 2 amends subsection 5 to ensure that the extension of the lifetime allowance works correctly for pension

saving within a hybrid arrangement when there is a transfer from a pension scheme outside of the UK.

41. Sub-paragraph 2 inserts new subsection (5)(aa), which enables collective money purchase benefits to be an additional money purchase option within a hybrid arrangement that can be used to calculate the value of the extension to the lifetime allowance when a transfer is received from a pension scheme established outside the UK.

42. Paragraph 13 amends section 227B of FA 2004 so that the pension input amount is calculated correctly when collective money purchase benefits form part of a hybrid arrangement and an individual has flexibly accessed their pension savings.

43. Sub-paragraph 2 substitutes 'X' for 'AA' to prevent repetition.

44. Sub-paragraphs 3 to 5 incorporate collective money purchase benefits as one

of the options for calculating the part of a hybrid arrangement that forms the alternative chargeable amount when an individual has flexibly accessed their pension savings.

45. Paragraph 14 amends section 227C of FA 2004 so that collective money purchase benefits that form part of a hybrid arrangement are calculated correctly when forming part of the money purchase input sub-total.

46. Sub-paragraph 2 amends subsection (1)(b)(ii) to incorporate collective money purchase benefits as one of the options for calculating the part of a hybrid arrangement that forms the money purchase input sub-total when an individual has flexibly accessed their pension savings.

47. Paragraph 15 amends section 227D of FA 2004 so that the pension input amount for hybrid arrangements is calculated

correctly when collective money purchase benefits form part of that arrangement.

48. Sub-paragraph 2 amends subsection (2)(a) so that collective money purchase benefits may form part of the pension input amount in relation to a hybrid arrangement.

49. Paragraph 16 amends section 227F of FA 2004 so that the pension input period is correctly apportioned in relation to collective money purchase benefits when an individual first flexibly accesses their pension benefits.

50. Sub-paragraph 2 amends subsection (5)(b) so that the input amount in relation to collective money purchase benefits as part of a hybrid arrangement relates to the correct pension input period when an individual has first flexibly accessed their pension savings.

51. Paragraph 17 amends section 227G of FA 2004 so that accessing collective money

purchase benefits is not treated as flexibly accessing pension benefits.

52. Sub-paragraph 2 introduces the new term 'relevant' arrangement in subsection 9(a) to mean a money purchase arrangement used to provide a scheme pension.

53. Sub-paragraph 3 inserts new subsection 9A which defines the term 'relevant' arrangement used in subsection 9 as a money purchase arrangement that is not a collective money purchase arrangement to maintain the treatment of a collective money purchase scheme pension in a similar way to a defined benefits scheme pension for tax purposes rather than as a money purchase scheme pension.

54. Paragraph 18 amends section 237 of FA 2004 to include collective money purchase benefits in the definition of hybrid arrangement.

55. Sub-paragraph 2 inserts an additional type of input amount AA in relation to a hybrid arrangement.

56. Sub-paragraph 3 inserts new subsection 3A which defines new input amount AA as the pension input amount that is referable to collective money purchase benefits.

57. Sub-paragraph 4 ensures that collective money purchase benefits are treated separately to any other type of money purchase benefits.

58. Paragraph 19 inserts the definitions for 'collective money purchase arrangement' and 'collective money purchase benefits' in the general index for Part 4 of FA 2004.

59. Paragraph 20 amends Schedule 28 to FA 2004 so that pension benefits can be paid out of collective money purchase benefits as authorised payments.

60. Sub-paragraph 2 inserts new sub-paragraphs (9) and (10) into paragraph 2 of Schedule 28.

61. New sub-paragraph (9) provides that where a payment of scheme pension is followed by a periodic income paid by virtue of section 36(7) or section 87(7) of the Pension Schemes Act 2021 under an arrangement, the periodic income is to be treated as the original scheme pension.

62. New sub-paragraph (10) provides that where no scheme pension has been paid under an arrangement, periodic income paid by virtue of section 36(7) or section 87(7) of the Pension Schemes Act 2021 under that arrangement is to be treated as a scheme pension.

63. Sub-paragraph 3 amends paragraph 2A of Schedule 28 to maintain the authorised nature of a pension commencement lump sum paid in relation to a collective money purchase scheme

pension.

64. Sub-paragraph 3 inserts new sub-paragraph (3A) which provides that no unauthorised payment arises as a result of a substantial reduction in the amount of scheme pension payable under the scheme rules in respect of a collective money purchase arrangement. This enables a collective money purchase scheme pension to increase or decrease in line with the scheme rules without giving rise to an unauthorised payments charge.

65. Paragraph 21 amends Schedule 29 to FA 2004 so that pension lump sums can be paid out of collective money purchase benefits.

66. Sub-paragraph 2 amends paragraph 1 of Schedule 29 so that there is no entitlement to a pension commencement lump sum if a collective money purchase scheme pension is converted to a drawdown pension fund as part of the

winding-up process of a pension scheme.

67. Sub-paragraph 2 inserts new sub-paragraph (4A) which makes a lump sum paid in connection with designation of funds into a drawdown fund an excluded lump sum, rather than a tax-free pension commencement lump sum.

68. Sub-paragraph 3 amends paragraph 2(6B) of Schedule 29 so that collective money purchase scheme pensions use the amount of the benefit crystallisation event in determining how much lifetime allowance is used up in contrast to other types of money purchase scheme pensions which use the aggregate amount of the sums and assets used to purchase the scheme pension.

69. Sub-paragraph 4 amends paragraph 3 of Schedule 29 so that collective money purchase arrangements are treated in the same way as defined benefits arrangements when calculating the

applicable amount of the pension commencement lump sum.

70. Sub-paragraph 5 amends paragraph 4A of Schedule 29 so that an uncrystallised funds pension lump sum cannot be paid out of a collective money purchase arrangement.

71. Sub-paragraph 6 amends paragraph 7 of Schedule 29 so that although a collective money purchase arrangement is a money purchase arrangement, it can be used to pay a trivial commutation lump sum.

72. Paragraph 22 amends Schedule 32 to FA 2004 so that benefit crystallisation events work correctly for collective money purchase benefits.

73. Sub-paragraph 2 inserts new paragraph 2B which prevents funds used to provide a collective money purchase scheme pension from being tested twice against the lifetime allowance where the

scheme is being wound up.

74. New paragraph 2B(1) prevents the same funds being tested twice against the lifetime allowance where funds that have been crystallised as a collective money purchase scheme pension are then designated into a drawdown fund in connection with the winding up of the scheme.

75. New paragraph 2B(2) prevents this overlap of tests by providing that the amount crystallised by the current test is to be reduced by the amount crystallised when the individual became entitled to the collective money purchase scheme pension.

76. Sub-paragraph 3 omits the provision in paragraph 5 valuing the amount to be used as the sum crystallised where an individual with a hybrid arrangement reaches age 75. It is replaced with new paragraph 14ZA of Schedule 32

introduced by paragraph 22(8) of this Schedule.

77. Sub-paragraphs 5 to 7 amend paragraph 10 of Schedule 32.

78. Sub-paragraph 5 inserts new sub-paragraph (A1) which introduces an alternative option (condition B) for excepted circumstances to occur in relation to the increase in a pension over a year.

79. Sub-paragraph 6 makes the current exception in paragraph 10 (now condition A) apply to arrangements that are not collective money purchase arrangements.

80. Sub-paragraph 7 inserts new sub-paragraph 5 which introduces condition B, which applies to collective money purchase arrangements. It provides an exception from a further test against the lifetime allowance (benefit crystallisation event 3) in relation to the increase in the annual rate of the pension if the scheme

pensions paid under the scheme are paid under collective money purchase arrangements and are increased at the same rate.

81. Sub-paragraph 8 inserts new paragraph 14ZA which sets out the amount to be tested against the lifetime allowance in relation to a hybrid arrangement of an individual who has reached age 75.

82. New paragraph 14ZA(1) provides that the test takes place immediately before the individual reaches age 75.

83. New paragraph 14ZA(2) sets out that if the hybrid arrangement could provide defined benefits or collective money purchase benefits, then those benefits are tested against the lifetime allowance using benefit crystallisation event 5.

84. New paragraph 14ZA(3) sets out that if the hybrid arrangement could provide money purchase benefits (whether, cash

balance or money purchase benefits other than cash balance or collective money purchase benefits) then those types of benefits are tested against the lifetime allowance using benefit crystallisation event 5B.

85. New paragraph 14ZA(4) provides that the greater or greatest amount is the amount to be used as the amount crystallised in relation to the hybrid arrangement.

86. New paragraphs 14ZA(5) sets out the meaning of 'relevant' variety of benefits as those that can be provided as part of a hybrid arrangement.

87. New paragraphs 14ZA (6) uses the same definition of 'variety of benefits' as in section 152(10), introduced by paragraph 2(9) of this Schedule.

88. Sub-paragraph 9 inserts new paragraph 14ZB which provides that any reduction made to account for the

crystallisation of a scheme pension under a collective money purchase arrangement when funds were designated into drawdown, by virtue of paragraph 2B of Schedule 32 to FA 2004, introduced by paragraph 22(2) of this Schedule, should be disregarded. This full deduction ensures that funds are not tested twice.

89. Paragraph 23 amends Schedule 36 to FA 2004 which modifies Part 4 of FA 2004 for arrangements in existence before 6 April 2006.

90. Sub-paragraph 2 amends paragraph 29(3) of Schedule 36 which modifies how Schedule 29 to FA 2004 works for pension provision in existence before 6 April 2006 by substituting different versions of paragraphs 3(6) and 3(7A) of Schedule 29. This sub-paragraph amends paragraph 29(3) of Schedule 36 to reflect the changes made to Schedule 29 in paragraph 18 of this Schedule to

accommodate collective money purchase arrangements and benefits.

91. Sub-paragraph 3 amends paragraph 34(2) of Schedule 36 which modifies how Schedule 29 to FA 2004 works for pension provision in existence before 6 April 2006 by substituting paragraph 2(7AA) of Schedule 29. This sub-paragraph amends paragraph 34(2) of Schedule 36 to reflect the changes made to Schedule 29 in paragraph 18 of this Schedule so that they do not apply to collective money purchase arrangements.

92. Paragraph 24 amends regulation 12 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499) in respect of the drawdown pension funds of a member who reaches age 75 after a recognised transfer. This paragraph ensures that funds are not tested twice against the lifetime allowance by allowing for the aggregate amount of

previous benefit crystallisation events on the same funds in the former pension scheme to be deducted.

93. Paragraph 25 sets out that the amendments in this Schedule will not enter into force until Treasury regulations appoint that date.

Background note

94. This measure incorporates the collective money purchase provisions introduced by the Pension Schemes Act 2021 into the pensions tax relief provisions in Part 4 of FA 2004.

95. It introduces collective money purchase arrangements and benefits and ensures that the unique nature of those benefits can operate within Part 4 without creating unintended unauthorised payments charges.

96. Collective money purchase arrangements are defined as money

purchase arrangements but work in a different way to other benefits. As a result, they do not replicate any of the existing types of benefits precisely.

97. For annual allowance purposes collective money purchase arrangements are treated in the same way as money purchase arrangements other than cash balance arrangements but the pension benefits that may be paid as authorised payments are more limited than under other money purchase arrangements. However, the rate at which collective money purchase scheme pensions may be paid can fluctuate to a greater degree year on year than other scheme pensions, while remaining an authorised payment. This reflects the nature of collective money purchase scheme pensions.

98. A number of provisions are made to incorporate collective money purchase benefits in the provision for hybrid

arrangements.

99. In addition, specific provision is made in relation to a pension scheme with collective money purchase arrangements and/or benefits being wound up to enable transfer to other registered pension schemes.

100. Clause 29 and Schedule 5 as introduced were amended by Public Bill Committee on 22 April 2021. The amendments ensure that the provisions dealing with collective money purchase benefits payable by a scheme being wound up, operate correctly in relation to a scheme governed by the law of Northern Ireland. Paragraphs 61 and 62 of this note cover the amendments.

Clause 30 and Schedule 6: Construction industry scheme

Summary

1. This clause and Schedule make four amendments to the Construction Industry Scheme (CIS) with effect from 6 April 2021. The CIS provisions in primary legislation are set out in Chapter 3 of Part 3 to Finance Act 2004 (FA04). The first amendment simplifies the deemed contractor rules. The second amendment clarifies the rules on deductions for materials purchased by a sub-contractor to fulfil a construction contract. The third amendment provides new powers for HM Revenue & Customs (HMRC) to restrict CIS set-off claims. The detailed rules will be in regulations. The final amendment expands the scope of current penalties for providing false information for registration to persons facilitating the application.

Details of the clause

2. Subsection 1 introduces Schedule 6. Schedule 6 contains provision amending Chapter 3 of Part 3 of FA 2004 (construction industry scheme).

3. Subsection 2 provides that the clause and Schedule have effect for the tax year 2021-22 and subsequent tax years.

Details of the Schedule

Introductory

4. Paragraph 1 provides that the Schedule amends various provisions of Chapter 3 of Part 3 of FA04 (construction industry scheme).

Contractors

5. Paragraph 2 amends the current provisions in section 59 FA04 which determine who is a deemed contractor.

6. Sub-paragraph 2(2) substitutes a new subsection 59(1)(l), which provides that a person who is carrying on a business at any time will be a deemed contractor

under this provision when their expenditure on construction operations in the period of one year ending with that time exceeds £3 million.

7. Sub-paragraph 2(3)

- substitutes a new subsection 59(2) by mirroring the above rule for certain public sector persons and bodies;
- substitutes a new subsection 59(3) by providing that a body or person falling under subsections(1)(l) or (2) may elect for the condition in either of those provisions to be treated as no longer being met if, at that time, they do not expect to make any further expenditure on construction operations;
- introduces a new subsection 59(3A), which provides that, where the condition in subsection 59(1)(l) or (2) ceases to be met in relation to a body or person at any time, the body or person may elect for the condition to

be treated as continuing to be met until the body or person is not expected to make any further expenditure on construction operations; and

- introduces a new subsection 59(3B), which provides that new subsections 59(3) and (3A) do not prevent the condition in subsection 59(1)(l) or (2) from being met again in relation to the body or person.

8. Paragraph 3 contains transitional provisions from the current rules to the new rules on deemed contractors.

9. Sub-paragraph 1 provides that paragraph 3 applies where the condition in existing section 59(l)(2) or 59(2) of FA04 was met in relation to a body or person immediately before the amendments made by paragraph 2 come into force, and but for the coming into force of those amendments, that condition would cease to be met in relation to the body or person.

10. Sub-paragraph 2 provides that, in such cases, the condition in section 59(1)(l) or (2) of FA04 (as the case may be) is treated as continuing to be met in relation to the body or person until they are not expected to make any further expenditure on construction operations.

Deductions for materials

11. Paragraph 4 amends section 61(1) FA04 by substituting reference to "any other person" with reference to "the sub-contractor". This clarifies that, when a contractor is deducting the relevant percentage from a contract payment made to a sub-contractor, they should first deduct only the cost of materials purchased by the sub-contractor from the figure to which the relevant percentage deduction is applied.

Grace period

12. Paragraph 5 inserts new sub-sections after subsection 61(3) of FA04. The purpose of these new provisions is to

afford a grace period to those contractors who inadvertently or unexpectedly breach the new deemed contractor threshold, so that they have time to set up the required processes to enable them to operate the CIS rules effectively. This provision covers a concession currently included in HMRC guidance.

- New subsection 61(4) provides that new subsection 61(5) applies where the contractor is a deemed contractor falling within section 59(1)(l).
- New subsection 61(5) provides that, in such a case, an officer of Revenue and Customs may serve a notice in writing which will either exempt the contractor (prospectively) from the requirement to deduct sums from contract payments under subsection 61(1) for a specified period; or treat the contractor as if such an exemption already applied in relation to, either, specified contract payments made

before the date of the notice, or contract payments made during a specified period before the date of the notice.

- New subsection 61(6) provides that the period referred to in new subsection 61(5)(a) must not exceed 90 days, but may be extended by one or more further notices under subsection 61(5).
- New subsection 61(7) provides that, in subsection (5) "specified" (period) means specified in the notice served under subsection (5).

Restrictions on set-off

13. Paragraph 6 amends section 62 FA04. Sub-paragraph 2 inserts new subsections 62(3A), 62(3B) and 62(3C).

14. New subsection 62(3A) provides that regulations made under subsection 62(3) may include provision authorizing an officer of Revenue and Customs to correct

an error or omission relating to a set-off claim; remove a set-off claim; or prohibit a person from making a further set-off claim, either for a specified period or indefinitely.

15. New subsection 62(3B) FA04 provides that regulations made under subsection (3) which include provision of the kind mentioned in new subsection 62(3A) may, for example, include provision allowing such things to be done by amending a return or otherwise, or allowing a set-off claim to be removed where the claimant is not eligible to make the claim. It also provides that such regulations may require information to be given to the Commissioners of Revenue and Customs, at such times as may be specified in the regulations.

16. New subsection 62(3C) FA04 provides that "set-off claim" means a claim for treating a sum deducted under section 61 as paid on account of any relevant

liabilities.

17. Sub-paragraph 3 amends subsection 62(4) by substituting reference to "subsection (3)" for reference to "this section".

Penalties

18. Paragraph 7 substitutes a new section 72 FA04 (penalties).

19. New subsection 72(1) provides that the section applies in a case within subsection (2), (3) or (4).

20. New subsection 72(2) replicates the current penalty that can be charged under the existing section 72 FA04, on a person (A) who knowingly or recklessly makes a false statement or furnishes a false document when applying to register for gross payment or payment under deduction under Chapter 3 of Part 3 of FA04.

21. New subsections 72(3) extends liability to a penalty under this section to a

person (A) who exercises influence or control over another person (B), or who is in a position to do so, if A knowingly or recklessly makes a false statement or furnishes a false document for the purposes of enabling or facilitating B to become registered for gross payment or for payment under deduction.

22. New subsection 72(4) extends liability to a penalty under this section to a person (A) who exercises influence or control over another person (B), or who is in a position to do so, if A encourages B to make a false statement or furnish a false document, and A either knows that the statement or document is false, or is reckless as to whether it is false.

23. New subsection 72(5) states that, in any case where the new section 72 applies, A is liable to a penalty not exceeding £3,000.

24. Paragraph 8 provides that paragraph 7 (the new sub-section 72) only applies to

statements made or documents provided on or after 06 April 2021.

Background note

25. These changes are designed to tackle abuse of the CIS rules, ensuring HMRC can act quickly where the rules are being broken and that the CIS applies fairly to everyone eligible. The changes to the deemed contractor rules are designed to prevent manipulation of the current rules so that a business cannot deliberately avoid operating the CIS. The clarification to the cost of materials provision will remove scope for different interpretations of the existing rule. The new power to allow HMRC to amend certain CIS set-off claims will prevent contractors incorrectly reducing their employer liabilities. The expansion of the penalty for providing false information at registration for the CIS will allow HMRC to charge a penalty on those facilitating such applications.

26. HMRC will update the guidance to reflect these changes in due course.

Clause 31: Covid-19 support scheme: working households receiving tax credits

Summary

1. This clause introduces an exemption from income tax for payments made to tax credits recipients from the Covid-19 support scheme: working households receiving tax credits.

Details of the clause

2. Subsection 1 sets out that the clause applies where:

   a) A payment is made by HM Revenue and Customs under a direction from the Treasury in accordance with section 76 of the Coronavirus Act 2020.

   b) The eligibility conditions for the payment will be set out in the Treasury direction and will include the receipt of tax credits.

3. Subsection 2 provides for an income tax

exemption to payments made under the Covid-19 support scheme: working households receiving tax credits.

4. Subsection 3 provides for the application of paragraph 8 of Schedule 16 to Finance Act 2020 to payments made under this coronavirus support scheme, to allow a charge to income tax where a person is not entitled to the payment.

Background note

5. In March 2020, the Chancellor announced a temporary uplift of £20 per week to the Working Tax Credits basic element for the 2020 to 2021 financial year. These payments provided extra support to low-income workers during the coronavirus pandemic.

6. A one-off payment: Covid-19 support scheme: working households receiving tax credits is being made to tax credits recipients to cover a six-month period from April to September 2021 to continue

this government support. The payments made under this Covid-19 support scheme will be exempt from income tax.

Clause 32: Self-employment income support scheme

Summary

1. This clause makes three amendments to the existing legislation relating to the tax treatment of self-employment income support scheme (SEISS) payments. The first amendment extends the Treasury's regulation making powers in relation to the taxation of SEISS payments. The second amendment clarifies that the payments are taxed in the tax year of receipt. The third amendment provides a mechanism which will apply a tax charge if a person ceases to be entitled to a SEISS payment received on or after 6 April 2021.

Details of the clause

2. Subsection 1 provides an amendment to extend the Treasury's existing powers in section 106(3) of Finance Act 2020 (FA 20) to make provisions about the application

of Schedule 16 to FA 20 to certain coronavirus support payments. The amendment allows a provision to modify the application of the Schedule to a coronavirus support payment and allows a provision to relate to SEISS.

3. Subsection 2 replaces the specific reference to the tax year 2020-21 in paragraph 3(3) of Schedule 16 to FA 20 with a general reference to the tax year of receipt.

4. Subsection 3 amends paragraphs 8(3) and 8(4) of Schedule 16 to FA 20 so that a person is liable to a tax charge if they cease to be entitled to a SEISS payment due to a change in circumstances. The tax charge will become payable at the time the person ceases to be entitled to retain the SEISS payment.

5. Subsection 4 provides that the amendments in subsections (2) and (3) have effect in relation to coronavirus support payments received on or after 6 April 2021.

6. Subsection 5 confirms that "coronavirus support payment" is as defined in section 106 of FA 20.

Background note

7. SEISS was announced by the Chancellor on 26 March 2020 and extensions to the scheme were declared on 29 May and 24 September 2020.

8. The extended powers will provide for modifications by way of regulations to Schedule 16 in its application to SEISS.

9. Under the existing legislation, SEISS payments are treated as income for the tax year 2020-21 in most circumstances. This clause updates the legislation, in light of the extension of the scheme beyond 2020-21, by providing for SEISS payments received on or after 6 April 2021 to be treated as income of the tax year in which they are received, instead of the tax year 2020-21. The main exception to this treatment in the existing legislation is for

certain members of partnerships who do not retain the payment: this exception is unaffected.

10. The amendments to paragraph 8 of Schedule 16 to FA 20 are designed to align SEISS and the Coronavirus Job Retention Scheme, by applying a tax charge if a person ceases to be entitled to retain all or part of a SEISS payment due to a change in circumstances.

Clause 33: Deduction where business rates etc repaid

Summary

1. This clause provides a new statutory relief within Finance Act 2021. This relief overrides the existing law and provides that payments made to a public authority in respect of coronavirus support arrangements are allowable expenses for corporation tax and income tax purposes. This clause has effect for payments made before or after it is enacted.

Details of the clause

2. Subsection 1 provides that the clause applies when a person carrying on a business ("A") would have incurred a deductible expense in discharging a liability to pay a charge to a public authority but for a coronavirus support arrangement, and an amount in respect of all or some of that liability is paid to any

public authority.

3. Subsection 2 provides that a deduction is allowed for relevant payments in calculating the profits of the business of A. To ensure neutrality, the deduction is allowed in the accounting period in which the original liability was due and payable, overriding Generally Accepted Accounting Principles (GAAP).

4. Subsection 3 ensures that a double deduction is not capable of being taken by a company or group of companies which fall into the clause by restricting any other deduction in respect of relevant payments.

5. Subsection 4 defines "coronavirus support arrangement" to include the waiver or reduction of a liability to non-domestic rates in connection with coronavirus-related support for businesses, and grants Her Majesty's Treasury the power to specify in regulations further liabilities to which the definition will apply.

6. Subsection 5 provides that regulations

made under subsection 4(b) may have retrospective effect.

7. Subsection 6 gives the meaning of "coronavirus" for the purposes of the clause.

8. Subsection 7 provides that the clause has retrospective effect.

Background note

9. This clause introduces the mechanism to allow a tax deduction for the return of coronavirus support arrangements to a public authority that are no longer required by the business making the payment.

10. The deduction capable of reducing the income tax or corporation tax liability is capped to the original liability.

11. A business qualifies to take a deduction where:

    a. it was subject to a liability payable to a public authority;

b. a payment of that original liability would have been an allowable deduction in calculating the profits of the business;

c. the liability was subsequently relieved due to coronavirus;

and

d. a payment, in respect of and up to the quantum of the original liability, is made to any public authority.

Clause 34: Repeal of provisions relating to the Interest and Royalties Directive

Summary

1. This clause repeals legislation that gave effect to the EU Interest and Royalties Directive in UK law.

Details of the clause

2. Subsection 1 repeals the provisions in the Income Tax Trading and Other Income Act 2005 and in the Income Tax Act 2007 that give effect to the EU Interest and Royalties Directive. The effect of repealing these provisions will be to reinstate an obligation to withhold income tax on certain payments of interest and royalties made to connected companies in EU Member States.
3. Subsections 2 to 7 make consequential amendments to legislation that refers to the repealed provisions.
4. Subsection 8 provides that the repeal shall

have effect in relation to payments made on or after 1 June 2021, unless the payments are made in "disqualifying circumstances".

5. Subsections 9 and 10 make provision for payments made in "disqualifying circumstances". Where a payment is made with the main purpose, or a main purpose, of securing the provisions being repealed by this clause (that is, to enable a payment to be made without withholding tax on the payment), the effect of the repeal took effect from 3 March 2021.

Background note

6. The repeal of these provisions will ensure that companies resident in EU member states will cease to benefit from UK withholding tax exemptions now that the UK no longer has an obligation to provide relief. As a result, EU companies will no longer receive more favourable treatment than companies based elsewhere in the

world, and the UK's ability to withhold tax on cross-border payments of annual interest and royalties will be governed solely by the reciprocal obligations in double taxation agreements.

Clause 35: Payments made to victims of modern slavery etc

Summary

1. This clause introduces an income tax exemption for payments made to victims of modern slavery and human trafficking.

Details of the clause

2. Subsection 1 sets out that payments that meet conditions A to C will be exempt from income tax under paragraph 3(1) and (2) of Schedule 15 to the Finance Act 2020 (exemption from income tax).
3. Subsection 2 provides for condition A, which requires that the payments be made by or on behalf of a public authority.
4. Subsection 3 provides for condition B, which outlines the categories of individuals who can receive payments attracting the exemption.
5. Subsection 4 provides for condition C,

which sets out that the purpose of the payments must be to provide support and assistance in accordance with Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings.

6. Subsection 5 (a) and (b) define "Trafficking Convention" and "public authority".

7. Subsection 6 provides for the income tax exemption to apply to payments made from 1 April 2009 onwards.

Background note

8. The UK has an obligation under the Council of Europe Convention on Action against Trafficking in Human Being to assist victims of modern slavery and human trafficking in their physical, psychological and social recovery, including material assistance.

Clause 36 and Schedule 7: Hybrid and other Mismatches

Summary

1. This clause and Schedule make various amendments to the corporation tax rules for hybrids and other mismatches. These include amendments that allow certain amounts of taxable income received to be treated as dual inclusion income for the purposes of those rules, and ones that provide for the allocation of deemed dual inclusion income within a group, if certain conditions are met. Some of the amendments have retrospective effect and so the existing hybrid mismatch rules will apply as amended since their 1 January 2017 commencement date, while others will take effect from the date on which this Act is passed. The new rules providing for the allocation of dual inclusion income within a group will be effective from 1 January 2021.

Details of the clause

2. Clause 36 introduces Schedule 7 which makes amendments to Part 6A of TIOPA 2010 (hybrid and other mismatches).

Details of the Schedule

Part 1: Meaning of Tax

3. Paragraph 1 inserts a new section 259(3ZA) into Tax (International and other Previsions) Act 2010 (TIOPA) that provides that a tax should not be regarded as a foreign tax (for the purposes of s259B(2)) if it is charged on income that has arisen to an entity that is not subject to the tax on that income, but is assessed on another entity which is subject to the potential foreign tax. The new exclusion applies only to the definition of foreign tax, so where tax is levied in this way due to the operation of a foreign CFC charge, it will still constitute tax within the meaning of the hybrid rules.

Part 2: Chapter 3 mismatches: Relevant debt relief circumstances

4. Paragraph 2 provides for Part 6A TIOPA to be amended

5. Paragraph 3 provides for the existing section 259CB(3) to be replaced by a new subsection (3) that provides that so far as the excess arises by a relevant debt relief provision, or in relevant debt relief circumstances, the excess is taken to not arise by reason of the terms, or any feature of, the financial instrument, and as such would not be within the scope of a counteraction under Chapter 3 of Part 6A TIOPA.

6. Paragraph 4 inserts a new subsection (3A) into section 259CC that explains sections 259NEB to section 259NEF contain the rules for determining whether an excess arises in "relevant debt relief circumstances"

7. Paragraph 5 inserts new sections 259NEB to 259NEF into TIOPA which contain the rules for determining whether there are "relevant debt relief circumstances". The relevant debt relief circumstances correspond to the circumstances in which most of the already defined relevant debt relief provisions, listed in s.259CC(3), may be in point. It is not necessary to include relevant debt relief circumstances corresponding to sections 357, 361C and 361D Corporation Tax Act 2009, since where those sections are in point it is not possible for a mismatch (potentially within the scope of the hybrids rules) to arise in circumstances to which the relevant debt relief provisions would not apply. The existing exclusion from charge under Chapter 3 therefore works as intended in those cases.

8. New section 259NEB is an introductory section to the other sections on relevant debt relief circumstances. It provides that

an excess arises in "relevant debt relief circumstances" only if it arises in the circumstances set out in sections 259NEC to section 259NEF. It also explains how to construe various terms referred to in those sections.

9. New section 259NEC provides for one of the categories of "relevant debt relief circumstances": Release of debts. The circumstances are that a liability to pay an amount under a debtor relationship is released, that the release is in an accounting period where the amortised cost basis of accounting is used, and one of the conditions listed (A to E) are met.

10. New section 259NED provides for the second of the relevant debt relief circumstances: Release of connected companies debts. These are that a liability to pay an amount under a debtor relationship involving connected parties is released as long as the release takes place

in a period in which the amortised cost basis for accounting is used in respect of that relationship. However, the release can be neither a deemed release or a release of relevant rights.

11. New section 259NEE provides for the third of the relevant debt relief circumstances: Release of connected company debts during a creditor's insolvency. The circumstances of the section are that, in relation to a company that is a payee in respect of a payment of quasi payment;

a. The release of a liability under a debtor relationship takes place in an accounting period in which the amortised basis of accounting is used in respect of that relationship,
b. Condition A, B, C, D or E in section 259NED is met in relation to the company releasing the amount,
c. Immediately before the time the conditions was met the relationship

was a connected company relationship, and

d. Immediately after that time it was not such a relationship

12. New section 259NEF provides for the introduction of the fourth of the relevant debt relief circumstances: Corporate rescue: debt released shortly after connection arises. These circumstances require two companies to be party to a loan relationship as debtor and creditor. They must initially be unconnected then become connected and within 60 days of becoming connected the creditor releases the debtor's liability under the loan relationship. The corporate rescue conditions, relating to the risk of a company not being able to pay debts under a loan relationship, which are defined in new subsection (2) and (3), must also be met.

Part 3: Chapter 3 mismatches: Investment Trusts

13. Paragraph 6 provides for Part 6A of TIOPA to be amended

14. Paragraph 7 provides for the insertion of a new subsection (3A) in section 259CB which explains that if an excess arises by reason of an interest distribution designation, the excess does not arise because the terms or other features of a 'financial instrument' and therefore the excess is not subject to counteraction under Chapter 3 of Part 6A TIOPA. A consequential amendment is made to section 259CB(3) to refer to the new subsection (3A).

15. Paragraph 8 inserts a new subsection (3A) into section 259CC to define an "interest distribution designation" as a designation made under regulation 5(2) of the Investment Trusts (Dividends)(Optional Treatment as

Interest Distributions) Regulations 2009.

Payments to investment trusts will be excluded from hybrid counteractions by reason of the amendments to Part 6A concerning Qualifying Institutional Investors.

Part 4: Dual Inclusion Income

16. Paragraph 9 provides for Part 6A TIOPA to be amended

17. Sub Paragraph 10(1) provides for Chapter 5 (hybrid payer deduction/non-inclusion mismatches) to be amended.

18. Sub Paragraph 10(2) omits the following in section 259EC(4) "arises in connection with the arrangement mentioned in section 259EA(2) and".

19. Sub Paragraph 10(3) provides for a series of new subsections to section 259EC TIOPA.

20. New Subsection (6) operates to treat certain amounts as if they were ordinary income of an investor in the payer. Income treated in this way will then fall within the definition of dual inclusion income in section 259EC(4) if it is also ordinary income of the hybrid payer.

21. New Subsection (7) provides for the requirements for ordinary income of the hybrid payer to be treated in accordance with new subsection (6). The first requirement, in subsection (7)(a), is that the payment must not be deductible for tax purposes in any territory, including, in a change to the previously published legislation, the UK. The second requirement, at new sub section 7(b), is an addition to the previously published draft, and excludes payments from entities in zero-tax territories from the definition of inclusion/no deduction income (as in such case the non-deductibility of the payment

is not solely due to hybridity). The third test in (7)(c) has the effect that the non-deductibility of the payment would not have arisen but for an investor jurisdiction classifying the hybrid entity as transparent. This ensures that the inclusion/no deduction mismatch must arise solely due to the hybridity of the entity. The test will therefore not be satisfied if, for example, the payment would not be deductible on general principles in the investor jurisdiction, even if the entity were not a hybrid.

22. New Subsection (8) provides assumptions in relation to the test in subsection (7)(c). This provision has been adjusted from the first published draft to make clear that in testing the counterfactual where the entity is not a hybrid, the non-hybrid assumption should be made only for the purposes of determining the identity of the payee of the potential inclusion/no deduction

amount.

23. New Subsection (9) defines "zero-tax territory" for the purposes of new subsection (7) as a territory in which a person is either not within the charge to tax, or within the charge to tax at a nil rate.

24. New subsection (10) provides for section 259B(5), which contains rules for determining residence where no concept of residence for tax purposes exists, to apply to new subsection 259EC(7)(b).

25. New Subsection (11) defines "relevant taxable period" as any period beginning before the date 12 months from the end of the corporation tax accounting period of the company in which the taxable amount was recognised, or such later period within which it is just and reasonable for the company to recognise a deduction in respect of the amount concerned.

26. Subparagraph 10(4) omits the words "arises in connection with the arrangement mentioned in section 259EA(2) and" from section 259ED(9)

27. Paragraph 11 makes amendments to Chapter 6 of Part 6A TIOPA.

28. Sub Paragraph 11(1) introduces the changes.

29. Sub Paragraph 11(2) adds new subsections to section 259FB TIOPA as follows.

30. New Subsection (5) provides that excessive PE inclusion income shall be treated as ordinary income of the company in the parent jurisdiction. Income treated in this way will then fall within the definition of dual inclusion income at section 259FB(3) if it is also ordinary income in the UK.

31. New Subsection (6) provides that "excessive PE inclusion income" is defined in new section 259FC TIOPA. The provisions will mirror those relating to excessive PE deductions which already exist in Chapter 6 Part 6A TIOPA.

32. Sub Paragraph 11(3) adds a new section 259FC to Chapter 6 Part 6A TIOPA, containing provisions as follows.

33. New Subsection (1) defines "excessive PE inclusion income" by reference to new subsection (4). The provisions mirror those relating to excessive PE deductions which already exist in Chapter 6.

34. New Subsection (2) defines "PE inclusion income" as an amount meeting conditions set out in new subsections (3) and (4).

35. New Subsection (3) contains Condition A, that an amount is ordinary

income of the company which is in respect of a transfer of money or money's worth from the company overseas to its UK permanent establishment that is either actually made or is in substance treated as being made for corporation tax purposes.

36. New Subsection (4) contains Condition B, that the circumstances giving rise to the amount will not lead to reduced profits or increased losses in the overseas jurisdiction, or, if they do, that the amount exceeds the aggregate effect on taxable profits.

37. New Subsection (5) defines the aggregate effect on taxable profits as the sum of any reductions in profits or increases in losses arising in the overseas jurisdiction as a result of the circumstances giving rise to the amount.

38. New Subsection (6) provides that any reduction in profit or increase in losses is

to be ignored for the purposes of subsections (4) and (5) if the company is subject to a nil rate of tax in the overseas jurisdiction.

39. New Subsection (7) defines relevant taxable period as any period beginning before the date 12 months from the end of the corporation tax accounting period of the company in which the taxable amount was recognised, or such later period within which it is just and reasonable for the company to recognise a deduction in respect of the amount concerned.

40. Paragraph 12 makes amendments to Chapter 9 Part 6A TIOPA.

41. Sub Paragraph 12(1) introduces the amendments.

42. Sub Paragraph 12(2) deletes words from existing section 259IC(4) TIOPA.

43. Sub Paragraph 12(3) adds a new section 259ICA (Deemed dual inclusion income for the purposes of section 259IC) follows.

44. New Subsection 259ICA(1) operates to treat certain amounts as if they were ordinary income of an investor in the hybrid entity making a payment. Income treated in this way will then fall within the definition of dual inclusion income in section 259IC(10) if it is also ordinary income of the hybrid entity.

45. New Subsection (2) provides for three tests to be satisfied in order for income to fall within the definition. These correspond to the tests in new section 259EC(7).

46. New subsection (3) contains assumptions relevant for the test in subsection (2)(c). The provision corresponds to the new section 259EC(8).

47. New subsection (4) defines "zero-tax territory" as one in which a person or body is either not within the charge to tax, or is within the charge to tax but at a nil rate.

48. New subsection (5) provides for section 259B(5), which contains rules for determining residence where no concept of residence for tax purposes exists, to apply to new subsection 259ICA(4).

49. New Subsection (6) defines relevant taxable period as any period beginning before the date 12 months from the end of the corporation tax accounting period of the company in which the taxable amount was recognised, or such later period within which it is just and reasonable for the company to recognise a deduction in respect of the amount concerned.

50. Sub Paragraph 12(4) repeals the

existing section 259ID TIOPA.

51. Paragraph 13 makes amendments to Chapter 10 Part 6A TIOPA.

52. Sub Paragraph 13(1) introduces the changes.

53. Sub Paragraph 13(2) adds two new subsections to s.259JD TIOPA as follows.

54. New Subsection (10) provides that excessive PE inclusion income shall be treated as ordinary income of the company in the parent jurisdiction. Income treated in this way will then fall within the definition of dual inclusion income at section 259JD(8) if it is also ordinary income of the company in the UK.

55. New Subsection (11) indicates that "excessive PE inclusion income" is defined in new section 259JE TIOPA.

56. Sub Paragraph 13(3) adds a new section 259JE to Chapter 10 Part 6A TIOPA, containing provisions as follows.

57. New Subsection (1) defines "excessive PE inclusion income" by reference to new subsection (4). The provisions broadly mirror those relating to excessive PE deductions which already exist in Chapter 10.

58. New Subsection (2) defines "PE inclusion income" as an amount meeting conditions set out in new subsections (3) and (4).

59. New Subsection (3) contains Condition A, that an amount is ordinary income of the company which is in respect of a transfer of money or money's worth from the company overseas to its UK permanent establishment that is either actually made, or is in substance treated as

being made for corporation tax purposes.

60. New Subsection (4) contains Condition B, that the circumstances giving rise to the amount will not lead to reduced profits or increased losses in the overseas jurisdiction, or, if they do, that the amount exceeds the aggregate effect on taxable profits.

61. New Subsection (5) defines the aggregate effect on taxable profits as the sum of any reductions in profits or increases in losses arising in the overseas jurisdiction as a result of the circumstances giving rise to the amount.

62. New Subsection (6) provides that any reduction in profit or increase in losses is to be ignored for the purposes of new subsections (4) and (5) if the company is subject to a nil rate of tax in the overseas jurisdiction.

63. New Subsection (7) defines relevant taxable period as any period beginning before the date 12 months from the end of the corporation tax accounting period of the company in which the taxable amount was recognised, or such later period within which it is just and reasonable for the company to recognise a deduction in respect of the amount concerned.

Part 5: Dual Inclusion Income Anti Avoidance

64. Paragraph 14 amends section 259M in Chapter 13 of Part 6A TIOPA to ensure that causing something to be treated as dual inclusion income should be regarded as a relevant tax advantage for the purposes of the targeted anti-avoidance rule in Chapter 13, in the same way as the prevention of a counteraction or the avoidance of a deemed income receipt can be.

Part 6: Allocation of Deemed Dual inclusion income within a group

65. Sub Paragraph 15 (1) provides that Part 6A TIOPA is to be amended.

66. Sub Paragraph 15(2) provides for a new section 259A(16A) which explains that the new Chapter 12A in Part 6A TIOPA contains rules allowing surplus dual inclusion income to be allocated within a group of companies

67. Sub Paragraph 15(3) provides for the insertion of the chapter 12A into Part 6A of TIOPA:

68. New section 259ZM introduces the group matching rules.

69. New section 259ZMA sets out the conditions which must be satisfied for the rules to apply.

70. New Subsection (1) provides for the

requirement of five conditions to be met

71. New Subsection (2) contains Condition A, which provides that where a company has received dual inclusion income for the purposes of Part 6A in an amount which exceeds any of its reliefs which have been subject to counteractions restricting their use to the sheltering of dual inclusion income, it thereby has a "DII surplus" within the meaning of the new rules.

72. New Subsection (3) contains Condition B, which is that another company has a tax deduction which has been subject to a counteraction under Part 6A such that it may only be utilised against dual inclusion income (a "counteraction amount"), and that the counteraction amount exceeds that company's dual inclusion income in a given accounting period. In these circumstances, no relief would be granted

for the excess counteraction amount until and unless dual inclusion income was available to set against it in another accounting period. The excess amount is defined as a "DII shortfall".

73. New Subsection (4) directs the reader to the definitions of "dual inclusion income" and "counteraction amount".

74. New Subsection (5) contains Condition C, which is that the relevant accounting periods of the two companies referred to above overlap to some extent.

75. New Subsection (6) contains Condition D, which is that both companies are within the charge to corporation tax in that overlapping period.

76. New Subsection (7) contains Condition E, which is that both companies are members of the same group in that

overlapping period.

77. New Subsection (8) applies subsection (9) if there is any period of time within the overlap of the accounting periods of the two companies when either company is not within the charge to corporation tax or they are not members of the same group.

78. New Subsection (9) then provides that the extent of the period in which the two accounting periods are treated as overlapping is limited to any period in which Conditions D and E are both satisfied. This means that companies will only be able to utilise the new facility to match dual inclusion income and double deduction expenditure while they are both within the charge to corporation tax and members of the same group relief group.

79. New section 259ZMB sets out the conditions to be met for the company with a DII shortfall ("Company B") to allocate

the DII surplus of its fellow group company against that shortfall

80. New Subsection (1) introduces the provisions and specifies that the requirements of the section must be met. It then sets out the requirements.

- Requirement 1 is that the company with the DII surplus ("Company A") consents.
- Requirement 2 is that the allocation claim specifies the amount of the DII surplus to which it relates.
- Requirement 3 is that the company with the DII shortfall ("Company B") has an amount of non-dual inclusion income which is at least equal to the amount of the DII surplus which is the subject of the claim ("matchable income").
- Requirement 4 is that the allocation claim specifies the amount of matchable income to which the claim relates.

• Requirement 5 is that the amount of matchable income to which the claim relates is equal to the amount of the DII surplus to which the claim relates, and does not exceed the unused amount of DII shortfall for the relevant accounting period of Company B. This requirement ensures that Company B may only allocate a DII surplus to itself to the extent it has an unused counteraction amount in the period in question. If Company B has made a profit comprised of non-dual inclusion income, it cannot make an allocation claim in relation to that element of profit – it may only do it to the extent it has reliefs which have been subject to counteractions.

81. New Subsection (2) specifies the effect of an allocation claim. Company A's dual inclusion income is reduced by the amount of matchable income to which the

allocation claim relates. Company B can treat the matched amount of its non-dual inclusion income as having characteristics which may cause it to be regarded as dual inclusion income under the provisions of a relevant chapter of part 6A.

82. New Subsection (3) assumes that things done to or by company A in relation to that amount are treated as done by or to company B, but that everything else in relation to that amount of income is unchanged. So, the characteristics of the dual inclusion income of Company A that made it dual inclusion income of Company A are impressed on the matched amount of Company B's income. The matched amount of Company B's income will then meet any definition of dual inclusion income within Part 6A whose conditions it meets as a result. This is a slightly more restrictive position than that set out in the originally published

legislation, and principally ensures that amounts deductible in two jurisdictions can only be set against income included in the same two jurisdictions.

83. New section 259ZMC contains the rules for determining the quantum of Company A's DII surplus available to be the subject of an allocation claim from Company B. It does this by first making an apportionment of Company A's total DII surplus on a time basis where the accounting periods of Companies A and B are not precisely concurrent or where Conditions D and E of new section 259ZMA are not met throughout an accounting period, and then by deducting any amounts subject to prior allocation claims with other group members. Where a simple time apportionment delivers a result which is not just and reasonable, an alternative apportionment can be used.

84. New Subsection (1) introduces the section.

85. New Subsection (2) provides that the unused DII surplus of a company is the DII surplus attributable to that part of its accounting period which overlaps with its relevant fellow group member, less any previously allocated surplus.

86. New Subsection (3) provides for a time-based apportionment of the total DII surplus in a given accounting period to the overlapping period.

87. New Subsection (4) requires the identification of all prior allocation claims.

88. New Subsection (5) defines prior allocation claims.

89. New Subsection (6) stipulates the steps necessary to attribute amounts of DII surplus to prior allocation claims

(applying subsection (7) at Step 3).

90. New Subsection (7) applies a pro rata rule to determine how much DII surplus in an overlapping period should be treated as having been subject to a prior allocation claim.

91. New Subsection (8) provides that if two allocation claims are made at the same time, the various companies concerned can prioritise them by joint election, but if this is not done then an officer of HM Revenue & Customs (HMRC) can do this instead.

92. New Subsection (9) provides that for the purposes of Step 3 in subsection (6), the amount of the DII surplus allocated on a prior allocation claim is determined on the basis that an amount is allocated on the claim before it is allocated on a later claim.

93. New Subsection (10) provides that if the time apportionment rules in subsections (3) and (7) give rise to a result which is not just and reasonable, an alternative method of apportionment can be used.

94. New section 259ZMD contains rules for determining the quantum of Company B's DII shortfall which is available for matching. No time apportionment is needed here since section 259ZMC will already have ascertained how much dual inclusion income of Company B's fellow group members is available for matching, so the section's role is limited to preventing double counting.

95. New Subsection (1) introduces the section.

96. New Subsection (2) identifies any unused part of a company's DII shortfall, as the total amount of the DII shortfall less

any prior matches.

97. New Subsection (3) defines prior matches as the total or previously matched amounts of DII shortfall in relation to prior allocation claims in the shortfall period.

98. New Subsection (4) defines prior allocation claims.

99. New Subsection (5) defines the previously matched amount of a DII shortfall.

100. New Subsection (6) provides that if two allocation claims are made at the same time, Company B can prioritise them, but if this is not done then an officer of HMRC can do this instead.

101. New Subsection (7) provides that for the purposes of subsection (3)(b), the amount of the DII shortfall matched in

relation to a prior allocation claim is determined on the basis that an amount is matched on the claim before it is matched on a later claim.

102. New section 259ZME defines "a group" for the purposes of the new rules, by incorporating relevant definitions from the group relief rules.

103. New Subsection (1) provides that companies will be members of the same group if one is the 75% subsidiary of another, or if both are 75% subsidiaries of a third company.

104. New Subsection (2) imports the definition of 75% subsidiary from the corporation tax group relief rules.

105. New Subsection (3) applies certain anti-avoidance provisions from Corporation Tax Act 2010, and provides that surrenderable amounts in that

legislation should be understood as a DII surplus for the purposes of Chapter 12A.

106. New section 259ZMF defines dual inclusion income and counteraction amount.

107. New Subsection (1) provides that the definitions in the section apply for the purposes of the new Chapter 12A TIOPA.

108. New Subsection (2) defines dual inclusion income as anything that would be dual inclusion income under any provision of Part 6A TIOPA.

109. New Subsection (3) contains a rule against double counting.

110. New Subsection (4) defines a counteraction amount by reference to each of the provisions of Part 6A pursuant to which a counteraction can be made the effect of which is to restrict use of a relief

to being set against dual inclusion income.

111. Paragraph 16 provides for the introduction of a new Part 8A into Finance Act 1998 which contains the rules for claims for allocation of surplus dual inclusion income.

112. New paragraph 77B provides for the new Part 8A to apply to allocation claims made under Chapter 12A of Part 6A TIOPA. Expressions used in the new Part are to have the same meaning as they do in Chapter 12A.

113. New paragraph 77C provides that the claim must be made in either the original or amended corporation tax return of the claimant company B for the shortfall period

114. New paragraph 77D provides for an allocation claim made by claimant company B to require the consent of the

company with the DII surplus, company A. That company's consent must be given in writing, to an officer of Revenue and Customs on or before the allocation claim is made, otherwise that claim is ineffective. The claim by company B is ineffective unless it is accompanied by the notice of consent given by company A.

115. New paragraph 77E provides the details required in the notice of consent given by company A.

116. New paragraph 77F requires company A to amend their return to give effect to any notice of consent if that notice of consent was provided after submission of the original return. This must be done even if time limit to do so would have ordinarily passed, and without such an amendment the notice of consent is ineffective.

117. New paragraph 77G provides for a

rule that the allocation claim made by company B cannot be amended. It can only be withdrawn, by amendment to its corporation tax return, and replaced by another allocation claim.

118. New paragraph 77H contains the time limits for making and withdrawing allocation claims.

119. New paragraph 77I provides for rules in the event of Company A's unused DII surplus reducing to an amount smaller than that originally stated in its notice of consent. Within 30 days of the amount of surplus DII being reduced, Company A must withdraw the notice(s) of consent by writing to both the companies effected and to an officer of revenue and Customs. The company may give a new notice of consent. If company A does not withdraw their consent(s) in this scenario, new subsection (5) provides for an officer of Revenue and Customs being able to give a

direction that the existing notice of consent(s) is ineffective or that it is to have an effect in a lesser amount. New subsections (9) and (10) ensure company A has the right of appeal against any direction given by an officer of Revenue and Customs.

120. New paragraph 77J contains rules in relation to Company B, should company A withdraw their consent to an allocation claim, or an officer of Revenue and Customs issue a direction in relation to the claim. If company B has not paid any additional tax due within 6 months of becoming liable to it, an Officer of Revenue and Customs may make an assessment to recover the unpaid tax.

121. New paragraph 77K provides an officer of Revenue and Customs with the power to make an assessment to recover any excess tax if an allocation claim is, or has become excessive

122. New paragraph 77L provides the Treasury with the power to make regulations to provide for the procedures around making and consenting to allocation claims to be simplified in certain respects.

Part 7: Financing Cost of Loan Capital

123. Paragraph 17 amends section 259FA(4) in Chapter 6 of Part 6A TIOPA to ensure that deductions arising by way of capital attribution tax adjustments are not subject to counteraction by the hybrids rules.

Part 8: Chapters 9 and 10: Carry forward of illegitimate overseas deduction

124. Paragraph 18 amends the rules for the counteractions under Chapters 9 and 10 of Part 6A TIOPA to ensure that where a deduction is utilised by the parent, an

investor or headquarters (as appropriate) to shelter income that is not taxable in the UK, this is not classified as an "illegitimate overseas deduction".

Part 9: Imported mismatches

125. Paragraph 19 provides for Chapter 11 of Part 6A of TIOPA to be amended

126. Paragraph 20 provides for a new sub section 259KE(4B) that explains that new section 259KE sets a limit on the size of the counteraction under Chapter 11

127. Sub Paragraph 21 (1) amends section 259KA. The existing section 259KA(7) is replaced with a new subsection (7). The new Condition E will not be satisfied if the relevant mismatch is capable being countered in a territory that is has implemented the OECD recommendations on neutralizing the effect of hybrid mismatches.

128. New subsection 259KA(7A) provides that a relevant mismatch is capable of counteraction to the extent it is capable of being considered, for the purposes of determining the tax treatment of a person other than P, under the law of a territory that is OECD mismatch compliant. This language is intended to address an ambiguity in the existing legislation, and make it clear that it is not necessary for a counteraction to be made in a relevant territory which has adopted the OECD recommendations in order for Condition E not to be met. It is sufficient that the relevant territory is OECD mismatch compliant, and so it has OECD derived law which addresses the question of whether a hybrid counteraction might arise.

129. New subsection 259KA(7B) provides for the possibility of a proportionate

satisfaction of Condition E, where only a proportion of the relevant mismatch is capable of counteraction in a territory that is OECD mismatch compliant. This is to prevent Chapter 11 being fully disapplied in circumstances where funding for only part of the relevant mismatch passes via a territory that is OECD mismatch compliant.

130. New section 259KA(7C) provides that any determination of proportionality for the purposes of new section 259KA(7B) is to be done on a just and reasonable basis. By way of example, assume a UK company paid 100 to a company in a non-OECD mismatch compliant jurisdiction, that company then paid 90 to a company in another non-OECD mismatch compliant jurisdiction and 10 to a company in an OECD mismatch compliant jurisdiction, and then those two payee companies paid 90 and 10

respectively to a company in a non-OECD mismatch compliant jurisdiction which was the payer in relation to a relevant mismatch of 100. The combined effect of new subsections 259KA(7B) and (7C) is that only 10 of the relevant mismatch would be treated as capable of counteraction, and Condition E would be treated as satisfied in respect of a relevant mismatch of 90.

131. New subsection 259KA(7D) defines what is meant by a territory being OECD mismatch compliant. This status is achieved by a territory if its law gives effect to the OECD report on hybrid mismatches. It is not necessary for the territory's law to deliver the same outcome as the UK's hybrid rules would in any given situation as long as the territory can be said to have given effect to the report

132. The new Condition E therefore tests equivalence of a jurisdiction's hybrid regime as a whole, rather than that of specific provisions within it. So, if a relevant mismatch arises notwithstanding that its payer is resident in a jurisdiction that has enacted an equivalent regime to Part 6A, no counteraction under chapter 11 will occur.

133. Sub Paragraph 21(3) removes condition F at section 259KA(8).

3.1. Sub Paragraph 21(4) amends condition G at section 259KA(9) consequentially on the deletion of Condition F. In the absence of a structured arrangement, it is not appropriate for Chapter 11 to be engaged where P is in a control group with the payer of the mismatch payment, but all payees of the mismatch payment are unrelated. Condition F would previously

have prevented a counteraction in these circumstances. Accordingly, after amendment, Condition G tests simply whether P is in a control group with any of those payees.

134. Paragraph 22amends section 259KC(2A) to ensure effect is given to the new limits on deductions provided for by the new section 259KE.

135. Paragraph 23 inserts a new section 259KE, which caps any counteraction under Chapter 11 in respect of a given imported mismatch payment at the amount the relevant mismatch would have been had the mismatch payment been in an amount equal to that imported mismatch payment. This is an additional measure over and above those previously announced. It ensures that the previously announced measure implemented in new section 259KF, which limits counteractions under Chapter 11 where an imported

mismatch payment is subject to a transfer pricing adjustment, does not result in companies which are subject to transfer pricing adjustments obtaining a better tax outcome than those which pay arm's length amounts.

Part 10: Changes to "Act Together" definition

136. Paragraph 24 substitutes new subsections 259ND(7), section 259ND(7A) and section 259ND(7B) for the existing subsection 259ND(7), and adds new subsections 259ND(7C) and (7D).

137. The effect of the amendments is to restate the existing tests of acting together in subsection 259ND(7)(a) to (c), but add an additional requirement in all those cases that P must have a stake of at least 5% in U. The existing test in section 259ND(7)(d) is restated along with the test in subsection 259ND(7)(c) insofar as it relates to partnerships, since these tests

will not benefit from the additional requirement for P to have at least a 5% stake in U.

138. Contrary to our originally published intention, no amendment is to be made to the acting together test so far as it relates to investors in transparent funds with sub-10% interests in those funds. The policy decision to exclude sub-10% investors in transparent funds from counteractions is instead being implemented via the introduction of the new Chapter 13A of Part 6A.

Part 11: Exempt Investors in Hybrid entities

139. Paragraph 25 provides for Part 6A of TIOPA to be amended.

140. Paragraph 26 introduces a new section 259BC(8A) into Part 6A TIOPA which provides that income of qualifying institutional investors is to be regarded as ordinary income, notwithstanding that it

is not in fact subject to tax.

141. Sub Paragraph 27(1) provides for section 259EB (hybrid payer deduction/non- inclusion mismatches and their extent) to be amended in accordance with sub paragraphs (2) and (3)

142. Sub Paragraph 27(2) amends section 259EB(3) in Part 6A TIOPA to ensure it is subject to the new subsections (4A) to (4C)

143. Sub Paragraph 27(3) introduces new subsections (4A), 4(B) and 4(C) to section 259EB of TIOPA.

144. New subsection (4A) provides that no excess is taken to have arisen by reason of the hybrid payer being a hybrid entity (for the purposes of section 259EB(1)(b)) if the excess is attributable to a qualifying institutional investor (a ”QII”) that is based in a territory that treats the income or profits of the hybrid entity as the

income or profits of the QII, or if the QII is based in a territory that does not regard the hybrid entity as a distinct and separate person to the QII.

145. New subsection (4B) provides that the excess is attributable to such a QII to the extent that ordinary income would fall to be brought into account by the QII if

a. where subsection (4A)(a) applies, under the law of the territory the income or profits of the hybrid entity were not treated as income and profits of the QII, and
b. where subsection (4A)(b) applies, under the law of the territory the hybrid entity were regarded as a distinct and separate person to the QII.

The provision is therefore testing the counterfactual situation where a payment actually received by the QII but disregarded for tax purposes (because the QII sees the hybrid payer as either

transparent or part of itself) is not so disregarded.

146. New Subsection (4C) provides for new section 259NDA which contains rules to determine whether a qualifying institutional investor is based in a particular territory for the purpose of (4A) and (4B),

147. Paragraph 28 amends s259GB (hybrid payee deduction/non-inclusion mismatches and their extent) to include new subsections (2A), (2B) and (2C).

148. New subsection (2A) provides that no excess is taken to have arisen by reason of the hybrid payee being a hybrid entity (for the purposes of section 259GB(1)(b)) if the excess is attributable to a qualifying institutional investor (a ”QII”) that is based in a territory that does not treat the income or profits of the hybrid entity as the income or profits of the QII, or is based

in a territory that regards the hybrid entity as a distinct and separate person to the QII.

149. New subsection (2B) provides for the excess to be attributable to a QII to the extent that ordinary income would fall to be brought into account by the QII if—

a. where subsection (2A)(a) applies, under the law of the territory the income or profits of the hybrid entity were treated as income or profits of the QII, and
b. where subsection (2A)(b) applies, under the law of the territory the hybrid entity were not regarded as a distinct and separate person to the QII.

This provision is relevant where the QII sees a hybrid payee as opaque. It tests the counterfactual situation, where the QII sees the payee as transparent, in order to determine the amount of the total mismatch which should be regarded as

attributable to the QII and hence disregarded.

150. New subsection (2C) provides for the new section 259NDA to contain rules to determine whether a qualifying institutional investor is based in a particular territory for the purpose of (2A) and (2B),

151. Paragraph 29 introduces a new section 259NDA which provides for the meaning of qualifying institutional investor to be given by paragraph 30A of Schedule 7AC to TCGA 1992 and that a qualifying institutional investor is based in a territory if it is resident there for tax purposes or, if it is not resident anywhere for tax purposes, if it is established in that territory.

Part 12: Interaction with Part 4 of TIOPA

152. Paragraph 30 provides for TIOPA to

be amended.

153. Paragraph 31 provides for the insertion of new section 192A in Part 4 of TIOPA. It provides that the relevant tax treatment is to apply in relation to the guarantor if the conditions set out in section 192A(1) are met. This means the guarantor company, who is treated by section 192 of TIOPA as if it, and not the issuing company, issued a security (and so could be liable to claim a tax deduction otherwise not available to it), is also capable of being subject to a counteraction under Part 6A TIOPA.

154. Paragraph 32 provides for a new section 259K(4C) that explains that new section 259KF contains provisions for cases that also fall within Part 4 of TIOPA (transfer pricing)

155. Paragraph 33 provides for the insertion of a new section 259KF in

Chapter 11 Part 6A TIOPA. That new section applies to reduce the amount of any imported mismatch counteraction when the imported mismatch payment is reduced due to the imposition of the arm's length provision under section 147(3) or (5) of TIOPA.

Part 13: Securitisation Companies

156. Paragraph 34 provides for the insertion of new section 259NEZA into TIOPA to ensure that the tax treatment of a securitisation company cannot be adjusted by Part 6A TIOPA. A securitisation company is one to which the Taxation of Securitisation Companies Regulations 2006 apply.

Part 14: Transparent Funds

157. Paragraph 35 provides for the introduction of new Part 13A into Part 6A of TIOPA, which contains special provisions for transparent funds.

158. The purpose of the new Part 13A is to adjust counteractions which arise when transparent funds are either payees in circumstances within Chapters 3, 4, 5 and 7 of part 6A, or are shareholders in hybrid entities in circumstances within Chapter 9. Furthermore, the same adjustments are to be made in determining the amount of a relevant mismatch within Chapter 11, where a transparent fund is party to an overseas mismatch in circumstances corresponding to those within Chapters 3, 4, 5, 7 or 9.

159. As long as there is no structured arrangement (in which case the existing rules apply in full) , the provisions enable any mismatch to be disregarded in computing counteractions where it is attributable to an investor in the fund with a less than 10% interest in the payment received by the fund (in the payee cases), or, in the Chapter 9 case, whose deduction

is less than 10% of the maximum which could have been available to participants in the fund.

160. The provisions test direct or indirect interests in the fund in the structure that is furthest from the underlying fund participants. So, if a payment is received by a fund whose participants include a fund of funds, the tests are applied solely by reference to the indirect interest in the first fund. For example, if the first fund is 20% held by a fund of funds, a participant would need to hold more than 50% of the fund of funds in order to be treated as having a greater than 10% interest in a payment received by the first fund and so be required to be considered in computing any mismatch.

161. Contrary to our original announcement, no changes are being made to the acting together rules in relation to funds, because we are

delivering the intended policy outcome by a different mechanism. The acting together rules need to remain in place for participants in funds when this mechanism is being used, in order to ensure that funds and their participants meet the common ownership tests under each of the relevant chapters. Those tests will bring transparent funds within the scope of potential counteractions by reason of their participants acting together, and the new measure will then effectively take them out again except to the extent mismatches are attributable to participants with interests of over 10%.

162. New section 259MA defines a transparent fund for new Part 13A, as a Collective Investment Scheme ("CIS") or an Alternative Investment Fund ("AIF") which if, were all the income or profits to arise from UK sources, and were all the participants within the charge to Income Tax, the funds profits or income would be

profits or income of its participators for the purposes of Income Tax.

163. New Section 259MB(1) specifies that new rules will apply where there is a payment or quasi-payment within Chapter 3, 4, 5 or 7 of Part 6A TIOPA, the relevant structured arrangement condition is not met, and a proportion of the payment or quasi-payment is attributable to a person as a result of their interest in a transparent fund.

164. New subsection (2) states that payment or quasi-payment will be attributable to a person if either ordinary income actually arises to them as a result of it, or if that would have been the case were they UK resident.

165. New subsection (3) defines "primary fund" as the fund furthest from the ultimate participants, in cases where there are tiers of funds.

166. New subsection (4) defines the relevant structured arrangement provisions for the purposes of subsection 259MB(1)(b).

167. New Subsection (5) provides that the provisions of new subsection (6) will override the rules for computing counteractions in the relevant chapters of part 6A.

168. New subsection (6) provides that if the percentage of the payment attributable to a person as a result of their interest in the primary fund is less than 10% of the "relevant amount", that proportion is ignored for the purposes of determining the extent of a mismatch under the Chapter in question.

169. New subsection (7) provides the meaning of "relevant amount" in new subsection (6), which is the amount of

ordinary income which would have been expected to arise (if the assumption in new subsection (8) is made) in the primary fund as a result of the payment or circumstances giving rise to the relevant deduction (in the case of a quasi-payment). This provision is determining the amount 10% of which a fund participant's entitlement must not exceed.

170. New subsection (8) provides the relevant assumption for new subsection (7) which is that the primary fund is a person to whom ordinary income would arise as a result of the payment or circumstances mentioned in new subsection (7).

171. New subsection (9) provides for the interests in a relevant fund of connected parties being aggregated to those of the person with the interest in the primary fund when determining if a person meets the sub-10% test.

172. New Section 259MC applies where Chapter 9 of Part 6A of TIOPA applies in relation to a double deduction amount in respect of an investor in a hybrid entity, provided the structured arrangement condition in Chapter 9 is not met, and provided the investor in the hybrid entity is an investor as a result of an interest in a transparent fund. It also defines "relevant fund" as the fund which either holds an interest in the hybrid entity, or holds an indirect interest in the hybrid entity making the doubly deductible payment via another entity that is not a transparent fund.

173. New subsection (2) provides that the provisions of subsection (3) will override the rules for computing counteractions in Chapter 9.

174. New subsection (3) provides that any deduction arising to an investor by reason

of its interest in the relevant fund will be ignored for the purposes of determining the extent of the mismatch in Chapter 9 if the amount that arises is less than 10% of the potential double deduction amount.

175. New subsection (4) explains what is meant by a "potential double deduction amount" being the double deduction that would arise if the relevant fund, rather than the persons with the interests in the fund, was the investor. This sets the amount by reference to which the percentage share of investors in the fund will be tested in applying the 10% test.

176. New subsection (5) provides for the interests of connected parties to be aggregated in applying the 10% test.

177. New Section 259MD applies to Chapter 11 cases where that Chapter would be engaged by a payment or quasi-payment to which new section 259MB

would have applied, as long as the structured arrangement condition in Chapter 11 is not engaged.

178. New subsection (2) applies, if the conditions in new subsection (1) are met, new subsection 259MB(6) applies for the purposes of determining the extent of the relevant mismatch under chapter 11.

179. New subsection (3) provides an explanation of which chapters correspond to the subparagraphs of section 259KA(6)

180. New subsection (4) provides the conditions for the application of new subsection (2). The first condition is that Chapter 11 applies as a result of there being a hybrid entity double deduction amount to which new section 259MB would have applied if Chapter 9 had applied to the amount. The second condition is that the structured arrangement condition (Part of Condition

E in Chapter 11) is not met.

181. New subsection (5) applies new subsection section 259MC(3) for the purposes of determining the relevant mismatch under Chapter 11.

Part 15: Commencement

182. Paragraph 36 provides that certain amendments made by this schedule are deemed to have effect since Part 6A TIOPA came into effect. These are the amendments contained in this schedule at

a. Part 2: Amendments to the meaning of hybrid entity and investor in Chapter 2 of Part 6A TIOPA,
b. Part 3: Chapter 3 mismatches: relevant debt relief circumstances,
c. Part 4: Chapter 3 mismatches: Investment Trusts,
d. Part 8: Financing costs of loan capital,
e. Part 11: Acting together,
f. Chapter 14: Securitisation companies,

and

g. Paragraph 27, so far as it applies in relation to a qualifying institutional investor that is an investment trust.

183. Paragraph 37 provides for the commencement dates of the other amendments made by this schedule, being the ones at:

a. Part 1: Meaning of tax
b. Part 5: Deemed dual inclusion income,
c. Part 6: Deemed dual inclusion anti avoidance,
d. Part 9: Changes to Chapters 8 and 9 of Part 6A TIOPA for the carry forward of illegitimate overseas deductions,
e. Part 10: Imported mismatches,
f. Part 12: Exempt investors in hybrid entities (except for the amendment made by paragraph 27 so far as it applies to a QII that is an investment trust),
g. Part 13: Interaction with Part 4 TIOPA, and

h. Part 15: Transparent Funds

These amendments have effect:

- In the case of their application to Chapter 6 TIOPA, in relation to excessive deductions to which the relevant PE period begins, on or after the day on which the Act is passed,
- In the case of their application to Chapter 9 or 10 of Part 6A TIOPA, in relation to accounting periods on or after that day,
- In relation to their application to any other chapter of Part 6A TIOPA, in relation to either payments made on or after that date, or quasi payments in relation to which the payment period begins on or after that date,

184. Paragraph 38 provides that if an accounting or payments period 'straddles' the date on which the Act is passed and the relevant amendment takes effect by reference to the date in which the Act is

passed, the accounting or taxable periods are split into separate periods for before the Act was passed and after. Any apportionment should be carried out on a time basis, or on another just and reasonable basis if the time basis would produce an unjust result.

185. Paragraph 39 provides taxpayers with the option of claiming to make the amendments in Part 5 of this Schedule (deemed dual inclusion income) retrospective. The default position is that those amendments take effect by reference to the date on which the Act is passed (as described in paragraph 37), but a taxpayer can make an election to make those changes retrospective, in which case they will be deemed to always have been in place. A taxpayer must make a "Part 5 retrospection election" by 31 December 2021. Taxpayers also have until 31 December 2021 to make any amendments to claims, returns and elections already

submitted (if they would otherwise be outside the time limits to makes such an amendment) as are reasonable to give effect to the retrospective change in law following any Part 5 retrospection election.

186. Sub Paragraphs 39(6) , (7) and (8) allow a company which has surrendered losses to (another) company making a Part 5 retrospection claim, until 31 December 2021 to make reasonably necessary adjustments to its claims, returns or elections as a result of the group relief claimant company making a Part 5 election claim.

187. Paragraph 40 provides for the rules in Part 7 of the schedule (allocation of dual inclusion within a group) to take effect in relation to accounting periods that begin on or after 1 January 2021. If an accounting period straddles 1 January 2021, the periods before and after are to be

treated as separate accounting periods and any necessary apportionment is to be done on a time basis, unless that produces an unreasonable result.

Background note

188. The amendments made to the hybrids and other mismatches legislation follow extensive consultation and are designed to ensure the rules operate proportionately and as intended

189. Some of the amendments differ in certain respects to those announced on 12 November 2020 and some changes have been made to the draft legislation published on that date (deemed dual inclusion income and allocation of dual inclusion income within a group) following the consultation on that legislation. These changes have been explained in these explanatory notes.

190. Clause 36 and Schedule 7 as

introduced were amended by Committee of the Whole House on 20 April 2021 to ensure the changes introduced have the intended effect. Paragraphs 23, 47, 126 to 130 and 171 of this note cover the amendments. One further amendment removed what was Part 3 (Meaning of Hybrid entity and investor) from Schedule 7 as introduced.

Clause 37 and Schedule 8: Relief from corporation tax for losses etc

Summary

1. This clause and Schedule make certain amendments to the loss reform legislation in Part 7ZA (restrictions on obtaining certain deductions) of the Corporation Tax Act 2010 (CTA10) to ensure that it meets the policy objective of restricting relief for certain carried forward losses. The Schedule allows certain groups access to an allowance to which they are entitled following an acquisition or demerger. The schedule also makes further amendments to the transfer of a trade provisions where there has been a change of ownership, group relief, the calculation of the loss restriction and allocation of the deductions allowance and the group allocation statement submission requirements.

Details of the clause

2. Clause 37 introduces Schedule 8. Part 1 includes provisions relating to the group allowance nomination process for former groups. Part 2 includes other amendments to CTA 10 and Part 3 includes the commencement and transitional provisions.

Details of the Schedule

Part 1: Allocation of deductions allowance of former groups

3. Paragraph 1 introduces the amendments of Part 7ZA CTA10.

4. Paragraph 2 inserts new section 269ZSA which sets out changes to the nomination procedure where a group is unable to make a valid nomination after a group ceases to exist for the purpose of Part 7ZA.

5. New section 269ZSA(1) describes the circumstances in which a group allowance nomination may be made under section 269ZSA. Immediately before a group

ceases to exist for the purposes of section 269ZZB(2) (such as in the event of an acquisition or a demerger, for example), there must not have been a valid group allowance nomination in effect.

6. New section 269ZSA(2) provides that all companies that were within the charge to CT and members of the group immediately before the group ceased to exist may together nominate a company.

7. New section 269ZSA(3) provides that the companies making the nomination under section 269ZSA are not required to be within the charge to CT at the time of making the nomination.

8. New section 269ZSA(4) provides that the nomination under section 269ZSA has effect from the date stated in the nomination (which must precede the date the group ceased) and ends immediately before the group ceased to be a group for the purposes of section 269ZZB(2).

9. New section 269ZSA(5) treats a

nomination made under this section as a nomination made under section 269ZS, with certain modifications. This includes disapplying section 269ZS(7) (which provides for situations where the group nomination ceases to have effect) and removing any power to revoke a nomination made under this subsection.

10. New section 269ZSA(6) prevents more than one nomination being made in respect of a group under this section.

11. Paragraph 3 inserts new section 269ZVA which allows a company nominated under sections 269ZS or 269ZSA to submit a group allowance allocation statement for a group which has ceased to exist for the purposes of section 269ZZB(2).

12. New section 269ZVA (2) provides that sections 269ZT to 269ZV, that provide the requirements for the group allocation statement submission, will have effect for the nomination with certain modifications:

a. Section 269ZT(2)(a) does not apply and the nominated company may submit a group allowance allocation statement under section 269ZT

b. For the purposes of sections 269ZT(2)(b), 269ZU(2) and 269ZV(7) and (8), treat any reference to the "nominated company" as a nomination mentioned in section 269ZVA(1)(b) – being a nomination that takes effect for a group which has ceased to exist for the purposes of this Part

c. If the ultimate parent of the group which ceased to exist was a member of more than one deductions allowance group, it may only be allocated a deductions allowance from the group for which it was the ultimate parent.

Part 2: Other amendments of CTA 2010

13. Paragraph 4 amends section 137 of CTA 2010 to ensure a deduction for in-year group relief under Part 5 is made before any deductions for relief for carried-forward losses.

14. Paragraph 5 introduces amendments to Part 5A of CTA 2010 (group relief for carried-forward losses).

15. Paragraph 6 amends section 188BE to clarify when a company can surrender carried-forward losses. A company may only surrender carried-forward losses where it has used its carried-forward losses to the fullest extent possible against its own total profits first.

16. Paragraph 7 amends section 188DD to take effect of consequential changes made following the introduction of corporate capital loss restriction with effect for accounting periods beginning on or after 1st April 2020.

17. Paragraph 8 introduces amendments

to Part 7ZA of CTA 2010.

18. Paragraph 9 clarifies Step 2 in section 269ZF(3) (steps for determining a company's qualifying trading profits, qualifying non-trading income profits and qualifying chargeable gains). The amounts that could be relieved against total profits that are deducted are the amounts that are the subject of a claim and not the amounts that could be claimed.

19. Paragraph 10 amends section 269ZFA which sets out the company's relevant profits for an accounting period. Where the amount of deductions allowance allocated to a company exceeds the qualifying profits, the relevant profits will be nil.

20. Paragraph 11 amends section 269ZT which sets out the circumstances in which a company may submit a group allowance allocation statement.

21. New subsection 3A removes the requirement to submit a group allowance

allocation statement in cases where no deductions allowance is allocated to any group company in the period.

22. Section 269ZT(4) is amended to extend the time limits for submitting an original group allowance allocation statement where there has been an enquiry (including where an appeal is brought against the closure of such an enquiry).

23. Paragraph 12 amends the formula in section 269ZV(5) used for calculating the maximum allowance that can be allocated to a company for a period. The calculation is now based on the number of days in a company's accounting period that were both days on which the nominated company was nominee and the company was a group member, and the number of days in the nominated company's accounting period on which it was nominee.

24. Paragraph 13 introduces amendments to Chapter 7 of Part 14 of CTA 2010.

25. Paragraphs 14 and 15 amend sections 719(4A) (certain acquisitions giving rise to a change in the ownership of a company) and 721(4) (certain extraordinary rights or powers giving rise to a change in ownership of a company) so that the extended definition of "change in ownership" applies to Chapter 2E of Part 14 CTA 2010 (cases with trade losses involving a transfer of a trade). The extended definition under s719(4A) includes cases where a person acquires a holding of ordinary share capital in a company of less than 50% but as a result of which the group condition in section 188CE CTA 2010 is met for the purposes of claiming group relief. The extended definition under s721(4) allows other interests in a company, such as voting power attaching to shares, to be taken into account in determining whether there has been a change in ownership.

Part 3: Commencement and transitional provision

26. Paragraph 16 to 20 include the following commencement provisions:

a. The procedure for making a new nomination after a group ceases to exist for the purposes of Part 7ZA (paragraph 2 of the schedule) and to allow a new or existing nominated company to submit a group allowance allocation statement for a period prior to the date the group ceased to exist for the purposes of Part 7ZA (paragraph 3 of the schedule) have effect in relation to accounting periods beginning on or after 1 April 2017. For accounting periods that straddle 1 April 2017, the periods that fall before and after this date are treated as separate accounting periods for the purposes of applying the amendments. Where it is necessary to apportion amounts to the separate

periods, this should be done on a time basis unless this produces a result that is unjust or unreasonable in which case a just and reasonable method is used.

b. The amendments to:

   i. deduct in-year group relief before any relief for carried-forward losses (paragraph 4)

   ii. clarify when a company can surrender carried-forward losses (paragraph 6) and

   iii. remove the requirement to submit a nil group allowance allocation statement and to extend the time limits for submitting an original group allowance allocation statement where there has been an enquiry (paragraph 11)

   iv. The formula for allocating the deductions allowance to a listed company (paragraph 12)

have effect in relation to accounting periods beginning on or after 1 April 2021.

c. The amendment to take effect of consequential changes made following the introduction of Corporate Capital Loss Restriction is treated as always having had effect, I.e. since the introduction of Corporate Capital Loss Restriction with effect for accounting periods beginning on or after 1st April 2020.

d. The amendment to clarify Step 2 in calculating the qualifying trading profits, qualifying non-trading profits and qualifying chargeable gains (paragraph 9) is treated as always having had effect (i.e. since the introduction of loss reform with effect from 1 April 2017).

e. The amendment to cap the figure for relevant profits at nil where the deductions allowance exceeds

qualifying profits (paragraph 10) is treated as always having had effect (i.e. in relation to accounting periods beginning on or after 6 July 2018).

f. The amendments made to the definition of "change in ownership" used for Chapter 2E of Part 14 CTA 2010 applies in relation at an acquisition that takes place on or after 1 April 2021.

27. Paragraph 21 includes transitional provisions where a group ceases to exist for the purposes of this Part before the date on which this Act is passed. The nomination only has to be made by those companies that were within the charge to Corporation Tax and a member of the group immediately before the group ceased to exist, and who still exist when the nomination is made. If only one company exists at the point the nomination is made, that company may nominate itself.

28. Paragraph 22 extends the time limits for submitting a group allowance allocation statement to 31st March 2022 for nominations mentioned in section 269ZVA(1)(b) where the time limit under section 269ZT(4) is earlier than 31st March 2022.

Background note

29. Loss reform was introduced in section 18 and Schedule 4 of Finance (No 2) Act 2017 with effect from 1 April 2017.

30. The reform made two main changes. It increased the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Additionally, it limited the amount of profit against which carried-forward losses can be set. Each group (or a company that is not part of a group) has an annual deductions allowance of £5m profits. Carried-forward losses can be set

against that amount without restriction. Losses in excess of that amount are restricted to a maximum of 50% of the company's total profits for the period.

31. The restriction to carried-forward losses was extended to include corporate capital losses with effect from 1 April 2020.

32. These amendments have been made to ensure the legislation works as intended and to reduce administrative burdens.

Clause 38: Corporate interest restriction: minor amendments

Summary

1. This clause makes technical amendments to the Corporate Interest Restriction (CIR) rules in Part 10 and Schedule 7A of the Taxation (International and Other Provisions) Act (TIOPA) 2010 to ensure that the regime works as intended.

Details of the clause

2. Subsection (1) introduces amendments to Part 10 of TIOPA 2010.

3. Subsection (2) introduces new subsection 452(2A), which clarifies that for the purposes of section 452, a company is deemed to carry on a residual business within the charge to UK corporation tax, regardless of whether or not the company actually has a business other than a property rental business. Accordingly, any amounts that are required to be brought

into account by section 452 in respect of the residual business are within the charge to UK corporation tax.

4. Subsection (3) provides that new subsection 452(2A) applies from 21 July 2020.

5. Subsection (4) introduces new paragraph 29A into Schedule 7A to TIOPA 2010, which provides that a reporting company is not liable to a late filing penalty where the company has a reasonable excuse for the failure and the return is submitted as soon as possible once the reasonable excuse ceases.

6. Subsection (5) provides that paragraph 29A applies from 1 April 2017.

Background note

7. The CIR rules restrict the ability of large businesses to reduce their taxable profits through excessive UK interest and similar expenses. They are part of the government's policy to align the location

of taxable profits with the location of economic activity. They are consistent with the UK's more territorial approach to corporate taxation, and the OCED Base Erosion and Profit Shifting (BEPS) Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments) recommendations.

8. The CIR rules were enacted in Finance (No.2) Act 2017 and apply from 1 April 2017. They were subject to technical amendments in Finance Act 2018 and in Finance Act 2019.

9. As a result of further engagement with affected businesses, two minor amendments to the legislation have been identified that are necessary for the regime to work as intended.

10. The first amendment concerns the interaction of the CIR with rules for UK Real Estate Investment Trusts (REITs). From 6 April 2020, UK property businesses of non-resident companies are

brought into the charge of corporation tax rather than income tax. The amendment clarifies that a non-resident company within a UK REIT group would face a UK corporation tax charge where a CIR disallowance is allocated to the residual business company.

11. The second amendment addresses the unintended omission of 'reasonable excuse' as a ground for late submission of an interest restriction return without penalty.

12. For further information about the CIR rules, please refer to: https://www.gov.uk/guidance/corporate-interest-restriction-on-deductions-for-groups

Clause 39: Northern Ireland Housing Executive

Summary

1. This clause introduces a new corporation tax (CT) exemption for the Northern Ireland Housing Executive.

Details of the clause

2. Subsection 1 inserts an exemption from CT for the Northern Ireland Housing Executive at section 987C Corporation Tax Act 2010 (CTA 2010).
3. Subsection 2 indicates that the exemption will take effect from 1 April 2020.

Background note

4. The Northern Ireland Housing Executive was established in such a way that it did not meet the definition of 'local authority' for Corporation Tax purposes.
5. The equivalent providers of state funded housing in England, Wales and Scotland

are exempt from Corporation Tax (as they are local authorities for Corporation Tax purposes).

6. This clause introduces legislation to similarly exempt the Northern Ireland Housing Executive.

Clause 40: Annual exempt amount

Summary

1. This clause maintains the Capital Gains Tax (CGT) Annual Exempt Amount (AEA) at its current amount of £12,300 for individuals and personal representatives and £6,150 for trustees of most settlements for tax years 2021 to 2022 up to and including 2025 to 2026.

Details of the clause

2. This clause disapplies the annual increase by the consumer prices index to the CGT AEA, as provided by section 1L of The Taxation of Chargeable Gains Act 1992, in relation to tax years 2021 to 2022 up to and including 2025 to 2026.

Background note

3. Individuals do not have to pay CGT unless their chargeable gains (net of all allowable losses) for a tax year exceed the

AEA for the year.

4. Unless otherwise determined, Section 1L of The Taxation of Chargeable Gains Act 1992 provides for the AEA to be automatically increased each year by an amount to reflect inflation, as measured by the consumer prices index (CPI), for the 12 months to September in the preceding tax year (rounded up to the nearest £100).
5. At Budget 2021 the Government announced that the AEA would remain at current levels up to and including tax year 2025 to 2026.

Clause 41: Hold-over relief for foreign-controlled companies

Summary

1. This clause amends an anti-avoidance rule when claiming relief for gifts of business assets. This will affect disposals made on or after 6 April 2021.

Details of the clause

2. Subsection 1 amends section 167 of TCGA 1992 by inserting "is or" at the beginning of subsection (2)(b).

3. Subsection 2 provides that paragraph 1 has effect for disposals made from the tax year 2021-22 onwards.

Background note

4. This amendment clarifies an existing anti-avoidance rule regarding the circumstances in which relief can be given when a non-UK resident person gifts assets to a company which is controlled by

a person who is not UK resident.

5. This change improves the fairness for those who can claim the relief and thereby prevents future abuse.

Part 2: Plastic Packaging Tax

Clause 42: Plastic packaging tax

Summary

1. This clause establishes a new tax called plastic packaging tax and provides that the Commissioners for HM Revenue and Customs ("the Commissioners") will be responsible for its collection and management.

Details of the clause

2. Subsection 1 introduces a new tax called "plastic packaging tax".
3. Subsection 2 provides that the Commissioners are responsible for the collection and management of plastic packaging tax.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic

packaging which contains less than 30% recycled plastic content. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

5. Plastic packaging tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and will apply to plastic packaging manufactured in, or imported into, the UK. There will be an exemption for businesses who manufacture and/or import less than 10 tonnes of plastic packaging in a 12-month period.
6. The tax will not be chargeable on plastic packaging which;
    - Has 30% or more recycled plastic content;
    - Is made of multiple materials of

which plastic is not proportionately the heaviest when measured by weight;

- Is manufactured or imported for use as immediate packaging of licensed human medicines;
- Is in use as transport packaging to import products into the UK; or
- Is exported, filled or unfilled, unless it is in use as transport packaging to export products out of the UK.

7. HMRC will be responsible for administering the new tax.
8. Draft secondary legislation will be published in 2021-22.

Clause 43: Charge to plastic packaging tax

Summary

1. This clause provides for when the charge to plastic packaging tax arises.

Details of the clause

2. Subsection 1 sets out that the tax applies to chargeable plastic packaging components manufactured in the UK or imported into the UK in the course of a business.
3. Subsection 2 sets out that commercial activities of charities and government departments or other public authorities are within the meaning of "a business" for the purposes of the tax.
4. Subsection 3 provides that the charge to plastic packaging tax is subject to the exemptions set out in Clause 52 (exempt plastic packaging components).

Background note

5. Plastic packaging tax will come into effect

from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

6. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 44: Liability to pay plastic packaging tax

Summary

1. This clause sets out who is liable to pay plastic packaging tax.

Details of the clause

2. Subsection 1 sets out that where the chargeable plastic packaging component is manufactured in the UK, the person liable to pay plastic packaging tax is the UK manufacturer of the plastic packaging component.
3. Subsection 2 sets out that where a chargeable plastic packaging component is imported into the UK, the person liable to pay plastic packaging tax is the person on whose behalf the plastic packaging component is imported.

Background note

4. Plastic packaging tax will come into effect

from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 45: Rate

Summary

1. This clause sets out the rate of plastic packaging tax, and how the tax is charged in relation to packaging components of a single specification.

Details of the clause

2. Subsection 1 sets the rate of plastic packaging tax at £200 per metric tonne of chargeable plastic packaging components of a single specification.
3. Subsection 2 prescribes how part of a tonne measurements of plastic packaging components are charged. The amount is proportionally reduced, meaning that the same rate is applied to that part of a tonne of chargeable plastic packaging components.

Background note

4. Plastic packaging tax will apply from

April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 46: Payment

Summary

1. This clause sets out matters related to the payment of plastic packaging tax.

Details of the clause

2. Subsection 1 sets out that payments for plastic packaging tax are to be made by reference to accounting periods determined in accordance with regulations made under Clause 61.
3. Subsection 2 prescribes that any references to "accounting periods" for the proposes of plastic packaging tax are references to accounting periods as per subsection (1).

Background note

4. Plastic packaging tax will apply from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic

content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 47: Chargeable plastic packaging components

Summary

1. This clause sets out when plastic packaging tax is chargeable on a plastic packaging component in relation to its plastic content, and when it is considered a finished plastic packaging component.

Details of the clause

2. Subsection 1 sets out that a plastic packaging component is chargeable if the proportion of recycled plastic is less than 30% of the total amount of plastic within it, when measured by weight, and it is a finished plastic packaging component.
3. Subsection 2 prescribes that packaging containing plastic will be treated as having less than 30% recycled plastic content unless it is demonstrated that at least 30% of the total amount of plastic is recycled, when measured by weight.

4. Subsection 3 sets out that a component is to be treated as finished when it has gone through its last substantial modification. This will be the last point in the manufacturing process necessary to enable the component to be plastic packaging ready to be packed or filled. This is the case even if waste or surplus material remains attached to it.
5. Subsection 4 explains that waste or surplus material that remains attached to the component after its last substantial modification will not be treated as part of the component in respect of plastic packaging tax and will therefore not be liable to the tax.
6. Subsection 5 provides for the Commissioners to make provision by regulations about the information or evidence required, or the methodology to be used, to check the amount of recycled plastic in a plastic packaging component and the meaning of "substantial

modification" referenced in this clause.

Background note

7. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at the rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

8. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 48: Meaning of "plastic packaging component"

Summary

1. This clause defines "packaging component" and "plastic packaging component" in respect of plastic packaging tax and provides for related regulations to be made.

Details of the clause

2. Subsection 1 defines a "packaging component" as: A product that is designed to be suitable for use (either on its own or with other products) to contain, protect, handle, deliver or present goods in the supply chain from the manufacturer to the user or consumer;

3. Subsection 2 states it does not matter whether a component is manufactured or imported for use by a producer, user or consumer within the definition at subsection 1, but is subject to section 52

(exempt plastic packaging components).

4. Subsection 3 defines a "plastic packaging component" as a component which, when measured by weight, contains more plastic than any other single substance listed in regulations under subsection (6).

5. Subsection 4 prescribes that any packaging components which contain plastic are to be treated as plastic packaging components unless it is demonstrated that they are not.

6. Subsection 5 gives the power to the Treasury to modify by regulations the meaning of "packaging component" by both adding or removing descriptions of products.

7. Subsection 6 provides that regulations as set out in subsection (4) may amend this Part.

8. Subsection 7 gives the power for the Commissioners by regulations to create a list of substances for the purposes of

subsection (2) and to specify the types of information and evidence required, and methodology used to show that a packaging component containing plastic should not be treated as a plastic packaging component for the purposes of the tax.

Background note

9. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

10. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate

increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration. This clause defines "packaging component" and "plastic packaging component" in respect of plastic packaging tax and provides for related regulations to be made.

Clause 49: Meaning of “plastic” and “recycled plastic”

Summary

1. This clause defines what “plastic” and “recycled plastic” mean for the purposes of plastic packaging tax.

Details of the clause

2. Subsection 1 defines “plastic” for the purposes of plastic packaging tax as a material comprising of a polymer to which additives or other substances may have been added. The definition specifically excludes cellulose-based polymers that have not been chemically modified.
3. Subsection 2 defines “recycled plastic” for the purposes of plastic packaging tax as recovered plastic that has been reprocessed by a chemical or manufacturing process which can then be used for its original or other purposes.
4. Subsection 3 defines organic recycling and

excludes this from the chemical or manufacturing process referenced in the definition of recycled plastic.

5. Subsection 4 sets out that recovered material for the purposes of plastic packaging tax is material collected before or after use by a consumer (known as pre and post-consumer plastic, defined below) that is fed into a recycling or manufacturing process in place of virgin plastic, instead of it being disposed as waste or used for energy recovery.

6. Subsection 5 sets out that pre-consumer plastic for the purposes of plastic packaging tax is waste material collected from a manufacturing process which has been processed by a reprocessing facility. Excluding plastic that has been recovered from the same process as scrap.

7. Subsection 6 sets out that post-consumer plastic for the purposes of plastic packaging tax is material generated after the end use of a product (including

industrial users and households) that can no longer be used for its original purpose, that is, items made or part-made of plastic that have been used and disposed of. Material returned from the distribution chain is also included in this definition.

8. Subsection 7 sets out the default position by specifying that plastic is not to be treated as recycled unless shown that it is in fact recycled plastic.

9. Subsection 8 provides powers to the Treasury to modify by regulations the meaning of "plastic" and "recycled plastic".

10. Subsection 9 specifies that regulations under subsection (8) may amend this part.

11. Subsection 10 provides powers to the Commissioners to specify in regulations the type of methodology to be used, or the information or evidence required to show that plastic is recycled plastic.

Background note

12. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

13. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 50: Time of importation

Summary

1. This clause defines the time of importation for the purposes of plastic packaging tax.

Details of the clause

2. Subsection 1 sets out that importation of a chargeable plastic packaging component takes place when all customs formalities have been complied with, within the meaning of section 1(1) of the Customs and Excise Management Act 1979. In cases where imported chargeable plastic packaging components are not subject to those customs formalities, importation is at the time prescribed by customs and excise Acts.

3. Subsection 2 prescribes that this clause is subject to Clause 76 (Isle of Man: import and export of chargeable plastic packaging components).

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 51: Plastic packaging components intended for export

Summary

1. This clause sets out the provisions for plastic packaging components that are intended for export.

Details of the clause

2. Subsection 1 provides for liability to pay plastic packaging tax to be deferred where a plastic packaging component is intended to be exported in line with the direct export conditions defined in subsection (2). This liability is cancelled altogether if the component is exported before the end of the deferral period set out in subsection (5) and following requirements set out in regulations.

3. Subsection 2 defines the direct export condition referred to in subsection (1). The condition is met if the deferral period (defined under subsection (5)) has not

expired, the component has always been intended to be exported since it was made in the UK or imported, and any other requirements set out in regulations are fulfilled.

4. Subsection 3 allows the Commissioners to notify a liable person that the export condition has ceased to be met or that it was never met as appropriate, if they believe that one or more of the requirements is not fulfilled.

5. Subsection 4 specifies that if a notification under subsection (3) is issued, a liability to pay plastic packaging tax ceases to be deferred from a date specified in the notification or is taken to have never been deferred.

6. Subsection 5 defines the deferral period as 12 months, beginning with the day a plastic packaging component is manufactured or imported.

7. Subsection 6 specifies that this clause does not apply to plastic packaging

components used to export goods from the UK that are transport or tertiary packaging as defined in the Packaging (Essential Requirements) Regulations 2015, or are road, rail, ship and air containers.

8. Subsection 7 specifies that this clause is subject to Clause 76 (Isle of Man: import and export of chargeable plastic packaging components).

Background note

9. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

10. The tax will encourage the use of

recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 52: Exempt plastic packaging components

Summary

1. This clause provides for exemptions from plastic packaging tax for certain plastic packaging components.

Details of the clause

2. Subsection 1 provides an exemption from plastic packaging tax for plastic packaging components used for importing goods into the UK that are transport or tertiary packaging as defined in the Packaging (Essential Requirements) Regulations 2015, or are road, rail, ship and air containers.
3. Subsection 2 provides for a plastic packaging component to be exempt from plastic packaging tax if subsections (3), (4) or (6) apply to that component.
4. Subsection 3 applies to plastic packaging components that are stores, as defined in

Customs and Excise Management Act 1979.

5. Subsection 4 exempts from the tax plastic packaging components manufactured or imported for use in the immediate packaging of a medicinal product.
6. Subsection 5 defines “immediate packaging” and “medicinal product" in subsection (4) by reference to their meanings under the Human Medicines Regulations 2012.
7. Subsection 6 sets out an exemption for plastic packaging components which are designated or set aside, at or before the time of manufacture or import, for a use other than those in the containment, protection, handling, delivery or presentation of goods, and where a record is kept of that designation by the manufacturer or person on whose behalf it was imported.
8. Subsection 7 gives powers to the Treasury to make provisions by regulations for

further exemptions from plastic packaging tax.

Background note

9. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

10. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 53: Tax credits

Summary

1. This clause provides powers for the Commissioners to make regulations for tax credits to be available in circumstances where a person has become liable to account for plastic packaging tax on a component which is later exported from the UK or subsequently converted into a different packaging component.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to make provision in respect of cases where, after a person has become liable to pay plastic packaging tax on a component, that packaging is later exported or converted into a different packaging component.
3. Subsection 2 sets out the areas that may be covered by such regulations. These are:
    - Allowing a tax credit to the person

who had become liable to account for plastic packaging tax on the packaging;

- Offsetting the credit against plastic packaging tax payable for an accounting period or periods;
- Allowing a repayment in certain cases.

4. Subsection 3 sets out that regulations under this clause may include provision for the administration of tax credits, including: requiring a claim to be made, how and when a claim to a tax credit should be made, requirements to be met to claim a credit, setting minimum and maximum credit amounts, periods of entitlement, information required to substantiate a claim, record and information keeping, and withdrawal of a tax credit if the requirements are not met. They may also provide for amendments to liability for plastic packaging tax if a tax credit entitlement is changed or

withdrawn, the treatment of a tax credit where a person is no longer in business or liable to the tax, and the meaning of "converted". Anything to be determined by regulations may be determined by general or specific directions by the Commissioners consistent with regulations.

5. Subsection 4 defines "prescribed" as meaning specified or determined in accordance with provision made by regulations under this clause.

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be

a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 54: The register

Summary

1. This clause sets out that the Commissioners must keep a register of all persons who are registered for plastic packaging tax.

Details of the clause

2. Subsection 1 sets out the requirement for a register to be established and maintained by the Commissioners for the purposes of collecting and managing plastic packaging tax.
3. Subsection 2 allows the Commissioners to determine what information the register may contain as required for the purposes of subsection (1).
4. Subsection 3 explains that other references to "the register" in this Part mean the register under subsection (1) above, and that references to registration refer to registration in that register.

Background note

5. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

6. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 55: Liability to register: producers and importers

Summary

1. This clause sets out the circumstances under which manufacturers and importers of plastic packaging components are liable to be registered for plastic packaging tax.

Details of the clause

2. Subsection 1 specifies that manufacturers and importers of plastic packaging components are liable to be registered for plastic packaging tax on a given day if they meet either of the criteria in subsection (2) on that day.
3. Subsection 2 sets out that a manufacturer or importer of plastic packaging components is liable to be registered for plastic packaging tax if either of the following applies:
    - There are reasonable grounds for

believing that they are going to manufacture, import, or manufacture and import 10 tonnes or more of finished plastic packaging components in the next 30 days from any given day; or

- They have manufactured, imported, or manufactured and imported 10 tonnes or more of such components in the past 12 months (looking back from the first day of any given calendar month).

4. Subsection 3 excludes finished plastic packaging components as set out in Clause 52(1) or (3) for the purposes of subsection (2), namely components in use as transport packaging, or road, rail, ship and air containers, to import products into the UK, or they are stores.

5. Subsection 4 substitutes the words “over the previous 12 months” under subsection (2)(b), in relation to the first year of the tax, with “during the period beginning

with 1 April 2022 and". The effect of this is that only packaging manufactured in, or imported into, the UK after 1 April 2022 will be included in calculations of whether a person is liable to be registered for plastic packaging tax.

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate

increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 56: Notification of liability and registration

Summary

1. This clause sets out the period in which a liable person must be registered for plastic packaging tax with the Commissioners.

Details of the clause

2. Subsection 1 states that when a person is liable to be registered for plastic packaging tax, they must notify the Commissioners of this before the end of a certain period called the notification period.
3. Subsection 2 specifies that the notification period is 30 days starting from the first day on which liability arises.
4. Subsection 3 requires the Commissioners to register a liable person from the day their liability arises, whether or not the person has notified the Commissioners themselves of the liability.

5. Subsection 4 specifies that no account is to be taken to changes in the members of unincorporated bodies (other than partnerships) in determining how any provision of or under this Part applies to that body.

6. Subsection 5 states the Commissioners may by regulations make further provision with regards to how and what information will be required to notify of a liability to plastic packaging tax. This may also include requiring further information in connection with person's registration, and provision for notification and other communications to be made electronically.

Background note

7. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged

at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

8. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 57: Cancellation of registration

Summary

1. This clause sets out when a registration in respect of plastic packaging tax can be cancelled.

Details of the clause

2. Subsection 1 provides that a registration for plastic packaging tax may only be cancelled if it meets the criteria set out in this clause.
3. Subsection 2 allows the Commissioners to cancel a registration if the registered person requests this and satisfies the Commissioners that they are not liable to be registered for plastic packaging tax on the day of the request.
4. Subsection 3 allows the Commissioners to cancel a registration if they are satisfied that the person concerned is not liable to be registered for plastic packaging tax and has not been liable for at least 12 months.

5. Subsection 4 allows the Commissioners to cancel a registration if they are satisfied that the person was not liable to be registered for plastic packaging tax when they registered and has not been liable since then.

6. Subsection 5 provides for a cancellation made on a request under subsection (2) to be effective from the date the request was made or from a later date by agreement between the registered person and the Commissioners.

7. Subsection 6 provides for a cancellation under subsection (3) to be effective from when the registered person was no longer liable to be registered for plastic packaging tax, or from a later date by agreement between the registered person and the Commissioners.

8. Subsection 7 provides that when a cancellation under subsection (4) is made it will take effect from the day the person was registered.

9. Subsection 8 prevents a registration being cancelled under subsections (2) or (3) if there are outstanding payments of plastic packaging tax due, or there are any outstanding returns for plastic packaging tax due from that person.

10. Subsection 9 permits the Commissioners to refuse to cancel a person's registration if they reasonably believe that the person will become liable to be registered for plastic packaging tax in the following 12 months.

11. Subsection 10 specifies that liability to be registered for plastic packaging tax is determined in respect of this clause by reference to the liability conditions set out in Clause 55.

Background note

12. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic

packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

13. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 58: Correction of the register

Summary

1. This clause provides for the correction of entries in the plastic packaging tax register.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to make provision in respect of any corrections of the register.
3. Subsection 2 provides that regulations under subsection (1) may include provision to require persons registered, or liable to be registered, for plastic packaging tax to notify the Commissioners of relevant changes in circumstances.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic

packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 59 and Schedule 9: Notices imposing secondary or joint and several liability

Summary

1. This clause and Schedule provide for a secondary liability and joint and several liability in respect of plastic packaging tax in certain circumstances.

Details of the clause

2. Clause 59 introduces Schedule 9 which sets out provisions to impose secondary liability notices in respect of amounts of plastic packaging tax that another person has not paid, and joint and several liability notices in respect of some or all of another person's liability to pay plastic packaging tax for a period of time in the future.

Details of the Schedule

3. Part 1 of Schedule 1 (paragraphs 1-8) deals with secondary liability notices for plastic

packaging tax.

4. Part 2 of Schedule 1 (paragraphs 9-19) deals with joint and several liability notices for plastic packaging tax.
5. Part 3 of Schedule 1 (paragraphs 20-22) deals with the serving of secondary liability and joint and several liability notices and definitions that apply in this Schedule.

Part 1 – Secondary liability and assessment notices

Effect of secondary liability and assessment notice

6. Paragraph 1 sets out that secondary liability and assessment notices may be given to a person ("R") to make them liable for an amount which is equal to or less than an amount of plastic packaging tax which another person ("P") is liable to pay but has failed to pay. This paragraph also defines the "relevant time" as the accounting period for which P has failed to pay the plastic packaging tax due.

Test for giving a secondary liability and assessment notice

7. Paragraph 2 sub-paragraph 1 allows the Commissioners to issue a secondary liability and assessment notice if they consider that R is acting in the course of a related business, and sub-paragraph (2) or (3) applies to them. The definition of 'related business' is at paragraph 21.

8. Paragraph 2 sub-paragraph 2 applies where R has been concerned in, or taken steps with a view to, P failing to pay plastic packaging tax, or R knows, or should know, that their actions would lead or have led to P failing to pay plastic packaging tax.

9. Paragraph 2 sub-paragraph 3 applies to R where they are or have been involved in transporting, storing or otherwise dealing with a chargeable plastic packaging component, and R knows, or should know, that P had not paid the plastic packaging tax P was liable to on that

component.

10. Paragraph 2 sub-paragraph 4 gives the Commissioners the power by regulations to make provision about the factors they will consider when deciding whether to give a secondary liability notice to R, and issue directions about those factors.

11. Paragraph 2 sub-paragraph 5 allows the Commissioners to issue more than one secondary liability and assessment notice for a relevant time. Under this paragraph, the Commissioners may also give a secondary liability and assessment notice to R whether or not P has asked HMRC to review, or has appealed against, a decision that P is liable to pay an amount of the plastic packaging tax P has failed to pay.

Content of secondary liability and assessment notice

12. Paragraph 3 sub-paragraph 1 sets out the information that a secondary liability and assessment notice must contain. A secondary liability and assessment notice

must:

- State the amount of plastic packaging tax P has failed to pay;
- State the amount of plastic packaging tax that the Commissioners have assessed that R is liable to pay;
- State how and when R must pay;
- State how late payment interest will accrue;
- Explain why the Commissioners consider that a secondary liability notice is appropriate to R under paragraph 2(1); and
- Explain how the Commissioners assessed the amount R is liable to pay.

13. Paragraph 3 sub-paragraph 2 requires that the amount the Commissioners assess to R must be just and reasonable, taking into consideration the reasons that paragraph 2(2) or (3) applies to R.

14. Paragraph 3 sub-paragraph 3 requires the Commissioners to issue guidance setting out the matters they will consider when determining whether an amount is just and reasonable.

15. Paragraph 3 sub-paragraph 4 sets out that the time limit for R to pay an amount in a secondary liability notice must not be less than 30 days beginning with the day the notice is given to R.

16. Paragraph 3 sub-paragraph 5 sets out that an amount assessed and notified in a secondary liability notice to R is an amount of plastic packaging tax due from R, and is recoverable on that basis.

17. Paragraph 3 sub-paragraph 6 disapplies sub-paragraph (5) if, or to the extent that, an assessment has been withdrawn or reduced.

Copy of notice to be given to P

18. Paragraph 4 requires the Commissioners to give a copy of a

secondary liability and assessment notice to P at the same time as R.

Application to revoke or reduce amount

19. Paragraph 5 sub-paragraph 1 allows R to apply to the Commissioners to have a secondary liability and assessment notice revoked where R took all reasonable steps to establish that P had paid or intended to pay all the plastic packaging tax P was liable to at the relevant time, or to reduce the amount payable by R where it is not just and reasonable.

20. Paragraph 5 sub-paragraph 2 gives the Commissioners the power by regulations to make provision on the steps considered reasonable to apply for revoking a secondary liability and assessment notice and about applications for revocation or reducing the amount R is liable to pay.

21. Paragraph 5 sub-paragraph 3 states that the provision to make regulations under sub-paragraph (2) may include the information that must be supplied as part

of an application.

22. Paragraph 5 sub-paragraph 4 requires the Commissioners to notify R of their decision on an application under sub-paragraph (1) within 30 days, beginning with the day they receive the application.

23. Paragraph 5 sub-paragraph 5 sets out that the Commissioners must specify in their notification to R the new amount R is liable to pay and how and when they must pay where the amount R is required to pay is reduced as a result of an application.

24. Paragraph 5 sub-paragraph 6 sets out that the time limit for R to pay the new amount must not be less than 30 days beginning with the day R is notified.

25. Paragraph 5 sub-paragraph 7 requires the Commissioners to repay R any amount of plastic packaging tax paid in excess of the new amount.

Limitation on secondary liability

26. Paragraph 6 sub-paragraph 1 sets out that the time limit for issuing a secondary liability and assessment notice is two years beginning with the day after the last day of the accounting period for which P was liable to pay the amount or, if later, the day on which a court or tribunal finally determines that P is liable to pay the amount.

27. Paragraph 6 sub-paragraph 2 provides for an exception to the time limit at sub-paragraph (1) where R or P deliberately brought about the loss of tax. In these cases, references to two years in sub-paragraph (1) are substituted for 20 years.

Reduction of amount where P's liability is reduced

28. Paragraph 7 sub-paragraph 1 requires the Commissioners to consider whether an amount R is liable to pay should be reduced as a result of a reduction to the amount P is liable for in relation to the relevant time.

29. Paragraph 7 sub-paragraph 2 sets out

that where the Commissioners decide to reduce or cancel the amount R is liable to pay, they must tell R the new amount they are liable to (if any) and repay any amount R has paid above that new amount. The Commissioners must do this within 30 days beginning with the day on which the decision to reduce or cancel the amount was made.

30. Paragraph 7 sub-paragraph 3 provides for the new amount to be that which the Commissioners consider just and reasonable, taking into consideration the reasons that paragraph 2(2) or (3) applies to R.

31. Paragraph 7 sub-paragraph 4 requires the Commissioners to notify R that a secondary liability notice has been revoked and repay any amount R has paid, within 30 days after P's liability to pay in relation to the relevant time is cancelled.

No double payment

32. Paragraph 8 sub-paragraph 1 provides that R may not be liable to pay any amount in their secondary liability notice if P has already paid that amount.

33. Paragraph 8 sub-paragraph 2 provides that P may not be liable to pay any amount if R has already paid that amount in reference to their secondary liability notice.

Part 2 – Joint and several liability notices

Effect of joint and several liability notice

34. Paragraph 9 sets out that a joint and several liability notice makes a person ("R") jointly and severally liable for amounts of plastic packaging tax due from another person ("P") for any accounting period of P that fall within two years beginning with either the day on which the notice is given to R, or the day after any other joint and several liability notice affecting R ceases.

Test for giving joint and several liability notice

35. Paragraph 10 sub-paragraph 1 allows the Commissioners to give a joint and several liability notice to R if they consider they are acting in the course of a related business and sub-paragraph (2) or (3) applies to R. The definition of 'related business' is at paragraph 21.

36. Paragraph 10 sub-paragraph 2 applies where has been concerned in, or taken steps with a view to, P failing to pay plastic packaging tax, or R knows, or should know, that their actions would lead or have led to P failing to pay plastic packaging tax.

37. Paragraph 10 sub-paragraph 3 applies where R is involved in transporting, storing or otherwise dealing with a chargeable plastic packaging component that P has not and does not intend to pay tax on.

38. Paragraph 10 sub-paragraph 4 gives the Commissioners the power by regulations to make provision about the

factors they will consider when deciding whether to give a joint and several liability notice to R, and issue directions about those factors.

Content of joint and several liability notice

39. Paragraph 11 requires a joint and several liability notice to state that R is jointly and severally liable with P to pay plastic packaging tax that P is liable to pay for any accounting period of P that falls within the joint and several liability notice period (two years beginning with the date the notice was given). A joint and several liability notice must also state the reason the Commissioners consider giving a joint and several liability notice to R is appropriate.

Copy of notice to be given to P

40. Paragraph 12 requires the Commissioners to give a copy of a joint and several liability notice to P at the same time as R.

Revocation of a joint and several liability notice

41. Paragraph 13 sub-paragraph 1 sets out that, after being given a joint and several liability notice and for the period of the notice, R must notify the Commissioners if paragraph 10(2)(a), paragraph 10(3)(a) or both, do not apply to R, including if this is as a result of R ceasing to have dealings with P at any time during the period of two years mentioned in paragraph 9.

42. Paragraph 13 sub-paragraph 2 requires the Commissioners to notify R that a joint and several liability notice has been revoked if, following notification under sub-paragraph (1), they consider that paragraph 10(2)(a) or paragraph 10(3)(a) do not apply to R. This applies where R has notified the Commissioners under sub-paragraph (1) within 30 days beginning with the day R is given the joint and several liability notice (the "cancellation period"). The result of this revocation is that R is not liable to pay any

plastic packaging tax arising as a result of the joint and several liability notice.

43. Paragraph 13 sub-paragraph 3 sets out that following the end of the cancellation period in sub-paragraph (2), if R has not notified the Commissioners under sub-paragraph (1), R will be treated as knowing that their actions would lead to P failing to pay plastic packaging tax as in paragraph 10(2), or knowing that P has not paid, and does not intend to pay, plastic packaging tax as in paragraph 10(3).

44. Paragraph 13 sub-paragraph 4 sets out that the period of liability is two years where R does not notify the Commissioners under sub-paragraph (1) within the period of two years as in paragraph 9. It also sets out that, where R notifies the Commissioners under sub-paragraph (1) after the end of the cancellation period but before the end of the two-year period in paragraph 9, and

the Commissioners accept that paragraph 10(2)(a) or paragraph 10(3)(a) do not apply to R , the period of liability is either the cancellation period or, where the Commissioners consider that paragraph 10(2)(a) or paragraph 10(3)(a) applied to R after the cancellation period, the period from the day the joint and several liability notice was given to R to the day the Commissioners consider paragraph 10(2)(a) or paragraph 10(3)(a) to no longer apply to R.

45. Paragraph 13 sub-paragraph 5 requires the Commissioners to tell R and P of the result of a notification under sub-paragraph (1) within 30 days beginning with the day on which the Commissioners are notified.

46. Paragraph 14 sub-paragraph 1 allows P to apply to the Commissioners to revoke a joint and several liability notice issued to R on the grounds that paragraph 10(2) or (3) does not apply to R in relation to

anything done, or not done by, P, or any intention of P.

47. Paragraph 14 sub-paragraph 2 requires an application under sub-paragraph (1) to be made within 30 days, beginning with the day the Commissioners gave a copy of the notice to P.

48. Paragraph 14 sub-paragraph 3 sets out that the Commissioners must notify both R and P of the decision to an application under sub-paragraph (1) with 30 days, beginning with the day they received the application.

49. Paragraph 15 sub-paragraph 1 gives the Commissioners the power by regulations to make provisions relating to notifications for the purposes of paragraph 13(1) and applications for the purposes of paragraph 14(1).

50. Paragraph 15 sub-paragraph 2 states that the regulations under sub-paragraph (1) may include provision about the

information that must be supplied as part of a notification or application.

Assessments of liability

51. Paragraph 16 sub-paragraph 1 sets out that the Commissioners may assess that R is liable to pay an amount equal to or less than the amount of plastic packaging tax due from P, where an assessment is notified to P under paragraph 2(2) of Schedule 2.

52. Paragraph 16 sub-paragraph 2 sets out that where an assessment is made under sub-paragraph (1), the Commissioners must include in the notification to R: the amount assessed as due from P; the amount assessed as due from R; an explanation of how the amount due from R was assessed; the date R must make payment by; how payment must be made; and how late payment interest will accrue.

53. Paragraph 16 sub-paragraph 3 requires that the amount the Commissioners assess to be due from R

must be just and reasonable, taking into consideration the reasons that paragraph 10(2) or (3) applies to R and the requirement in paragraph 13(3) for R to be treated as knowingly involved in P's failure to pay tax.

54. Paragraph 16 sub-paragraph 4 requires the Commissioners to issue guidance setting out the matters they will consider when determining whether an amount is just and reasonable.

55. Paragraph 16 sub-paragraph 5 sets out the time limit for R to pay an amount assessed under sub-paragraph (2) must not be less than 30 days beginning with the day R is notified of the assessment.

56. Paragraph 16 sub-paragraph 6 allows the Commissioners to assess and notify R of a liability under this paragraph, even if R has made an application for a joint and several liability notice to be revoked under paragraph 13(1). If R's joint and several liability notice is later revoked, the

Commissioners must repay any amount that R has overpaid.

Adjustments

57. Paragraph 17 sub-paragraph 1 prescribes that, where an assessment to P is withdrawn or reduced, or their liability is otherwise adjusted, the Commissioners may cancel, reduce or otherwise adjust R's liability in a way they consider to be just and reasonable, taking into consideration the reasons that paragraph 10(2) or (3) applies to R.

58. Paragraph 17 sub-paragraph 2 sets out that where the Commissioners decide to reduce, cancel or otherwise adjust the amount R is liable to pay they must tell R the new amount they are liable to (if any) and to repay any amount R has paid above that new amount. The Commissioners must do this within 30 days beginning with the day on which the decision to reduce, cancel or otherwise adjust the amount was made.

Limitation on assessments

59. Paragraph 18 sets out that the time limit for issuing an assessment under paragraph 16(2), or an increase in an assessment under paragraph 4(2) of Schedule 2, is two years beginning with the day after the last day of the accounting period for which P was liable to pay the amount or, if later, the day on which a court or tribunal finally determines that P is liable to pay the amount.

No double payment

60. Paragraph 19 prevents R or P being liable to pay any amounts of plastic packaging tax that the other has already paid.

Part 3 – Application of Schedule 2

61. Paragraph 20 subparagraph 1 applies to Parts 1 and 2 of Schedule 2, with any necessary modifications, in relation to any amount which R is liable to pay as a result of a secondary liability and assessment

notice or a joint and several liability notice.

62. Paragraph 20 subparagraph 2 applies the provisions in paragraphs 4 to 6 of Schedule 2 in relation to paragraph 16(1) as they do for an assessment under paragraph 2(2) of Schedule 2, except that the calculations for relevant time in paragraph 6(2)(a) relate to the end of the period of 2 years, rather than 4 applies.

Part 4 – Interpretation

Interpretation: related businesses

63. Paragraph 21 defines a "related business", for the purposes of this Schedule, as one that is:

- involved in the production or importation of chargeable plastic packaging components by P, including in the transportation or storage of the components, or in the manufacture or supply of raw or processed materials used in, or in

the production of, the components;

- supplied, whether directly or indirectly, with chargeable plastic packaging components produced or imported by P; or
- involved in the marketing or sale of chargeable plastic packaging components by P as an operator of an online marketplace or fulfilment business.

This paragraph also explains that references to acting in the course of a related business include:

- regarding a business that is a corporate body, such as a company, being a director, manager, secretary, chief executive or member of the committee of management, or a person purporting to act in such a capacity; and
- regarding a business that is an unincorporated association, being

an officer of the association or a member if its governing body, or a person purporting to act in such a capacity.

Interpretation: general

64. Paragraph 22 sub-paragraph 1 states that for this Schedule:

- references to "R" and "P" take their meaning from paragraph 1 in relation to secondary liability notices, and paragraph 9 in relation to joint and several liability notices;
- references to P paying, failing to pay or being liable to pay an amount of plastic packaging tax are references to P paying, failing to pay or being liable to pay in accordance with provisions of or under this Part apart from this Schedule;
- references to an amount of plastic packaging tax which P is liable to

pay include references to an amount which P would have been liable to pay but for anything done, or not done, by R.

65. Paragraph 22 sub-paragraph 2 defines "fulfilment business", "online marketplace" and "operator" for the purposes of this Schedule. A "fulfilment business" is one that stores or packs goods that are owned by another person with a view to sale by that person. An "online marketplace" is a website, or any other means by which information is made available over the internet, which facilitates the sale of goods through the website or other means by persons other than the operator (whether or not the operator also sells goods through the marketplace). An "operator" is the person who controls access to and the contents of the online marketplace or the fulfilment business.

66. Paragraph 22 sub-paragraph 3

provides for the Commissioners by regulations to set out the specific circumstances that are or are not to be treated as sale through an online marketplace or a fulfilment business, and alter the definitions of "fulfilment business", "online marketplace" and "operator".

Background note

67. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

68. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand

for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 60: Measurement of weight etc

Summary

1. This clause provides for regulations to be made in relation to how the weight of a plastic packaging component is measured and assessed for the purpose of plastic packaging tax.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to make provision in respect of how weight is measured and assessed for the purposes of plastic packaging tax.
3. Subsection 2 explains that the regulations in subsection (1) may include provision for such things as;
    - How weight is to be measured, and in what time period;
    - The evidence requirements to support any measurements;

- For the Commissioners to reach agreements with specific people about the method, or type of evidence used, to measure or determine weight, and certain circumstances when the Commissioners can disregard these agreements;
- For the Commissioners to make their own assessments or best judgments of the weight of plastic packaging components, which may be based on estimates and assumptions, and that this assessment or judgment may be used in place of a previous assessment made by anyone else;
- For the Commissioners to weigh and inspect plastic packaging components or samples themselves and base their assessments on estimates or assumptions.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 61 and Schedule 10: Payment, collection, recovery

Summary

1. This clause and Schedule provide for regulations to be made for plastic packaging tax in relation to the payment, collection and recovery of the tax. The schedule makes provision relating to recovery, overpayments and set-off of amounts due or owing of plastic packaging tax or other taxes.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to set out the arrangements for payment, collection and recovery of plastic packaging tax.

3. Subsection 2 sets out that regulations made under subsection (1) may include provisions for determining the accounting period for payments, requirements for keeping accounts and making returns, the

timing and method of payment, requirements for the amounts payable by reference to tax periods to be determined by or under regulations, prescribes for payment, collection and recovery where an assessment notice has been issued for either secondary liability or joint and several liability and the correction of errors in accounting for the tax.

4. Subsection 3 gives more detail on what the regulations in respect of returns can cover, namely how and when returns should be made, what information returns should include, and the period to which each return should relate.

5. Subsection 4 introduces Schedule 10, which sets out provision for recovery, overpayments and set-off.

Details of the Schedule

6. Part 1 of Schedule 10 (paragraphs 1 - 6) deals with the recovery of plastic packaging tax.

7. Part 2 of Schedule 10 (paragraphs 7 – 14) deals with repayments of plastic packaging tax.

Part 1 – Recovery

Recovery as a debt due

8. Paragraph 1 provides for any debt due with regards to plastic packaging tax to be recoverable as a debt to the Crown, that is, a tax that is payable and liable for collection.

Assessments of amounts of plastic packaging tax due

9. Paragraph 2 sub-paragraph 1 sets out that sub-paragraph (2) applies where there has been a relevant default (as defined at sub-paragraph (3)) by a person for an accounting period where they were registered or liable to be registered, and an amount of plastic packaging tax by reference to that period has become due.

10. Paragraph 2 sub-paragraph 2 gives the Commissioners powers to make their best

assessment of the tax due if it cannot be ascertained, or to assess the amount due where it can be ascertained and requires them to tell the person liable of the amount owing.

11. Paragraph 2 sub-paragraph 3 defines "relevant defaults" as the failure to: comply with registration requirements and update changes to registration information, make returns, keep records, to make complete and accurate returns, maintain records to verify the tax, supply the Commissioners with complete or accurate information in compliance with any requirement in respect of this Part and to meet any of these requirements in a reasonable timeframe.

12. Paragraph 2 sub-paragraph 4 provides that where the default is by someone acting on behalf of another person (the representative) to make a return, reference to amounts of plastic packaging tax due under sub-paragraph (1) above includes amounts of plastic packaging tax due from

the person who is being represented.

13. Paragraph 3 sub-paragraph 1 sets out the situation where sub-paragraph (2) applies, that is, where a person has failed to make a return and the Commissioners have made an assessment for that accounting period which has been paid but no proper return has then being submitted, and the Commissioners make a further assessment in relation to the subsequent failure to make a return.

14. Paragraph 3 sub-paragraph 2 permits the Commissioners in the new assessment to include additional amounts they consider appropriate in the absence of a previous proper return. In effect, it allows the Commissioners in making the assessment not to be limited to the later period only.

Supplementary assessments

15. Paragraph 4 sub-paragraph 1 states that this provision applies where the Commissioners have made an assessment under paragraph 2 and now recognise that

a further amount of tax is due for that period.

16. Paragraph 4 sub-paragraph 2 permits the Commissioners to make a further assessment to the best of their judgment of the additional amount due in these circumstances and requires them to notify the person liable of this amount.

Further provision about assessments under paragraph 2 and 4

17. Paragraph 5 sets out that any amount assessed by the Commissioners under paragraph 2 or 4 can be recovered on the basis that it is plastic packaging tax that is due, unless the assessment has been reduced or withdrawn.

Time limits for assessments

18. Paragraph 6 sub-paragraph 1 states that an assessment under either paragraph 2 or 4 cannot be made after the end of a relevant period of time.

19. Paragraph 6 sub-paragraph 2 defines the

relevant period as 4 years from the end of the accounting period to which the assessment relates, unless sub-paragraph (3) applies. Or 1 year from the day the Commissioners found the evidence to justify an assessment being made, whichever is earlier.

20. Paragraph 6 sub-paragraph 3 sets out an exception to the 4-year relevant period. This is where a case involves loss of plastic packaging tax caused deliberately by a person, or the loss is due to a failure to comply with regulations as detailed under Clause 55 (liability to register) or under Clause 58 (registration and keeping held information up to date). In these cases, the relevant period is 20 years from the end of the accounting period to which the assessment relates.

21. Paragraph 6 sub-paragraph 4 explains that the loss brought about by a person in sub-paragraph (2) and (3) can also be by another person acting on behalf of that person.

Part 2 – Repayments

Repayments of overpaid tax

22. Paragraph 7 sub-paragraph 1 states that this paragraph applies to people who have paid plastic packaging tax to the Commissioners where it was not due.

23. Paragraph 7 sub-paragraph 2 requires the Commissioners to repay amounts overpaid where they are claimed by the person who made the payment in sub-paragraph (1) above.

24. Paragraph 7 sub-paragraph 3 provides for the Commissioners the power by regulations to set out how claims for repayments are to be made and the information required to support such claims.

25. Paragraph 7 sub-paragraph 4 provides that with exception of the provisions set out in this paragraph, the Commissioners are not liable to repay any plastic packaging tax that was not due.

26. Paragraph 7 sub-paragraph 5 states this paragraph is subject to paragraph 8.

Supplementary provisions about repayment etc.

27. Paragraph 8 sub-paragraph 1 sets out that the Commissioners are not liable to repay any repayment claims if the claim is made more than 4 years after the plastic packaging tax was paid or the person was entitled to a tax credit in relation to that amount.

28. Paragraph 8 sub-paragraph 2 allows claims for repayment to be defended if the money repaid will unjustly enrich the claimant. For example, if the tax wrongly paid was passed on to a subsequent customer as part of the cost of the product and the overpayment would likely not be refunded to this customer, the original taxpayer would be unjustly enriched by the refund.

29. Paragraph 9 sub-paragraph 1 sets out that the conditions in this paragraph apply where a repayment would be due to

someone (apart from the defence of unjust enrichment) and where some or all of the cost of the original payment of plastic packaging tax has in fact been borne by a different person.

30. Paragraph 9 sub-paragraphs 2 - 3 state that in assessing whether, and to what extent, any repayment would unjustly enrich the taxable person, any loss or damage to that person resulting from mistaken assumptions about any provisions relating to plastic packaging tax should be disregarded in arriving at appropriate repayment to that person, unless the taxable person can show it is appropriate compensation for such loss and damage.

31. Paragraph 9 sub paragraph 4 explains the reference to "provisions relating to plastic packaging tax" in sub-paragraph (2) as any legislation relating to the plastic packaging tax or any matter connected with it, or any related notice published by the Commissioners under such legislation.

Reimbursement arrangements

32. Paragraph 10 sub-paragraph 1 provides for the Commissioners the power to provide by regulations that reimbursement arrangements can be disregarded when considering unjust enrichment, unless those reimbursement arrangements comply with provisions required by regulations and are supported by undertakings to comply with the arrangements set out in regulations.

33. Paragraph 10 sub-paragraph 2 sets out what "reimbursement arrangements" means with regards to this paragraph, namely that they are arrangements to make reimbursement by a person claiming a repayment of plastic packaging tax, to another person who has for practical purposes borne the whole or part of cost of the tax, in order for the person claiming repayment to secure that they have not been unjustly enriched of any amount.

34. Paragraph 10 sub-paragraph 3 provides for regulations under this paragraph in

relation to reimbursement arrangements for plastic packaging tax. These may include requiring reimbursement to be made within a time limit after repayment, repayment to the Commissioners of amounts which have not been reimbursed, interest payments, records to substantiate payments, and imposing obligations on certain persons for the purposes of provisions made above.

35. Paragraph 10 sub-paragraph 4 provides that regulations under this paragraph may make provision in relation to how the administration of undertakings given to the Commissioners under the regulations will be made, the timing of these undertakings, and for those matters to be determined by the Commissioners according to the regulations.

Assessment for excessive repayment

36. Paragraph 11 sub-paragraph 1 prescribes that sub-paragraph (3) applies when the Commissioners have made a repayment of plastic packaging tax in excess of the

amount that should have been repaid.

37. Paragraph 11 sub-paragraph 2 prescribes that sub-paragraph (3) also applies when a person has liability to pay any amount to the Commissioners under requirements in paragraph 10 relating to reimbursement arrangements.

38. Paragraph 11 sub-paragraph 3 sets out that the Commissioners may use their best judgment to make an assessment to calculate the excess or the amount owing according to sub-paragraphs (1) and (2) and the amount must be notified to the person.

39. Paragraph 11 sub-paragraph 4 provides for combining an assessment for excess repayment under these provisions with an assessment for plastic packaging tax payable under Part 1 of the Schedule into a single assessment.

40. Paragraph 11 sub-paragraph 5 sets out that a combined assessment under sub-paragraph (4) must separately identify the different elements of the assessment.

Supplementary assessments

41. Paragraph 12 sub-paragraph 1 describes the circumstance where the Commissioners have notified a person of an assessment under paragraph 11, and it then appears to the Commissioners that the amount which ought to be due is more than that originally assessed.

42. Paragraph 12 sub-paragraph 2 provides for the Commissioners to make a supplementary assessment within the time that the assessment under paragraph 11 could have been issued and notify this amount to the person.

Further provisions about assessments under paragraphs 11 and 12

43. Paragraph 13 sub-paragraph 1 sets out that amounts notified under paragraphs 11 and 12 are recoverable as an amount of plastic packaging tax due.

44. Paragraph 13 sub-paragraph 2 prescribes that sub-paragraph (1) does not apply if the

assessment has been withdrawn or reduced.

Time limits for assessments

45. Paragraph 14 sets out that assessments under paragraph 11 and 12 cannot be made more than 2 years after the Commissioners held sufficient evidence to make that assessment.

Background note

46. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

47. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for

recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 62 and Schedule 11: Reviews and appeals

Summary

1. This clause and schedule provide for reviews and appeals in respect of plastic packaging tax.

Details of the clause

2. Clause 62 introduces Schedule 11 which sets out the provisions for reviews and appeals in respect of plastic packaging tax.

Detail of the Schedule

3. Part 1 of Schedule 11 (paragraphs 1 - 2) deals with appealable decisions in respect of plastic packaging tax.
4. Part 2 of Schedule 11 (paragraphs 3 – 9) deals with reviews of decisions in respect of plastic packaging tax.
5. Part 3 of Schedule 11 (paragraphs 10 – 13) deals with appeals in respect of plastic packaging tax.

Part 1 – Appealable Decisions etc

Appealable decisions etc

6. Paragraph 1 sub-paragraph 1 sets out what decisions made by the Commissioners, or an officer of HMRC, can be appealed against in respect of plastic packaging tax. This includes: liability, the amount payable, registration and cancellation of registration, the issuing of a joint and several liability notice, refusal to revoke a joint and several liability and assessment notice and the date of revocation, tax credits, security requirements, repayments and recovery of amounts repaid incorrectly, penalties, and accounting periods.

7. Paragraph 1 sub-paragraph 2 sets out what determinations and directions made by the Commissioners, or an officer of HMRC, may be appealed against. This includes: determination that something is a plastic packaging component and/or is

chargeable, directions relating to carrying on a business after death, incapacity or insolvency and transfer of a business as a going concern. It also includes directions on the records and information a business needs to keep, determinations and directions in relation to appointment of tax representatives, directions relating to secondary liability and joint and several liability notices, prevention of artificial separation of business activities and applications or terminations relating to group treatment.

8. Paragraph 2 clarifies that references to a decision in Parts 2 and 3 include determinations and directions.

Part 2 – Reviews

Offer of review

9. Paragraph 3 sub-paragraph 1 sets out that HMRC must offer a person a review of an appealable decision notified to them in respect of plastic packaging tax.

10. Paragraph 3 sub-paragraph 2 requires that the offer of review must be made at the same time the person is notified of the decision.

11. Paragraph 3 sub-paragraph 3 explains that paragraph 3 does not apply to the notification of the review's conclusions.

Right to require review

12. Paragraph 4 sub-paragraph 1 provides that any person with the right of appeal against a decision (apart from the person to whom the decision was notified) can seek a review providing that no appeal to the tribunal has already been made.

13. Paragraph 4 sub-paragraph 2 states that the person must request such a review within 30 days of becoming aware of the decision.

Review by HMRC

14. Paragraph 5 sub-paragraph 1 requires HMRC to review a decision if the offer of a review is accepted within 30 days of the

date on the notification of the decision.

15. Paragraph 5 sub-paragraph 2 provides that an offer of review cannot be accepted if an appeal to the tribunal has already been made.

16. Paragraph 5 sub-paragraph 3 requires that HMRC must review a decision if requested to do so by someone other than the person to whom the decision was made as per paragraph 4.

17. Paragraph 5 sub-paragraph 4 explains that no review is possible if an appeal to the tribunal has already been made against the decision by anyone entitled to do so.

Extensions of time for review

18. Paragraph 6 sub-paragraphs 1 and 2 permit HMRC to notify an extension to the time period to seek a review of a decision within the relevant period for doing so, if the person has been offered a review under paragraph 3 of this Schedule or

another person may require HMRC to review the matter under paragraph 4 of this Schedule.

19. Paragraph 6 sub-paragraph 3 provides for any such extension to be 30 days from the date of the notice of the extension, or 30 days from a date set out in that notice or a further notice issued later.

20. Paragraph 6 sub-paragraph 4 defines the "relevant period" to be the initial 30 days from the date of the decision in paragraphs 4(2) or 5(1)(b) of this Schedule, or a period extended by issue of a notice under this Schedule.

Review out of time

21. Paragraph 7 sub-paragraph 1 sets out that the provisions in this paragraph apply where a review has not been accepted or requested in the initial or extended (where relevant) time allowed to do so.

22. Paragraph 7 sub-paragraph 2 requires HMRC to carry out a review if they accept

that there was a reasonable excuse for not accepting the offer or requesting the review within the time limit, and the request is made in writing, as soon as reasonably possible after that time.

23. Paragraph 7 sub-paragraph 3 provides that no review is possible under this paragraph if an appeal to the tribunal has already been made.

Nature of review etc.

24. Paragraph 8 sub-paragraph 1 explains that this paragraph applies where HMRC are required to carry out a review or a review out of time.

25. Paragraph 8 sub-paragraph 2 sets out how the decision is reviewed and what is reviewed are to be determined as appropriate by HMRC according to the circumstances of the case.

26. Paragraph 8 sub-paragraph 3 provides that the scope and manner of the review should take note of how the decision was

made by HMRC and any action taken by any person to try to resolve the disagreement.

27. Paragraph 8 sub-paragraph 4 states that the review should consider any representations by the person seeking the review when they are submitted in a reasonable time to enable consideration by HMRC.

28. Paragraph 8 sub-paragraph 5 sets out that a review must reach one of three conclusions about the decision in question: upheld, varied or cancelled.

29. Paragraph 8 sub-paragraph 6 explains that HMRC must tell the person requesting the review the outcome within 45 days of the relevant date specified in sub-paragraph (7) below or within a longer period by agreement.

30. Paragraph 8 sub-paragraph 7 sets out that the starting date for the period in sub-paragraph (6) is the date that HMRC received notification accepting the offer of

or requiring a review, and in the case of out of time reviews, the date when HMRC agreed to carry out the review.

31. Paragraph 8 sub-paragraph 8 sets out that where HMRC does not provide a notice of the conclusion in the required period, the review will be treated as concluded with the decision upheld.

32. Paragraph 8 sub-paragraph 9 states that if sub-paragraph (8) applies, HMRC must notify the person or other person that the conclusion of the review has been treated as being reached.

Part 3 – Appeals

"Appeal tribunal"

33. Paragraph 9 defines that "appeal tribunal" in this Schedule means the First-tier Tribunal, or where determined by or under Tribunal Procedures, the Upper

Tribunal.

Bringing of appeals

34. Paragraph 10 sub-paragraph 1 sets out that an appeal to the tribunal must be made within 30 days from the date on which the appellant is notified of the decision or becomes aware of the decision (if the appellant is not the person to whom the decision relates), or by the end of the relevant period defined under paragraph 6.

35. Paragraph 10 sub-paragraph 2 states that the time limits for appeals in sub-paragraph (1) is subject to sub-paragraphs (3) – (5).

36. Paragraph 10 sub-paragraph 3 sets out that if a review is to be undertaken under paragraph 5, an appeal to the tribunal cannot be made until a conclusion to the review has been reached, and the appeal must be made within 30 days of the conclusion date

37. Paragraph 10 sub-paragraph 4 covers the situation where an out of time review is requested under paragraph 7. In this case, an appeal must be made within 30 days of the review concluding if the Commissioners have notified the appellant that it will be carried out. If the request for a review is rejected, an appeal can only be made if the tribunal allows it.

38. Paragraph 10 sub-paragraph 5 states that if the decision is treated as upheld due to HMRC not providing a notice of the conclusion in the required period, then an appeal must be made within 30 days of the end of the conclusion date allowed for the review.

39. Paragraph 10 sub-paragraph 6 states an appeal can be made later than the time specified in this Schedule with the agreement of the appeal tribunal.

40. Paragraph 10 sub-paragraph 7 defines "conclusion date" for this paragraph as the date of the document advising the

outcome of the review, which then becomes the start date for the time allowed for an appeal.

Further provisions about appeals

41. Paragraph 11 sub-paragraph 1 makes the requirement that an appeal to the tribunal about the amount is to be considered only once the amount in question has been paid or deposited with HMRC.

42. Paragraph 11 sub-paragraph 2 states that if the amount has not been paid, an appeal can be considered if HMRC or the appeal tribunal accept an application from the appellant that the requirement to do so would cause them to suffer hardship.

43. Paragraph 11 sub-paragraph 3 states that despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 providing for appeals to the upper tier tribunals and the courts, there can be no further appeal on the appeal tribunal's decision on issue of

hardship.

Determinations on appeal

44. Paragraph 12 sub-paragraph 1 provides for the situation where an appeal tribunal finds that additional plastic packaging tax is payable and directs an amount to be paid. In this case, the effect is as if the correct amount was originally assessed as due.

45. Paragraph 12 sub-paragraph 2 allows an appeal tribunal which finds that a decision could not have reasonably been made by the Commissioners that the decision no longer has effect from a date directed, or to direct the Commissioners to review the decision.

46. Paragraph 12 sub-paragraph 3 sets out that if the appeal tribunal find that a penalty or an interest amount arises, the tribunal must not modify such amounts except in exercising a power under Clause 80(6) (penalties) or to make the amount payable confirm to the liability set out by

this Part.

47. Paragraph 12 sub-paragraph 4 extends value added tax provisions for the settlement of appeals by including references to appealable decisions under paragraph 1 of this Schedule and including plastic packaging tax where value added tax is referenced.

Background note

48. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

49. The tax will encourage the use of recycled plastic instead of new plastic

within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 63: Records

Summary

1. This clause provides for regulations to be made for plastic packaging tax in relation to record keeping requirements.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to require people to keep specified records and to preserve records for specified periods.
3. Subsection 2 allows the records, or the information contained in them, to be preserved in any way subject to any conditions or exceptions provided by regulations.
4. Subsection 3 requires that the period specified in regulations under subsection (1) may not exceed 6 years beginning with the end of the accounting period the records relate to.

5. Subsection 4 empowers the Commissioners to direct a person who is, or is liable to be, registered for the tax or to a person whom a secondary liability and assessment notice or a joint and several liability notice has be served to keep specified records or to preserve records for a specified period.
6. Subsection 5 limits the use of subsection (4) to cases where the Commissioners have reasonable grounds to believe that the records relate to chargeable plastic packaging components upon which plastic packaging tax may not have been paid.
7. Subsection 6 sets out that directions under this clause should be in writing, setting out the consequences of non-compliance with the requirements, and can be revoked or amended by a subsequent direction.
8. Subsection 7 sets the maximum period for which records are required to be kept by a direction under subsection (4)(b) as 6 years.

Background note

9. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is set at £200 per tonne of plastic packaging components in a chargeable line and there will be a limited number of exemptions.

10. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 64 and Schedule 12: Information and evidence

Summary

1. This clause and schedule set out provisions for the collection and sharing of information and the use of evidence in proceedings in respect of plastic packaging tax.

Details of the clause

2. Clause 64 introduces Schedule 12 which provides for the collection and sharing of information, as well as evidence requirements, in respect of plastic packaging tax.

Details of the Schedule

Part 1 – Information

Power to take samples

3. Paragraph 1 sub-paragraph 1 provides for

samples to be taken from a product by an authorised person to establish its treatment in respect of plastic packaging tax.

4. Paragraph 1 sub-paragraph 2 sets out the circumstances when samples can be taken by an authorised person. These are for cases where there is reasonable cause to believe the product is a chargeable plastic packaging component, and the sampling is considered by the Commissioners to be necessary for the protection of the revenue against mistake or fraud.

5. Paragraph 1 sub-paragraph 3 provides for the Commissioners to direct how the sample must be disposed of.

6. Paragraph 1 sub-paragraph 4 defines an "authorised person" in this paragraph as someone the Commissioners give authority to carry out the sampling process.

Disclosure of information

7. Paragraph 2 sub-paragraph 1 provides for the disclosure of information that is collected and or held by the Commissioners in respect of plastic packaging tax to the public bodies listed, or to an authorised officer of those listed.

8. Paragraph 2 sub-paragraph 2 allows for the disclosure of information with the organisations listed in sub-paragraph (1) only for the purpose of assisting them in the performance of their duties.

9. Paragraph 2 sub-paragraph 3 provides for the organisations listed in sub-paragraph (1) to disclose information to the Commissioners, or their authorised officer, to enable the Commissioners to carry out their duties in respect of plastic packaging tax.

10. Paragraph 2 sub-paragraph 4 prohibits any charge being raised for the disclosure of information between the organisations listed in sub-paragraph (1) and the Commissioners.

11. Paragraph 2 sub-paragraph 5 states that no information can be disclosed under these provisions that goes against data protection legislation.

12. Paragraph 2 sub-paragraph 6 explains that "data protection legislation" in this paragraph has the same meaning as in section 3 of the Data Protection Act 2018.

13. Paragraph 2 sub-paragraph 7 states that reference to an authorised officer means any person given authority to disclose or receive information under these provisions by the organisation.

Part 2 – Evidence

Evidence by certificate

14. Paragraph 3 provides that a certificate from the Commissioners in respect of whether someone was or was not registered for plastic packaging tax, or that a return had not been made at any time, is sufficient evidence to prove those matters in court. A copy certified by the

Commissioners of any document may be admissible in any proceedings to the same extent as the document itself. A document purporting to be a certificate from the Commissioners will be accepted as such unless shown otherwise.

Inducements to provide information

15. Paragraph 4 sub-paragraph 1 sets out this paragraph will apply in criminal proceedings relating to plastic packaging tax or all civil and criminal proceedings relating to the recovery of an amount due in respect of plastic packaging tax.

16. Paragraph 4 sub-paragraphs 2-4 provide that statements and documents will not be considered inadmissible in these proceedings where a person has been, or may have been, induced to produce a document or make a statement by virtue of the Commissioners drawing attention to: their power to impose a civil penalty rather than initiate criminal proceedings, to take into account any co-

operation a person has given in an investigation, or their power (or on appeal, an appeal tribunal having power) to reduce a penalty.

Background note

17. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

18. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 65: Security for tax

Summary

1. This clause provides for regulations to be made requiring security for payment of plastic packaging tax where necessary to protect the revenue.

Details of the clause

2. Subsection 1 gives the Commissioners the power to use regulations to set out when and how a person liable to be registered for plastic packaging tax may be required to provide security against their current or future liability.

3. Subsection 2 specifies that the Commissioners may only use the provision in subsection (1) for the protection of the revenue.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget

2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 66: Unincorporated bodies

Summary

1. This clause makes provision for determining who is responsible for fulfilling the obligations of unincorporated bodies in respect of plastic packaging tax.

Details of the clause

2. This clause allows the Commissioners to make provision by regulations relating to a business carried on by a partnership or another unincorporated body, specifying which person is to do anything required to be done by a person by or under this Part.

Background note

3. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged

at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

4. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 67: Service

Summary

1. This clause provides for anything required to be given to a person by or under a provision within this Part to be given to that person or their representative by post to that person's last known address.

Details of the clause

2. Subsection 1 provides for anything required to be given to a person by or under a provision within this Part to be given to that person or their representative by post to that person's last known address.
3. Subsection 2 provides that anything given to a person's representative is treated as having been given to that person.
4. Subsection 3 sets out that a "representative" means: any personal representatives; any person holding office as a receiver in relation to a person or any

of that person's property; a person's trustee in bankruptcy or liquidator; a trustee, or interim trustee, in a sequestration of a person's estate under the Bankruptcy (Scotland) Act 2016; any other person acting in a representative capacity for a person, including those acting under clause 69.

Background note

5. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

6. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for

recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 68: Statements for business customers

Summary

1. This clause sets out requirements relating to the inclusion of a "PPT statement" on certain invoices.

Details of the clause

2. Subsection 1 requires suppliers of plastic packaging components upon which a charge to plastic packaging tax has arisen to include a statement of the amount of plastic packaging tax associated with those components on invoices issued to business customers. This is known as a "PPT statement".
3. Subsection 2 sets out that supply to a business customer as referred to in subsection (1) includes goods contained inside the packaging component.
4. Subsection 3 gives the Commissioners the power by regulations to specify the

information the PPT statement must contain.

5. Subsection 4 defines a "business customer" referenced in subsection (1) as a person who is supplied with a plastic packaging component in the course of carrying out "a business" as defined in Clause 43(2).

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for

recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 69: Tax representatives of non-resident taxpayers

Summary

1. This clause provides for regulations to be made for plastic packaging tax in relation to requiring non-resident taxpayers to appoint a tax representative resident in the UK and sets out the role and responsibilities of such a representative.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations to require every non-resident taxpayer to appoint a UK resident tax representative for the purposes of plastic packaging tax.
3. Subsection 2 sets out a range of administrative matters the Commissioners may by regulation require in respect of tax representatives, including provisions on the notification of being a non-resident taxpayer, notification of appointment of a

tax representative, approval of tax representatives being required before the appointment takes effect, direction for a tax representative to be replaced, circumstances when a tax representative ceases to act for a taxpayer and withdrawal of approval to act as a tax representative, use of agents by tax representatives, and the procedures and time limits for all these matters.

4. Subsection 3 sets out that a tax representative may act on behalf of a taxpayer for all matters in respect of plastic packaging tax and places a duty on them to ensure compliance with the requirements of the tax by the taxpayer (including any obligations which arose before they were appointed). Exceptions to this duty of tax representatives may be specified in regulations.

5. Subsection 4 sets out that a person who is or has been a tax representative is personally jointly and severally liable for

failures of the non-resident taxpayer to meet any plastic packaging tax obligations and liabilities, and for any actions they take while acting as their tax representative.

6. Subsection 5 sets out that tax representatives are not themselves required to register for plastic packaging tax, but that the Commissioners may by regulations require that tax representatives be named against the registration of the non-resident taxpayers they represent, and for tax representatives to be removed from this record when they stop acting as such.

7. Subsection 6 clarifies that a tax representative is not guilty of an offence by virtue of this clause, unless they consented to, or connived in, the offence, or it was attributable to any neglect on their part, or they failed to meet an obligation which falls on them and the non-resident taxpayer they represent.

8. Subsection 7 defines "non-resident taxpayer" as a person who is liable to be registered for plastic packaging tax and is not resident in the UK.

9. Subsection 8 explains that a person is resident in the UK for the purposes of subsection (7) if they have a place of business in the UK, they reside in the UK or is part of a business or unincorporated body where at least one member resides in the UK.

Background note

10. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

11. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 70: Adjustment of contracts

Summary

1. This clause provides for the adjustment of existing contracts in respect of plastic packaging tax.

Detail of the clause

2. Subsections 1 - 2 provide that payments under contracts for the supply of chargeable plastic packaging components, which are agreed before either plastic packaging tax becomes chargeable on a component, or a change in the amount of plastic packaging tax chargeable on the components, may be adjusted by the supplier to take account of the new value of the tax, unless the terms of the contract explicitly prohibit such an adjustment.

3. Subsections 3 - 4 cover the scenario where a tax paid chargeable packaging component is supplied to a buyer under a contract. The buyer then converts the

component, or becomes aware that the component is converted, into a different chargeable component. The contract may then be adjusted to require the buyer of the component to supply information about the subsequent conversion to the seller, unless the terms of the contract explicitly prohibit such an adjustment. This information is required by the seller to make a claim for a tax credit as a result of the subsequent conversion of the component.

4. Subsection 5 states for the purposes of the provisions of this clause it is irrelevant when the contract was made, or if the contract also provides for other matters.

Background note

5. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30%

recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

6. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 71 and Schedule 13: Groups of companies

Summary

1. This clause and Schedule set out when and how two or more corporate bodies are to be treated as a group in respect of plastic packaging tax.

Details of the clause

2. Subsection 1 sets out that subsection (2) applies where corporate bodies are liable to plastic packaging tax, or an amount recoverable as an amount of plastic packaging tax, as a producer or importer of plastic packaging components, or by virtue of a secondary liability and assessment notice or a joint and several liability notice when they are a member of a group.
3. Subsection 2 provides for amounts incurred by a member of a group to be treated as charged to the representative

member of the group.

4. Subsection 3 provides that while the amounts incurred by a group member are charged to the representative members, all corporate bodies in the group at the time, or who join the group while the amount is unpaid, are joint and severally liable for the amount in the event of non-payment.

5. Subsection 4 sets out that Schedule 13 provides for when a corporate body is treated as a member of a group and the identity of the representative member.

6. Subsection 5 introduces Schedule 13 and provides for two or more corporate bodies to be treated as a group in respect of plastic packaging tax.

Detail of the Schedule

Bodies eligible for group treatment

7. Paragraph 1 sub-paragraph 1 provides that where two or more corporate bodies, at least one of which has an established

presence in the UK, are under the same control (defined below), they are eligible to be treated as members of the same group for the purposes of plastic packaging tax.

8. Paragraph 1 sub-paragraph 2 explains that to be the representative member of a group, the corporate body must be resident, or have a permanent establishment, in the UK.

9. Paragraph 1 sub-paragraph 3 sets out that a corporate body may only be a member of one group at any given time.

10. Paragraph 2 sets out the conditions for bodies being 'under the same control' for the purpose of paragraph 1. This includes control (as defined in this paragraph) of the corporate bodies by an individual, a partnership or another corporate body.

Application for group treatment

11. Paragraph 3 sub-paragraph 1 provides that an application for group status under

plastic packaging tax may be made by the eligible corporate bodies to the Commissioners setting out when the arrangement is to begin (the "specified time").

12. Paragraph 3 sub-paragraph 2 requires that such an application for group status must state which corporate body is to be the representative member (the corporate body that will pay plastic packaging tax on behalf of the other member(s) of the group).

13. Paragraph 3 sub-paragraph 3 defines the "specified time" as the beginning of the accounting period specified in the application for group status. This cannot be an accounting period prior to the accounting period in which the application is made.

14. Paragraph 4 sub-paragraph 1 sets out that the Commissioners can only refuse an application for group status if a body is not eligible to join the group, the

nominated representative member is not eligible to be the representative member, or it is necessary for the protection of revenue.

15. Paragraph 4 sub-paragraph 2 provides that an application cannot be declined for revenue protection reasons after 90 days of the date it is received by the Commissioners.

Applications to modify group treatment

16. Paragraph 5 sub-paragraph 1 sets out the types of changes that can be sought by the representative member, to have effect from the "specified time" stated in the application to modify. Namely, they may apply to add an eligible member to the group, change the identity of the representative member, remove a member from the group, or end the group arrangement.

17. Paragraph 5 sub-paragraph 2 defines the "specified time" as the beginning of the accounting period specified in the

application to modify group treatment. This cannot be an accounting period prior to the accounting period in which the application is made.

18. Paragraph 6 sub-paragraph 1 sets out that the Commissioners can only refuse an application to add an eligible member to the group, or to change the representative member, if it is necessary for the protection of the revenue.

19. Paragraph 6 sub-paragraph 2 sets out that the Commissioners can only refuse an application to remove a member from a group, or end a group arrangement altogether, if a member is not already being removed from a group by the Commissioners as set out in paragraph 8 of this Schedule, and the refusal is necessary for the protection of the revenue.

Applications relating to group treatment

20. Paragraph 7 provides that applications regarding group treatment of

companies under this Schedule can only be made by one of the corporate bodies concerned or by the person controlling them.

Termination of group treatment by the Commissioners

21. Paragraph 8 provides that the Commissioners may give notice to the group that a member will be removed from the group from the time specified in the notice if they appear not to be eligible to be a member, or it is necessary to protect revenue.

22. Paragraph 9 requires that if the representative member is being removed either by application from the group or by the Commissioners, where at least two corporate bodies remain and the application does not specify who the representative member should be, the Commissioners must by notice appoint one of the remaining members as the representative member.

23. Paragraph 10 sub-paragraph 1 sets out that a corporate body can be removed from a group if it is not eligible to be a member from a date before the date of the notice, but no earlier than when the corporate body lost its eligible status.

24. Paragraph 10 sub-paragraph 2 requires that the effective time for the removal of a corporate body from a group by the Commissioners for revenue protection reasons must not be before the date the notice is issued to the representative member.

25. Paragraph 10 sub-paragraph 3 permits the appointment of a new representative member under paragraph 9 to be from a date before the notice is given.

Notifications relating to group treatment

26. Paragraph 11 sub-paragraph 1 requires a group member that is no longer eligible to belong to the group to notify the Commissioners.

27. Paragraph 11 sub-paragraph 2 requires the representative member of a group to give advance notice to the Commissioners if they will no longer have an established place of business in the UK.

Regulations about applications and notifications

28. Paragraph 12 sub-paragraph 1 gives the Commissioners the power by regulations to make provision in respect of when applications under this Schedule should be made (including extending time limits), in what form they should be made and what information needs to be supplied as part of the application.

29. Paragraph 12 sub-paragraph 2 gives the Commissioners the power by regulations to make provision requiring applicants to inform the Commissioners if any information supplied is incorrect or changes.

30. Paragraph 12 sub-paragraph 3 extends the regulation making powers in sub-paragraph (1) to also cover the form,

timing and content of notifications required to be given by the Commissioners.

Background note

31. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

32. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 72: Prevention of artificial separation of business activities: directions

Summary

1. Clause 72 and the following clause 73 introduce measures to prevent the avoidance of plastic packaging tax by artificially separating business activities.

Details of the clause

2. Subsection 1 sets out the intention of Clauses 72 and 73 to prevent any artificial separation of business activities carried out by two or more persons in order to avoid plastic packaging tax.

3. Subsection 2 sets out the conditions which the Commissioners must be satisfied have all been fulfilled to make a direction regarding artificial separation of business activities. These are that a person is, or has been, manufacturing or importing chargeable plastic packaging components;

those activities by that person form part of the activities of one or more other persons; the division of activities is artificial having regard to whether the persons concerned are connected (considered by reference to the definition in section 1122 of the Corporation Tax Act 2010); and if all these activities were considered as being carried out by a single person, that person would be liable to register for plastic packaging tax under Clause 55.

4. Subsection 3 specifies that subsection (4) applies where the Commissioners identify that an additional person should be added to a direction which has already been made.

5. Subsection 4 provides for a supplementary direction to be issued in the case described in subsection (3), adding the newly identified person to the earlier direction from the date relevant activities commenced, or the date from which the original direction required registration for

plastic packaging tax, if this is later.

6. Subsection 5 sets out that if someone named in a direction or supplementary direction is already registered for the tax, that earlier liability to be registered ceases. This is effective from the date the single taxable person (set out in clause 73) named in the direction became liable to be registered, or the date of the direction itself, whichever is later.

7. Subsection 6 prescribes that a direction issued under this clause must be given to each person named in it.

Background note

8. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging

components of a single specification, and there will be a limited number of exemptions.

9. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 73: Prevention of artificial separation of business activities: effect of directions

Summary

1. This clause provides for the effects of directions issued under Clause 72 to prevent artificial separation of business activities for the purposes of avoiding plastic packaging tax.

Details of the clause

2. Subsection 1 sets out that where a direction is made under Clause 72:

    - The persons named in the direction are to be treated as if they were a single person who is liable to be registered for plastic packaging tax from the date of the direction, or a later date if specified;
    - The taxable person is to be registered under a name specified by those named in the direction

within 14 days of the date of the direction or otherwise in a name set out in the direction;

- All activities relating to chargeable plastic packaging components of everyone named in the direction are to be treated as those of the taxable person for plastic packaging tax purposes;
- All those named in the direction are joint and severally liable for payment of, and compliance with, the tax;
- The members named within the direction are to be treated as a partnership carrying on the business of a taxable person from the date specified in the direction or the date of the direction.

3. Subsection 2 applies subsection (3) where it appears to the Commissioners that a constituent member should no longer be regarded as joint and severally liable for

payment of, and compliance with, the tax, and the Commissioners give notice of this.

4. Subsection 3 sets out that the constituent member in subsection (2) is not jointly and severally liable for payment of, and compliance with, plastic packaging tax, and ceases to be part of the partnership under subsection (1)(e) and (f) from the specified date in the notice.

5. Subsection 4 defines "constituent members" as those named in the direction and any supplementary directions, who are together to be treated as the taxable person.

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of

chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 74: Death, incapacity or insolvency of person carrying on a business: regulations

Summary

1. This clause provides for regulations to be made for plastic packaging tax in relation to cases where a person carrying on a business dies, becomes incapacitated or becomes subject to an insolvency procedure.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulation to make provisions in respect of cases where a person carries on a business formerly undertaken by a person who has died, has become incapacitated or is subject to an insolvency procedure.
3. Subsection 2 prescribes the types of provisions for the purposes of plastic packaging tax that may be made by, or

under, regulations relating to this clause. These may include requiring the person who has taken over a business to notify the Commissioners of this, including the reason for taking over the business. For a limited time, the person taking over the business may be treated as being the same person from whom they have taken it over (for the purposes of plastic packaging tax). Regulations may also include anything else the Commissioners see fit to ensure continuity in application of the tax.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 75: Transfer of business as a going concern: regulations

Summary

1. This clause provides for regulations to be made for plastic packaging tax in relation to the transfer of a business as a going concern.

Details of the clause

2. Subsection 1 gives the Commissioners the power by regulations in respect of cases where a business that is registered for plastic packaging tax is transferred as a going concern from one person to another.
3. Subsection 2 prescribes the types of provisions for the purposes of plastic packaging tax that may be made by, or under, regulations relating to this clause. These may include:
    - Requiring the person who has transferred the business to another person (the transferee) to notify the

Commissioners of the transfer;

- That the liabilities and duties on transfer become the transferee's liabilities and duties, to the extent specified;
- The right of either person to a tax credit or repayment to be satisfied by the credit or repayment being paid to either person;
- Requiring records from periods before the date of transfer to be retained by the transferee after the transfer as required by regulations under Clause 63; and
- That regulations may also include anything else the Commissioners see fit to ensure continuity in application of the tax.

4. Subsection 3 prescribes that regulations under this clause may require an application for the transfer to be made in order for obligations and entitlements

under subsection (2)(b) or (c) on liabilities and duties, and tax credits or repayments, to be effective.

Background note

5. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

6. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 76: Isle of Man: import and export of chargeable plastic packaging components

Summary

1. This clause sets out the treatment of chargeable plastic packaging components imported from, or exported to, the Isle of Man.

Details of the clause

2. Subsection 1 specifies that if a chargeable plastic packaging component is imported into the UK from the Isle of Man and a charge to plastic packaging tax arises on the component under the law of the Isle of Man, then subsections (2) and (3) apply.
3. Subsection 2 provides for the treatment of imported chargeable plastic packaging components where a charge to plastic packaging tax arises under the law of the Isle of Man which is equal to, or greater than, the UK rate. In these circumstances,

the components are not be treated as imports into the UK for the purposes of clause 43.

4. Subsection 3 provides for the treatment of imported chargeable plastic packaging components where a charge to plastic packaging tax arises under the law of the Isle of Man which is lower than the UK rate. In these circumstances, the tax charged on the components in the UK is reduced by an amount equal to the tax charged in the Isle of Man.

5. Subsection 4 defines "the UK rate" in subsections (2) and (3) as the rate of plastic packaging tax that would otherwise be chargeable in the UK.

6. Subsection 5 provides that exports from the UK to the Isle of Man of chargeable plastic packaging components are not to be treated as exports for the purposes of provisions made by or under Clauses 51 and 53.

Background note

7. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

8. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 77: Fraudulent evasion

Summary

1. This clause provides a criminal offence for knowingly being involved in the fraudulent evasion of plastic packaging tax.

Details of the clause

2. Subsection 1 specifies that a person commits an offence if they knowingly are involved in, or take action with a view to, the fraudulent evasion of plastic packaging tax either by them or another person.
3. Subsection 2 prescribes that 'evasion', for the purposes of this clause, also includes when tax credits or repayments are fraudulently claimed in respect of plastic packaging tax.
4. Subsection 3 provides the maximum levels of punishment for a person convicted of this offence. The offence may be tried

summarily or on indictment. Where it is tried summarily, the maximum fine will depend on the amount of tax that was intended to have been evaded.

5. Subsections 4 and 5 set out that in calculating penalties under subsection (3), the amount of plastic packaging tax evaded should also include any tax credits or repayments claimed without entitlement and should not take into account any tax credits or repayments actually due.

6. Subsection 6 prescribes that until such time as paragraph 24(2) of schedule 22 to the Sentencing Act 2020 commences, the imprisonment term for England and Wales detailed in subsection (3)(a)(i) should be read as 6 months, rather than 12 months. Once that provision is commenced, Magistrates' Courts in England and Wales will have the power to impose the maximum term of imprisonment contemplated by subsection

3(a)(i) of this clause.

Background note

7. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

8. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 78: Misstatements

Summary

1. This clause provides a criminal offence for supplying false information and documents, with an intention to deceive, in connection with plastic packaging tax.

Details of the clause

2. Subsection 1 specifies that a person commits an offence if they produce or provide, or cause to be produced or provided, a document containing false information in connection with plastic packaging tax with the intention to deceive.

3. Subsection 2 specifies that a person commits an offence if they deliberately or recklessly provide false information in connection with plastic packaging tax.

4. Subsection 3 provides the maximum levels of punishment for a person convicted of this offence. The offence may be tried

summarily or on indictment.

5. Subsections 4 – 6 set the maximum fine for this offence. On summary conviction, the maximum fine is set at the larger sum of £20,000 or the statutory maximum, and 3 times the amount of plastic packaging tax under-declared in the return. Under-declared amounts include either a reduction in the tax payable (a person's "gross liability"), an inflation of tax credits and repayments due, or a combination of both. A person's gross liability for plastic packaging tax is calculated before any tax credit entitlement or repayments due are deducted.

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged

at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 79: Conduct involving evasions or misstatements

Summary

1. This clause provides a criminal offence for conduct involving evasions or misstatements in respect of obligations under, and liability for, plastic packaging tax whether or not the specifics of those offences are known.

Details of the clause

2. Subsection 1 specifies that a person commits an offence if their conduct must have involved committing one or more offences under Clauses 77 or 78.

3. Subsection 2 prescribes that it is immaterial, for the purposes of any proceedings for an offence under this section, whether the details of any offences that must have been committed are known. For example, where an act must have involved the commission of evasions

or misstatements, but documents which would have evidenced the particulars of the commissioning have been lost, the lack of such documentation does not matter for the purpose of any proceedings.

4. Subsection 3 provides the maximum levels of punishment for a person convicted of this offence. The offence may be tried summarily or on indictment.

5. Subsections 4 – 6 set the maximum fine for this offence. On summary conviction, the maximum fine is set at the larger sum of £20,000 or the statutory maximum, and 3 times the amount of plastic packaging tax evaded or intended to be evaded. The amount of tax evaded, or intended to be evaded, includes any amounts of unentitled credit or repayment obtained, or intended to be obtained. However, any credits or repayments that may have been due to a person that is convicted under this offence do not need to be taken into consideration when determining the

amount of tax that were, or intended to be, evaded for the purposes of calculating the maximum fine.

Background note

6. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

7. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 80 and Schedule 14: Penalty for contravening relevant requirements

Summary

1. This clause and Schedule provide the penalties for contravening specified obligations or requirements in respect of plastic packaging tax.

Details of the clause

2. Subsection 1 provides for a fixed penalty of £500 where a person fails to comply with a relevant requirement, as defined in subsection (7), and a daily penalty of £40 for each day thereafter where a person continues to fail to comply.
3. Subsection 2 prescribes that where a person is liable to a daily penalty for a continued failure to comply with a relevant requirement, that person will not be liable to another fixed penalty for the same failure.
4. Subsection 3 sets out that a person is not

liable to a penalty under this clause for an act or omission if the person has been convicted of an offence or is liable to a penalty other than under this section, for that same failure or action.

5. Subsection 4 prescribes that a person is not liable to a penalty under this Clause if the Commissioners are satisfied there is a reasonable excuse for the failure. Reasonable excuse can also be relied upon on appeal to the first and upper tier tribunals, and no penalty is payable if either tribunal is satisfied there is a reasonable excuse for the failure.

6. Subsection 5 sets out a number of situations which are not acceptable as reasonable excuses under subsection (4). These are:

    - Lack of funds, unless due to events outside the control of the person concerned;
    - Relying on another person to do anything, unless reasonable care

was taken to avoid the failure to comply with a relevant requirement; and

- If the circumstances giving rise to a reasonable excuse have ended, the excuse will remain valid if action was taken to correct the failure in a reasonable time after this change.

7. Subsection 6 prescribes that a penalty under this section can be reduced (up to nil) by the Commissioners, or on appeal, an appeal tribunal. A subsequent appeal may cancel the whole or any part of the Commissioners' reduction.

8. Subsection 7 defines "relevant requirements" for the purposes of this clause. These are obligations or requirements set out in: Clause 58 variations and correction of the register, Clause 61 payment, collection, recovery etc, Clause 63 records, Clause 65 security for tax, Clause 68 statements, Clause 69 tax representatives, Clause 74 carrying on

of a business after a death, incapacity or insolvency, Clause 75 transfer of a business as a going concern, Schedule 9 secondary and joint and several liability notices and Schedule 13 groups of companies. In effect, this measure imposes penalties for failing to meet the requirements of the tax which are not covered by specific penalties elsewhere in the legislation.

9. Subsection 8 provides powers to the Treasury to make amendments by regulations to subsection (1) to change the amounts of the penalties due to inflation.

10. Subsection 9 provides powers to the Treasury to make amendments by regulations to subsection (7) as to what falls under a "relevant requirement" in respect of plastic packaging tax.

11. Subsection 10 introduces Schedule 14, which sets out provisions for the assessment of penalties under this clause.

Details of the Schedule

Interpretation

12. Paragraph 1 specifies that references to "penalty" in this schedule are to a penalty under Clause 80.

Assessment etc of penalty

13. Paragraph 2 gives the Commissioners the power to assess a penalty and requires them to notify the amount to the person concerned.

14. Paragraph 3 allows the Commissioners to make a supplementary assessment of a penalty where an earlier penalty is found to be insufficient, and requires them to notify the person concerned of this new amount.

Further provision about assessments under paragraphs 2 and 3

15. Paragraph 4 provides for the amount of a penalty to be collected as if it were plastic packaging tax due, unless the assessment has been withdrawn or

reduced (in which case only the remaining amount due after reduction can be collected as if it were tax).

16. Paragraph 5 provides that if an act or omission which caused the penalty to be due has ended before the assessment of the penalty is made, this has no impact on the powers to assess the penalty.

17. Paragraph 6 allows a penalty to be combined with an assessment for plastic packaging tax made under Schedule 10 for the same period as the penalty, and requires the notice of the combined assessment to identify the amount of penalty which forms part of that assessment.

Assessment etc of daily penalties

18. Paragraph 7 requires a notice of a penalty assessment to include a date up to which any daily penalty under Clause

80(1)(b) is calculated. This date cannot be later than the date of the notice. Further penalties accruing after this date may be notified by further assessments.

19. Paragraph 8 allows the Commissioners to notify a future date for resolution of the issue causing a penalty in an assessment, and, if the issue is resolved by that date, it is treated (when calculating any further liability) as if resolved by the date specified in the assessment under paragraph 7.

Time limits for assessments

20. Paragraph 9 provides that an assessment of a penalty must be made within 4 years of the act or omission being penalised in most circumstances. If the act or omission is deliberate (including a deliberate inaccuracy in a document given to HMRC) or is a failure to register under Clause 55, or to keep registration details up to date as required by regulations under Clause 58, a penalty can be assessed

up to 20 years after the event in question. These provisions for the 20 year period also apply to the actions of another person acting on behalf of the taxpayer causing a loss of plastic packaging tax.

Background note

21. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

22. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from

landfill or incineration.

Clause 81: Criminal proceedings

Summary

1. This clause provides for criminal proceedings for the purposes of plastic packaging tax.

Details of the clause

2. This clause provides that sections 145 to 155 of the Customs and Excise Management Act 1979 apply in relation to plastic packaging tax offences as they apply to offences under the customs and excise Acts. These are the general provisions on criminal legal proceedings applied across much of the indirect tax and duty system.

Background note

3. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic

packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

4. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 82 and Schedule 15: Minor and consequential amendments

Summary

1. This clause and Schedule set out amendments necessary to be made to other legislation in respect of plastic packaging tax. These amendments provide a range of administration and enforcement provisions for plastic packaging tax.

Details of the clause

2. Clause 82 introduces Schedule 15 which sets out minor and consequential amendments to other areas of legislation so those provisions apply to plastic packaging tax.

Details of the Schedule

Part 1 - Penalties

Failure to notify etc.

3. Paragraph 1 adds plastic packaging tax to

the list of taxes for which Schedule 41 to the Finance Act 2008 applies. This provides for a penalty to apply to persons who fail to comply with the obligation to give notice of their liability to be registered under Clause 55.

Failure to comply with requirements relating to returns

4. Paragraphs 2 and 3 add plastic packaging tax to the list of taxes for which Schedule 55 to Finance Act 2009 applies. This provides for a penalty to apply to persons who fail to submit returns. The amendments made by Schedule 10 to Finance (No. 3) Act 2010 to Schedule 55 will come into force in respect of plastic packaging tax when the tax commences.

Failure to make payment on time

5. Paragraph 4 and 5 add plastic packaging tax to the list of taxes for which Schedule 56 to Finance Act 2009 applies. This provides for a penalty to apply to persons who fail to make payments on time. The

amendments made by Schedule 11 to Finance (No. 3) Act 2010 to Schedule 56 will come into force in respect of plastic packaging tax when the tax commences.

Errors in documents

6. Paragraph 6 provides for an amendment to Schedule 24 to Finance Act 2007 which inserts plastic packaging tax into the table in paragraph 1. This will allow a penalty to apply to persons who submit inaccurate returns.

Failure to disclose tax avoidance schemes

7. Paragraph 7 adds plastic packaging tax to the list of taxes under which Schedule 17 to Finance (No. 2) Act 2017 (Disclosure of tax avoidance schemes: indirect taxes) applies. This provides for penalties to apply for failure to comply with the obligations to disclose tax avoidance schemes.

Modifications

8. Paragraph 8 sets out the amendments to

Schedule 41 to the Finance Act 2008 and Schedules 55 and 56 to the Finance Act 2009 which apply penalties for the failure to notify, failure to make returns and failure to make payments, so as to remove the obligation to raise these penalties in all circumstances.

Part 2 - Miscellaneous

Provisional collection of plastic packaging tax

9. Paragraph 9 adds plastic packaging tax to the list of taxes to which the Provisional Collection of Taxes Act 1968 applies.

Isle of Man

10. Paragraph 10 provides for an amendment to the Isle of Man Act 1979 to enact the Isle of Man powers in Clause 76.

HMRC powers to obtain information etc.

11. Paragraph 11 provides for an amendment to Schedule 36 to Finance Act 2008 (powers to obtain information etc.). This will allow information to be requested from certain persons in respect

of plastic packaging tax.

Interest

12. Paragraph 12 provides for an amendment to Schedule 53 to Finance Act 2009 (late payment interest). The insertion sets the date from which interest will be calculated where a person has failed to register.

Serial tax avoidance

13. Paragraph 13 provides for an amendment to Schedule 18 to Finance Act 2016 by inserting "plastic packaging tax" after "landfill tax" in paragraph 4(2). This will apply penalties for serial tax avoidance in respect of plastic packaging tax.

Background note

14. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30%

recycled plastic content. The tax is charged at a rate of £200 per tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

15. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 83: Interpretation

Summary

1. This clause sets out where the meaning of various terms used in the legislation can be found.

Details of the clause

2. This clause lists various terms used in the legislation and where their meanings can be found.

Background note

3. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

4. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Clause 84: Regulations

Summary

1. This clause provides for regulations to be made in respect of plastic packaging tax and sets out general provisions about the regulations.

Details of the clause

2. Subsection 1 sets out that regulations made under the powers in this Part may make different provision for different purposes and that these can be incidental, consequential, supplementary or transitional in nature.
3. Subsection 2 provides powers to make provision by reference to things specified in a notice that is published in line with regulations and not withdrawn by a subsequent notice.
4. Subsection 3 provides that regulations made under the powers in this Part are to be made by statutory instrument.

5. Subsections 4 and 5 specify that statutory instruments made under the powers listed in the following clauses are subject to the made affirmative procedures in the House of Commons:
    - Clause 48(5) - the meaning of "packaging component";
    - Clause 49(8) – the meaning of "plastic" and "recycled plastic";
    - Clause 52 – exempt plastic packaging components;
    - Clause 80(8) or (9) – amounts relating to the general regulatory penalty.
6. Subsection 6 provides that any other statutory instrument made under this Part is subject to the negative procedure in the House of Commons.
7. Subsection 7 sets out that subsection (6) does not apply to a statutory instrument containing only regulations under Clause 85 (commencement of this Part).

8. Subsection 8 sets out that plastic packaging tax statutory instruments subject to the made affirmative procedure must be laid before the House of Commons after being made, and cease to have effect at the end of 28 days beginning with the day the instrument is made, unless the instrument is approved by a resolution of the House of Commons within that period. The 28 days must be sitting days, defined in subsection (11).

9. Subsection 9 provides that if regulations cease to have effect as a result of subsection (8) (i.e. are not approved by a resolution of the House of Commons within 28 sitting days), this does not affect anything previously done under those regulations or prevent the making of new regulations.

10. Subsection 10 sets out that plastic packaging tax provisions which can be made in regulations subject to the negative procedure in the House of Commons may

also be made by regulations subject to the made affirmative procedure.

11. Subsection 11 defines "sitting day" as a day on which the House of Commons is sitting, and is only considered a day if the House begins to sit on that day

Background note

12. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

13. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection

of plastic waste, diverting it away from landfill or incineration.

Clause 85: Commencement etc

Summary

1. This clause provides for regulations to be made for plastic packaging tax in relation to the commencement of the tax.

Details of the clause

2. Subsection 1 gives the Treasury the power by regulations to appoint the commencement date of the provisions in this Part in relation to packaging components that are manufactured in the UK, or imported into the UK, on or after 1 April 2022.
3. Subsection 2 provides that regulations made under this clause may specify different commencement dates for different purposes. This can include commencing some provisions of the legislation at different times from others.

Background note

4. Plastic packaging tax will come into effect from April 2022. Announced at Budget 2018, the tax will apply to UK manufacturers and importers of plastic packaging which contains less than 30% recycled plastic content. The tax is charged at a rate of £200 per metric tonne of chargeable plastic packaging components of a single specification, and there will be a limited number of exemptions.

5. The tax will encourage the use of recycled plastic instead of new plastic within packaging. This greater demand for recycled plastic will in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

Part 3: Other Taxes

Clause 86: Rate bands etc for tax years 2021-22 to 2025-26

Summary

1. This clause maintains the inheritance tax (IHT) thresholds at their 2020 to 2021 levels up to and including 2025 to 2026. This measure will
    - maintain the nil-rate band at £325,000
    - maintain the residential enhancement (commonly referred to as the Residence Nil-Rate Band or RNRB) at £175,000; and
    - maintain the RNRB taper threshold at £2,000,000

Details of the clause

2. This clause disapplies section 8 and section 8D(7) of the Inheritance Tax Act 1984 (IHTA) for the tax years 2021 to 2022 up to and including 2025 to 2026.
3. Section 8 and section 8D(7) apply if the

consumer prices index (CPI) for September in any tax year is higher than it was for the previous September; and provide for an increase in the nil-rate band, RNRB and RNRB taper thresholds for the following tax year by the same percentage as the increase in CPI (rounded up to the nearest £1,000).

4. The effect of this clause is that the nil-rate band, RNRB and the RNRB taper threshold will not increase in line with CPI for the tax years 2021 to 2022 up to and including 2025 to 2026.

Background note

5. This clause means qualifying estates can continue to pass on up to £500,000 and the qualifying estate of a surviving spouse or civil partner can continue to pass on up to £1,000,000 without an IHT liability.

6. The rates of IHT are set out in the Table in Schedule 1 to IHTA 1984. The IHT nil-rate band is the amount below which no IHT is

charged. It is automatically indexed in line with CPI each year unless Parliament otherwise determines.

7. The RNRB is an additional IHT nil-rate band that is available from 6 April 2017 to those passing on a qualifying residence on death to their direct descendants. The taper threshold reduces the amount of the RNRB by £1 for every £2 the estate is worth more than £2 million.

8. The RNRB and RNRB taper threshold are subject to automatic indexation in line with CPI each year unless Parliament otherwise determines.

9. At Budget 2021 the Government announced that the nil-rate band, RNRB, and RNRB taper threshold would remain at current levels until April 2026.

Clause 87: Temporary period for reduced SDLT rates on residential property

Summary

1. This clause extends the temporary increase to the Stamp Duty Land Tax (SDLT) nil rate band for residential property in England and Northern Ireland. It means that all individual purchasers of residential property who complete or substantially perform their purchase between 8 July 2020 and 30 September 2021 will pay less or no SDLT.

Details of the clause

Section 1: Reduced rates of SDLT on residential property for a temporary period

2. Subsection (1) provides for The Stamp Duty Land Tax (Temporary Relief) Act 2020 to be amended in accordance with this clause. That Act amends Part 4 of the Finance Act 2003 as it applies to residential land transactions.

3. Subsection (2) changes the end date for the SDLT temporary nil rate band of £500,000 to 30 June 2021 and names this period "an initial temporary relief period". This has the effect that the temporary nil rate band of £500,000 for residential property in England and Northern Ireland will be from 8 July 2020 to 30 June 2021.

4. Subsection (3) inserts New Section 1A into The Stamp Duty Land Tax (Temporary Relief) Act 2020.

Section 1A: Further period for reduced rates of SDLT on residential property

5. New Section 1A sets out the temporary nil rate band for residential property that will apply from 1 July 2021 to 30 September 2021.

6. Subsection (1) provides for Part 4 of the Finance Act 2003 to be modified in relation to land transactions between 1 July 2021 and 30 September 2021, and names this period "the further temporary relief

period".

7. Subsection 2 substitutes the table below for the existing "Table A: Residential" mentioned in section 55(1B) of Part 4 of the Finance Act 2003 where the purchase is not liable to the higher rates of SDLT on additional dwellings:

Relevant consideration	**Percentage**
So much as does not exceed £250,000	0%
So much as exceeds £250,000 but does not exceed £925,000	5%
So much as exceeds £925,000 but does not exceed £1,500,000	10%
The remainder	12%

(if any)

8. Subsection 3 substitutes the table below for the existing 'Table A: Residential' mentioned in paragraph 1(2) of Schedule 4ZA of Part 4 of the Finance Act 2003 where the purchase is liable to the higher rates of SDLT on additional dwellings:

Relevant consideration	**Percentage**
So much as does not exceed £250,000	3%
So much as exceeds £250,000 but does not exceed £925,000	8%
So much as exceeds £925,000 but does not exceed £1,500,000	13%

The remainder (if any)	15%

9. Subsection 4 substitutes the table below for the existing 'Table A: Residential' mentioned in paragraph 2(3) of Schedule 5 of Part 4 of the Finance Act 2003 where taxable rent is given for the purchase:

Rate bands	**Percentage**
£0 to £250,000	0%
Over £250,000	1%

10. Subsection 1(5) amends the effect of section 44 of the Finance Act so that no additional tax will be due by virtue of section 44 when a contract is completed after the further temporary relief period has ended following substantial performance within the further temporary relief period. This is provided that the only reason for additional tax becoming due is that completion has occurred after

the end of the further temporary relief period.

11. Subsection 1(6) makes provision to ensure that the terms `completion`, `contract` and `conveyance` as used in subsection (5) have the meanings given to them by section 44(10) of the Finance Act 2003.

Background note

12. Due to the coronavirus (Covid-19) pandemic, the housing market was largely put on hold between 26 March and 13 May 2020, and after that period there continued to be reduced activity in the UK housing market when compared with the period before lockdown. In response to this, on 8 July 2020 the Chancellor announced a temporary increase to the amount a purchaser could pay for

residential property before SDLT was due, from £125,000 to £500,000, for the period 8 July 2020 to 31 March 2021.

13. This clause extends the temporary increase to the SDLT nil rate band for residential property. The nil rate band will continue to be £500,000 until 30 June 2021 and will then be £250,000 from 1 July 2021 to 30 September 2021. The nil rate band will return to the standard amount of £125,000 from 1 October 2021.

Clause 88 and Schedule 16: Increased rates for non-resident transactions

Summary

1. This clause and Schedule introduce a 2% Stamp Duty Land Tax (SDLT) surcharge on purchases of dwellings made by non-resident purchasers, including certain UK-resident companies controlled by non-residents. It applies to purchases of dwellings in England and Northern Ireland with an effective date on or after 1 April 2021.

Details of the clause

2. Clause 88 introduces Schedule 16 which makes provision for increased rates of SDLT in relation to non-resident transactions.

Details of the Schedule

3. Paragraph 1 introduces amendments to Part 4 (Stamp Duty Land Tax) of the

Finance Act (FA) 2003.

4. Paragraph 2 inserts new section 75ZA into Part 4 of FA 2003, which provides for additional tax to be charged in respect of non-resident transactions.

5. Subsection 1 of new section 75ZA explains that land transactions which are non-resident transactions will be charged to SDLT with an additional 2% added to the rates provisions specified at subsection 2 of new section 75ZA.

6. Subsection 2 of new section 75ZA sets out the rate provisions that may be subject to the 2% surcharge where the land transaction is a non-resident transaction.

7. Subsection 3 of new section 75ZA explains "non-resident transaction" is defined in new Schedule 9A to FA 2003. It also inserts a new cross heading immediately before section 75A of FA 2003.

8. Paragraph 3 amends section 101 of FA

2003 so the rules in that section which treat the trustees of a unit trust scheme as a company, and the rights of unit holders as shares in that company do not apply to new Schedule 9A. This ensures that the residence position of the trustees of the unit trust scheme is considered when determining whether the transaction is a non-resident transaction.

9. Paragraph 4 inserts a new reference to "non-resident transaction" into the index of defined expressions in section 122 FA 2003.

10. Paragraph 5 inserts new Schedule 9A into FA 2003 which sets out the rules for determining whether a land transaction is a non-resident transaction and therefore liable to the increased SDLT rates.

11. Paragraph 1 of new Schedule 9A sets out the arrangement of the Parts in new Schedule 9A.

12. Paragraph 2 of new Schedule 9A

defines "non-resident transaction".

13. Paragraph 2(1) of new Schedule 9A sets out the main rules for determining whether a land transaction is a non-resident transaction. This will be where:

- One or more purchasers is non-resident,
- The property or land being acquired in the land transaction is a major interest in one or more dwellings, or is a major interest in one or more dwellings and other property,
- The major interest being acquired is not a lease with 7 years or less to run at the date of transaction, and
- The chargeable consideration for the transaction exceeds the de minimis threshold.

14. Paragraph 2(2) of new Schedule 9A contains more information about the term" major interest".

15. Paragraph 2(3) of new Schedule 9A sets out when the de minimis threshold is exceeded. This will be:

- Where the chargeable consideration does not include rent, the consideration is £40,000 or more;
- Where the chargeable consideration includes rent:
  - The consideration for the premium is £40,000 or more, or
  - The annual rent is £1,000 or more.

16. Paragraph 2(4) of new Schedule 9A defines "annual rent" in relation to the de minimis threshold for transactions where the chargeable consideration includes rent.

17. Paragraphs 2(5) and (6) of new Schedule 9A explain that special rules apply in respect of bare trusts which are purchasing a newly granted lease, in respect of certain types of settlements, and

in relation to contracts which are substantially performed and subsequently completed.

18. Paragraph 3 of new Schedule 9A explains an individual purchaser must consider the tests at paragraphs 4 and 5 of new Schedule 9A to determine their residence status for a transaction.

19. Paragraph 4 of new Schedule 9A contains the main rules for determining whether an individual is UK resident in relation to a transaction.

20. Paragraphs 4(1) and (2) of new Schedule 9A state that an individual will be UK resident where they are present in the UK for at least 183 days during any continuous 365-day period in the "relevant period". The "relevant period" begins 364 days before the effective date of the transaction and ends 365 days after that date.

21. Paragraph 4(3) of new Schedule 9A

provides the special rules for individuals in paragraph 5 of new Schedule 9A take precedence over the main rules in paragraph 4 of new Schedule 9A.

22. Paragraph 4(4) of new Schedule 9A explains an individual will be present in the UK for a day if they are situated in the UK at the end of that day.

23. Paragraph 4(5) of new Schedule 9A states that special rules apply where spouses or civil partners are joint purchasers in relation to a transaction.

24. Paragraph 5 of new Schedule 9A contains the special rules for determining whether an individual is UK resident in relation to a transaction.

25. Paragraph 5(1) of new Schedule 9A states that an individual will be UK resident if they are present in the UK for at least 183 days during the period beginning 364 days before the date of transaction and ending on the date of transaction. This is

subject to the special rules set out in paragraph 5(2) of new Schedule 9A applying.

26. Paragraph 5(2) to (5) of new Schedule 9A explains the special rules apply where any of the following are met:

- The purchaser is or includes a company or a person acting as the trustee of a unit trust scheme.
- The purchaser is or includes a partner who enters into a transaction on behalf of the partnership of which they are a member.
- The purchaser is or includes the trustee of a settlement but only where the beneficiaries of that settlement have neither a life interest in the dwelling acquired nor an entitlement to income from that dwelling.

27. Paragraph 5(6) of new Schedule 9A explains an individual will be present in the UK for a day if they are situated in the UK at the end of that day.

28. Paragraph 5(7) of new Schedule 9A states that special rules apply where spouses or civil partners are joint purchasers in relation to a transaction.

29. Paragraph 6 of new Schedule 9A modifies the tests at paragraphs 4 and 5 of new Schedule 9A for individuals who are Crown employees and for the spouses or civil partners of such individuals.

30. Paragraphs 6(1) and (2) of new Schedule 9A explain an individual (together with their spouse or civil partner with whom they are living) will be treated as being present in the UK on a day where they are in Crown employment and are situated outside of the UK for the purposes of that employment.

31. Paragraph 6(3) of new Schedule 9A

requires that the special treatment for Crown employees and their spouses or civil partners must be claimed on a land transaction return.

32. Paragraphs 6(4) and (5) of new Schedule 9A define "Crown employment" and "living together".

33. Paragraph 7 of new Schedule 9A sets out rules for determining whether a company is non-resident in relation to a transaction.

34. Paragraphs 7(1) to (3) of new Schedule 9A state a company will be non-resident where the company is not UK resident for Corporation Tax under Chapter 3 of Part 2 of the Corporation Tax Act (CTA) 2009, or where the company is resident under Chapter 3 of Part 2 of CTA 2009, and:

- Is a close company under paragraph 8 of new Schedule 9A,
- Meets the non-UK control test under

paragraphs 9 and 10 of new Schedule 9A (so that it is a close company controlled by reference to relevant participators only), and

- Is not specifically excluded under paragraph 11 of new Schedule 9A.

35. Paragraph 7(4) of new Schedule 9A explains special rules apply where the purchaser is a Co-Ownership Authorised Contractual Scheme (CoACS) or where alternative property finance relief is being claimed.

36. Paragraph 8 of new Schedule 9A defines "close company" for the purposes of new Schedule 9A. "Close company" is defined as having the meaning given by Chapter 2 of Part 10 of the Corporation Tax Act (CTA) 2010, subject to the omission of Condition A at sections 444, and of 446 of that Act.

37. Paragraph 9 of new Schedule 9A sets out the "non-UK control test" referenced

at paragraph 7(3) of new Schedule 9A.

38. Paragraph 9(1) of new Schedule 9A states a company will meet the non-UK control test where it is a close company within the meaning given by Chapter 2 of Part 10 of CTA 2010, subject to modifications contained within paragraphs 9(2) to (5) of new Schedule 9A.

39. Paragraph 9(2) of new Schedule 9A modifies the application of section 439 of CTA 2010 so that:

- Only relevant participators are taken into account for either of the tests within section 439, and
- References to 5 or fewer participators in both tests at section 439 are removed.

40. Paragraph 9(3) of new Schedule 9A defines "relevant participator" as being a participator (within the meaning of Chapter 2 of Part 10 of CTA 2010) who is

non-UK resident under new Schedule 9A and is not a general partner is a limited partnership.

41. Paragraphs 9(4) and (5) of new Schedule 9A omit Condition A at section 444, and section 446 of CTA 2010 when determining whether a company is a close company under the non-UK control test.

42. Paragraph 9(6) of new Schedule 9A modifies the application of section 451 of CTA 2010 when determining whether a company is a close company under the non-UK control test.

43. Paragraph 9(7) of new Schedule 9A explains that the reference to a general partner in paragraph 9(3)(b) of new Schedule 9A does not include a general partner who holds certain rights or entitlements in respect of the company.

44. Paragraph 10 of new Schedule 9A lists the modifications referenced at paragraph 9(6) of new Schedule 9A.

45. Paragraph 10(1) of new Schedule 9A explains that the modifications limit the attribution provisions in section 451 of CTA 2010.

46. Paragraphs 10(2) and (3) of new Schedule 9A provide for a modification to the attribution rules in relation to business partners and to spouses and civil partners.

47. Paragraphs 10(4) and (5) of new Schedule 9A provide that certain rights and entitlements held by a participator may not be attributed to another person.

48. Paragraph 10(6) of new Schedule 9A excludes the rights of loan creditors when considering whether rights to distributable income are de minimis for the purposes of sub-paragraph 10(5)(c) of new schedule 9A.

49. Paragraph 10(7) of new Schedule 9A defines "living together" for the purposes of paragraph 10(3) of new Schedule 9A.

50. Paragraph 11 of new Schedule 9A defines "excluded company" for the purposes of paragraph 7(3)(c) of new Schedule 9A so that companies do not need to apply the second residence condition under paragraph 7(3) of new Schedule 9A where they are:

- a Property Authorised Investment Fund (PAIF) (including 51% subsidiaries of PAIFs), or
- a UK Real Estate Investment Trust (REIT) (including members of a REIT).

51. Paragraph 12 of new Schedule 9A sets out special rules which to apply to paragraphs 4 and 5 of new Schedule 9A.

52. Paragraphs 12(1) and (2) of new Schedule 9A explain the special rules which apply where two or more purchasers acquire a property and:

- They are spouses or civil partners of

one another,

- Who are living together,
- One of them is UK resident and one of them is non-resident, and
- Neither of them is acting as the trustee of a settlement.

53. Paragraph 12(3) of new Schedule 9A states that where the special rules apply, the non-resident spouse or civil partner is treated as being UK resident in relation to the transaction.

54. Paragraph 12(4) of new Schedule 9A defines "living together" for the purposes of paragraph 12(2) of new Schedule 9A.

55. Paragraph 13 of new Schedule 9A sets out special rules which apply where the purchaser is a bare trust acquiring a newly granted lease.

56. Paragraphs 13(1) and (2) of new Schedule 9A explain the special rules will apply where the purchaser includes a bare

trustee so that the residence position of the beneficiaries is considered rather than that of the bare trustee when determining whether the transaction is a non-resident transaction.

57. Paragraph 14 of new Schedule 9A sets out special rules which apply where the purchaser is acting as the trustee of a settlement.

58. Paragraphs 14(1) and (2) of new Schedule 9A explain that special rules apply where the purchaser includes a trustee of a settlement and under the terms of the settlement, one or more of the beneficiaries of that settlement have either a life interest in the dwelling acquired or an entitlement to income from that dwelling. In those cases, the residence position of the beneficiaries is considered rather than that of the trustees of the settlement when determining whether the transaction is a non-resident transaction.

59. Paragraph 14(3) of new Schedule 9A provides for the special rules not to apply in cases where settlement is a unit trust scheme.

60. Paragraph 15 of new Schedule 9A explains that a CoACS is UK resident in relation to the Schedule but that certain collective investment schemes which are treated as CoACSs under section 102A of FA 2003 (EEA equivalent schemes) are non-resident in relation to the Schedule.

61. Paragraph 16 of new Schedule 9A sets out special rules which apply where alternative property finance relief is claimed in respect of a transaction

62. Paragraphs 16(1) and (2) of new Schedule 9A explain that where the purchaser is a financial institution claiming alternative finance relief under section 71A of FA 2003, liability to the surcharge will be determined by applying the tests at paragraphs 4 to 7 of new

Schedule 9A to the person mentioned in section 71A(1) of FA 2003.

63. Paragraphs 16(3) and (4) of new Schedule 9A explain that where the purchaser is a financial institution claiming alternative property finance relief under section 73(1) of FA 2003, liability to the surcharge will be determined by applying the tests at paragraphs 4 to 7 of new Schedule 9A to the person mentioned in section 73(1) of FA 2003.

64. Paragraph 17 of new Schedule 9A explains that where a contract for a land transaction is substantially performed and then completed, the liability of the purchaser to the surcharge in respect of the second of those transactions will be determined in accordance with their residence status at the effective date of the first transaction.

65. Paragraph 18 of new Schedule 9A states that where an individual

purchaser's residence is determined in accordance with paragraph 4 of new Schedule 9A, and where they are not UK resident at the point they submit their land transaction return, they must complete that return and pay SDLT on the basis that they are non-resident.

66. Paragraph 19 of new Schedule 9A contains provisions relating to amending a land transaction return in respect of individuals who become UK-resident after submitting their land transaction return.

67. Paragraph 19(1) of new Schedule 9A provides that where a land transaction return is submitted on the basis that one or more individual purchasers are non-resident but all of those individuals subsequently satisfy the test at paragraph 4(1) of new Schedule 9A, they may amend their land transaction return.

68. Paragraph 19(2) of new Schedule 9A states purchasers have up to 2 years from

the date of transaction to amend their return to take account of the fact that the transaction is not a non-resident transaction.

69. Paragraph 19(3) of new Schedule 9A omits the requirement for certain documents to be provided with the amendment under paragraph 6(2A) of Schedule 10 to FA 2003.

70. Paragraph 20 of new Schedule 9A defines "dwelling" for the purposes of the Schedule.

71. Paragraph 20(2) of new Schedule 9A states a building or part of a building is a dwelling if it is used as such, or is suitable to be used as such. This includes where it is in the process of being constructed or adapted for use as a dwelling.

72. Paragraph 20(3) of new Schedule 9A explains that land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds is part of that dwelling.

73. Paragraph 20(4) of new Schedule 9A explains that land which subsists, or is to subsist, for the benefit of a dwelling is part of that dwelling.

74. Paragraph 20(5) of new Schedule 9A explains that a land transaction will include a dwelling where:

- The land transaction is effected through the substantial performance of a contract,
- The transaction includes a building or part of a building that is to be constructed or adapted for use as a dwelling, and
- Construction or adaptation has yet to commence at the time the contract is substantially performed.

75. Paragraph 20(6) of new Schedule 9A defines certain terms used in paragraph 20(5) of new Schedule 9A.

76. Paragraphs 20(7) and (8) of new

Schedule 9A ensure that the rules around what constitutes a dwelling at sections 116(2) and (3) of FA 2003 do not apply for the purposes of this Schedule.

77. Paragraph 21 of new Schedule 9A provides definitions of certain terms used in new Schedule 9A.

78. Paragraph 22 of new Schedule 9A gives HM Treasury the power to modify the Schedule in certain circumstances by regulation.

79. Paragraph 6 sets out the commencement provisions for this Schedule.

80. Sub-paragraph 1 explains that the surcharge will apply to land transactions with an effective date on or after 1 April 2021.

81. Sub-paragraph 2 sets out that the surcharge will not apply to land transactions with an effective date on or

after 1 April 2021 in two situations:

- Situation 1 applies where the contract for the land transaction is entered into and substantially performed under section 44 of FA 2003 before 1 April 2021 but completes on or after 1 April 2021.
- Situation 2 applies where the contract for the land transaction is entered into before 11 March 2020 but is not substantially performed or does not complete until 1 April 2021 or later, subject to sub-paragraph 3.

82. Sub-paragraph 3 explains that the exclusion in situation 2 will not apply in the following circumstances:

- where the contract entered into is subject to a variation or assignment of rights which takes place on or after 11 March 2020,
- where the land transaction takes

place on or after 11 March 2020 because of an option, right of pre-emption or similar right being exercised, or

- where the contract entered into is subject to an assignment, subsale or other transaction which takes place on or after 11 March 2020, and which results in another person becoming entitled to call for a conveyance of the property.

83. Sub-paragraph 4 provides that the "commencement date" is 1 April 2021.

Background note

84. SDLT is a transaction tax which applies to acquisitions of an interest (usually a freehold or a leasehold interest) in land in England and Northern Ireland. Land transaction taxes in Scotland and

Wales are devolved to the Scottish and Welsh governments respectively. The purchaser (that is, the person acquiring the interest) is liable to pay the tax.

85. SDLT is charged on the "chargeable consideration" for the transaction (which is usually the purchase price for the property) with the rate of tax payable determined by several factors, including the type of property purchased and the status of the purchaser.

86. At present, purchasers of residential property located in England and Northern Ireland pay SDLT irrespective of where they live or their residence status.

87. The government announced at Budget 2018 that it intended to increase the amount of SDLT payable by non-UK residents when purchasing residential property in England and Northern Ireland.

88. On 11 February 2019, the government

commenced a consultation on its proposals and published its "Stamp Duty Land Tax: non-UK resident surcharge consultation", which explored options for implementing a surcharge on non-UK resident purchasers. The consultation ran until 6 May 2019.

89. On 21 July 2020, the government published a response to its consultation "Non-UK Resident Stamp Duty Land Tax Surcharge: Summary of Responses", confirming its proposals in respect of the surcharge. This clause and Schedule give effect to those proposals, which are intended to help make house prices more affordable, helping people get onto and move up the housing ladder in line with wider objectives on homeownership. The revenue raised will be used to tackle rough sleeping.

Clause 89 and Schedule 17: Relief from higher rate charge for certain housing co-operatives etc

Summary

1. This clause introduces a new relief from the 15% higher rate of Stamp Duty Land Tax (SDLT) where the purchase of a residential property valued in excess of £500,000 is by a company which is a housing co-operative that has no transferable share capital.

Details of the clause

2. Subsection 1 inserts new paragraph 5FA into Schedule 4A to the Finance Act 2003 (stamp duty land tax: higher rate for certain transactions). New paragraph 5FA provides for a relief from the 15% higher rate of SDLT where a residential property is purchased by a qualifying housing co-operative, as defined by section 150(3A) of

the Finance Act 2013 (relief from ATED for housing co-operatives).

3. Subsection 2 inserts new paragraph 5L into Schedule 4A to the Finance Act 2003. New paragraph 5L sets out the rules under which relief is to be withdrawn.

4. New paragraphs 5L(1) to 5L(3) provide that relief which has been allowed under new paragraph 5FA is to be withdrawn if on any day in a period of three years from the date of purchase (the 3-year "control period"), the purchaser is not a qualifying housing body and immediately before that day still owned the property (or an interest in it). A qualifying housing body is a qualifying housing co-operative (as defined in new Section 150(3A) to the Finance Act 2013 (relief from ATED), a registered provider of social housing, or a registered social landlord.

5. New paragraphs 5L(4) to 5L(6) provide that where, during the 3-year control

period, the purchaser is no longer a qualifying housing co-operative because it ceases to exist (e.g. because it converts or amalgamates into something else), relief will be withdrawn but only where:

- a successor ("the first successor") to the engagements of the qualifying housing co-operative is not a qualifying housing body, and immediately before that day the housing co-operative still owned the property;
- the first successor is a qualifying housing body on the day of succession but later ceases to be so during the remainder of the 3-year control period, and immediately before that day the first successor still owned the property.

6. New paragraphs 5L(7) and (8) extend the rules concerning a first successor to cover

situations where there are further successors. Where there is further succession, these new paragraphs provide for the rules to apply as if the first successor was the purchaser and the subsequent successor was the first successor, and so on down any chain of succession.

7. Subsection 3 says that Schedule 17 makes consequential changes to the Finance Act 2003 which are necessary as a result of the introduction of new paragraphs 5FA and 5L referred to above.

8. Subsection 4 provides that the amendments made by this section and Schedule 17 come into effect for land transactions where the effective date of is on or after 3 March 2021.

Details of the Schedule

9. Consequential amendments relating to this change are included in Schedule 17.

These changes amend the SDLT administrative provisions associated with the introduction of this new relief and ensure that a qualifying housing co-operative purchasing property via an alternative property finance arrangement, used to satisfy the requirements of Shari'a law, also benefits from the relief.

10. Paragraph 1 provides that Part 4 to the Finance Act 2003 (the SDLT legislation) is amended in accordance with the Schedule.

11. Paragraphs 2(1) to (7) amend Section 81 to the Finance Act 2003 which deals with the requirement to deliver a further return where relief is withdrawn. The effect of these changes is that where relief previously given under new paragraph 5FA of Schedule 4A is later withdrawn because the conditions in new paragraph 5L are no longer met, a further return must be made within 30 days of the day on which the purchaser ceases to be a

qualifying housing co-operative. It further provides that where, a qualifying housing co-operative no longer exists because a successor has succeeded to its engagements (where that succession includes taking on ownership of the property), a further return must be made by the successor within 30 days of the first day on which the successor is not a qualifying housing body. A qualifying housing body is defined in new paragraph 5L(2) of Schedule 4A . Clarificatory changes are also made to Sections 81(1A) and 81(3) and section 81(5) is omitted as a result.

12. Paragraphs 3(1) to (8) amend section 81ZA to the Finance Act 2003 (alternative finance arrangements: return where relief withdrawn). These changes have the same effect as that described immediately above in relation to the withdrawal of relief as governed by section 81, but in relation to the withdrawal of relief for

properties purchased under an alternative property finance arrangement, which are governed by section 81ZA.

13. Paragraphs 4(1) to (4) inserts new subsections 2A and 2B into section 85 to the Finance Act 2003 (liability to tax) and provide that where relief is withdrawn because a successor, who is not a qualifying housing body, has succeeded to the engagements of the purchaser, it is that successor who is liable to pay the additional tax. It also makes similar provision where relief is withdrawal under an alternative property finance arrangement.

14. Paragraph 5(1) to (3) amend section 86 of the Finance Act 2003 (payment of tax) to extend the existing rules for the time in which tax is payable as the result of the withdrawal of relief, to similarly cover situations where relief is withdrawn under new paragraph 5L. Equivalent rules

apply where relief is withdrawn under an alternative property finance arrangement.

15. Paragraph 6 amends section 87 to the Finance Act 2003 (interest on unpaid tax) so that the requirement to pay interest on tax remaining unpaid as a result of the withdrawal of relief, applies similarly where relief is withdrawn under new paragraph 5L. Equivalent rules apply where relief is withdrawn under an alternative property finance arrangement.

16. Paragraphs 7(1) to (6) make consequential changes to Schedule 4A of the Finance Act 2003 (stamp duty land tax: higher rate for certain transactions) as a result of the introduction of the new relief from SDLT for qualifying housing co-operatives. Subparagraph (5) inserts new paragraph 6I into Schedule 4A of the Finance Act 2003. It introduces for alternative property finance arrangements the same withdrawal of relief provisions

which apply, as described above, to properties purchased via other arrangements.

17. Paragraph 8 makes a clarificatory change to paragraph 12(2A) (notice of enquiry) of Schedule 10 of the Finance Act 2003 which deals with returns, assessments and other matters. These changes are made as a consequence of the clarificatory changes to section 81 of the Finance Act 2003.

Background note

18. The 15% flat rate of SDLT is charged where a company, a partnership with at least one company member, or a collective investment scheme purchases UK residential property (a single-dwelling interest) valued in excess of £500,000. There are a number of reliefs available where the property is to be used for a particular purpose.

19. The Annual Tax on Enveloped Dwellings (ATED), which operates alongside the 15% rate of SDLT, is similarly charged where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued in excess of £500,000. The rules for both 15% and ATED largely mirror one another, except to the extent that one is a one-off transaction tax; the other an ongoing annual charge.

20. The 15% rate of SDLT and ATED were introduced to deter the practice of buying and owning residential property within a corporate wrapper, a practice often described as 'enveloping'. Enveloping creates a situation in which effective ownership of a property can continually change hands, not via the sale of the property itself, which would give rise to SDLT, but instead via the sale/transfer of

the shares in the company. No SDLT is payable on share transactions.

21. Housing co-operatives are voluntary associations of members who use a corporate structure (a company) to provide housing to their members. Whereas ordinary companies are registered under the Companies Acts with Companies House, Housing co-operatives are registered and regulated by the Financial Conduct Authority.

22. Currently, any housing co-operative that purchases residential property valued in excess of £500,000 is chargeable to the 15% rate of SDLT. This measure introduces new legislation to provide relief for housing co-operatives which are non-publicly funded, non-social housing co-operatives and which have no transferable share capital. The absence of transferable share capital eliminates the potential avoidance of SDLT.

23. If, during the 3-year period (the control period) following the purchase of the property the housing co-operative, or a successor to the engagements of the housing co-operative, no longer meets the conditions, relief is withdrawn. Relief will not be withdrawn if, during the 3-year control period a successor to the qualifying housing co-operative is either itself a qualifying housing co-operative or is a registered provider of social housing or a registered social landlord.

24. A corresponding relief is also introduced in relation to the Annual Tax on Enveloped Dwellings.

25. The new relief comes into effect for any qualifying housing co-operative purchasing a residential property for more than £500,000 on or after 3 March 2021.

Clause 90: Relief for certain housing co-operatives

Summary

1. This clause introduces a new relief from the Annual Tax on Enveloped Dwellings (ATED) to apply where an interest valued in excess of £500,000 is held in UK residential property exclusively by non-publicly funded, non-social housing co-operatives which has no transferable share capital.

Details of the clause

2. Subsection 1 inserts new subsection 3A into section 150 of the Finance Act 2013 (providers of social housing) to provide that relief from ATED is available on any day on which a qualifying housing co-operative is entitled to an interest in UK residential property within the scope of

ATED. It makes a consequential amendment to the heading of section 150.

3. Subsection 2 inserts a new section 150A into the Finance Act 2013, which defines a "qualifying housing co-operative".

4. New section 150A(1) provides that a "qualifying housing co-operative" is one which falls within the meaning of the Housing Association Act 1985, or Part 2 of the Housing (Northern Ireland) Order 1992 ,and is a registered society within the meaning of the Co-operative and Community Benefits Societies Act 2014 or the Co-operative and Community Benefits Society Act (Northern Ireland) 1969.

5. New section 150A(2) provides that the rules of the association must:

    - restrict membership of the association to individuals who are tenants or prospective tenants of the property;
    - prevent the granting or assignment of

tenancies to individuals other than members of the association;

- prevent members from transferring any of their share capital or making a gain on a return of their share capital;
- give members equal voting rights.

6. Subsections 3 to 5 provide that this relief can be claimed for chargeable periods beginning on or after 1 April 2020 with effect from 3 March 2021 and splits the way in which it can be claimed for the 2020/21 tax period into two categories -
   a. Case A deals with cases where a person comes within the charge on or after 3 March 2021 (Budget Day);
   b. Case B deals with cases where the person was within the charge before 3 March 2021 but who has not delivered a return by 3 March 2021.
7. Subsection (6) provides that the terms "single dwelling interest", "within the

charge" and "annual tax on enveloped dwellings return" have the same meaning as they have in Part 3 of the Finance Act 2013 (the ATED legislation).

Background note

8. ATED is charged where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than more than £500,000. The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed by filing an ATED return. Reliefs can reduce the annual charge in part, or in whole to nil.

9. The 15% rate of Stamp Duty Land Tax (SDLT), which operates alongside ATED, is similarly charged where a company, partnership, or a collective investment scheme purchases UK residential property

valued in excess of £500,000. The rules for both ATED and 15% rate of SDLT largely mirror one another, except to the extent that one is a one-off transaction tax; the other an ongoing annual charge.

10. ATED and the 15% rate of SDLT were introduced to deter the practice of buying and owning residential property within a corporate wrapper, a practice often described as 'enveloping'. Enveloping creates a situation in which effective ownership of a property can continually change hands, not via the sale of the property itself, which would give rise to SDLT, but instead via the sale/transfer of the shares in the company. No SDLT is payable on share transactions.

11. Housing co-operatives are voluntary associations of members who use a corporate structure (a company) to provide housing to their members. Whereas ordinary companies are

registered under the Companies Acts with Companies House. Housing co-operatives are registered and regulated by the Financial Conduct Authority.

12. Currently, any housing co-operative that owns residential property valued in excess of £500,000 is within the scope of ATED. Housing co-operatives which are registered providers of social housing already qualify for relief. This measure introduces new legislation to provide relief for housing co-operatives which are non-publicly funded, non-social housing co-operatives and which have no transferable share capital. The absence of transferable share capital eliminates the potential avoidance of SDLT which ATED was designed to counter.

13. A corresponding relief is also introduced in relation to the 15% flat rate of SDLT.

14. From 3 March 2021 qualifying housing

co-operatives owning or purchasing residential property valued in excess of £500,000 can claim relief from ATED for chargeable periods beginning on or after 1 April 2020.

Clause 91: Repayment to certain housing co-operatives: 2020-21 chargeable period

Summary

1. This clause enables housing co-operatives which now qualify for relief for the 2020/21 period and who have already paid the tax for that period, to claim a repayment by amending their 2020/21 ATED return.

Details of the clause

2. Subsection 1 provides that a repayment may be claimed by a qualifying housing co-operative which owned, before 3 March 2021, an interest in a residential property within the scope of ATED. A repayment may be claimed for the chargeable period beginning 1 April 2020.
3. Subsections 2 to 4 provide that -
    - A company is a qualifying housing co-operative on any day if it would

have been so had the legislation providing relief for qualifying housing co-operatives been in force on that day.

- Any day on which a qualifying housing co-operative comes within the scope of the relief as described above is a relievable day.
- Repayment must be claimed by amending the ATED return for the period beginning 1 April 2020, and HMRC must repay tax for the relievable days.
- A claim must be made by amending an ATED return, within the time limits in the existing legislation for amending ATED returns. This means that a claim must be made by 31 March 2022 or, if the return was delivered on or after 31 January 2022, 3 months from the filing date.

4. Subsection 5 provides that terms used in

this new section of the legislation have the same meaning as in the existing ATED legislation in Part 3 of FA 2013.

Background note

5. This measure introduces new legislation to provide relief from ATED for qualifying housing co-operatives which have no transferable share capital. The absence of transferable share capital eliminates the potential avoidance of SDLT which ATED was designed to counter.

6. For housing co-operatives who filed a return and paid ATED prior to 3 March 2021 for the chargeable period beginning 1 April 2020, a repayment of the tax may be claimed for any days on which they would have been a qualifying housing co-operative had the new relief been in force at that time.

7. A claim for a repayment must be made by amending their return, the time limit for

doing so being 31 March 2022. However, where a late return was delivered on or after 1 January 2022 and the tax paid, the time limit for amending the return and claiming a repayment of the tax is limited to 3 months from the filing date of that return.

Clause 92: Extension of temporary 5% reduced rate for hospitality and tourism sectors

Summary

1. This clause extends the temporary reduced rate of 5% for supplies of hospitality and tourism. This extension has effect until 30 September 2021.

Details of the clause

2. This clause extends the temporary reduced rate of VAT of 5%, and consequential changes to the percentage rates for the various categories of business entitled to use the flat-rate scheme, for supplies of hospitality and tourism to 30 September 2021.

Background note

3. Provision for the extension of the reduced rate of VAT of 5% has been made to continue support for the hospitality and

tourism sectors through the Coronavirus pandemic. The reduced rate for these sectors was initially announced on 8 July 2020. Without this clause the reduced rate of VAT of 5% would expire on 31 March 2021.

4. The clause also extends the temporary consequential changes to the percentages in the Table setting out the percentage rates for the various categories of business entitled to use the flat-rate scheme for small businesses in regulation 55K of the Value Added Tax Regulations 1995 (S.I. 1995/2518) to reflect the temporary reduced rate.

Clause 93: Temporary 12.5% reduced rate for hospitality and tourism sectors

Summary

1. This clause introduces a temporary 12.5% reduced rate of VAT for supplies of hospitality and tourism. It will be effective from 1 October 2021 through to 31 March 2022.

Details of the clause

2. Subsection (1) and (2) introduce the new temporary reduced rate of VAT of 12.5% for supplies of hospitality and tourism.
3. Subsection (3) and (4) provide for consequential changes to the percentage rates for the various categories of business entitled to use the flat-rate scheme for small businesses in regulation 55K of the Value Added Tax Regulations 1995 (S.I. 1995/2518) to reflect the temporary reduced rate.
4. Subsection (5) provides for the

commencement and end dates of the new temporary reduced rate, 1 October 2021 to 31 March 2022.

5. Subsection (6) provides a new power for the Treasury to introduce secondary legislation to repeal subsection (1) to (5) or amend the commencement and end dates of the new temporary reduced rate.

6. Subsection (7) to (10) explain the circumstances and process for the Treasury to exercise the power in subsection (6).

Background note

7. Provision for introduction of a reduced rate of VAT of 12.5% has been made to continue support for the hospitality and tourism sectors through the Coronavirus pandemic. This temporary reduced rate of VAT of 12.5% will replace the existing reduced rate of VAT of 5% as part of a staggered return to the standard rate of VAT of 20% for supplies of hospitality and

tourism. Without this clause the standard rate of VAT of 20% would apply from 1 October 2021.

8. It also makes temporary consequential changes to the percentages in the Table setting out the percentage rates for the various categories of business entitled to use the flat-rate scheme for small businesses in regulation 55K of the Value Added Tax Regulations 1995 (S.I. 1995/2518) to reflect the temporary reduced rate.

Clause 94: Extending digital record-keeping for VAT purposes to all businesses

Summary

1. This clause allows the scope of Making Tax Digital (MTD) to be extended in regulations to all Value Added Tax (VAT) registered businesses with effect from 1 April 2022 by repealing previously enacted legislation.

Details of the clause

2. This clause repeals sub-paragraphs 7 to 9 of paragraph 6 of Schedule 11 to the Value Added Tax Act 1994. Those sub-paragraphs provide that where regulations are made about digital record-keeping for VAT purposes, those regulations must provide for an exemption for VAT registered businesses with a taxable turnover below the VAT registration threshold.

Background note

3. This clause enables the implementation of the government's announcement on 21 July 2020 that MTD for VAT will be extended to all VAT registered business with effect from 1 April 2022.

4. When MTD for VAT was originally introduced, the government committed to initially making its provisions mandatory only for businesses with taxable turnover at or above the VAT registration threshold. In support of that commitment, it introduced a requirement in primary legislation to exempt businesses with taxable turnover below that threshold via regulations. The clause removes that requirement. HM Revenue and Customs (HMRC) will make regulations to extend the MTD for VAT provisions to all businesses following Royal Assent.

Clause 95 and Schedule 18: Deferring VAT payment by reason of the coronavirus emergency

Summary

1. This clause and Schedule provide for an extension of time by which all Value Added Tax ("VAT") arising in respect of the period from 20 March to 30 June 2020, which has been deferred until 31 March 2021, becomes payable in full. They provide, instead of payment in full on 31 March, for the Commissioners for Revenue and Customs to agree that the amount may be further deferred and paid in instalments. In cases where businesses have taken no action to pay the deferred VAT amount (in full or by entering into payment arrangements in respect of it) by 30 June 2021, there will be liability for a penalty. The clause and Schedule also provide for the removal of default surcharge in respect of the deferred VAT

amount. There is provision for a power enabling the penalty to be repealed in the event of a worsening of the coronavirus situation.

Details of the clause

2. Subsection 1 of the clause introduces Schedule 18 which makes provision about the powers of the Commissioners of Revenue and Customs in relation to the deferred VAT, and about a penalty for non-payment of the deferred VAT. The subsection and the Schedule come into force on 9 March 2021.

3. Subsections 3 to 6 provide that the penalty can be repealed by a statutory instrument and must provide for the repayment of amounts paid in respect of penalties and may make other transitional provision.

Details of the Schedule

4. Paragraph 1 provides for definitions.

5. Paragraph 2 gives the Commissioners of Revenue and Customs the power to agree an extension of the date when deferred VAT becomes payable, presently 31 March 2021, and to make such arrangements as are necessary for the deferred VAT to be paid – including by instalment.

6. Paragraph 3 determines that there is no liability to default surcharge in relation to the VAT which has been deferred.

7. Instead, Paragraph 4(1) and (2) provide that a penalty may be chargeable where by 30 June 2021 a business has neither paid in full the deferred VAT, nor entered into an arrangement with the Commissioners in respect of it for payment.

8. Paragraph 4(3) provides for a defence against the charge of the penalty on the basis that there is a reasonable excuse for not paying, or making arrangements to pay, the deferred VAT.

9. Paragraph 5 provides that the penalty is 5 per cent of the unpaid amount of the

deferred VAT.

10. Paragraph 6 makes provision for the method of, and time limits for, charging the penalty.

11. Paragraphs 7 and 8 make provision in relation to the payment and recovery of the penalty.

12. Paragraphs 9, 10 and 11 are concerned with reviews and appeals and matters of double jeopardy and requirements of notification.

Background note

13. VAT is ordinarily payable at the time when businesses furnish their VAT returns, or when those returns are corrected. There are some other requirements where businesses pay VAT on account.

14. On 20 March 2020 the Chancellor of the Exchequer announced that businesses could defer until 31 March 2021 the VAT that would become payable between 20

March and 30 June 2020. On 24 September 2020, the Chancellor further announced an option for businesses rather than making the payments in March to spread that VAT bill over 11 smaller repayments with no interest to pay. These are to start in March 2021.

15. When deciding how to pay the deferred VAT, businesses have the option to:

(a) pay it in full by 31 March 2021;

(b) opt into the instalment arrangement announced by the Chancellor (the New Payment Scheme);

(c) seek individual help from HM Revenue and Customs, which will normally be tailored to the specific needs of a business and its inability to pay the taxes due.

16. This clause and Schedule provide for option (b). The New Payment Scheme will be available for businesses to use between

March and the end of June 2021. It utilises a simple digital platform facilitating payment by direct debit. The first payment becomes due in the month of opt-in. However, there will be more monthly instalments available for businesses which make their first payment in March 2021 than for businesses which make their first payment in April, May or June 2021.

17. When payment of VAT was deferred until 31 March 2021, default surcharge and default interest – which concern non-payment of VAT – were inhibited. Default interest will continue to be inhibited where businesses avail themselves of any of the three options in paragraph 15 above and keep to any arrangements made. The clause and Schedule now remove the liability to default surcharge completely. However, where by 30 June 2021 businesses have not availed themselves of any of the three options, a 5 percent penalty may be assessed from 1 July 2021. Should

there be a further coronavirus emergency, the clause makes provision for a power to repeal the penalty.

Clause 96: VAT refunds to S4C

Summary

1. This clause amends the VAT refund scheme in section 33(3) of the Value Added Tax Act 1994 (VATA) to include S4C (the Welsh language broadcaster) as an eligible body. This will allow S4C to recover the VAT paid on purchases used to support its non-business activity of free to air public service broadcasting. The clause gives S4C parity of treatment with the public service broadcasters already included in Section 33.

Details of the clause

2. Subsection 1 inserts new paragraph (ia) into section 33(3) of VATA. New paragraph (ia) provides that section 33(3) applies to S4C.

3. Subsection 2 provides that the amendments made by the clause have

effect from 1 April 2021.

Background note

4. Section 33 refunds to named bodies the VAT they have incurred on purchases, acquisitions and importations made to support their non-business activities. Among the bodies eligible to claim refunds of VAT are the BBC and the appointed news providers. In order to provide equity of treatment, S4C is being added to the list of named bodies as, in common with the BBC, it is funded from the licence fee.

Clause 97 and Schedule 19: Customs duty on steel removed to Northern Ireland

Summary

1. This clause and Schedule will enable businesses who move steel originating from Rest of World (RoW) countries outside the EU and the UK into Northern Ireland to access the UK safeguard quotas or an equivalent in-quota tariff treatment provided there is a relevant EU tariff rate quota and it is open. The changes have effect from 11pm on the 31 December (the end of the Transitional Period). The Schedule also provides that existing powers to make secondary legislation can, with appropriate parliamentary engagement be used to extend the measure retrospectively to other goods.

Details of the clause

2. Clause 97 introduces Schedule 19 which contains amendments to the Customs

(Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605) in connection with the movement of certain steel products to Northern Ireland.

Details of the Schedule

3. Paragraph 2 inserts new regulation 7A into The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605), which makes changes in relation to the duty on certain steel products imported into Northern Ireland and declared on or after 3 March 2021.

4. New regulation 7A provides that for RoW origin steel imported directly into Northern Ireland that is at risk of subsequently being moved into the European Union, as determined by the Joint Committee decision on 'at risk', and declared for free circulation or end-use on or after 3 March, the duty is calculated by applying the UK steel safeguards notice and not applying the EU steel safeguard

duty. New regulation 7A (1) (g) requires that the relevant EU quota must be open for the regulation to apply.

5. Paragraph 3 inserts new regulation 7B to The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605), which makes changes in relation to the duty on certain steel products imported into Northern Ireland and declared before 3 March 2021 but after 11pm 31 December 2020.

6. New regulation 7B provides that for RoW origin steel imported directly into Northern Ireland that is at risk of subsequently being moved into the European Union, as determined by the Joint Committee decision on 'at risk', and declared for free circulation or end-use before 3 March, the EU steel safeguard duty will not apply if a claim has been made. New regulation 7B (1) (g) and (h) requires that the relevant EU and UK quotas must be open for the regulation to

apply. New regulation 7B (3) provides that for a claim to be made the process set out in 'the steel notice', must be followed.

7. Paragraph 4 inserts new regulation 13A to The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605), which makes changes in relation to the duty on certain steel products moved to Northern Ireland from Great Britain and declared on or after 3 March 2021.

8. New regulation 13A provides that for RoW origin steel moved into Northern Ireland via Great Britain, without being declared and discharge for free-circulation or authorised use in Great Britain, that is at risk of subsequently being moved into the European Union, as determined by the Joint Committee decision on 'at risk', and declared for free circulation or end-use in Northern Ireland on or after 3 March, the duty is calculated by applying the UK steel safeguards notice and not applying the EU steel safeguard duty. New

regulation 13A(1)(i) requires that the relevant EU quota must be open for the regulation to apply.

9. Paragraph 5 inserts new regulations 13B and 13C to The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605), which makes changes in relation to the duty on certain steel products removed to Northern Ireland from Great Britain and declared after 11pm 31 December 2020.

10. New regulation 13B provides that for RoW origin steel moved into Northern Ireland, having previously been declared and discharged for free-circulation or authorised use in Great Britain, that is at risk of subsequently being moved into the European Union, as determined by the Joint Committee decision on 'at risk', and then declared for free circulation or end-use in Northern Ireland after 11pm 31 December 2020, the EU safeguard duty will not apply if a claim has been made.

New regulation 13B(1)(i) requires that the relevant EU quota must be open for the regulation to apply. New regulation 13B (3) to (6) provides that for a claim to be made the process set out in 'the steel notice' must be followed unless and until a separate procedure is set out by HMRC Commissioners in a notice when that separate procedure must be followed. That separate procedure can include a notification to the Secretary of State.

11. New regulation 13C provides that for RoW origin steel moved into Northern Ireland via Great Britain, without being declared and discharged for free-circulation or authorised use in Great Britain, that is at risk of subsequently being moved into the European Union, as determined by the Joint Committee decision on 'at risk', and declared for free circulation or end use in Northern Ireland before 3 March but after 11pm 31 December 2020, the EU safeguard duty

will not apply if a claim has been made. New regulation 13C (1) (i) and (j) requires that the relevant EU and UK quotas must be open for the regulation to apply. New regulation 13C(3) provides that for a claim to be made the process set out in 'the steel notice', must be followed.

12. Paragraphs 6 inserts the relevant new interpretation provisions into The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2000/1605).

13. The inserted regulations have effect as though they are made under existing powers contained in the Taxation (Cross-border Trade) Act 2018 and may be amended or revoked by further secondary legislation. These existing powers can be used to apply these provisions to other goods and Paragraph 7 allows an extension to other goods to be retrospective, provided that it does not impose or increase taxation.

Background note

14. This clause and Schedule are being implemented to ensure Northern Ireland importers can continue to import RoW steel without being subject to prohibitive EU out-of-quota safeguard duties when the EU quota is open.

15. Without these changes, RoW steel imported into Northern Ireland, or moved into Northern Ireland from Great Britain would be subject to the EU's out-of-quota rate of 25%.

16. The changes made by paragraphs 2 and 4 have effect from 3 March 2021 and the remaining changes have effect from 11pm on the 31 December 2020 (the end of the Transitional Period).

Clause 98 and Schedule 20: Restriction of use of rebated diesel and biofuels

Summary

1. This clause and Schedule amend the Hydrocarbon Oil Duties Act 1979 (HODA) to restrict entitlement to use red diesel and rebated biofuels to a number of qualifying uses. It will also extend fuel duty to biofuels and fuel substitutes used in heating, applying lower rebated rates when used for non-commercial heating. The changes will take effect from 1 April 2022.

Details of the clause

2. Subsection (1) introduces Schedule 20 which amends HODA to restrict the use of rebated diesel ('red diesel') and biofuels to categories of machines specified in that schedule and makes related provisions.

3. Subsection (2) provides that the schedule will come into force on 1 April 2022.

4. Subsection (3) allows the Treasury to prescribe in regulations consequential, supplementary, transitional or saving provisions in connection with the coming into force of the schedule.
5. Subsection (4) provides that these regulations may allow for changes to amend, repeal or revoke provisions made by or under an Act that is passed before this Act; and make different provisions for different purposes or areas.
6. Subsection (5) provides that these regulations to be made by statutory instrument.
7. Subsection (6) provides that these regulations will be subject to the negative procedure of the House of Commons.
8. Subsection (7) amends paragraph 21 of Schedule 11 to Finance Act 2020 (FA 2020) to provide that the power to make consequential amendments to that schedule also includes the power to amend the schedule being introduced by

this clause.

Details of the Schedule

9. Paragraph 1 provides that all paragraphs in the schedule amend HODA. All references to legislation in the following paragraphs are to sections and schedules in that Act unless specifically stated.

10. Paragraph 2 amends section 6AA(2) to bring biodiesel used for heating within the chargeable use definition, enabling fuel duty to be charged when biodiesel is put to this use.

11. Paragraph 3 makes a consequential amendment to section 6AB(4A) required by the amendment to the heading of section 14B. It also provides for an alternative consequential amendment in case changes in Schedule 11 to FA 2020 relating to private pleasure craft (PPC) come into force in any part of the UK before this change.

12. Paragraph 4 amends section 6A(2) to

bring fuel substitutes used for heating within the chargeable use definition, enabling fuel duty to be charged when they are put to this use.

13. Paragraph 5 amends section 12 which sets out when a fuel duty rebate is not allowed. It provides that instead of the rebate not being allowed on road vehicles, it is allowed in excepted machines. It adds a new subsection (2ZA) which provides that, except where already provided, a rebate under section 11 on gas oil, fuel oil or other heavy oil will be allowed only on fuel used in excepted machines. The paragraph also provides for alternative amendments to be made in case changes in Schedule 11 to FA 2020 relating to PPC have come into force in any part of the UK before these changes.

14. Paragraph 6 makes consequential amendments to section 13 to specify that penalties for contravening restrictions on the use of rebated fuels set out in section

12 apply where fuel is taken into a vehicle, vessel, machine or appliance rather than into a road vehicle or an excepted machine as provided for in new section 12(2ZA).

15. Paragraph 7 makes similar consequential amendments to section 13ZB which contains enforcement provisions when a person supplies heavy oils for a "prohibited use" such as heating or for engines which are not "excepted machines". It also provides for an alternative consequential amendment in case changes in Schedule 11 to FA 2020 relating to PPC come into force to any part of the UK before this change.

16. Paragraph 8 amends section 13AA so that restrictions on the use of kerosene apply to the use of kerosene used as fuel for an excepted machine unless it is used in such a machine for heating.

17. Paragraph 9 makes a consequential amendment to section 13AB which deals with penalties for contravention of section

13AA to omit a redundant reference to 'an engine'.

18. Paragraph 10 amends section 14A so that the rebate specified in the section refers to biodiesel used as fuel for an excepted machine rather than as fuel for a road vehicle; and makes other consequential changes to that section.

19. Paragraph 11 amends section 14B so that the rebate specified in the section refers to bioblends used as fuel for an excepted machine rather than as fuel for a road vehicle; and makes other consequential changes to that section. The paragraph also provides for alternative amendments to be made in case changes in Schedule 11 to FA 2020 relating to PPC have come into force in any part of the UK before these changes.

20. Paragraph 12 amends section 14C so that restrictions on the use of rebated biodiesel and bioblend apply to their use as fuel in excepted machines rather than to

use in road vehicles; and makes consequential changes.

21. Paragraph 13 makes consequential amendments to section 14D so that the penalties for contravention of section 14C still work following the changes to that section.

22. Paragraph 14 omits section 14E as a rebate for all heavy oil and bioblend used in PPC is no longer required.

23. Paragraph 15 omits section 14F which sets out the penalties for contravention of section 14E and is therefore no longer needed.

24. Paragraph 16 amends section 19 to ensure that the title more accurately reflects what the section covers (relief on fuel used in lifeboats) and omits a redundant provision.

25. Paragraph 17 amends section 20AAA so that it refers to mixing of rebated oils other than when used in an excepted

machine rather than when used as fuel in a road vehicle. This paragraph also provides for an alternative amendment to be made if Schedule 11 to FA 2020 has come into force in any part of the UK before this change.

26. Paragraph 18 inserts a new subsection (3A) into section 24 to provide that where the Commissioners for HMRC are satisfied that any heavy oil, biodiesel or bioblend taken into the vehicle, vessel, machine or appliance was done according to the law of the place it was taken in, then subsection (3) shall not apply. Subsection (3) provides that the presence of a marker in the fuel shall be considered conclusive evidence that a rebate has been allowed. This is to ensure that users can transport marked fuel to the UK that was obtained outside the UK.

27. Paragraph 19 amends section 24A to ensure that the penalties for the misuse of marked oil and forfeiture provisions will

apply following the changes.

28. Paragraph 20 amends section 27(1) to insert a definition for an 'excepted machine', amend the definition of 'road vehicle' and omit the definition of an 'excepted vehicle' which is no longer required. It also makes a number of consequential amendments to subsections (1ZA), (1ZB), (1ZC) and (1ZD).

29. Paragraph 21 omits Schedule 1 which listed what were regarded 'excepted vehicles' under the Act as this list is no longer required.

30. Paragraph 22 inserts a new 'Schedule 1A' which sets out what will be regarded as 'excepted machines' under the Act. These machines are defined by reference to the type of machine and the purposes for which they are being used. Only 'excepted machines' will be able to use red diesel and rebated biodiesel. The schedule includes some new definitions of terms used in it.

31. Paragraph 23 makes consequential amendments to paragraphs 19, 20 and 21 of Schedule 4 dealing with record-keeping and entry/inspection of premises, in particular to replace references to 'road vehicle' with 'vehicle, vessel, machine or appliance'. The paragraph also provides for alternative amendments to be made in case changes in Schedule 11 to FA 2020 relating to PPC have come into force in any part of the UK before these changes.

32. Paragraph 24 makes consequential amendments to paragraph 7 of Schedule 5, which deals with sampling requirements, to make clear that samples can also be taken from a vessel, machine or appliance, as well as a vehicle. The paragraph also provides for an alternative amendment to be made in case changes in Schedule 11 to FA 2020 relating to PPC have come into force in any part of the UK before these changes.

Background note

33. This measure introduces changes that will remove the entitlement to use red diesel and rebated biodiesel from most sectors from April 2022 as part of the government's strategy to meet the UK's target of net zero carbon emissions by 2050. The changes will also extend fuel duty to biodiesel, bioblends and fuel substitutes used in heating, applying the rebated duty rate to non-commercial heating and the full rate of duty to commercial heating. This aligns the duty treatment of diesel and biodiesel.

34. Motor and heating fuels are liable to fuel duty, with only fuel taxed at the full rate of fuel duty allowed to be used in road vehicles. Some oils and fuels are taxed at a lower (rebated) rate as they are not intended to be used in road vehicles. This includes gas oil (diesel), which is chemically marked and dyed (commonly known as 'red diesel'). Gas oil intended

for use in diesel engine road vehicles is known as 'white diesel' (has no marker or dye) and has a fuel duty rate of 57.95 pence per litre (ppl). Red diesel has a duty rate of 11.14ppl.

35. At Budget 2020 the government announced its intention to restrict the entitlement to use red diesel and rebated biodiesel from 1 April 2022. It published a consultation in summer 2020, which set out proposals to remove red diesel entitlement for all except for a limited number of qualifying uses: for vehicles and machinery used in agriculture (as well as forestry, horticulture and fish farming); as fuel to propel passenger, freight or maintenance vehicles designed to run on rail tracks; and for non-commercial heating and non-propulsion uses in permanently moored houseboats.

36. As result of the consultation, Budget 2021 announced that further uses will retain entitlement to use red diesel and

rebated biodiesel, including: generating power for non-commercial premises; as fuel for all marine craft refuelling and operating in the UK (except PPC in Northern Ireland); for maintaining community amateur sports clubs and all golf courses; and for powering the machinery (including caravans) of travelling fairs and circuses. The government's response to the consultation was published alongside Budget 2021.

37. The legislation in this clause and schedule give effect to these changes by amending the main primary legislation covering hydrocarbon oils - HODA.

Private pleasure craft

38. At Budget 2021 the government announced that PPC in Northern Ireland will have to use white diesel to propel their craft with effect from no later than June 2021. This is to implement the Court of Justice of the European Union judgment of 2018 relating to the marking of fuel for

propulsion of such craft, which the government is required to implement in Northern Ireland under the terms of the Northern Ireland Protocol to the Withdrawal Agreement.

39. Schedule 11 to FA 2020 provided for amendments to HODA to make the changes needed relating to PPC but did not commence the changes. It provided that the schedule would be brought into force on a day appointed in secondary legislation either in the UK as a whole or in a more limited area of the UK. The legislation in the clause and schedule covering the April 2022 changes provides for two sets of amendments to HODA, with only one coming into force depending on the circumstances. The first set cover the possibility that the PPC changes in FA 2020 come into force after the FA 2021 becomes law and the second set cover the possibility that they take effect before the changes in the Finance

Bill receive Royal Assent.

Clause 99: Rates of tobacco products duty

Summary

1. This clause consolidates into the Tobacco Products Duty Act 1979 the increases to tobacco duties made in the Tobacco Products Duty (Alteration of rates) Order 2020 (the Order) on 16 November 2020. As the Order would need to be renewed or otherwise expire after a year, the increases are being consolidated into legislation through a Finance Bill. The Order will be revoked at the same time.

Details of the clause

2. Subsection (1) substitutes a new table of rates into Schedule 1 to the Tobacco Duty Act 1979. The rates in the new table are the same as those that came into force by virtue of the Order on 16 November 2020.

3. Subsection (2) revokes the Order which first introduced the increases. The rate changes represent an increase in excise

duty of 7.134% on hand-rolling tobacco, 3.134% on all other tobacco products, and 5.134% on the Minimum Excise Tax (MET) on cigarettes.

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 public health objectives and the public finances. Research has consistently shown that the price of tobacco products affects demand.

5. The duty increases that came into effect through the Order on 16 November 2020, increased excise duty on all tobacco products by the duty escalator (RPI + 2%). In addition, the duty rate on hand-rolling tobacco was increased by an additional 4% (RPI +6%) and the MET on cigarettes by an additional 2% (RPI +4%).

6. These duty increases, together with consequential VAT, on average increased the price of a packet of 20 cigarettes by 22p, a 30 gram pack of hand-rolling tobacco by 65p, 10 grams of cigars by 11p, a 30 gram pack of pipe tobacco by 15p and 30 grams of tobacco for heating by 28p. The Order also increased the MET on cigarettes from £305.23 to £320.90 per 1000 cigarettes.

Clause 100: Rates for light passenger or light goods vehicles, motorcycles etc

Summary

1. This clause 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 2021.

Details of the clause

2. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change rates of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £10. It also amends paragraph 1(2A) of schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an engine capacity not exceeding 1,549cc to increase the duty rate by £5.
3. Subsection (3) amends paragraph 1B of

Schedule 1 to VERA to substitute new VED rates for light passenger vehicles first registered between 1 March 2001 and 31 March 2017. This reduced rate applies to alternatively fueled light passenger vehicles, including those powered by bioethanol and liquid petroleum gas and hybrids.

4. Subsection (4) amends paragraph 1B of Schedule 1 to VERA in the sentence immediately following the table, to substitute for paragraphs (a) and (b), "(a) in column (3), in the last rows, "330" were substituted for "575" and "590", and (b) in column (4), in the last two rows, "340" were substituted for "585" and "600".

5. Subsection (5) amends paragraphs 1GC of Schedule 1 to VERA to change rates on the first vehicle licence for light passenger vehicles first registered on or after 1 April 2017.

6. Subsection (6) amends paragraph 1GC of Schedule 1 to VERA to change rates on the

first licence for higher rate diesel light passenger vehicles first registered on or after 1 April 2017.

7. Subsection (7) amends paragraph 1GD(1) of Schedule 1 to VERA to change the rate of duty applicable to light passenger vehicles first registered on or after 1 April 2017 from the second vehicle licence onwards. The reduced rate of duty is increased by £5 to £145 per annum. The standard rate of duty is increased by £5 to £155 per annum.

8. Subsection (8) amends paragraph 1GE(2) of Schedule 1 to VERA to change the rates for light passenger vehicles with a list price exceeding £40,000 registered on or after 1 April 2017. In paragraph (a) the rate is increased by £15 to £480 and in paragraph (b) the rate is increased by £15 to £490.

9. Subsection (9) amends paragraph 1(J) of Schedule 1 to VERA to change rates for some light goods vehicles first registered

on or after March 2001 by increasing the duty rate from £265 to £275. The rate of duty for light goods vehicles first increased between 1 January 2009 and 31 December 2010 is unchanged at £140.

10. Subsection (10) amends paragraph 2(1) of Schedule 1 to VERA to change rates for motorcycles weighing no more than 450 kilograms unladen. The range of duty increased by £1 to £21 for motorcycles with an engine size not more than 150cc; by £1 to £45 for motorcycles with an engine size of over 150cc but not more than 400cc; by £2 to £69 for motorcycles with an engine size of over 400cc but not more than 600cc; and by £3 to £96 for motorcycles with an engine size of over 600cc, motor tricycles with an engine size over 150cc and trade licences for motorcycles.

Background note

11. The rate of VED is chargeable on

vehicles dependent on various factors including the vehicle type, engine size, date of first registration, fuel type and CO_2 emissions data. In general:

a. cars and vans first registered prior to March 2001, and all motorcycles, pay VED by reference to the engine size.

b. vans registered on or after 1 March 2001 pay a flat rate of VED.

c. cars first registered between 1 March 2001 and 31 March 2017 pay VED according to CO_2 emissions and fuel type.

d. cars registered on or after 1 April 2017 pay VED based on CO_2 emissions and fuel type when first licensed, followed by a standard rate for subsequent licences.

Clause 101: Rebates of vehicle excise duty where higher rate of duty paid

Summary

1. This clause amends Part I, Section 19 (3A) of the Vehicle Excise and Registration Act 1994 (VERA), which provides for a rebate of vehicle excise duty (VED), so that registered keepers of cars with a list price of over £40,000 are issued with the correct annual VED refund if they sell their vehicle or make a Statutory Off-Road Notification (SORN) in the last year of the vehicle being liable to pay the expensive car supplement.

Details of the clause

2. This clause amends Part I, Section 19 (3A) of the Vehicle Excise and Registration Act 1994 (VERA), for vehicles subject to Schedule 1, Part 1AA, Paragraph 1GE (Higher rates of duty: vehicles with a price exceeding £40,000), so that the rebate

amount is equal to the amount of months remaining at the higher rate of duty and the amount of months remaining at the standard rate.

Background note

3. Since April 2017, registered keepers of cars which have a list price exceeding £40,000 are required to pay an additional supplement in addition to the standard rate of VED. This must be paid for a period of five years from the start of the second vehicle licence but for a period of no longer than six years from when the vehicle was first registered.

4. As a vehicle can change hands or be declared off-road through a SORN, the vehicle licence end date and the expensive car supplement end date will not always align.

5. This clause will amend VED legislation to ensure that where the vehicle licence end date and the expensive car supplement

end date do not align, registered keepers of cars in their last year of paying the expensive car supplement are issued correct VED refunds when required.

Clause 102: HGV road user levy (extension of suspension)

Summary

1. This clause suspends the charging and collection of the heavy goods vehicle (HGV) Road User Levy for a further 12 months from 1 August 2021 to 31 July 2022.

Details of the clause

2. This clause amends section 88(3) of the Finance Act 2020 so as to define the exempt period as 24 months beginning with 1 August 2020 instead of 12.

Background note

3. The HGV Road User levy is an annual charge for UK hauliers paid alongside their vehicle excise duty, and a daily, weekly or monthly charge for non-UK based hauliers.

4. The levy was suspended under the Finance Act 2020 for an initial period of 12 months to support the haulage sector and pandemic recovery efforts.
5. The Government has decided to suspend the levy for a further 12 months to support the haulage sector and pandemic recovery efforts.

Clause 103: Rates of air passenger duty from 1 April 2022

Summary

1. This clause provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of the Finance Act 1994. The rates of APD for flights to Band A destinations are unchanged. Rate changes to Band B destinations will be as follows:
    - Reduced rates will rise by £ 2 (from £ 82 to £ 84)
    - Standard rates will rise by £ 5 (from £ 180 to £ 185)
    - Higher rates will rise by £ 13 (from £ 541 to £ 554)
2. These changes to the rates of APD in relation to the carriage of passengers will come into effect beginning on or after 1 April 2022.

Details of the clause

3. Subsection 1 amends the APD rates for flights to Band B destinations.

4. Subsection 2 states that these changes apply to the carriage of passengers beginning on or after 1 April 2022.

Background note

5. APD rates are dependent on a passenger's class of travel and final destination. The reduced rates apply to the lowest class of travel available on the aircraft, the standard rates to any other class, and the higher rates to travel in aircraft of 20 tonnes or more equipped to carry fewer than 19 passengers. There are two destination bands: band A includes destinations whose capital is up to 2,000 miles from London and band B includes all other destinations.

6. The airline industry made a request to the government to give sufficient advance notice of changes in APD rates. In

response to this it was announced at the Budget 2021 that APD rates for 2022 – 2023 would increase in line with inflation (based on the retail price index RPI)).

Clause 104: Amounts of gross gaming yield charged to gaming duty

Summary

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2021.

Details of the clause

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 beginning on or after 1 April 2021.

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 £ 2,548,500 of GGY, then 20 per cent for the next £ 1,757,000 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.

5. The change made by this clause increases the GGY bands but makes no changes to the rates. This ensures that casino operators' profits are not subject to the higher gaming duty bands simply as a result of inflation. There is therefore no duty increase in real terms. The basis of revalorisation of the bands is a forecast Retail Price Index of 3.14% per cent.

Clause 105: Rates of climate change levy from 1 April 2022 to 31 March 2023

Summary

1. This clause amends the main rates of Climate Change Levy (CCL) in relation to supplies treated as taking place from 1 April 2022 but before 1 April 2023. It also amends the reduced rate percentages that apply to the main rates of CCL payable by participants in the Climate Change Agreement (CCA) scheme, also in relation to supplies treated as taking place from 1 April 2022 but before 1 April 2023.

Details of the clause

2. This clause amends paragraph 42 of Schedule 6 to the Finance Act 2000, which provides for the amount payable by way of CCL.

3. Subsection 2 substitutes a new table in paragraph 42(1) which sets out the rate at which the levy is payable for each taxable

commodity if the supply is not a reduced-rate supply.

4. Subsection 3 amends paragraph 42(1)(c) to set the rate of CCL for other reduced-rate supplies.

5. Subsection 4 amends the Notes to paragraph 2 of Schedule 1 to the Climate Change Levy (General) Regulations 2001 to change the value of "r" in the formula that is used to calculate the reduced rate of CCL paid by businesses that participate in the CCA scheme.

6. Subsection 5 provides that the changes have effect in relation to supplies treated as taking place on or after 1 April 2022 but before 1 April 2023.

Background note

7. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use

of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases. Businesses that participate in the CCA scheme run by the Department for Business, Energy and Industrial Strategy pay reduced rates, expressed as a percentage of the full main rates of CCL, on the taxable commodities supplied to them.

8. Budget 2016 announced that, from 1 April 2019, rates would become subject to 'rebalancing' to reflect changes in the fuel mix used in electricity generation. Moving to a ratio of 2.5:1 (electricity: gas) from April 2019. These announced rates for which we now wish to legislate follow a trajectory towards the government's objective of reaching a ratio of 1:1 by April 2025.

9. The Budget 2020 included an announcement for the extension of the freeze of rates for liquefied petroleum gas

(LPG) to 31 March 2024. The freeze was first announced at Autumn Budget 2017. This was to preserve the competitiveness of LPG as a heating fuel against kerosene.

10. Budget 2016 announced that, alongside the rates increase from 1 April 2019, the reduced rates of CCL for qualifying businesses in the CCA scheme would be amended so that participants did not pay more in CCL than they would have if the rates were increased in line with the Retail Prices Index (RPI) as in previous years. March Budget 2020 announced amended reduced rates for 2022 to 2023 and 2023 to 2024 which would similarly limit the impact on CCA scheme participants to an RPI increase.

Clause 106: Rates of climate change levy from 1 April 2023

Summary

1. This clause amends the main rates of Climate Change Levy (CCL) in relation to supplies treated as taking place from 1 April 2023. It also amends the reduced rate percentages that apply to the Climate Change Levy (CCL) main rates payable by participants in the Climate Change Agreement (CCA) scheme, also in relation to supplies treated as taking place from 1 April 2023.

Details of the clause

2. This clause amends paragraph 42(1) of Schedule 6 to Finance Act 2000, which provides for the amount payable by way of CCL.

3. Subsection 2 substitutes a new table in paragraph 42(1), which sets out the rate at which the levy is payable for each taxable

commodity if the supply is not a reduced-rate supply.

4. Subsection 3 amends paragraph 42(1)(c) to set the rate of CCL for other reduced-rate supplies.

5. Subsection 4 amends the Notes to paragraph 2 to Schedule 1 of the Climate Change Levy (General) Regulations 2001 to change the value of "r" in the formula that is used to calculate the reduced rate of CCL paid by businesses that participate in the CCA scheme.

6. Subsection 5 provides that the changes have effect in relation to supplies treated as taking place on or after 1 April 2023.

Background note

7. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's

international and domestic targets for cutting emissions of greenhouse gases. Businesses that participate in the CCA scheme run by the Department for Business, Energy and Industrial Strategy pay reduced rates, expressed as a percentage of the full main rates of CCL, on the taxable commodities supplied to them.

8. Budget 2016 announced that, from 1 April 2019, rates would become subject to 'rebalancing' to reflect changes in the fuel mix used in electricity generation. Moving to a ratio of 2.5:1 (electricity: gas) from April 2019. These announced rates for which we now wish to legislate follow a trajectory towards the government's objective of reaching a ratio of 1:1 by April 2025.

9. The Budget 2020 included an announcement for the extension of the freeze of rates for liquefied petroleum gas (LPG) to 31 March 2024. The freeze was

first announced at Autumn Budget 2017. This was to preserve the competitiveness of LPG as a heating fuel against kerosene.

10. Budget 2016 announced that, alongside the rates increase from 1 April 2019, the reduced rates of CCL for qualifying businesses in the CCA scheme would be amended so that participants did not pay more in CCL than they would have if the rates were increased in line with the Retail Prices Index (RPI) as in previous years. March Budget 2020 announced amended reduced rates for 2022 to 2023 and 2023 to 2024 which would similarly limit the impact on CCA scheme participants to an RPI increase.

Clause 107: Rates of landfill tax

Summary

1. This clause amends section 42(1)(a) and 42(2) of the Finance Act 1996 ("FA96") to increase both the standard and lower rates of Landfill tax in line with inflation (rounded to the nearest 5 pence). The increased rates apply to any disposal of relevant materials made (or treated as made) at a landfill site in England or Northern Ireland on or after 1 April 2021. The increased standard rate also applies from the same date to any disposal of relevant materials made (or treated as made) at an unauthorized waste site in England or Northern Ireland. The standard rate will increase to £96.70 per tonne and the lower rate to £3.10 per tonne.

Details of the clause

2. Subsection (2) substitute "£94.15" to

"£96.70" in sections 42(1)(a) of FA96.

3. Subsection (3) substitutes "£94.15" to "£96.70" and "£3.00" to "£3.10" in sections 42(2) of FA96.

4. Subsection (4) provides the commencement date for the change to the standard and lower rate of tax.

Background note

5. Landfill Tax was introduced on 1 October 1996 to encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste material through increasing the cost of waste disposal at landfills.

6. There is a lower rate of tax, which applies to less polluting qualifying materials listed in two Treasury Orders, and a standard rate which applies to all other taxable material. From 1 April 2018 the scope of Landfill tax was extended to include the disposal of relevant materials made to

unauthorized waste sites. Previously, the tax applied across the UK but from 1 April 2015 it was devolved in Scotland and from 1 April 2018 in Wales.

7. New legislation contained in the 2018 Finance Bill meant that, from 1 April 2018, the scope of Landfill Tax was extended to sites operating without the appropriate environmental disposal permit. Operators of such sites became liable for Landfill Tax at the standard rate for all disposals.

Clause 108: Repeal of carbon emissions tax

Summary

1. This clause repeals redundant, un-commenced primary legislation relating to the Carbon Emissions Tax, from Royal Assent.

Details of the clause

2. Subsection (1) omits Part 3 of Finance Act 2019 which established the tax.

3. Subsection (2) omits section 95 of, and Schedule 12 to, Finance Act 2020 which amended Finance Act 2019 to ensure the tax would work once commenced.

Background note

4. In preparation for its withdrawal from the EU, the government developed two policies that could ensure a price on carbon emissions was maintained when the UK would leave the EU Emissions Trading Scheme: a Carbon Emissions Tax

and a UK emissions trading scheme.

5. Finance Act 2019 (sections 69 to 95) established the tax and set out the basic structure, providing for much of the detail to be set out in secondary legislation. These provisions were updated by Finance Act 2020 (section 95 and Schedule 12).

6. In December 2020 the government announced that it had decided to implement the UK Emissions Trading System rather than the Carbon Emissions Tax. The legislation in Finance Acts 2019 and 2020 relating to the tax, which has never been commenced, is therefore redundant. To ensure the statute book is up to date, this legislation is now being repealed.

Part 4: Miscellaneous and Final

Clause 109: Designation of freeport tax sites

Summary

1. This clause introduces a new power to designate freeport tax sites in Great Britain.

Details of the clause

2. Subsection (1) provides that HM Treasury may by regulations designate special areas in Great Britain for the purposes of Parts 2 and 2A of the Capital Allowances Act 2001 (plant and machinery allowances and structures and buildings allowances) and, in respect of England only, Part 4 of the Finance Act 2003 (stamp duty land tax).
3. Subsection (2) provides that an area may only be designated by regulations under this section if the area is situated in a freeport or HM Treasury consider that the area is being used, or is likely to be used, in connection with the activities of a

freeport.

4. Subsection (3) provides that an area designated by regulations under this section is to be called a "freeport tax site".

5. Subsection (4) provides that regulations made under this section must specify the date on which the designation takes effect.

6. Subsection (5) provides that in this section a "freeport" means an area that is identified as a freeport by, or with the consent of, HM Treasury in a published document.

7. Subsection (6) contains transitional provisions to secure that any regulations made in reliance on a resolution under the Provisional Collection of Taxes Act 1968 continue to have effect once the Finance Bill 2021 receives Royal Assent.

Background note

8. This freeport tax site designation power has been introduced to support the government's freeports policy. Tax reliefs

are one part of the wider freeports policy. These tax reliefs include an enhanced capital allowance for qualifying expenditure on plant and machinery, an enhanced structures and buildings allowance for qualifying expenditure on non-residential buildings and structures and a stamp duty land tax relief for certain acquisitions of land. These tax reliefs will be available in areas in Great Britain which have been designated as freeport tax sites by regulations made under this clause.

Clause 110 and Schedule 21: Capital allowances for freeport tax sites

Summary

1. This clause introduces a Schedule which provides for enhanced rates of capital allowances on qualifying expenditure incurred in freeport tax sites. Part 1 of the schedule provides for 100% first-year allowances for companies investing in plant or machinery for use primarily in freeport tax sites. Part 2 of the schedule provides for an enhanced annual rate of structures and buildings allowances of 10% for qualifying expenditure incurred on non-residential structures and buildings situated in freeport tax sites. These enhanced rates of capital allowances will be available for qualifying expenditure incurred from the date that the freeport tax site is formally designated until 30 September 2026.

Details of the clause

2. Clause 110 introduces Schedule 21 which makes provision about capital allowances for expenditure incurred in connection with freeport tax sites.

Details of the Schedule

Part 1: First-Year Allowance for Plant and Machinery

3. Paragraph 1 is introductory and explains that amendments are to be made to Part 2 of the Capital Allowances Act 2001 (CAA 2001).

4. Paragraph 2 adds this new first-year allowance under new section 45O to the categories of expenditure, listed in section 39 CAA 2001, that can qualify for first-year allowances.

5. Paragraph 3 introduces new sections 45O to 45R into CAA 2001.

6. Subsection (1) of new section 45O requires five conditions, referred to as Conditions A to E, to be met for expenditure incurred

by companies on the provision of plant or machinery to qualify for this new first-year allowance.

7. Subsection (2) sets out Condition A, requiring the plant or machinery to be primarily for use within an area which is a freeport tax site at the time the expenditure is incurred.

8. Subsection (3) sets out Condition B, requiring the plant or machinery to be new and unused.

9. Subsection (4) sets out Condition C, requiring the expenditure to be for the purposes of a trading activity or for other activities, which are listed in section 12(4) Income Tax (Trading and Other Income) Act 2005 and section 39(4) Corporation Tax Act 2009. These other activities are mainly in connection with mines, quarries, ironworks, gasworks, waterworks, canals, docks, railways, fishing rights and other rights of markets, fairs, bridges, tolls and ferries.

10. Subsection (5) sets out Condition D, requiring that the expenditure be incurred on or before 30 September 2026.

11. Subsection (6) sets out Condition E, requiring the company to be within the charge to corporation tax.

12. Subsection (7) provides that new section 45O is subject to new sections 45P, 45Q and 45R CAA 2001, and the existing general exclusions for first-year qualifying expenditure set out in section 46 CAA 2001.

13. Subsection (1) of new section 45P CAA 2001 provides for a power to enable the Treasury to make regulations to change the conditions that must be met in order for expenditure to be first-year qualifying expenditure under new section 45O.

14. Subsection (2) prevents regulations made under this section from removing the requirement that the plant or machinery be for use primarily within a

freeport tax site at the time the expenditure is incurred.

15. Subsection (3) provides that regulations made under this section may, among other things—

a. make provision by reference to the expenditure, the plant or machinery, the company that incurred the expenditure or a person who is or has been connected with that company,

b. impose conditions relating to accounts or other records,

c. impose other conditions requiring a person to take steps specified in the regulations,

d. make different provision for different purposes,

e. include incidental, supplementary, consequential, transitional or transitory provision.

16. Subsection (4) provides that regulations made under this section may

amend new section 45O, other provisions in Part 2 of CAA 2001 and, where the changes are incidental, supplementary, consequential, transitional or transitory, other provisions of CAA 2001 or provisions of another Act.

17. Subsections (1)(a) & (b) of new section 45Q provide that the anti-avoidance rule in this section applies where the company incurring the expenditure intends to use the plant or machinery partly outside a freeport tax site, but enters into "relevant arrangements", designed to meet the "for use primarily in the area" test, where the main, or one of the main, purposes of those arrangements is to obtain the first-year allowance, or a greater amount of first-year allowance.

18. Subsection (2) prevents that part of the expenditure on plant or machinery which is attributable to the intended use outside of a freeport tax site from qualifying for the first-year allowance under new section

45O.

19. Subsection (3) provides for the part of the expenditure on plant or machinery which is attributable to the intended use outside of a freeport tax site to be apportioned on a just and reasonable basis from that part which is attributable to intended use within a freeport tax site.

20. Subsection (4) defines "relevant arrangements" for the purpose of this section as being the transaction for the purchase of the plant or machinery, or any wider scheme or arrangement of which that transaction forms part.

21. Subsection (1) of new section 45R provides that expenditure on plant or machinery is to be treated as never having been first-year qualifying expenditure under new section 45O, in circumstances where the plant or machinery becomes at any relevant time thereafter primarily used outside a freeport tax site. This means that if at any relevant time the

person claiming the first-year allowance under new section 45O, or a connected person, begins to use the plant or machinery primarily outside that area, the first-year allowance must be withdrawn, as if the expenditure had never qualified for the new first-year allowance.

22. Subsection (2) defines the "relevant time" for the purpose of this section as meaning a time within the relevant period when the company (or a connected person) owns the plant or machinery.

23. Subsection (3) defines the "relevant period" for the purpose of this section as meaning five years from when the plant or machinery is first used or held for use by the company for its trading or other activity (detailed within condition C in new section 45O).

24. Subsections (4) to (6) provide that all such necessary assessments and adjustments are to be made for the purpose of withdrawing the relief under

this section. In addition, a person who has made a tax return, who becomes aware that anything in the tax return has become incorrect because of the operation of this section, must give notice to HMRC of the necessary amendment, within three months of first becoming aware of it.

25. Paragraph 4 inserts a reference to new section 45O into the list of provisions to which the general exclusions in section 46 apply. These general exclusions provide that expenditure is not first-year qualifying expenditure if, for example, it is incurred on the provision of a car, or on plant or machinery for leasing, or in the chargeable period in which the qualifying activity of the business is permanently discontinued.

26. Paragraph 5 adds expenditure on plant and machinery for use in freeport tax sites to the Table of first-year allowances, and their respective rates, in section 52(3) CAA 2001, and sets the rate

of this new first-year allowance under new section 45O at 100%.

Part 2: Structures and Buildings Allowances

27. Paragraph 6 is introductory and explains that amendments are to be made to Part 2A of CAA 2001.

28. Paragraph 7 amends section 270AA CAA 2001 to give effect to the enhanced rate of structures and buildings allowances for freeport qualifying expenditure.

29. Subsection (2)(b)(ii) of section 270AA CAA 2001 is amended to refer to the period specified in new subsection (2A) rather than the period of 33 1/3 years.

30. Subsection (2A) is inserted into section 270AA CAA 2001 to provide for a different allowance period for freeport qualifying expenditure. The allowance period for freeport qualifying expenditure is 10 years whilst the allowance period for other qualifying expenditure under Part

2A remains 33 1/3 years.

31. Subsection (5) of section 270AA CAA 2001 is amended to introduce different rates of structures and buildings allowances. The annual rate of structures and buildings allowances for freeport qualifying expenditure is 10% whilst the annual rate for other qualifying expenditure under Part 2A remains 3%.

32. Paragraph 8 inserts new subsection (2A) into Section 270BJ CAA 2001. Subsection (2A) operates by allowing qualifying expenditure on the renovation and conversion of parts of buildings and structures which have already been brought into use before the area in which the building or structure is situated was designated as a freeport tax site, to be treated for the purposes of new subsections (2) and (7) of 270BNA as if that qualifying expenditure was on the construction of that part of the structure or building for the first time.

33. Paragraph 9 amends section 270BK(3) CAA 2001 (preparation of sites) to include reference to new subsections (2) and (7) of 270BNA.

34. Paragraph 10 inserts new sections 270BNA, 270BNB and 270BNC into Part 2A of CAA 2001.

35. Subsection (1) of new section 270BNA CAA 2001 requires five conditions, referred to as Conditions A to E, to be met for qualifying expenditure to be "freeport qualifying expenditure".

36. Subsection (2) sets out Condition A which requires that construction must begin at a time when the area in which the building or structure is located is a freeport tax site.

37. Subsection (3) sets out Condition B which requires that the building or structure must be brought into qualifying use at a time when the area in which the building or structure is located is a freeport tax site and by 30 September 2026.

38. Subsection (4) sets out Condition C which requires that all qualifying expenditure must be incurred at a time when the area in which the building or structure is located is a freeport tax site and by 30 September 2026.

39. Subsection (5) sets out Condition D which requires that the person who incurs the qualifying expenditure must be within the charge to income tax or corporation tax at the time that the qualifying expenditure is incurred.

40. Subsection (6) sets out Condition E which requires that the allowance statement made by the person who incurred the qualifying expenditure, and which is relied on for the purposes of the first valid claim for structures and buildings allowances, must state that the person wants the qualifying expenditure to be freeport qualifying expenditure. The allowance statement is required in accordance with section 270IA CAA 2001.

41. Subsection (7) provides that for the purposes of subsection (2) of new section 270BNA CAA 2001 the construction of the building or structure is deemed to begin when the first construction contract relating to that building or structure is entered into.

42. Subsection (8) provides that this section is subject to any regulations made under new section 270BNC CAA 2001.

43. Section 270BNB is inserted into Part 2A to allow for a just and reasonable apportionment to treat part of the qualifying expenditure as freeport qualifying expenditure where:

a. The building or structure is located only partly within a freeport tax site; and/or

b. Part of the building or structure is brought into qualifying use by 30 September 2026 and part afterwards.

44. Subsection (1) of new section 270BNC

CAA 2001 provides for a power to enable the Treasury to make regulations to change the conditions that must be met for qualifying expenditure to be freeport qualifying expenditure.

45. Subsection (2) prevents regulations made under this section from removing the requirement for the building or structure to be located in a freeport tax site but provides that regulations may alter the time when that requirement must be satisfied.

46. Subsection (3) provides that regulations made under this section may, among other things—

a. make provision by reference to the expenditure, the building or structure, the person who incurred the expenditure (or a person who is or has been connected with that person),

b. impose conditions relating to accounts or other records,

c. impose other conditions requiring a person to take steps specified in the regulations,

d. make different provision for different purposes,

e. include incidental, supplementary, consequential, transitional or transitory provision.

47. Subsection (4) provides that regulations made under this section may amend new section 270BNA, other provisions in Part 2A of CAA 2001 and, where the changes are incidental, supplementary, consequential, transitional or transitory, other provisions of CAA 2001 or provisions of another Act.

48. Paragraph 11 amends section 270EB CAA 2001 by providing for just and reasonable apportionments made for buildings and structures in multiple uses to be made by reference to the different rates of structures and buildings allowances provided for in the

amendments to section 270AA(5).

49. Paragraph 12 inserts new subsection (5) into section 270IA CAA 2001 which provides for a new requirement for the allowance statement. This requirement applies where the amount of qualifying expenditure includes freeport qualifying expenditure and it requires that the amount of that qualifying expenditure which is freeport qualifying expenditure to be stated separately on the allowance statement.

Part 3: Related Amendments

50. Paragraph 13 inserts a reference to new subsections 45R(5) and (6) CAA 2001 into the table in section 98 of the Taxes Management Act 1970 (penalty for failure to provide information etc.).

51. Paragraph 14 is introductory and explains that related amendments are to be made to other provisions in CAA 2001 (other than those in Parts 2 and 2A).

52. Paragraph 15 amends section 3 CAA 2001 to require that claims made under new section 45O and claims in respect of freeport qualifying expenditure (as defined in new section 270BNA) must include or be accompanied by such information as HMRC may require.

53. Paragraph 16 concerns the procedure for making regulations under new sections 45P and 270BNC CAA 2001.

54. Subparagraph 1 provides that section 570B CAA 2001 is to be amended.

55. Subparagraph (2) inserts a reference to new sections 45P and 270BNC CAA 2001 into section 570B(3) CAA 2001 and in so doing excludes regulations made under those provisions from the negative statutory instrument parliamentary procedure.

56. Subparagraph (3) amends section 570B CAA 2001 by inserting new subsections (4)-(8).

57. Subsection (4) provides that an instrument containing regulations made under new sections 45P or 270BNC CAA 2001 must be laid before the House of Commons after being made.

58. Subsection (5) provides that regulations made under new sections 45P or 270BNC CAA 2001 will cease to have effect unless approved by the House of Commons before the end of the period of 28 days beginning with the day on which they are made.

59. Subsection (6) provides that regulations made under new sections 45P or 270BNC CAA 2001 will cease to have effect before then if the House of Commons rejects the regulations.

60. Subsection (7) disregards time for the 28 day period during which—

a. Parliament is prorogued or dissolved, or

b. the House of Commons is adjourned

for more than four days.

61. Subsection (8) provides that where regulations cease to have effect under subsection (6), their ceasing to have effect is without prejudice to anything done in reliance on them.

62. Paragraph 17 provides that in CAA 2001 a "freeport tax site" means an area designated under section 109 of the Finance Act 2021.

63. Paragraph 18 inserts a reference to new section 573A into Part 2 of Schedule 1 of CAA 2001 (defined expressions).

Background note

64. Tax relief for the costs of certain capital assets is available through capital allowances, which can be deducted from a business's profits for income tax or corporation tax purposes in place of depreciation, which is not deductible for the purposes of these taxes.

65. The standard rates of writing-down

allowances for businesses' qualifying capital expenditure on plant or machinery are either 18% or 6% per annum, depending on the nature of the asset.

66. The standard rate of structures and buildings allowances for the cost of constructing, renovating or converting and acquiring structures or buildings for non-residential use is 3% per annum.

67. This measure provides for enhanced rates of capital allowances on qualifying expenditure incurred in freeport tax sites: 100% first-year allowances will be available for companies investing in plant or machinery for use primarily in freeport tax sites, and an enhanced annual rate of structures and buildings allowances of 10% will be available for qualifying expenditure incurred on non-residential structures and buildings situated in freeport tax sites.

68. These enhanced rates of capital allowances on qualifying expenditure

incurred in freeport tax sites therefore provide business with a valuable tax-timing benefit, and have been introduced to support the Government's freeport policy.

69. On 10 February 2020 the government published a consultation on Freeport policy, in respect of its plans to introduce at least ten Freeports across the United Kingdom, following its departure from the European Union. Freeports are intended to support the policy of levelling up the towns, cities and regions of the United Kingdom.

70. The government published its response to the consultation on 7 October 2020, which provided initial detail of the tax reliefs it intended to offer to encourage investment in freeports. This was followed by a Freeport bidding prospectus on 16 November 2020, which included plans for the introduction of the tax reliefs to be offered, including for these enhanced rates

of capital allowances.

Clause 111 and Schedule 22: Relief from stamp duty land tax for freeport tax sites

Summary

1. This clause and Schedule provide for a new relief from Stamp Duty Land Tax (SDLT) for certain acquisitions of land situated in freeport tax sites. Relief will be available for purchases made from the date a freeport tax site is formally designated until 30 September 2026.

Details of the clause

2. Clause 111 introduces Schedule 22 which makes amendments in respect of SDLT.

Details of the Schedule

3. Paragraph 1 provides for Part 4 of the Finance Act 2003 to be amended.

4. Paragraph 2 inserts new section 61A into the Finance Act 2003.

5. Subsection (1) introduces new Schedule 6C to the Finance Act 2003.

6. Subsection (2) sets out the structure of Schedule 6C.

7. Subsection (3) provides that relief under Schedule 6C is only available where the effective date of the land transaction falls on or before 30 September 2026.

8. Subsection (4) provides that relief must be claimed in a land transaction return or an amendment of such a return.

9. Subsection (5) provides that a claim for relief must be made on or before 14 October 2027, and must include or be accompanied by such information as HMRC may require.

10. Subsection (6) provides that in section 61A and Schedule 6C a "freeport tax site" means an area designated under clause 109 of this Bill.

11. Paragraph 3 provides for section 81 of the Finance Act 2003 to be amended. Section 81 requires a further return to be delivered to HM Revenue and Customs

(HMRC) in certain circumstances where relief is withdrawn. The amendments by paragraph 3 have the effect that where SDLT Freeports relief is withdrawn, a further return must be submitted within 30 days of the "relevant date", which is the last day in the control period on which qualifying freeport land is used exclusively in a qualifying manner.

12. Paragraph 3A provides for section 81ZA of the Finance Act 2003 to be amended with the effect that where SDLT Freeports relief is withdrawn for cases involving alternative finance (AF) arrangements, a further return must be submitted within 30 days of "the date of the disqualifying event", which is the last day in the control period on which qualifying freeport land is used exclusively in a qualifying manner.

13. Paragraph 3B provides for section 85(3) of the Finance Act 2003 to be amended with the effect that the "relevant

person" rather than the "financial institution" is liable to pay the tax where SDLT Freeports relief is withdrawn for cases involving AF arrangements.

14. Paragraph 4 provides for new paragraph (zb) to be inserted into section 86(2) of the Finance Act 2003 (payment of tax), and for section 86(2A) of the Finance Act 2003 to be amended, to cover payment of tax for Schedule 6C. This has the effect that where SDLT Freeports relief is withdrawn, the tax payable as a result of that withdrawal must be paid no later than the filing date for the return due under section 81 or 81ZA of the Finance Act 2003.

15. Paragraph 5 provides for new paragraphs (azaa) and (azab) to be inserted into section 87(3) of the Finance Act 2003 (interest on unpaid tax) to cover interest on unpaid tax for Schedule 6C. This has the effect that if any tax is unpaid following withdrawal of SDLT Freeports

relief, interest is payable from 30 days after the last day in the control period on which qualifying freeport land is used exclusively in a qualifying manner.

16. Paragraph 6 inserts new Schedule 6C into the Finance Act 2003.

17. Paragraph 1 of Schedule 6C defines "transaction land", in relation to a land transaction, as meaning land a chargeable interest in which is the subject matter of the transaction.

18. Paragraph 2 defines "qualifying freeport land" as land situated in a freeport tax site on the effective date of the transaction and which the purchaser intends to be used exclusively in a "qualifying manner".

19. Paragraph 3 defines when transaction land is used in a "qualifying manner".

20. Subparagraph 3(1) provides that transactions land is used in a qualifying manner if –

a) it is used by the purchaser or a connected person in the course of a commercial trade or profession,

b) it is developed or redeveloped by the purchaser or a connected person for use (by any person) in the course of a commercial trade or profession,

c) it is exploited by the purchaser or a connected person, in the course of a commercial trade or profession, as a source of rents or other receipts (other than excluded rents), or

d) it is used in two or more of the ways described in subparagraphs (a) to (c).

21. Subparagraph 3(2) excludes use of land to the extent that it is –

a) used as a dwelling or as the garden or grounds of a dwelling,

b) developed or redeveloped to become residential property,

c) exploited as a source of rents or other receipts payable by a person using the

land as a dwelling or as the garden or grounds of a dwelling, or

d) held (as stock of the business) for resale without development or redevelopment.

22. Subparagraph 3(3) provides for land that is ancillary to land that is used in a qualifying manner to count for relief if it –

a) is situated in a freeport tax site, and

b) is being used, or developed or redeveloped, in the course of a commercial trade or profession.

23. Subparagraph 3(4) provides that references to land used as the garden or grounds of a dwelling in subparagraph (2) include a building or structure on that land.

24. Subparagraph 3(5) provides that references to doing something in the course of a commercial trade or profession in paragraph 3 include doing something in the course of a property rental business.

25. Subparagraph 3(6) defines the meaning of "commercial", "excluded rents" and "property rental business" for paragraph 3 generally.

26. Paragraph 4 defines a "connected person" as a person who is connected to a purchaser and provides that the definitions under section 1122 of the Corporation Tax Act 2010 of "connected person" apply.

27. Paragraph 5 deals with when a land transaction is exempt from charge under the Schedule. If at least 90% of the consideration for the transaction is attributable to "qualifying freeport land" then the transaction is exempt from charge.

28. Paragraph 6 deals with when partial relief is available under the Schedule in respect of a land transaction.

29. Subparagraph 6(1) provides that paragraph 6 applies to transactions where the consideration attributable to

"qualifying freeport land" (the "relevant proportion") is between 90% and 10% of the consideration as a whole.

30. Subparagraph 6(2) provides for the tax charged in cases covered by paragraph 6 to be reduced by the "relevant proportion".

31. Paragraph 7 concerns the attribution of consideration for the purposes of the Schedule.

32. Subparagraph 7(1) provides for the consideration to be attributed to qualifying freeport land on a just and reasonable basis.

33. Subparagraph 7(2) provides for subparagraphs (3) and (4) to apply where less than 100% of the consideration attributable to land situated inside a freeport tax site (the "freeport consideration") meets the condition set out in subparagraph 2(b).

34. Subparagraph 7(3) provides for all of

the freeport consideration to be treated as consideration meeting the condition set out in paragraph 2(b) if at least 90% does so.

35. Subparagraph 7(4) provides for none of the freeport consideration to be treated as consideration meeting the condition set out in paragraph 2(b) if less than 10% does so.

36. Paragraph 8 deals with withdrawal of relief.

37. Subparagraph 8(1) provides that paragraph 8 applies where relief has been allowed under Part 2 of the Schedule in respect of a land transaction.

38. Subparagraph 8(2) provides for relief to be withdrawn if the qualifying freeport land is not used exclusively in a qualifying manner at any time during the control period.

39. Subparagraph 8(3) provides for the relief not to be withdrawn if, because of a

change in circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect the qualifying freeport land to be used exclusively in a qualifying manner at that time. For example this would cover where the land is discovered to be contaminated so work cannot begin at the planned time, or where a natural disaster means the building has to be vacated for a significant period of time before it can be used again in a qualifying manner.

40. Subparagraph 8(4) provides that land is to be treated as being used exclusively in a qualifying manner during the control period if use in a qualifying manner has not yet begun provided that reasonable steps are being taken to ensure that it is used in that manner. For example this would cover where the purchaser is working to decontaminate the land in order to begin development.

41. Subparagraph 8(5) provides that land

is to be treated as being used exclusively in a qualifying manner if use in a qualifying manner has ceased provided that reasonable steps are being taken to ensure that it is used in that manner or disposed of in a timely way. For example this would cover where the qualifying activity has stopped on the site because the overall trade has ceased, but the purchaser is taking active steps to sell the property to another person.

42. Paragraph 9 defines "the control period".

43. Subparagraph 9(1) provides for the control period to end the earlier of three years after the effective date of a transaction or the effective date of "the final transaction".

44. Subparagraph 9(2) provides that a land transaction is "the final transaction" for these purposes if immediately afterwards neither the purchaser nor a connected person holds any chargeable

interest in the qualifying freeport land.

45. Paragraph 10 concerns disposals of interests in part of the qualifying freeport land during the control period.

46. Subparagraph 10(1) provides that paragraph 10 applies where the purchaser ceases to hold a chargeable interest in part of the qualifying freeport land during the control period.

47. Subparagraph 10(2) provides for references to qualifying freeport land in paragraphs 8 and 9 to be treated as references to only that part of the qualifying freeport land in which the purchaser still holds a chargeable interest.

48. Paragraph 10A deals with cases where certain AF arrangements are used.

49. Subparagraph 10A(1) provides that paragraph 10A applies where either section 71A Finance Act 2003 (land sold to financial institution and leased to person) or section 73 Finance Act 2003 (land sold

to financial institution and re-sold to person) applies.

50. Subparagraph 10A(2) provides that paragraph 10A applies for the purposes of determining eligibility for relief for the "first transaction" and withdrawal of relief for the "first transaction".

51. Subparagraph 10A(3)(a) provides that for cases involving AF arrangements references to the purchaser in Schedule 6C are to be treated as references to the "relevant person" in determining whether relief is available, or relief is withdrawn, under Schedule 6C.

52. Subparagraph 10A(3)(b) provides that for cases involving AF arrangements paragraph 3(2)(d) of Schedule 6C applies as if land held by the "financial institution" were held by the "relevant person". This means that land will only be regarded as being held for resale as stock of the financial institution's business without development or redevelopment if

it would be were it held by the "relevant person" (the person other than the financial institution who entered into the AF arrangement).

53. The effect of sub-paragraphs 10A(3)(a) and (b) is that eligibility for relief and whether relief is withdrawn is determined by the circumstances of the "relevant person" rather than the "financial institution". Similarly, liability for tax when relief is withdrawn lies with the "relevant person".

54. Subparagraph 10A(4) prevents the "first transaction" qualifying for relief under Schedule 6C other than under new paragraph 10A.

55. Subparagraph 10A(5) provides for "first transaction" and "relevant person" to have the meanings given to them by sections 71A and 73.

56. Paragraph 11 provides a power to change the cases in which relief is available under the Schedule.

57. Subparagraph 11(1) enables the Treasury to use regulations to —

a) amend the meaning of "qualifying freeport land",

b) add other conditions that must be met in order for relief to be available under the Schedule, and

c) amend or remove conditions added under paragraph (b).

58. Subparagraph 11(2) prevents regulations made under this paragraph from removing the requirement for land to be situated in a freeport tax site.

59. Subparagraph 11(3) provides that regulations made under this paragraph may, among other things—

a) make provision by reference to the land, the land transaction, the purchaser or connected persons,

b) impose conditions relating to accounts or other records,

c) impose other conditions requiring a person to take steps specified in the regulations.

60. Subparagraph 11(4) enables regulations made under this paragraph to —

a) amend, repeal or otherwise modify provisions of the Schedule, and

b) amend, repeal or modify other provisions of the Finance Act 2003 if made in reliance on section 114(6)(c).

61. Paragraph 12 concerns the procedure for making regulations under paragraph 11.

62. Subparagraph 12(1) provides that an instrument containing regulations under paragraph 11 must be laid before the House of Commons after being made.

63. Subparagraph 12(2) provides that regulations made under paragraph 11 will cease to have effect unless approved by the House of Commons before the end of

the period of 28 days beginning with the day on which they are made.

64. Subparagraph 12(3) provides that regulations made under paragraph 11 will cease to have effect before then if the House of Commons rejects the regulations.

65. Subparagraph 12(4) disregards time for the 28 day period during which—

a) Parliament is prorogued or dissolved, or

b) the House of Commons is adjourned for more than four days.

66. Subparagraph 12(5) provides that where regulations cease to have effect under subparagraph (3), their ceasing to have effect is without prejudice to anything done in reliance on them.

Background note

67. On 10 February 2020 the government published a consultation on Freeport policy seeking views on its plans to

introduce at least ten Freeports across the United Kingdom. Freeports are intended to support the policy of levelling up the towns, cities and regions of the United Kingdom.

68. The government published its response to the consultation on 7 October 2020. This was followed by a Freeport bidding prospectus on 16 November 2020, which included plans for the introduction of the tax reliefs to be offered, including for SDLT.

69. This measure introduces SDLT relief for purchases of land and buildings within a Freeport tax site, subject to a 'control period' of up to 3 years and the land being acquired and used in a 'qualifying manner'.

70. Clause 111 and Schedule 22 as introduced were amended by Committee of the Whole House on 19 April 2021 to make provision for cases involving certain alternative finance arrangements.

Paragraphs 12-15 and 48-55 of this note cover the amendments for alternative finance arrangements.

71. Relief from SDLT will apply to qualifying transactions with an effective date from the date the Freeport tax sites are designated until 30 September 2026.

Clause 112 and Schedules 23 and 24: Penalties for failure to make returns etc

Summary

1. The clause introduces schedules 23 and 24. Schedule 23 provides for a new penalty regime for late submission of Value Added Tax (VAT) and income tax self-assessment (ITSA) tax returns and Making Tax Digital (MTD) digital quarterly updates. This replaces existing late submission penalties with a points-based system. Schedule 24 provides for minor changes to the penalty for deliberately withholding information from HM Revenue and Customs (HMRC) in ITSA. The deliberate withholding penalties can now be applied as soon as a return is late, rather than after a return has been outstanding for 12 months.

Details of the clause

2. The clause introduces two new schedules:

- Schedule 23 introduces new points-based penalties for failure to submit various returns, including MTD quarterly updates; and
- Schedule 24 provides for penalties for deliberately withholding information by failing to submit returns.

3. The clause also confers on the Treasury the power to make secondary legislation:
    - to commence the schedules for different taxes and returns at different times; and
    - to make incidental changes to legislation, including consequential and transitional provisions.

Details of Schedule 23

4. Paragraph 1 describes the purpose of the schedule and its structure.
5. Paragraph 2 provides a table which lists each tax (VAT and ITSA) and all returns

and updates within these taxes that are within the scope of the new penalty regime. These returns include current ITSA returns and also future MTD digital quarterly updates and end of period statements. The table groups returns by their submission frequency; namely annual, quarterly and monthly.

6. The effect of these numbered groups in combination with subparagraph 5(1) is to establish a points total for each numbered group.

7. For some taxes in the scope of this schedule it is possible for a taxpayer to agree with HMRC non-standard accounting periods that are not exactly monthly, quarterly or annual. Where these non-standard accounting periods are the period for which returns are usually made, the return is treated as the next longest accounting period. For example, a return period of between 3 and 12 months is treated for the purposes of the schedule

as an annual return and the taxpayer will be subject to the relevant thresholds and rules for Table 1 annual returns (set out at subparagraphs 5(8)(a), 6(5)(a), 8(4)(a) and 10(4)).

8. Non-standard accounting period provisions do not apply to one-off or transitional changes to return periods. One-off or transitional periods are therefore excluded from attracting points.

9. Paragraph 3 provides definitions of various terms used throughout the schedule.

10. Paragraph 4 sets out specific provisions that apply where a taxpayer with return obligations has multiple businesses that require them to meet their submission obligation by submitting separate submissions relating to each business (for example, Making Tax Digital for Business ITSA regular updates and End of Period Statements). There will be one points total for the overall

obligation/group. Where the taxpayer submits *one or more* of the submissions required to meet the obligation late, they will accrue one point to their points total. In respect of ITSA if a taxpayer has three businesses and they fail to meet a submission deadline for one, two or three of those businesses, they will accrue one point to their points total. In respect of VAT if a person makes separate returns for each of the businesses there is a separate group of returns of that description for each business. They can therefore accrue penalty points in respect of each group of returns.

11. Paragraph 5 outlines that a point is accrued for failing to submit a return or regular update on time unless the person has already reached the maximum number of points for annual, quarterly and/or monthly returns. In combination with paragraph 15, this paragraph has the effect of setting the points threshold,

which is the number of late submissions at which a financial penalty is applied. The two paragraphs further ensure that this threshold is the maximum number of points that can be accrued. Once at the points threshold further failures to submit on time will result in further £200 penalties.

12. Paragraph 6 ensures that, in order for a point to be imposed, HMRC must, within the time limit, notify the taxpayer advising of:

- the failure to which it relates; and
- the group to which it has been awarded.

13. Time limits for levying a point depend on submission frequency. The time limit will be the latest of Date A, B and C. Date A is 48 weeks (from the date on which the failure occurred) for annual submissions, 11 weeks for monthly submissions and 2 weeks for monthly submissions. Date B replicates provisions at Schedule 55 to the

Finance Act 2009 (FA2009) to extend the time limits to cater for cases where HMRC could not reasonably have been aware of a liability in time. Date C ensures that new MTD digital reporting obligations that do not involve an assessment of a liability to tax are covered within the time limits.

14. Paragraph 7 sets the time after which points expire, which is 24 months after the month in which the failure arose. Points do not expire under this rule if a taxpayer has the maximum number of points for that group.

15. Paragraph 8 explains that *all* penalty points for a group expire when two conditions are met:

- Condition A is that all returns are submitted on time for a period that depends on if the returns are annual, quarterly or monthly. This period starts from the month after the month in which the most recent failure occurred; and

- Condition B is that all returns due in the last 24 months have now been filed.

16. Paragraph 9 sets out that paragraphs 10 to 13 apply to taxpayers who change the submission frequency of their returns.

17. Paragraph 10 explains that if a taxpayer had no points for the old submission frequency they will have no points when they move to the new submission frequency. If they had any points, the number will be adjusted using the table. If the result is a negative number of points then points will be set to zero for the new submission frequency.

Change in reporting frequency	**Adjustment to points**
Annual to quarterly	*+2 points*
Annual to monthly	*+3 points*
Quarterly to annual	*-2 points*
Quarterly to monthly	*+1 point*

Monthly to annual	*-3 points*
Monthly to quarterly	*-1 point*

18. Paragraph 11 outlines that if, after the adjustment using the table from paragraph 10, remaining points for the new filing frequency are fewer than before the adjustment, the points that remain are the points that accrued the most recently. The effect of this paragraph is to ensure the expiry of points covered in paragraphs 7 and 8 is applied consistently.

19. Paragraph 12 states that if, after the adjustment using the table from paragraph 10, the remaining points for the new submission frequency are greater than after the adjustment, the additional points are treated as being awarded in respect of the most recent relevant failure. The effect of this paragraph is to ensure the expiry of points covered in paragraphs 7 and 8 is applied consistently.

20. Paragraph 13 modifies paragraph 8 to provide for the expiry of all points for taxpayers whose filing frequency has changed. This changes the start point for Condition A (all returns are submitted on time for a period) to the month after the first submission obligation under the new frequency.

21. Paragraph 14 explains what happens when there is a change of representative member of a VAT group.

22. Paragraph 15 outlines that if a person fails to submit a return on time and either:

- this causes them to reach the points threshold (the maximum number of points); or
- they are already at the points threshold;

they will be liable to a £200 financial penalty.

23. For ITSA customers mandated to MTD who have multiple businesses only

one penalty will accrue per quarter per obligation after the penalty threshold has been reached. For example, if a taxpayer has three businesses and they fail to meet the quarter 4 regular update deadline for one, two or three of those businesses, they will be liable to one £200 penalty. If they then fail to meet the deadline for submitting the end of period statement for one, two or three of those businesses they will be liable to another £200 penalty.

24. Paragraph 16 sets out the process HMRC must follow to inform taxpayers of the liability to a penalty. HMRC must notify the taxpayer and include details of the submission failure(s) for which they are liable to a penalty. Furthermore, the penalty notice can be issued at the same time as the notice for the final point which led to the financial penalty.

25. Paragraph 17 sets out the time limit for HMRC to assess penalties under the schedule. A penalty may not be assessed

after the later of Dates A, B or, C (as defined earlier in the legislation in paragraph 6).

26. Paragraph 18 confers on the Commissioners for HMRC the power to make secondary legislation to change:

- the penalty threshold;
- the period of compliance required to reset points;
- the period for which outstanding returns are required in order to reset points; and
- the amount of the penalty.

Any regulations are made by statutory instrument and are subject to the affirmative procedure.

27. Paragraph 19 sets out reasonable excuse provisions.

28. Paragraph 20 explains that a taxpayer is not liable to a point or penalty if they also have a criminal conviction as a result

of the same failure to submit.

29. Paragraph 21 states that if notice to submit an income tax, self-assessment or partnership return is withdrawn, any point or penalty in relation to that return can be cancelled in the same notice of withdrawal.

30. Paragraph 22 sets out the right to appeal against liability to both points and penalties. A single appeal will cover both the financial penalty and the point that led to the financial penalty.

31. Paragraph 23 outlines that appeals under paragraph 22 will follow the same process as an appeal against an assessment of tax concerned. There is no requirement to pay the penalty prior to the appeal being determined.

32. Paragraph 24 ensures that the tribunal can uphold or overturn HMRC's decision to impose a point or a penalty. If the appeal relates to a penalty the tribunal can also affirm or cancel any of the points that

led to the penalty. This is the case, even if the time limit for appealing against the penalty point has expired, provided they have not been affirmed on an earlier appeal against the points individually.

33. It also states that in cases where the tribunal has cancelled a point or points HMRC has 12 months from the tribunal's decision to award points for failures that would have accrued but didn't because the taxpayer already had the maximum number of points. For example, An MTD mandated ITSA customer who has missed all 4 quarterly return obligations has reached the penalty points threshold described in paragraph 5 and accrued a £200 penalty. They have appealed the penalty and the tribunal has decided to cancel the point relating to the quarter 3 regular update, which results in the cancellation of the penalty. However, the same customer also missed the deadline for their End of Period Statement (EOPS).

A point did not accrue because when that deadline was missed the customer was already at the penalty points threshold. In this scenario HMRC will have 12 months from the date of the tribunal's decision to levy the point and any resulting penalty for the missed EOPS deadline.

34. Paragraph 25 and 26 ensure that the new penalty regime works effectively in the context of partnerships and settlements.

Details of Schedule 24

35. Paragraph 1 provides a table of all the taxes and returns etc. in scope of the deliberate withholding penalty. These are the same as the points-based penalty as the two are designed to be implemented together for particular taxes.

36. Paragraph 2 provides definitions of various terms used throughout the schedule.

37. Paragraph 3 outlines that for a penalty

to be charged under this schedule a person must fail to submit a return on time and as a consequence deliberately withhold information from HMRC which would enable the assessment of their tax liability. If the behavior is deliberate with concealment the penalty is the greater of £300 or the relevant percentage of the tax that would have been due. The percentage is based on the category that the information falls into. The percentages for each category are covered in subparagraph (4). If the behaviour is deliberate but with no attempt at concealment the penalty is the greater of £300 or a percentage of the tax that would have been due. The percentages for each category are covered in subparagraph (6).

38. Paragraph 4 defines different categories of information: these have been carried over from Schedule 55 to FA2009.

39. Paragraph 5 confers on the Treasury the power to make changes by regulations

to the provisions relating to the categories of information and the relevant percentages.

40. Paragraph 6 outlines what will be classed as an offshore transfer: this replicates Schedule 55 to FA2009.

41. Paragraph 7 explains how a penalty can be reduced by disclosing information to HMRC: this replicates Schedule 55 to FA2009.

42. Paragraph 8 provides a table that outlines how much the percentage rate of each penalty may be reduced to for both prompted and unprompted disclosure. This reduction cannot reduce the penalty below £300. This replicates Schedule 55 to FA2009.

43. Paragraph 9 sets out that penalties under this schedule may be reduced in special circumstances: replicating Schedule 55 to FA2009.

44. Paragraph 10 explains the penalty will

be reduced by the amount of any penalty charged in relation to the same amount of tax. This only applies to a penalty under this schedule that is tax-geared and cannot be used to reduce the £300 penalty. It provides two exceptions to this:

- penalties for late payment of tax; and
- penalties where corrective action is not taken after a follower notice.

This paragraph does not replicate paragraphs 17(3) and (4) of Schedule 55 as these subparagraphs relate to the interaction between tax-geared penalties and are therefore not relevant to the interaction between a fixed rate points-based penalty and a tax geared deliberate withholding penalty.

45. Paragraph 11 outlines the procedure if the amount of tax to charge the penalty on is unknown as a result of the return not being submitted. In this case HMRC may either charge the minimum £300 penalty

or determine the amount to base the penalty on using information HMRC does hold. When the return is submitted HMRC must re-assess the penalty using the figures from the return.

46. Paragraph 12 sets out the rules for assessing penalties under this schedule. HMRC must notify the person and provide details of the failings to which the penalty relates. Penalties must be paid within 30 days of issue of the notification. For procedural and enforcement purposes these assessments are treated as the same as an assessment to tax and can be combined with such an assessment.

47. Paragraph 13 allows supplementary penalty assessments if the initial penalty is found to be insufficient. If the penalty is found to be excessive this paragraph allows HMRC to reduce the original assessment.

48. Paragraph 14 sets time limits for raising assessments under this schedule.

The deadline for raising an assessment is *the later of*:

- 2 years from the submission date; and
- 12 months from the end of the appeal period for the assessment of tax in the return (or if there is no assessment, the date on which the liability is ascertained).

49. Paragraph 15 explains a taxpayer is not liable to a penalty if they also have a criminal conviction as a result of the same failure to submit.

50. Paragraph 16 states that if a notice to file an ITSA or partnership return is withdrawn HMRC may cancel liability to a penalty relating to that obligation to submit.

51. Paragraph 17 outlines that a person may appeal against the decision to charge a penalty and/or the amount of the penalty.

52. Paragraph 18 states that appeals under paragraph 17 follow the same process as an appeal against an assessment of the tax concerned. This will not require a person to pay the penalty before appealing against it even if payment of the tax involved is required.

53. Paragraph 19 sets out possible outcomes of a tribunal appeal. Appeals against the decision to impose a penalty can result in the penalty being confirmed or cancelled. For appeals against the amount of the penalty the tribunal may confirm the penalty or substitute it with a different amount that was within HMRC's powers to impose. The tribunal is bound by the same penalty percentages and reductions as HMRC and may only differ from this if the tribunal believes a special reduction under paragraph 9 is due.

54. Paragraph 20 sets out how the schedule applies to partnerships. For the purposes of partnerships, references to a

'person' in the legislation are treated as applying to relevant partners. Relevant partners are defined as a partner in the partnership for the period in which the return was required. Partnership penalties under this schedule will be charged to each and every relevant partner. Appeals against partnership penalties must be submitted by the representative partner (or successor) or the nominated partner. Once received, an appeal will be treated as an appeal against the penalties charged to each and every relevant partner.

55. Paragraph 21 provides the procedure for making any regulations under this Schedule. Any regulations are made by statutory instrument and are subject to negative procedure.

Background note

56. Taxpayers are required to submit tax returns by specified dates. When taxpayers submit their returns late (and do

not have a reasonable excuse) they generally incur a penalty. There are currently a range of different penalties that penalise the same behaviour in different ways across different taxes. This measure introduces a new points-based penalty regime for regular tax return filing obligations, which replaces existing penalties for VAT and ITSA.

57. The government wishes to encourage compliance with regular return submission obligations but does not want to punish taxpayers who make occasional mistakes. The new late submission penalty regime, announced Budget 2020, is designed to be proportionate, penalising only the small minority who persistently fall foul of the rules. Consistent compliance will be encouraged by the opportunity to clear penalty points without incurring a penalty charge.

58. A stronger deterrent is provided in cases where behaviour is shown to be

deliberate, and also by other compliance tools.

59. The new points-based penalty regime will only apply to returns (including MTD ITSA regular updates) with a regular submission frequency, for example monthly, quarterly or annually. It will not apply to occasional returns (for example a return required for a one-off transaction), which will continue to be covered by current penalty regime for the relevant return.

60. The new regime will initially apply to regular VAT and ITSA obligations. The government intends to extend the scope of the new regime to other excise, environmental, insurance and transport taxes as well as Corporation Tax at a later date.

61. Penalty reform will replace existing penalties and will come into effect for VAT taxpayers for accounting periods beginning on or after 1 April 2022. For

ITSA taxpayers with business or property income over £10,000 per year (who are required to submit digital quarterly updates through MTD for ITSA) the changes will come into effect for accounting periods beginning on or after 6 April 2023. For all other ITSA taxpayers the changes will come into effect for accounting periods beginning on or after 6 April 2024. This will be appointed by way of regulations

62. The regime has been developed through three separate consultations. The first consultation entitled 'HMRC penalties: a discussion document' ran from 2 February to 11 May 2015, leading to the 2016 consultation 'Making Tax Digital: Tax Administration' which ran from 15 August to 7 November 2016 and the latest consultation 'Making Tax Digital - sanctions for late submission and late payment' which ran from 20 March to 11 June 2017. The latter consultation

proposed three different penalty models, resulting in the majority of respondents favouring the points-based model above the others. The summary of responses to this consultation was published on 1 December 2017 and at the same time the government announced it would be taking forward the points-based model. The government consulted on draft legislation as part of the draft Finance Bill 2018-19 in summer 2018.

Clause 113 and Schedule 25: Penalties for failure to pay tax

Summary

1. This clause and Schedule introduce a new two-penalty model for individuals and businesses that fail to pay their tax liability on time. The changes come into force on a day to be announced and by way of regulations. They set out how the penalty will work, reasonable excuse provisions and the appeal process.

Details of the clause

2. This clause introduces a new schedule comprising of three parts:

    - Part 1 introduces the new two-tiered penalty for failure to pay tax liabilities by the due date;
    - Part 2 sets out under what circumstances a penalty would apply; and

- Part 3 covers the supplementary provisions including reasonable excuse and the appeals process.

Details of the Schedule

Part 1: Introduction

3. Paragraph 1 introduces the provisions for the new late payment penalty model. It sets out two tables showing the different taxes, the tax liabilities and dates by which penalties will be applied from within the new model. Initially this will be limited to Value Added Tax (VAT) and Income Tax/Capital Gains Tax self-assessment (ITSA). The tables set out the types of late payment which are within scope, being the principal tax amount, amounts payable in default of return being made and amounts shown to be due in other assessments and determinations etc.
4. Paragraph 2 gives the definition of HMRC, which is Her Majesty's Revenue and Customs.

5. Paragraph 3 provides the interpretation for this provision of assessments, determinations etc made in default of a return.

Part 2: When a penalty will apply

6. Paragraph 4 ensures no penalty is payable if the liability is paid in full before the end of the 15-day period after the due date, or if proposals leading to a time to pay agreement (TTP) with HMRC are made in that 15-day period.
7. Paragraph 5 sets out that if the liability has not been paid by Day 15 or the TTP condition is not met the first penalty will apply.
    - Subparagraphs 5(1-2), 5(3)(a) and 5(4) provide for a penalty of 2% of the principal tax if the debt is paid in full or the TTP condition is met between

days 15 and 30.

- Subparagraphs 5(3)(b) and 5(5) provide for the penalty to be 4% of the principal tax if the debt is not paid in full before the end the 30-day period and the TTP condition is not met between Days 15 and 30.

8. Paragraph 6 sets out that TTP conditions are met if the person contacts HMRC in the relevant period, making proposals for paying the tax owed which result in an agreement between HMRC and the person.

9. Paragraph 7 states that if the TTP agreement is breached the person will be liable to the first penalty, calculated as if the TTP was never agreed. If the agreement is breached HMRC must give the person a notice that a penalty is payable under this paragraph.

10. Paragraph 8 outlines that if there is still tax outstanding after the end of Day 30, then a second penalty of 4% per

annum, calculated daily, will be applied to the remaining tax liability. This will continue to accrue from Day 31 until the liability is paid in full or until the date TTP proposals are received which result in an agreement.

11. Paragraph 9 sets out that if this TTP is breached the person will be liable to the second penalty, calculated as if the TTP had never been agreed. If the agreement is breached HMRC must give the person a notice that a penalty is payable under this paragraph.

12. Paragraph 10 gives definitions of certain terms used within this clause including, 15-day period, 30-day period and TTP agreement.

13. Paragraph 11 sets outs amendments to the provisions that can be made by the Commissioners for HMRC through secondary legislation. These changes include the periods after which the penalties apply and the percentage values

of the penalties.

Part 3: Supplementary Provision

14. Paragraph 12 sets out the same reasonable excuse provisions that are found in the Finance Act 2009 (FA 09).

15. Paragraph 13 states that a penalty may be reduced if HMRC thinks there are 'special circumstances'. This is the same special circumstance provision that is found in FA 09.

- Subparagraph 13(2) sets out what does not constitute special circumstances.
- Subparagraph 13(3) provides an expanded meaning of reducing a penalty.

16. Paragraph 14 states that a person cannot suffer double jeopardy in respect of this schedule and an offence of which they have been convicted. This is the same double jeopardy as found in FA 09.

17. Paragraph 15 explains penalties under

this section will not be taken into account under the provisions of section 97A of the Taxes Management Act 1970, paragraph 12(2) of Schedule 24 to the Finance Act 2007 and paragraph 15(1) of Schedule 41 to the Finance Act 2008 and so those penalties will not be reduced where these late payment penalties have also been incurred.

18. Paragraph 16 sets out penalty assessment provisions:

- Subparagraph 2 allows HMRC to may make regulations to assess the second penalty at particular intervals of time;
- Subparagraph 3 ensures HMRC must notify the person of a penalty for it to be enforceable and that the penalty amount, penalty calculation and period to which the penalty relates must be included in the notice;
- Subparagraph 4 sets out that the penalty must be paid within 30 days of the date the notice is issued;

- Subparagraph 5 provides that for procedural and enforcement purposes these assessments are treated as the same as an assessment to tax and can be combined with such an assessment.

19. Paragraph 17 allows for a supplementary assessment of a penalty amount or an amendment of a penalty to be made where an earlier assessment is found to have been too small or too big.

20. Paragraph 18 sets out the time limits for HMRC to assess a penalty under this schedule. It has two years from the due date of the principal tax or twelve months from the end of an appeal period or, if later, 12 months from the end of appeal period for the assessment of the principal tax.

21. Paragraphs 19 to 21 set out the appeal provisions for this schedule:

- Paragraph 19 provides authority for a person to appeal against the penalty being applied and the value of the

penalty;

- Paragraph 20 sets out that the appeal will follow the same process as an appeal against an assessment of the tax concerned. This will not require a person to pay the penalty before appealing against it even if payment of the tax involved is required;
- Paragraph 21 sets out the tribunal's powers and responsibilities and provides a definition of 'tribunal'. On an appeal, the tribunal may affirm or cancel HMRC's decision or substitute its own decision for HMRC's decision.

22. Paragraph 22 states that changes made through statutory instrument in relation to Part 2 must follow affirmative procedure and be approved by the House of Commons. It also provides that regulations made by HMRC under paragraph 15 to assess the second penalty at certain intervals can follow negative procedure.

Background Note

23. Taxpayers are required to pay tax liabilities by specific payment dates. Under most tax regimes, if a customer fails to pay or make an agreement to pay their tax on time (and do not have a reasonable excuse for not doing so) then they are liable to a penalty. There are currently a range of different penalties applied to the same behaviour in different ways across different taxes. This measure introduces a new two-penalty regime for tax payment obligations, which replaces existing penalties for VAT and ITSA.

24. The government wishes to encourage customers to pay their tax on time or make contact to discuss solutions to resolve the situation. This reform introduces a common late payment penalty system that will incentivise early payment and better accounts for the length of time a debt is outstanding. The changes will also ensure that people who pay late can avoid a

penalty if they approach HMRC and enter into a TTP arrangement. Those that do not will receive a penalty that is proportionate to both the value of the debt and the amount of time it is outstanding for.

25. The new regime will initially apply to VAT and ITSA obligations. The government intends to extend the scope of the new regime to other excise, environmental, insurance and transport taxes as well as Corporation Tax and Pay As You Earn in the future.

26. Together with late submission penalties and late payment interest, late payment penalties will replace default surcharge for VAT payers. They will also replace existing late payment penalties for ITSA taxpayers and will come into effect as follows:

- For all VAT taxpayers, to all late payments relating to VAT return period starting on or after 1 April 2022;

- For all ITSA taxpayers who join MTD in 2023-24 tax year, to all late payments relating to the 2023-24 year onward;
- For all other ITSA taxpayers, to all late payments relating to the 2024-25 tax year onward.

27. The regime has been the subject of consultation on three occasions, initially as part of 'Making Tax Digital: Tax Administration' responses document published on 31 January 2017, then as part of the consultation 'Making Tax Digital: sanctions for late submission and late payment' responses document published on 1 December 2017 and then finally as 'Making Tax Digital: interest harmonisation and sanctions for late payment' consultation published on 1 December 2017. The government consulted on draft legislation as part of the draft Finance Bill 2018-19 in summer 2018, and at the same time published its

response to the most recent consultation.

Clause 114 and Schedule 26: Penalties for failure to make returns etc or pay tax: consequential provision

Summary

1. This clause introduces amendments to existing legislation which are consequential on the introduction of the new penalty regimes for failure to make returns etc. and for failure to pay tax. The clause introduces Schedule 26.

Details of Clause

2. Subsection (1) inserts Schedule 26.
3. Subsection (2) provides that Schedule 26 comes into force on such day as the Treasury may by regulations appoint.
4. Subsections (3) to (8) provide powers which allow the Treasury to make consequential amendments to provisions of other legislation (including subordinate legislation) by regulations subject to negative procedure.

Details of the Schedule

5. Paragraphs 2 and 3 amend the Taxes Management Act 1970 (TMA1970) to provide cross-references to Schedules 23 and 24. These provide for cancellation of any related points and/or penalties where a notice to file has been withdrawn.

6. Paragraphs 4 to 6 amend section 49E of TMA1970 and introduce new sections 49EA and 49FA. Together these provisions ensure that HMRC reviews work effectively with the new points-based penalties regime and mirror the approach of the tribunal set out in paragraphs 22 to 24 of Schedule 23.

7. Paragraph 7 amends section 69 of TMA1970 to ensure that penalties imposed under Schedule 25 are treated for the purposes of certain provisions relating to recovery as an amount of tax.

8. Paragraph 8 ensures that sections 100 to 103 of TMA 1970 (determination of appropriate penalties by an officer of

HMRC) do not apply in the case of penalties awarded under Schedules 23, 24 and 25.

9. Paragraph 9 amends section 107A of TMA 1970 to ensure that the legislation works effectively in the context of trustees.

10. Paragraph 10 amends section 824 of the Income and Corporation Taxes Act 1988.

11. Paragraph 12 makes changes to section 11A of the Social Security Contributions and Benefits Act 1992 (SSCBA1992) to apply Schedules 23 and 24 to Class 2 National Insurance contributions obligations in England and Wales.

12. Paragraph 13 amends section 16 of SSCBA1992 to apply Schedules 23 and 24 to Class 4 National Insurance contributions obligations in England and Wales.

13. Paragraph 14 provides for section 11A

of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to apply to Schedules 23 and 24 to Class 2 National Insurance obligations in Northern Ireland.

14. Paragraphs 16 and 17 removes sections 59 and 59B from the Value Added Tax Act 1994 (VATA1994) to repeal the Default Surcharge which will be replaced by Schedule 23 and 25 when they have been commenced.

15. Paragraph 18 makes additions to section 69 of VATA1994, which provides for the Value Added Tax (VAT) 'regulatory penalty'. The additions ensure that the regulatory penalty cannot be awarded where there is liability for points or penalties under Schedule 23.

16. Paragraph 19 makes changes to section 71 of VATA1994 to replace references to the repealed section 59 with section 60.

17. Paragraphs 20 to 23 makes changes to

section 76, 77, 81 and 83 of VATA1994 to remove reference to the surcharge. Paragraph 23 also removes reference to section 59.

18. Paragraphs 24 to 26 amend section 83F of VATA1994 and introduce new sections 83FA and 83FB. Together these provisions ensure that HMRC reviews work effectively with the new points-based penalties regime and mirror the approach of the tribunal set out in paragraph 22 to 24 of Schedule 23.

19. Paragraph 27 makes amendments to section 84 of VATA1994 to remove references to the surcharge and section 59.

20. Paragraph 28 removes paragraph 14 from Schedule 13 to VATA1994.

21. Paragraph 29 to 35 remove references to the surcharge from Income Tax (Trading and Other Income) Act 2005.

22. Paragraph 36 makes changes to section 1303 of the Corporation Tax Act

2009 to remove references to the VAT Default Surcharge.

23. Paragraph 38 makes changes to section 108 of FA2009 (Suspension of penalties during the currency of agreement for deferred payment) to remove the entry in the Table relating to VAT.

24. Paragraph 39 amends Schedule 55 to FA2009, which provides for the current late submission penalties which apply to Income Tax Self-Assessment (ITSA) and partnership returns. It removes income tax and partnership returns from the scope of Schedule 55 to FA2009.

25. Paragraph 40 amends Schedule 56 to FA2009 to take payments relating to income tax and Capital Gains Tax out of the scope of the existing "Failure to Make Payment on Time" regime.

26. Paragraph 41 amends subparagraph 34(1) of Schedule 38 to the Finance Act 2012 to ensure that a person does not

receive a sanction for dishonest conduct in their capacity as an agent where they have already been penalised under Schedules 23 and 24.

27. Paragraph 42 makes additions to paragraph 8 of Schedule 43C to the Finance Act 2013. These add references to Schedule 24 to provide that total tax-geared penalties under the General Anti-Abuse Rule and the deliberate withholding penalty do not exceed the greater of the respective 'relevant percentage'. This is only where the relevant percentage is greater than 100%.

28. Paragraph 43 inserts references to Schedule 24 into section 212 of the Finance Act 2014. In combination with the change made by clause 23, these ensure that total penalties under Follower Notice provisions and the deliberate withholding penalty do not exceed the greater of the respective 'relevant percentage'. This is only where the relevant percentage is

greater than 100%.

29. Paragraph 44 amends Schedule 21 to the Finance Act 2015 to ensure that a penalty under Schedule 24 can trigger a penalty in connection with offshore asset moves.

30. Paragraph 46 removes subsection (3) and (4) from section 167 (simple assessments) of the Finance Act 2016 (FA2016).

31. Paragraph 47 inserts references to Schedule 24 into Schedule 20 to FA2016 to ensure that the deliberate withholding penalty can apply to enablers of offshore tax evasion as well as customers who engage in this activity.

32. Paragraph 48 amends Schedule 22 to FA2016 to ensure that an asset-based penalty for offshore inaccuracies and failures can be awarded where a standard offshore evasion penalty has been awarded under Schedule 24.

33. Paragraph 49 removes paragraph 9 from Schedule 23 (simple assessments) to FA2016.

34. Paragraph 50 removes paragraph 20 from Schedule 4 (pensions: offshore transfers) to the Finance Act 2017.

35. Paragraph 51 inserts a reference to Schedule 24 into paragraph 15 of Schedule 18 to the Finance (No. 2) Act 2017.

Background note

36. This clause is one of three clauses in the Bill which will introduce new regimes for penalties for failure to make returns etc. and penalties for failure to pay tax for Value Added Tax (VAT) and income tax self-assessment (ITSA).

37. This clause introduces a Schedule which makes amendments to various provisions of legislation which are consequential on the introduction of the new penalty regimes.

Clause 115 and Schedule 27: Follower notice penalties

Summary

1. This clause and Schedule make changes to penalties issued under Part 4 Chapter 2 Finance Act 2014 for failing to take corrective action in response to a Follower Notice. The measure reduces the rate of penalty from 50% to 30% of the denied advantage and introduces a new additional penalty of 20% when those in receipt of Follower Notices are found by a Tribunal to have acted unreasonably in pursuing their litigation. The measure provides a right of appeal against the additional penalty.

Details of the clause

2. Clause 115 introduces Schedule 27, which amends Chapter 2 of Part 4 of Finance Act 2014 ("FA14").

Details of the Schedule

Part 1: Amendment of Chapter 2 of Part 4 of FA 2014

3. Paragraph 1 introduces amendments to Chapter 2 of Part 4 of FA14.

4. Paragraph 2 inserts new sections 208A to FA14. New section 208A provides that a person is liable to a penalty if he is found to have acted unreasonably in bringing or conducting an appeal and sets out the conditions which must apply for that penalty to be chargeable.

5. Subsection 1 of new section 208A provides that the section applies when the person, P, has been assessed to a penalty under section 208, having received a Follower Notice under section 204(2)(a) when there is a tax enquiry in progress into P's return or claim.

6. Subsection 2 of new section 208A provides that the section applies when the person has been assessed to a penalty under section 208, having received a Follower

Notice under section 204(2)(b), when the person makes a relevant tax appeal.

7. Subsection 3 of new section 208A provides that P is liable to a penalty if P or P's representative is found to have acted unreasonably in pursuing 'relevant proceedings'.

8. Subsection 4 of new section 208A introduces the circumstances when P or P's representative is found to have acted unreasonably in pursuing relevant proceedings

9. Subsection 5 of new section 208A provides that P or P's representative is found to have acted unreasonably if the proceedings are struck out because they stand no reasonable prospect of success or because of the conduct of P or P's representative; the appeal period has ended; the proceedings have not been reinstated; and the decision to strike out the proceedings has not been set aside or overturned on appeal.

10. Subsection 6 of new section 208A provides that P or P's representative is found to have acted unreasonably if on application from HMRC the tribunal makes a declaration to that effect; the appeal period has ended; and the decision to make that declaration has not been set aside or overturned on appeal.

11. Subsection 7 of new section 208A provides for the tribunal to make such a declaration.

12. Subsections 8 and 9 of new section 208A define relevant proceedings and the tax appeal to which they refer.

13. Subsection 10 of new section 208A defines the appeal period for the purposes of new section 208A.

14. Subsection 11 of new section 208A provides that an application to a tribunal to reinstate proceedings or for the tribunal to set aside its decision is an appeal for the purposes of subsection 10 of new section 208A.

15. Subsection 12 of new section 208A defines tribunal for the purposes of the section.

16. Paragraph 3 amends section 209 to reduce the penalty chargeable under section 208 to 30%.

17. Subparagraph 3(4) inserts new subsection 1A of section 209 which sets the penalty under new section 208A at 20% of the value of the denied advantage.

18. Subparagraph 3(5) amends subsection (3) of section 209 to introduce the term 'relevant time' for the purposes of the section.

19. Subparagraph 3(6) introduces new subsections (4) and (5) to section 209 which provide that the relevant time for a penalty under section 208 is the specified time as defined in subsection (8) of section 208; and that the relevant time for a penalty under new section 208A is the day after the end of the appeal period.

20. Paragraph 4 inserts new section 211A.

21. Subsection 1 of new section 211A provides that where a person is liable to a penalty under new section 208A, HMRC must assess it, notify the person of the penalty and state the tax period to which it relates.

22. Subsection 2 of new section 211A provides that the penalty must be paid within 30 days of the person being notified of it.

23. Subsection 3 of new section 211A applies subsection 4 of section 211 to section 211A so that, for example, the penalty will be treated for procedural purposes in the same way as an assessment to tax.

24. Subsection 4 of new section 211A provides that a penalty under new section 208A must be assessed within 90 days of the end of the appeal period.

25. Paragraph 5 ensures that the

aggregate penalties provisions in section 212 apply to a penalty under new section 208A.

26. Paragraph 6 applies the alteration of assessment provisions in section 213 to a penalty under new section 208A.

27. Paragraph 7 introduces new subsection (8A) which provides that where a penalty under section 208 is cancelled by the tribunal, the penalty under new section 208A is also cancelled.

28. Paragraph 8 inserts new section 214A which introduces a right of appeal against a penalty issued under new section 208A.

29. Subsection 1 of new section 214A provides that P may appeal against a decision by HMRC to charge a penalty under new section 208A.

30. Subsection 2 of new section 214A provides that P may appeal on the ground that the amount of the penalty charged under new section 208A is incorrect.

31. Subsection 3 of new section 214A provides that P may appeal under subsection 1 of new section 214A on the grounds that:

- P had not been assessed to a penalty under section 208 or is no longer liable to such a penalty;
- That P or P's representative had not been found to have acted unreasonably in pursuing relevant proceedings or that such a decision has been overturned on appeal; or
- The penalty was raised after the end of the period for doing so as set out in subsection 4 of new section 211A.

32. Subsection 4 of new section 214A provides that an appeal must be made within a period of 30 days from when the penalty notification was given.

33. Subsection 5 of new section 214A provides for the tribunal to affirm or cancel a penalty when an appeal is made

under subsection 1 of new section 214A.

34. Subsection 6 of new section 214A provide for the tribunal to affirm a penalty or substitute for HMRC's decision any decision HMRC has the power to make, when an appeal is made under subsection 2 of new section 214A.

35. Subsection 7 of new section 214A applies subsections 5 to 7 of section 214 so that an assessment of a penalty is treated for procedural purposes as if it were an assessment to the relevant tax and P is not required to pay a penalty under new section 208A before making an appeal against it.

36. Subsection 8 of new section 214A defines tribunal for the purposes of the section.

Part 2: Amendments Consequential on Part One

37. Paragraph 9 introduces consequential

changes to FA 2014.

38. Paragraph 10 amends the heading in Schedule 30 to FA14.

39. Paragraphs 11 and 12 make amendments to Schedule 31 to FA14 to ensure the new provisions apply to partnerships.

40. Paragraph 13 makes amendments to Schedule 2 to the National Insurance Contributions Act 2015 to ensure the new provisions apply in respect of Follower Notices issued in National Insurance Contributions cases.

Part 3: Amendment of Schedule 20 to FA2015

41. Paragraph 14 inserts new paragraph 21 to Schedule 20 to FA2015. This new paragraph amends section 212 of FA2014 so that the aggregate penalty provisions apply to a penalty under Schedule 20 to FA2015.

Part 4: Commencement

42. Paragraph 15 provides that the measure comes into force in respect of penalties issued under section 208 on or after the day this Schedule comes into force.

43. Paragraph 16 includes new paragraph 21 to Schedule 20 to FA2015 in the provision for that Schedule, by which the Schedule or any part of it applies by order of the Treasury.

Background note

44. Follower Notices were introduced in FA14. Subject to a number of conditions, HMRC may issue a Follower Notice to anyone who has used tax arrangements to gain a tax advantage and HMRC believe those arrangements have been shown to fail by the tribunal or courts in another party's litigation. Anyone who receives a Follower Notice must decide whether to give up the tax advantage they have

asserted, or continue their dispute with HMRC and risk a penalty of 50% if they are ultimately unsuccessful.

45. This measure enhances the effect of the Follower Notice regime by focusing the highest level of possible penalty on those whose continuation of their dispute with HMRC is without substance and a waste of the time and resources of both HMRC and HM Courts and Tribunals.

46. The measure reduces that penalty to 30% of the avoided tax in most cases, but retains the current level of 50% for those deemed by the Tribunal or court to have been unreasonable in pursuing their litigation. This is achieved through the issue of a further penalty assessment of 20% when the Tribunal or court makes such a finding. Anyone charged this further amount of penalty will be able to appeal against it, but on limited grounds as the penalty can only be issued when the person has already been found by the

tribunal or court to have been unreasonable in pursuing the litigation.

47. The measure will come into effect on the day the Act is passed.

Clause 116 and Schedule 28: Late payment interest and repayment interest: VAT

Summary

1. This clause and Schedule make amendments to the Finance Act 2009 (FA09) relating to late payment and repayment interest for Value Added Tax (VAT). The changes come into force on a day to be announced and by way of regulations. The Schedule introduces changes to section 102 FA09 S102, Schedule 54 and 54A FA09 that bring VAT into the scope of the provisions for late payment and repayment interest. The changes generally ensure that late payment and repayment interest work in the same way for VAT as they currently do for income tax self-assessment.

Details of the clause

2. This clause introduces a Schedule containing changes to FA09 that bring

VAT into scope of Schedules 54 and 54A. The clause also provides for regulations to be made to introduce the changes and allows the Treasury the power to make regulations to amend or repeal relevant interest provisions as appropriate.

Details of the Schedule

3. Paragraph 1 introduces amendments into FA09.
4. Paragraph 2 inserts a new sub-paragraph 102(4)(b)(aa) into FA09 .
5. Paragraph 3(1) introduces changes to Schedule 54.
6. Paragraph 3(2) inserts into Schedule 54 a new paragraph 12C that provides where VAT payment on accounts (PoAs) exceed the VAT payable in respect of a given period then the repayment interest date is the date on which the VAT return is due.
7. Paragraph 3(3) inserts new Part 2A comprising paragraphs 12D and 12E.

a. Paragraph 12D defines various VAT terms.

b. Paragraph 12E ensures that repayment interest is not made for any period when there are other VAT returns missing at the time of receipt of the relevant return, nor for any period during which there is a failure to comply with a notice to produce evidence or security.

8. Paragraph 4(1) introduces amendments to Schedule 54A FA09.

9. Paragraph 4(2) inserts a new heading "Part 1 Corporation Tax" into Schedule 54A.

10. Paragraph 4(3) inserts new "Part 2 Value Added Tax" into Schedule 54A comprising paragraphs 5 to 8.

a. Paragraph 5 defines the VAT terms "assessment", "prescribed accounting period" and "VAT Credit".

b. Paragraphs 6 and 7 set out the

conditions where certain amounts of repayment interest can be recovered as late payment interest. This includes where an assessment or amendment of the tax was due and repayment interest was paid but should not have been paid.

c. Paragraph 8 relates to common periods for VAT. These provisions provide that late payment interest or repayment interest will accrue only on the remainder/residual amount after the overpaid amount and outstanding amount are set off against each other.

Background note

11. Currently customers can receive repayment interest for the overpayment of a liability in certain taxes. This causes disparity across the tax system.

12. The government wishes to have a consistent approach to how interest is charged and paid to customers to achieve

a fairer tax system for all. This clause and Schedule make amendments to repayment interest in VAT to bring it in line with income tax self-assessment, ensuring interest is charged and paid to customers consistently across taxes.

13. Schedule 28, as introduced by Clause 116, was amended by the Public Bill Committee on 27 April 2021 to make provision to ensure repayment interest is paid in instances where HMRC have raised a reasonable inquiry, or for any period, where HMRC are correcting errors or omissions in a particular VAT return. This amendment allows for repayment interest to be paid to VAT taxpayers for the period covering HMRC's investigations as is the case in Income Tax Self-Assessment and Corporation Tax, ensuring greater consistency across different taxpayers and helping to simplify the tax system.

14. The changes will be implemented at

the same time as Penalty Reform: "Penalties for failure to pay tax" and "Penalties for failure to make returns and deliberately withholding information".

15. The regime has been the subject of consultation on two occasions, initially as part of "Making Tax Digital: Tax Administration" responses document published on 31 January 2017, then as "Making Tax Digital: interest harmonization and sanctions for late payment" consultation published on 1 December 2017 and responses document published alongside the draft legislation.

Clause 117 and Schedule 29: Promoters of tax avoidance schemes

Summary

1. This clause and Schedule amend Part 5 of the Finance Act 2014 (FA 2014), the Promoters of Tax Avoidance Schemes regime (POTAS). POTAS, applies a series of sanctions to a person carrying on a business as a promoter of tax avoidance. These amendments give HM Revenue and Customs (HMRC) the power to issue 'stop notices' to promoters of tax avoidance schemes at an earlier stage, to stop the sale of schemes before the scheme has been defeated. HMRC will be able to publish details of the promoters and scheme when a stop notice has been issued. These amendments widen the scope of the legislation to include as promoters certain other persons involved in promotion structures. The legislation also introduces

a range of technical amendments.

Details of the clause

2. Subsection 1 introduces Schedule 29 which amends Part 5 of FA 2014.

3. Subsection 2 provides that the amendments made by Schedule 29 have effect from the day on which this Act is passed and for the purposes of determining whether a person meets a threshold condition, including where the defeat notice conditions in section 237A of FA2014 apply, in a period of three years ending on or after the day on which this Act is passed.

Details of the Schedule

Part 1: Stop Notices

4. Paragraph 1 inserts new sections 236A to 236K into Part 5 of FA 2014. New sections 236A to 236K include provision concerning the conditions for when a stop

notice can be given, the effects of giving a stop notice, reporting requirements once a stop notice has been given, requests for the withdrawal of stop notices, appeal rights against decisions not to withdraw a stop notice, requests for suspension of stop notices pending appeals, automatic withdrawal of certain stop notices, publication by HMRC of the details of a stop notice, including details of the person subject to the stop notice, publication where a stop notice has been automatically withdrawn, disclosure to clients and intermediaries, and notification by HMRC to clients and others where HMRC suspects a stop notice has been breached.

5. Subsection 1 of new section 236A provides that an authorised officer can issue a stop notice to persons the officer suspects to be a promoter of arrangements of a description specified in the stop notice, or of proposals for such arrangements.

6. Subsection 2 of new section 236A provides that a description of arrangements may be specified in a stop notice only if the authorised officer considers conditions A and B, A and C, or B and D are met.
7. Subsection 3 of new section 236A introduces condition A which defines the categories of arrangements and proposed arrangements in relation to which a stop notice can be issued as arrangements that:
    a. implement disguised remuneration schemes that would have been likely to fall within the loan charge provisions, assuming they were in place at the time the arrangements were implemented;
    b. are the same as, or similar in form or effect to, ones to which a scheme reference number has been allocated under Part 7 of Finance Act 2004 (Disclosure of Tax Avoidance Schemes (DOTAS)) or under Schedule 17 to

Finance (No.2) Act 2017 (Disclosure of Tax Avoidance Schemes: VAT and Other Indirect Taxes (DASVOIT));

c. are the same as, or similar in form or effect to, ones in relation to which follower notice has been issued under Chapter 2 of Part 4 to FA 2014; or

d. are the same as, or similar in form or effect to, arrangements of a description specified in regulations made by the Commissioners.

8. Subsection 4 of new section 236A introduces condition B. For an authorised officer to issue a stop notice in reliance on the condition the officer must consider that the relevant arrangements or proposals are ones that:

a. have been, or are likely to be, marketed (in any manner by any person) as enabling a person to obtain a particular tax advantage; and

b. are more likely than not to be incapable of enabling the advantage.

9. Subsection 5 of new section 236A introduces condition C. For an authorised officer to issue a stop notice in reliance on condition C the officer must consider that condition A is met as a result of the allocation of a DOTAS or DASVOIT scheme reference number to arrangements or proposed arrangements and:

   a. a person has not complied with a request for information in relation to those arrangements under sections 310A or 311C FA2004, or paragraphs 19 or 22C of Schedule 17 F(No.2)A 2017, or

   b. HMRC has made a tribunal application in relation to those arrangements under section 308A(2) FA2004 or paragraph 16 of Schedule 17 F(No.2)A 2017.

10. Subsection 6 of new section 236A

introduces condition D. For an authorised officer to issue a stop notice in reliance on condition D the officer must consider that:

a. The arrangements to be described in the notice, or proposals for such arrangements would be relevant arrangements or relevant proposals as defined by section 234, and

b. The recipient of the notice is subject to a conduct notice or monitoring notice.

11. Subsection 7 of new section 236A defines when a person is considered as promoting arrangements or a proposal for arrangements and to be carrying on a business as a promoter for the purposes of sections 236B to 236K, and 272A.

12. Subsection 1 of new section 236B prohibits the promotion of schemes that are the same or similar in form or effect to those which are described in the stop notice.

13. Subsection 2 of new section 236B provides that the persons subject to a stop notice include the recipient, persons who are connected to the recipient, and the transferee on a relevant transfer where the transferor is subject to a stop notice.

14. Subsection 3 of new section 236B provides that if the recipient of a stop notice controls or has significant influence over a body corporate or partnership they must give a copy of the notice to that person and provide information about the person to HMRC.

15. Subsection 4 of new section 236B provides that if the recipient of a stop notice is a body corporate or partnership, they must give a copy of the notice to persons who control or have significant influence over them and provide information about those persons to HMRC.

16. Subsection 5 of new section 236B

provides that if the recipient of a stop notice makes a relevant transfer, they must give a copy to the transferee prior to the transfer and provide information to HMRC about the transferee.

17. Subsection 6 of new section 236B sets out the information that must be provided to HMRC under subsections 3(b), 4(b), and 5(b).

18. Subsection 7 of new section 236B allows an authorised officer to give a copy of a stop notice to any person to whom the recipient of the notice is obliged to give a copy under subsections 3, 4, and 5. This does not remove the recipient's obligation to do so.

19. Subsection 8 of new section 236B applies to section 236B the definitions of "control" and "significant influence" in paragraph 13A of Schedule 34 FA14

20. Subsection 9 of new section 236B applies to section 236B the definition of

"relevant transfer" in paragraph 5 of Schedule 33A.

21. Subsection 1 of new section 236C provides that persons subject to a stop notice must provide returns to HMRC for each relevant period.

22. Subsection 2 of new section 236C defines the first relevant period as the 3-month period commencing on the day the stop notice was given.

23. Subsection 3 of new section 236C provides that each successive 3-month period commencing within 3 years of the day the stop notice was given is a relevant period.

24. Subsection 4 of new section 236C sets out the information that must be contained in a return.

25. Subsection 5 of new section 236C sets out the requirements for a person to be a "relevant client" of a person subject to a

stop notice.

26. Subsection 6 of new section 236C provides that if a person subject to a stop notice is unable to include in a return the information required under subsection (4)(c)(ii) or (iii) the return must include a statement to that effect.

27. Subsection 7 of new section 236C sets out the deadline for providing the return.

28. Subsection 8 of new section 236C gives authorised officers the power to notify a person that they are no longer required to provide quarterly returns.

29. Subsection 1 of new section 236D provides that a person subject to a stop notice may make a request that the notice should cease to have effect on them. The grounds on which such a request may be made are that the person has not promoted relevant arrangements or proposals and does not intend to do so, considers the conditions for specifying the

relevant description of arrangements in the stop notice were not met, or considers there are other reasons for it to cease to have effect

30. Subsection 2 of new section 236D provides that a relevant request must be made in writing to an authorised officer before the end of the 30-day period beginning with the day on which the notice was issued with an explanation of the basis for the request and supporting evidence.

31. Subsection 3 of new section 236D provides that where a request is made an authorised officer must decide whether the stop notice is to cease to have effect in relation to the person who made the request.

32. Subsection 4 of new section 236D provides that the authorised officer must notify the person who made the request of their decision within 45 days of receiving

the request.

33. Subsection 5 of new section 236D provides for the stop notice to cease to have effect on the person who made the request, if a decision notice is not given by the deadline to do so.

34. Subsection 6 of new section 236D provides that an authorised officer may also determine that a stop notice is to cease to have effect on a person who has not made a request under subsection (1).

35. Subsection 7 of new section 236D provides that a decision notice or withdrawal notice must specify the date on which the stop notice ceases to have effect in relation to the person in question.

36. Subsection 1 of new section 236E provides that a person may appeal against the refusal by an authorised officer to grant a request that a stop notice cease to have effect in relation to that person.

37. Subsection 2 of new section 236E provides that a notice of appeal must be given in writing to the officer who made the decision within 30 days of the decision notice being given.

38. Subsection 3 of new section 236E provides that the appeal must state the grounds of appeal.

39. Subsection 4 of new section 236E sets out the possible grounds of appeal.

40. Subsection 5 of new section 236E sets out the possible outcomes of an appeal.

41. Subsection 6 of new section 236E provides that the provisions of Part 5 of the Taxes Management Act 1970 have effect in relation to appeals under this section.

42. Subsection 1 of new section 236F provides that a person who makes an appeal under section 236E may also make a suspension request.

43. Subsection 2 of new section 236F defines a suspension request as a request that a stop notice that is the subject of an appeal should cease to have effect in relation to the person making the request until the appeal is determined, withdrawn, or otherwise disposed of.

44. Subsection 3 of new section 236F provides that a suspension request must be made in writing and contain an explanation of the basis for the request and supporting evidence.

45. Subsection 4 of new section 236F requires the authorised officer to determine whether the effect of the stop notice is to be suspended in relation to the person who made the request.

46. Subsection 5 of new section 236F provides that when considering whether to grant a suspension request authorised officers must have regard to the need to protect the public revenue and persons to

whom the arrangements or proposals concerned might be marketed.

47. Subsection 6 of new section 236F provides that an authorised officer to whom a suspension request is made must give notice of their decision within 30 days from receiving the request.

48. Subsection 7 of new section 236F provides that if the authorised officer has not given notice of their decision by the deadline for doing so, the stop notice will cease to have effect in relation to the person who made the request until the officer gives a decision notice refusing the request, or the appeal is determined, withdrawn, or otherwise disposed of.

49. Subsection 1 of new section 236G provides that new section 236G applies where stop notices have been issued on the basis that condition A in section 236A is met in reliance on a DOTAS or DASVOIT scheme reference number

having been allocated to other arrangements or proposed arrangements and that scheme reference number is withdrawn after the issue of the stop notice.

50. Subsection 2 of new section 236G provides for the stop notice to cease to have effect from the time when the DOTAS or DASVOIT scheme reference number was withdrawn.

51. Subsection 3 of new section 236G set out the persons to whom HMRC should give notice where a stop notice is withdrawn for this reason.

52. Subsection 4 of new section 236G provides that the withdrawal notice must state the reason for withdrawing the DOTAS or DASVOIT reference number and may contain such further explanation as HMRC consider appropriate, including their view of the arrangements or proposed arrangements to which the

reference number relates.

53. Subsection 1 of new section 236H allows an authorised officer to publish the fact that a person is subject to a stop notice and details of arrangements or proposals promoted by the person that meet the description of arrangements specified in the stop notice.

54. Subsection 2 of new section 236H sets out certain other information about a person that may be published.

55. Subsection 3 of new section 236H makes further related provision.

56. Subsection 4 of new section 236H provides that details identifying the person subject to a stop notice may not take place before the end of the appeal period, but the description of the arrangements and the fact that arrangements of that kind are subject to a stop notice may be published as soon as the stop notice is issued.

57. Subsection 5 of new section 236H defines the appeal period.

58. Subsection 6 of new section 236H provides that the appeal period does not cover onward appeals from the first instance tribunal.

59. Subsection 1 of new section 236I provides that where an authorised officer has published information relating to a stop notice under section 236H and the stop notice ceases to have effect because an associated DOTAS or DASVOIT scheme reference number has been withdrawn, the officer must publish that the notice has ceased to have effect.

60. Subsection 2 of new section 236I provides that the authorised officer may also publish information about the persons who were subject to the stop notice which has ceased to have effect.

61. Subsection 1 of new section 236J requires a person subject to a stop notice,

who has promoted arrangements, or a proposal, that meet the description specified in the stop notice to give notices to persons who are their clients or intermediaries in relation to the arrangements or proposal.

62. Subsection 2 of new section 236J sets out what must be included in the notices to clients and intermediaries.

63. Subsection 3 of new section 236J defines who is a client for the purposes of section 236J.

64. Subsection 4 of new section 236J sets out the deadlines for giving notices under section 236I.

65. Subsection 1 of new section 236K provides that new section 236K applies where an authorised officer suspects that a person who is subject to a stop notice has failed to comply with it.

66. Subsection 2 of new section 236K

provides that where section 236K applies the officer may provide a copy of the stop notice to any person the officer considers might be affected by the failure.

67. Subsection 3 of new section 236K sets out the information the officer may provide alongside a copy of a stop notice provided under section 236K.

68. Paragraph 2 amends section 245 so that where a person subject to a monitoring notice requests that it should be withdrawn, the authorised officer considering the request should take into account the person's record of compliance with any stop notice to which they have been subject while the monitoring notice has been in place. Paragraph 2 also amends section 245 so that where an authorised officer is considering whether a follow-on conduct notice should be issued when a monitoring notice is withdrawn, any contravention of a stop notice in place

while the monitoring notice was in place is to be regarded as significant.,

69. Paragraph 3 repeals section 262, an information power allowing HMRC to obtain information required for monitoring compliance with a conduct notice.

70. Paragraph 4 introduces new section 272A which applies Schedule 36 FA 2008 information and inspection powers for the purposes of Part 5 FA 2014, subject to specified modifications.

71. Subsection 1 of new section 272A applies Schedule 36 FA 2008 for relevant purposes in relation to relevant persons subject to appropriate modifications.

72. Subsection 2 of new section 272A sets out who will be a relevant person for the purposes of section 272A.

73. Subsection 3 of new section 272A lists the relevant purposes in relation to a

relevant person.

74. Subsection 4 of new section 272A provides that in section 272A, references to compliance with a stop notice, conduct notice, or monitoring notice include compliance with any provisions in Part 5 FA 2014 that a person subject to such a notice must comply with, references to a person "promoting" are to be construed in accordance with section 236A(7), and "relevant transfer" has the meaning given in paragraph 5 of new Schedule 33A.

75. Paragraph 5 amends section 273 of FA 2014.

76. Sub-paragraph 1 introduces amendments to section 273 of FA 2014.

77. Sub-paragraph 2 amends section 273(1) so that relevant clients or intermediaries of persons subject to a stop notice are not prevented by any confidentiality requirements from voluntarily disclosing information about a

person subject to a stop notice or arrangements or proposals for arrangements of a description specified in a stop notice.

78. Sub-paragraph 3 amends section 273(2) so that clients of persons subject to a stop notice fall within the definition of relevant client.

79. Sub-paragraph 4 amends section 273(3) so that intermediaries of persons subject to a stop notice fall within the definition of relevant intermediary.

80. Sub-paragraph 5 makes associated amendments to section 273(4).

81. Sub-paragraph 6 inserts new subsections 5, 6 and 7 into section 273. New subsection 5 ensures that section 273 does not authorise disclosures that would contravene data protection legislation. New subsections 6 and 7 add certain definitions for the purposes of section 273 associated with the amendments made to

sections 273(1)-(4).

82. Paragraph 6 amends subsection 1 of section 283 of FA 2014 to insert definitions of "stop notice" and "subject to a stop notice".

83. Paragraph 7 amends the stop notice threshold condition set out in Schedule 34 to FA 2014 so that a person who is subject to a stop notice meets the condition if they fail to stop promoting arrangements or proposals meeting the description specified in the notice, fail to make a return as required by section 236C(1), or fail to provide information or documents required under paragraph 1 or 2 of Schedule 36 as applied by section 272A.

84. Paragraph 8 amends Schedule 35 to FA 2014 to add penalties under sections 236B(1), 236B(3), 236B(4), 236B(5), 236C(1), 236J(1), and paragraphs 1, 2, and 10 Schedule 36 FA08 as applied by section 272A.

85. Sub-paragraph 1 introduces amendments to Schedule 35 to FA 2014.

86. Sub-paragraph 2 includes in paragraph 1 of Schedule 35, in the list of duties that are "information duties" for the purposes of Schedule 35, the duty to make a return under section 236C(1) and duties arising under paragraph 1 or 2 of Schedule 36 FA 2008 as applied by section 272A.

87. Sub-paragraph 3 adds to paragraph 2 of Schedule 35 (which sets out the Part 5 FA 2014 penalty provisions and maximum penalty amounts) specific penalty provision for deliberately obstructing an HMRC officer in the course of an inspection under paragraph 10 of Schedule 36 as applied by section 272A that has been approved by the tribunal. Sub-paragraph 3 also adds to the table in paragraph 2 of Schedule 35 the new penalties introduced by this Schedule and

the maximum penalty amounts. Sub-paragraph 3 also adds new sub-paragraphs to paragraph 2 concerning how the amount of relevant penalties is to be determined. Sub-paragraph 3 also makes certain further associated amendments.

88. Sub-paragraph 4 amends paragraph 3(1) of Schedule 35, which provides for daily default penalties for failure to comply with information duties, to except failures to comply with duties arising under section 236C(1).

89. Sub-paragraph 5 amends paragraph 4 of Schedule 35, which provides for penalties for inaccurate information and documents, to specify the relevant sum in certain cases for failures related to duties arising under section 236C and Schedule 36 FA 2008 as applied by section 272A. It also omits the reference to section 262 in paragraph 4(8)(c).

90. Sub-paragraph 6 amends paragraph 6 of Schedule 35 to substitute for the reference to section 262 reference to Schedule 36 FA 2008 as applied by section 272A.

91. Sub-paragraph 7 amends paragraph 7 of Schedule 35 to substitute for the references to section 262 reference to Schedule 36 FA 2008 as applied by section 272A.

92. Sub-paragraph 8 amends paragraph 10 of Schedule 35, which sets out how Part 10 of the Taxes Management Act 1970 applies for the purposes of penalties assessable under Schedule 35, so that the new penalties under sections 236B, 236C, and paragraphs 1 and 2 of Schedule 36 FA 2008 as applied by section 272A are assessable by HMRC officers, subject to certain specified exceptions.

Part 2: Promotion Structures

93. Paragraph 9 inserts new subsection 1A into section 235 of FA 2014 to provide that a person who is a member of a promotion structure under new Schedule 33A is treated as carrying on business as a promoter (regardless of whether the person carries on a business).

94. Paragraph 10 inserts new Schedule 33A into FA 2014 which sets out the cases in which a person will be a member of a promotion structure.

95. Paragraph 1 of new Schedule 33A provides that a person will be a member of a promotion structure if they fall within one of the four cases in Schedule 33A and lists those cases.

96. Paragraph 2 of new Schedule 33A provides for the multiple entity promoter case. Under this case a person will be a member of a promotion structure if they and other persons who are closely related

carry out between them activities that if carried out by a single person would cause that person to be a promoter for the purposes of Part 5 FA 2014. The paragraph sets out the requirements for persons to be closely related and makes associated provision.

97. Paragraph 3 of new Schedule 33A provides for the acting for a non-resident promoter case. Under this case a person will be a member of a promotion structure if they act under the instruction or guidance of a non-resident promoter, and either contribute to the non-resident promoter's promotion activities, or receive remuneration related to the non-resident promoter's promotion activities.

98. Paragraph 4 of new Schedule 33A provides for the control of another promoter case. Under this case, an individual ("A") will be a member of a promotion structure if they control or

have significant influence over a body corporate or partnership ("B") that carries on a business as a promoter and they meet the personal condition or the corporate condition. The personal condition is that at any time after A first controlled or had significant influence over B, A was subject to an order disqualifying them as a director or was subject to insolvency or debt related proceedings, as widely defined. The corporate condition is that at any time A controlled or had significant influence over a body corporate or partnership other than B that carried on business as a promoter and that was dissolved or became dormant or insolvent, as widely defined.

99. Paragraph 5 of new Schedule 33A provides for the transfer of promotion business case. Under this case a person will be a member of a promotion structure if there has been a transfer to them, or to a body corporate or partnership they control

or have significant influence over, of another person's promotion business.

100. Paragraph 11 inserts new subsection 8A into section 237 of FA 2014. The subsection has the effect that where an authorised officer is required under section 237(5) to determine whether the meeting of a threshold condition by a person should be regarded as significant, the officer must determine that the meeting of the condition should be regarded as significant where the person is a member of a promotion structure under the multiple entity promoter case.

101. Paragraph 12 inserts new subsection 3C into section 237A of FA 2014. The subsection has the effect that where an authorised officer is required under section 237A(1), or (3)(a) or (b) to determine whether the meeting of a condition in section 237A(11)-(13) by a person should be regarded as significant,

the officer must determine that the meeting of the condition should be regarded as significant where the person is a member of a promotion structure under the multiple entity case.

102. Paragraph 13 amends section 250 of FA 2014 to include as persons who HMRC must notify of a monitored promoter reference number, any person who is a member of a promotion structure under the acting for a non-resident promoter case by virtue of acting under the guidance or instruction of the relevant monitored promoter.

103. Paragraph 14 amends section 251 of FA 2014 to include as persons who a promoter who has been allocated a monitored promoter reference number must notify of the number, any person who is a member of a promotion structure under the acting for a non-resident promoter case by virtue of acting under

the guidance or instruction of the monitored promoter.

104. Paragraph 15 inserts new subsection 4A into section 252 of FA 2014. The subsection places an obligation on persons within the acting for a non-resident promoter case who have been notified of a monitored promoter reference number to notify certain other persons of the number.

105. Paragraph 16 amends section 258 of FA 2014 to include as a person who may be required to provide relevant information where a non-resident monitored promoter fails to comply with a duty under section 255 or section 257, any person who is a member of a promotion structure under the acting for a non-resident promoter case by virtue of acting under the guidance or instruction of the monitored promoter.

106. Paragraph 17 amends section 260 of FA 2014 to give officers the power to

require any person who is a member of a promotion structure under the acting for a non-resident promoter case to provide details of persons who are their clients in relation to proposals that are monitored proposals in relation to the non-resident promoter under whose instruction or guidance they act.

107. Paragraph 18 amends section 283 of FA 2014 to provide that "promotion structure" is to be construed in accordance with section 235(1A) and Schedule 33A and to provide that references in Part 5 of FA 2014 to a person's activities as a promoter include relevant activities carried on by persons in a promotion structure.

108. Paragraph 19 amends paragraph 13B of Schedule 34 to FA 2014 so that the meeting of any threshold condition by a relevant person who controls a relevant body can be attributed to the body

regardless of whether the person is an individual, provided the person is a member of a promotion structure under the control of another promoter case or the transfer of a promotion business case.

Part 3: Conduct and Monitoring Notices: Transferees

109. Paragraph 20 inserts new section 239A into FA 2014.

110. Sub-paragraph 1 inserts new section 239A which allows an authorised officer to give conduct notice to the transferee on a relevant transfer within the meaning of paragraph 5 of Schedule 33A if the transferor was subject to a conduct notice. To the extent the proposed terms of the conduct notice to be given to the transferee differ to those of the transferor's conduct notice, the transferee is to be given an opportunity to comment on the terms. A person to whom a conduct

notice is given under the section may make representations to the officer who gave the notice that they were not a person to whom a relevant transfer was made, and the officer must withdraw the notice if having considered the representations they conclude they did not have power to give it.

111. Sub-paragraph 2 provides that new section 239A has effect in relation to relevant transfers made on or after Royal Assent.

112. Paragraph 21 inserts new section 244A into FA 2014 and amends section 248 of FA 2014.

113. Sub-paragraph 1 inserts new section 244A into FA 2014 which allows an authorised officer to give a monitoring notice to the transferee on a relevant transfer within the meaning of paragraph 5 of Schedule 33A if the transferor was subject to a monitoring notice. A person to

whom a monitoring notice is given under the section may make representations to the officer who gave the notice that they were not a person to whom a relevant transfer was made and the officer must withdraw the notice if having considered the representations they conclude they did not have power to give it.

114. Sub-paragraph 2 amends section 248(2)(c) of FA 2014 so that HMRC may publish the fact that the person to whom a monitoring notice is transferred is a monitored promoter.

115. Sub-paragraph 3 provides that new section 244A has effect in relation to relevant transfers made on or after Royal Assent.

Part 4: Miscellaneous Amendments

116. Paragraph 22 amends sections 237 and 237A of FA 2014 so that in effect where the attribution rules apply an authorised

officer must regard both relevant persons' meeting of one or more threshold conditions as significant if the officer would regard either person's meeting of the conditions as significant.

117. Paragraph 23 inserts new paragraph (h) into section 238(3) of FA 2014 so that the conditions in a conduct notice can include a requirement to provide such information or documents as is necessary for HMRC to monitor whether the recipient of the notice is complying with any of the conditions in that notice.

118. Paragraph 24 amends section 240 so that in relevant circumstances an authorised officer has the option either to amend a conduct notice or to withdraw the notice and give a new one in its place.

119. Paragraph 25 amends section 241 of FA 2014. It amends section 241(2) and inserts section 241(2A) so that where a new conduct notice is given under section

240(4) at a time when the notice it replaces has less than 12 months to run, the new notice ceases to have effect when the original one would have done so.

120. Paragraph 25 also inserts new subsections 4A to 4J to make further provision concerning the duration of conduct notices. New subsection 4A includes a table by reference to which the duration of a conduct notice (the 'relevant period') is to be calculated. The relevant period can be between 2 and 5 years depending on the number and significance of threshold conditions met. New subsection 4B provides that when an authorised officer gives a conduct notice the officer must notify the recipient of the relevant period. New subsection 4C provides for the authorised officer to recalculate the relevant period and to give notice of the revised period, if the meeting of threshold conditions was overlooked at the time the notice was given. New

subsection 4D sets out when the meeting of a threshold is to be treated as significant for the purposes of calculating the relevant period.

121. New subsections 4E to 4J provide that when calculating the remaining period of a conduct notice no account is to be taken of any day during which, either the notice has been suspended by an authorised officer, or the person who is subject to the notice has failed to comply with an information notice given under paragraph 1 of Schedule 36 FA 2008 as applied by section 272A by the deadline for doing so. Where an authorised officer recalculates the remaining period of a conduct notice, the officer must notify the person subject to the notice that they have done so and of the new expected end date of the notice.

122. Paragraph 26 amends section 241A(4) of FA 2014 so that the starting point for the 90 day period during which an authorised

officer may give a person a defeat notice is when the relevant matters first come to the attention of an authorised officer.

123. Paragraph 27 amends section 242 of FA 2014.

124. Sub-paragraph 1 amends section 242(1) so that where a person is subject to a conduct notice and an authorised officer determines that the person has failed to comply with one or more conditions in the notice or has provided false and misleading information, the officer must apply to the tribunal for approval to give the person a monitoring notice within 12 months of making the determination.

125. Sub-paragraph 2 inserts new subsections 1A - 1G. New subsections 1A – 1C provide that where a person has been subject to a conduct notice and within the period of 6 years after the notice ceases to have effect an authorised officer, who could not reasonably have been expected

to come to such a determination when the notice had effect, determines that the person failed to comply with one or more conditions in the notice or provided false and misleading information, the officer may apply to the tribunal for approval to give the person a monitoring notice. New subsections 1D – 1G make further provision so that where there has been a relevant transfer within the meaning of paragraph 5 of Schedule 33A, an authorised officer may, within the same 6 year period, apply to the tribunal for approval to give the transferee a monitoring notice if the officer could not reasonably have been expected to apply to the tribunal for approval to give the transferor a monitoring notice before the transfer took place.

126. Sub-paragraph 3 provides that the amendments made by paragraph 27 have effect in relation to conduct notices that cease to have effect on or after Royal

Assent and to relevant transfers made on or after Royal Assent.

127. Paragraph 28 introduces amendments to the threshold conditions in Schedule 34 to FA 2014.

128. Paragraph 29 amends Schedule 34 to FA 2014.

129. Sub-paragraphs 1 to 7 amend paragraph 5 of Schedule 34 to FA 2014. Sub-paragraph 2 amends the heading to the paragraph to reflect that it covers avoidance disclosure requirements generally. Sub-paragraph 3 inserts new sub-paragraph A1 which provides that a person meets the threshold condition if they fail to comply with relevant provisions of Part 7 FA 2004 (DOTAS) or Schedule 17 F(No.2)A 2017 (DASVOIT).

130. Sub-paragraph 4 updates sub-paragraph (1) of paragraph 5 to specify further provisions in Part 7 FA 2004 breach of which will have the effect that

the threshold condition is met.

131. Sub-paragraph 5 inserts new sub-paragraph (1A) to paragraph 5 to specify those provisions in Schedule 17 to F(No.2)A 2017 breach of which will have the effect that the threshold condition is met.

132. Sub-paragraph 6 makes amendments associated with those made by sub-paragraphs 2 to 5.

133. Sub-paragraph 7 makes further associated amendments.

134. Paragraph 30 inserts new subsections (3) and (4) to paragraph 7 of Schedule 34 to FA 2014 which sets out the GAAR Advisory Panel opinion notice threshold condition. New subsection (3) provides that the condition will be met by a promoter of arrangements in relation to which the taxpayer concerned has been given either a pooled arrangements opinion notice under paragraph 6(2) of

Schedule 43A to FA 2013 or a bound arrangements opinion notice under paragraph 6(4) of the same Schedule, in circumstances where the Panel's opinion was that the arrangements in question are not reasonable. New subsection (4) makes similar provision so that a person will meet the condition where they are a promoter of arrangements to which a Panel opinion that the arrangements are not reasonable applies for the purposes of the enablers regime in Schedule 16 F(No.2)A 2017.

135. Paragraph 31 amends the exercise of information powers threshold condition at paragraph 10 of Schedule 34 to include failure to comply with requirements imposed under specified DOTAS and DASVOIT information powers.

Background note

136. This measure was first announced in December 2019 as part of the

government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would (i) ensure HMRC could more effectively issue stop notices to promoters, under the Promoters of Tax Avoidance Schemes (POTAS) rules, to make it harder to promote schemes that do not work; (ii) prevent promoters from abusing corporate entity structures to avoid their obligations under the POTAS rules; as well as (iii) further technical amendments to the POTAS regime so that it continues to operate effectively.

137. This clause and Schedule will allow

HMRC to issue stop notices where HMRC consider both that there is a scheme being promoted which has been marketed as capable of enabling a person to obtain a particular tax advantage and that it is more likely than not that the scheme would not be capable of achieving that advantage. Safeguards are provided in the form of a right of appeal against the stop notice and stop notices can only be issued by an officer authorised for the purpose.

138. This clause and Schedule have also been introduced in order to see the responsibility for the obligations within POTAS, and for any failure to comply with them to be placed on the people and entities behind the schemes. The scope of the existing legislation will be widened to include individuals who control, or significantly influence, entities that carry on promotion activities, as well as the people they work through in the UK and other entities that have been set up in a

fragmented way, which result in HMRC being unable to tackle them. The new legislation enables HMRC to more effectively challenge persons who use separate entities to avoid their legal obligations.

Clause 118 and Schedule 30: Disclosure of tax avoidance schemes

Summary

1. This clause and Schedule amend Part 7 of the Finance Act 2004 (FA 2004) and Schedule 17 to the Finance (No.2) Act 2017 (F(No.2)A 2017), which provide for promoters of tax avoidance proposals or arrangements to notify them to HM Revenue and Customs (HMRC). The provisions in FA 2004 govern the regime for Disclosure of Tax Avoidance Schemes (DOTAS); those in F(No2)A 2017 the regime for Disclosure of Tax Avoidance Schemes, VAT and Other Indirect Taxes (DASVOIT). The clause and Schedule provide that when HMRC reasonably suspect that a person has failed to disclose arrangements or proposed arrangements which should have been notified to them, HMRC may issue a notice to anyone they reasonably suspect of being a promoter or

other supplier involved in the supply of the arrangements or proposed arrangements. This notice explains that if the person is unable to satisfy HMRC within 30 days, or any longer period HMRC agree, that the arrangements or proposed arrangements are not disclosable, HMRC may allocate a Scheme Reference Number (SRN) to the arrangements or proposed arrangements. The measure will come into effect on the day the Act is passed.

Details of the clause

2. Clause 118 introduces Schedule 30.

Details of the Schedule

Part 1: Amendments of Part 7 of FA 2004

3. Paragraph 1 introduces amendments to Part 7 of FA 2004.

4. Paragraph 2 inserts new section 305A into FA 2004 which provides an overview of Part 7.

5. Paragraph 3 amends section 307(4A) of FA 2004 to omit the word "notifiable" in both places.

6. Paragraph 4 inserts new section 310D to Part 7 of FA 2004.

7. New section 310D provides that when HMRC become aware that i) a transaction forming part of arrangements has been entered into, or ii) a firm approach has been made to a person in relation to a proposal for arrangements with a view to making the proposal available for implementation, or iii) a proposal for arrangements is made available for implementation,

8. and HMRC have reasonable grounds for suspecting that the arrangements are notifiable, or the proposal is notifiable, HMRC may, within 15 days beginning with the day on which they first became aware one of the three pre-conditions has been met, issue a notice to any person they believe to be involved in the

supply or promotion of those arrangements or proposals, explaining that, unless the person is able to satisfy HMRC, before the end of the notice period, that the arrangements are not notifiable or (as the case may be) the proposal is not notifiable.

9. HMRC may allocate a reference number to the arrangements or (in the case of a proposal) the proposed arrangements.

10. Paragraph 5 substitutes new sections 311, 311A, 311B and 311C for existing section 311 of FA 2004.

11. New section 311 sets out two routes to the allocation of an SRN, termed 'subsection (2)' cases and 'subsection (3)' cases.

12. Subsection 2 of new section 311 applies to cases where proposals or arrangements have been notified to HMRC.

13. Subsections 3 to 7 of new section 311

provide that when HMRC have issued a notice or notices under new section 310D, they may allocate an SRN to the arrangements or proposal if the recipients of the notices are unable to satisfy HMRC within 30 days of the notice (or any longer period HMRC may allow) that the arrangements or proposal are not notifiable.

14. Subsection 8 of new section 311 allows HMRC to withdraw an SRN allocated under subsection (3).

15. Subsection 9 of new section 311 provides that the allocation of an SRN is not to be regarded as an indication that HMRC consider the proposal or arrangements may work to achieve a tax advantage.

16. New section 311A provides that where HMRC allocate an SRN in a subsection (2) case, they must notify that number to the person who disclosed the proposal or arrangements and to any

other promoter notified by that person to HMRC. When HMRC allocate an SRN in a subsection (3) case, new section 311A provides that they must notify the number to anyone they reasonably suspect to be or to have been, a promoter in relation to the arrangements or the proposed arrangements, and to any other person they reasonably suspect to be, or to have been, involved in the supply of the arrangements or the proposed arrangements. The duty in a subsection (3) case applies irrespective of whether the notice under section 310D as a result of which the reference number was allocated has been issued to the person concerned.

17. New section 311B provides a right of appeal in a subsection (3) case. The right extends to anyone who has been notified of the SRN allocated in a subsection (3) case and appeal may be made on the basis that HMRC did not act in

accordance with the requirements in new section 310D and section 311, or that the arrangements or proposal are not notifiable. Notice of appeal must be given to the tribunal within 30 days of the person being notified of the SRN. The bringing of an appeal does not prevent the powers and duties deriving from the SRN applying during the currency of the appeal.

18. New section 311C provides that in a subsection (3) case HMRC may require any person they reasonably suspect to be, or to have been, a promoter in relation to the arrangements or the proposed arrangements or any other person they reasonably suspect to be, or to have been, involved in the supply of the arrangements to provide further information or documents relating to those arrangements or proposed arrangements. They may only do this if they reasonably suspect that the

information or documents will help them in considering the arrangements or proposed arrangements. The information must be provided within 10 working days, unless HMRC allow a longer period.

19. Paragraph 6 amends section 312 of FA 2004 so that it applies for subsection (2) cases.

20. Paragraph 7 inserts new section 312ZA into Part 7 of FA 2004. New section 312ZA provides that any person who provides services to a client in respect of arrangements or proposed arrangements to which an SRN has been allocated in a subsection (3) case, or in respect of arrangements that are substantially the same as the arrangements or proposed arrangements to which the SRN has been allocated must forward to that client certain information prescribed in regulations within 30 days of being

advised of the SRN. HMRC may give notice that this duty no longer applies in relation to specified arrangements or proposed arrangements.

21. Paragraph 8 amends section 312A of FA 2004 so that the duty of a client to notify other parties of an SRN is extended to cases where the client receives the prescribed information set out in new section 312ZA.

22. Paragraph 9 amends section 312B of FA 2004 so that the duty to provide information extends to persons who are clients under new section 312ZA.

23. Paragraphs 10, 11, 12 and 13 amend sections 313, 313ZA, 313ZB and 313ZC of FA 2004 to include subsection (3) cases. These sections deal with the requirements on parties to arrangements, those involved in the promotion or supply of arrangements or proposals and other specified persons to provide to HMRC information about the

parties or other specified persons, as applicable.

24. Paragraphs 14 and 15 amend sections 316 and 316A of FA 2004 to include subsection (3) cases.

25. Paragraph 16 amends section 316C of FA 2004 to allow HMRC to publish details of arrangements or proposed arrangements to which an SRN has been allocated in a subsection (2) case or a subsection (3) case and to publish, in subsection (2) cases, details of any person who is a promoter in relation to the arrangements or proposed arrangements and, in subsection (3) cases, details of any person who is a promoter in relation to the arrangements or proposed arrangements or otherwise involved in the supply of the arrangements or proposed arrangements. It also inserts new subsection (4A)which prohibits HMRC from publishing information about a

person involved in the supply of arrangements or proposed arrangements where there are reasonable grounds for believing that the person's involvement is limited to activities subject to legal professional privilege.

26. It also inserts new subsections 6A and 6B which provide for time limits on HMRC's power to publish information identifying a person in subsection (3) cases. HMRC may not publish information identifying a promoter or other supplier for the first time more than 12 months after the day the SRN is allocated. Where details identifying such a person have been published there can be no new or continued publication identifying the person once 12 months have passed from the date of first publication. If because of tribunal or court proceedings HMRC are prohibited for a period from publishing

information identifying a person, that period is not included in calculating the 12-month periods.

27. Paragraph 17 amends section 316D of FA 2004 to include subsection (3) cases.

28. Paragraph 18 amends section 318(1) of FA 2004 to include subsection (3) cases.

Part 2: Amendments of Schedule 17 to F(No.2)A 2017

29. Paragraph 19 introduces amendments to Schedule 17 to F(No.2)A 2017.

30. Paragraph 20 inserts new Part A1 into Schedule 17, which provides an introduction to the Schedule.

31. Paragraph 21 amends paragraph 10(1) of Schedule 17 to include sub-paragraph (3) cases.

32. Paragraph 22 introduces new paragraph 21A into Schedule 17 which provides that when HMRC become aware that i) a transaction forming part

of arrangements has been entered into, or ii) a firm approach has been made to a person in relation to a proposal for arrangements with a view to making the proposal available for implementation, or iii) a proposal for arrangements is made available for implementation; and HMRC have reasonable grounds for suspecting that the arrangements are notifiable, or the proposal is notifiable, HMRC may within 15 days beginning with the day on which they first became aware one of the three pre-conditions has been met, issue a notice to any person they believe to be involved in the supply or promotion of those arrangements or proposals. The notice explains that, unless the person is able to satisfy HMRC, before the end of the notice period, that the arrangements are not notifiable or (as the case may be) the proposal is not notifiable, HMRC may allocate a reference number to the arrangements or (in the case of a

proposal) the proposed arrangements.

33. Paragraph 23 substitutes new paragraphs 22, 22A, 22B and 22C for existing paragraph 22 of Schedule 17.

34. New paragraph 22 sets out two routes to the allocation of an SRN, termed 'sub-paragraph (2)' cases and 'sub-paragraph (3)' cases.

35. New paragraph 22A provides that where HMRC allocate an SRN in a sub-paragraph (2) case, they must notify that number to the person who disclosed the proposal or arrangements and to any other promoter notified by that person to HMRC. When HMRC allocate an SRN in a sub-paragraph (3) case, new paragraph 22A provides that they must notify the number to anyone they reasonably suspect to be a promoter in relation to the arrangements or the proposed arrangements, and any other person who they reasonably suspect to be, or to have been, involved in the

supply of the arrangements or the proposed arrangements. The duty in a sub-paragraph (3) case applies irrespective of whether the notice under paragraph 21A as a result of which the reference number was allocated has been issued to the person concerned.

36. New paragraph 22B provides a right of appeal in a sub-paragraph (3) case. The right extends to anyone who has been notified of the SRN allocated in a sub-paragraph (3) case and appeal may be made on the basis that HMRC did not act in accordance with the requirements in new paragraphs 21A and 22, or that the arrangements or proposal are not notifiable. Notice of appeal must be given to the tribunal within 30 days of the person being notified of the SRN. The bringing of an appeal does not prevent the powers and duties deriving from the SRN applying during the currency of the appeal.

37. New paragraph 22C provides that in a sub-paragraph (3) case HMRC may require anyone they reasonably suspect to be, or to have been, a promoter in relation to the arrangements or the proposed arrangements, or any other person they reasonably suspect to be, or to have been, involved in the supply of the arrangements to provide further information or documents relating to those arrangements or proposed arrangements. They may only do this if they reasonably suspect that the information or documents will help them in considering the arrangements or proposed arrangements. The information must be provided within 10 working days, unless HMRC allow a longer period.

38. Paragraphs 24 and 25 amend paragraph 23 of Schedule 17 so that it applies to sub-paragraph (2) cases.

39. Paragraph 26 inserts new paragraph

23A into Schedule 17 which provides that any person who provides services to a client in respect of arrangements or proposed arrangements to which an SRN has been allocated in a sub-paragraph (3) case, or in respect of arrangements that are substantially the same as the arrangements or proposed arrangements to which the SRN has been allocated must forward to that client certain information prescribed in regulations within 30 days of being advised of the SRN. HMRC may give notice that this duty no longer applies in relation to specified arrangements or proposed arrangements.

40. Paragraph 27 amends paragraph 24 of Schedule 17 so that the duty of a client to notify other parties of an SRN is extended to cases where the client receives the prescribed information set out in new paragraph 23A.

41. Paragraphs 28 and 29 amend

paragraph 25 so that the duty to provide information extends to persons who are clients under new paragraph 23A.

42. Paragraphs 30 to 35 make amendments to paragraphs 26 to 28, 33 and 34 of Schedule 17 to include sub-paragraph (3) cases. These paragraphs deal with the requirements on the parties to arrangements, those involved in the promotion or supply of proposals or arrangements and other specified persons to provide to HMRC information about the parties and other specified persons, as applicable.

43. Paragraph 36 amends paragraph 36 of Schedule 17 to allow HMRC to publish details of arrangements or proposed arrangements to which an SRN has been allocated in a sub-paragraph (2) case or a sub-paragraph (3) case and to publish, in sub-paragraph (2) cases, details of any person who is a promoter in relation to the arrangements or proposed

arrangements and, in sub-paragraph 22(3) cases, details of any person who is a promoter in relation to the arrangements or proposed arrangements or otherwise involved in the supply of the arrangements or proposed arrangements. It also inserts new sub-paragraph 4A which prohibits HMRC from publishing information about a person involved in the supply of arrangements or proposed arrangements where there are reasonable grounds for believing that the person's involvement is limited to activities subject to legal professional privilege.

44. It also inserts new sub-paragraphs 7 and 8 which provide for time limits on HMRC's power to publish information identifying a person in sub-paragraph (3) cases. HMRC may not publish information identifying a promoter or other supplier, for the first time, more

than12 months after the day the SRN is allocated. Where details identifying such a person have been published there can be no new or continued publication identifying the person once 12 months have passed from the date of first publication. If because of tribunal or court proceedings HMRC are prohibited for a period from publishing information identifying a person, that period is not included in calculating the 12-month periods.

45. Paragraph 37 amends paragraph 37 of Schedule 17 to include sub-paragraph (3) cases.

46. Paragraph 38 amends paragraph 39 of Schedule 17. A failure to provide further information required by HMRC under new paragraph 22C of Schedule 17 or for failing to pass on relevant information to clients as required under new paragraph 23A(2) of Schedule 17 can result in a penalty not exceeding

£600 per day.

47. Paragraph 39 amends paragraph 40 of Schedule 17 to include penalties incurred for failures under new paragraph 22C of Schedule 17.

48. Paragraph 40 substitutes a new definition of "reference number" into paragraph 57(1) of Schedule 17.

Part 3: Other Amendments

49. Paragraph 41 amends section 98C(2) of Taxes Management Act 1970. A failure to provide information required by HMRC under new section 311C of FA 2004 or for failing to pass on relevant information to clients as required by new section 312ZA(2) of FA 2004 can result in a penalty not exceeding £600 per day.

50. Paragraph 42 amends Chapter 3 of Part 4 of Finance Act 2014 so that arrangements in respect of which an

SRN has been allocated in a subsection (3) case are included as "DOTAS arrangements" for the purposes of accelerated payments. This means that HMRC may issue accelerated payment notices and partner payment notices to users of such arrangements when the relevant criteria in Chapter 3 are met.

Part 4: Commencement

51. This measure comes into force on the day on which this Act is passed.

Background note

52. DOTAS was introduced in 2004 and DASVOIT in 2017. These regimes provide HMRC with early information about new tax avoidance schemes, how they work and those who use them. Prompt disclosure to HMRC of proposals and arrangements which bear the hallmarks of tax avoidance allows HMRC to make informed decisions

about whether and how such schemes should be challenged, and whether new legislation is needed to address them.

53. This measure was first announced in December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. He proposed changes that would ensure that HMRC could act quickly and decisively where promoters fail to provide information about their avoidance.

Clause 119: Penalties for enablers of defeated tax avoidance

Summary

1. This clause amends the penalties for enablers of defeated tax avoidance legislation set out in Schedule 16 to the Finance (No.2) Act 2017 (F(No.2)A 2017). Once amended, HM Revenue and Customs (HMRC) will be able to use its information powers (under Schedule 36 to Finance Act 2008, as applied and modified) to check a person's position regarding potential liability for a penalty in relation to arrangements before the arrangements are defeated; and to request information from one enabler about other persons who may also have enabled the same arrangements. This clause also amends the special provisions for multi-user schemes altering the threshold percentages before a penalty can be issued and allowing HMRC to assess enabler

penalties following a judicial ruling. This clause also amends the requirements for publishing information about enablers who have received penalties removing the requirement for all related arrangements to have been defeated.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 16 to F(No.2)A 2017.

3. Subsection 2 amends paragraph 21 of Schedule 16 to provide for two new conditions to the special provision about assessment of penalties for multi-user schemes, and when these conditions apply. Once one of the conditions has been met HMRC may assess penalties on enablers of all related arrangements that have been defeated. New condition 1 applies if one of the defeats of related arrangements results from a judicial ruling. Condition 2, which will apply where no defeat of related arrangements

results from a judicial ruling, provides for a new tiered threshold dependent on (i) the number of related cases and (ii) the percentage of those cases that have been defeated.

4. Subsection 3 makes consequential amendments to paragraph 22 of Schedule 16 to reflect the two new conditions.

5. Subsections 4 to 7 amend paragraphs 40 to 43 of Schedule 16. These amendments make provision for HMRC to exercise its information and inspection powers (under Schedule 36 to the Finance Act 2008, as applied and modified) to check a person's position regarding potential liability for a penalty in relation to arrangements before the arrangements are defeated, and to help identify any other person who may have enabled those arrangements. The amendments also treat paragraph 25 of Schedule 36 to the Finance Act 2008 as omitted for the purposes of Schedule 16, with the effect that there are no bespoke

restrictions on the information tax advisers can be required to provide for the purposes of checking a person's position regarding potential liability for a penalty under Schedule 16.

6. Subsection 8 amends paragraph 48 of Schedule 16 which sets out the requirements that must be met before information may be published about persons who have received penalties under Schedule 16. The amendment omits the requirement for all 'related arrangements' to be defeated before such information may be published.

7. Subsection 9 ensures that conditions 1 and 2 specified in subsection 2 have effect only in relation to arrangements that are enabled after Royal Assent to this Act.

8. Subsections 10 and 11 allow for defeats of related arrangements incurred before Royal Assent to this Act to be taken into account when determining whether the thresholds for conditions 1 and 2 have

been met in relation to arrangements enabled after Royal Assent.

9. Subsection 12 ensures that HMRC may exercise its information and inspection powers as amended by subsections 4-7 to enquire into enablers whenever the relevant arrangements were enabled.

10. Subsection 13 ensures that the amendments made by subsection 8 in respect of HMRC's power to publish information apply only to arrangements that are enabled after Royal Assent to this Act.

Background note

11. Schedule 16 to F(No.2)A 2017 introduced penalties for enablers of defeated tax avoidance whereby anyone who has enabled abusive tax avoidance arrangements that are later defeated by HMRC will be subject to a penalty of 100% of the fee earned.

12. This measure was first announced in

December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. The announcement proposed changes that would ensure HMRC could obtain information about the enabling of abusive schemes as soon as they are identified with the aim of ensuring that enabler penalties are felt without delay.

13. The measure was included in the consultation document Tackling Promoters of Tax Avoidance published on 21 July 2020. A response document was published at Budget 2021.

14. This clause amends the provisions for

HMRC to issue penalties for multi-use abusive tax arrangements. HMRC will be able to assess enablers penalties in relation to all defeated uses where any taxpayer's implementation of the scheme has been defeated in court proceedings and the relevant judicial ruling is final and not subject to appeal. The clause also introduces a tiered approach to determining when HMRC can issue penalties to an enabler of defeated arrangements in relation to multi-use tax arrangements where no use has yet suffered a judicial defeat.

15. The clause amends the provisions for HMRC to exercise its information and inspection powers (under Schedule 36 to Finance Act 2008, as applied and modified). HMRC will only use information powers to request information to enable them to check whether a person is, or may become, liable to enablers penalties and, if so, how much

those penalties would be. The clause removes the exclusion (under paragraph 25 of Schedule 36 to Finance Act 2008) for tax advisers in connection with relevant communications: a tax adviser may continue to withhold any material they think is not required for the purpose of checking the penalty position.

16. The clause amends the requirements that must be met before publishing details of enablers who have received penalties: it removes the restriction requiring HMRC to defeat all related uses of a multi-user scheme before publishing details. HMRC are now able to publish information about an enabler once they have received 51 penalties or penalties exceeding £25,000 over a period of 12 months.

Clause 120 and Schedule 31: The GAAR and partnerships

Summary

1. This clause and Schedule make provision about the operation of the general anti-abuse rule (GAAR) in relation to partnerships. The amendments make provision for the GAAR procedure to work consistently with how HM Revenue and Customs (HMRC) conducts tax enquiries in respect of partnerships. They allow for the giving of a notice to relevant partners via the representative partner, making amendments to the partnership return, feeding counteraction through to the relevant partners' tax returns and for the representative partner to appeal. The Schedule also introduces minor and technical amendments to the legislation to remove ambiguity in the definition of the "closed period" as applied to pooled and bound cases and correct a cross-reference

in paragraph 2(1) of Schedule 43C of FA 2013. It also amends Schedule 43 of FA 2013 to be consistent with Schedule 43A of FA 2013 to make it clear that anything that may or must be done by a given designated HMRC officer can be done by another designated HMRC officer instead. These changes will apply from Royal Assent.

Details of the clause

2. Clause 120 introduces Schedule 31 which makes provision about the operation of the GAAR in relation to partnerships.

Details of the Schedule

3. Paragraph 1 inserts new Schedule 43D into Finance Act 2013 (FA 2013).

4. Paragraph 1 of new Schedule 43D introduces the Schedule which makes provision about the operation of the GAAR in relation to partnerships and provides that it applies in relation to partnerships where a return is made

under section 12AA, or paragraph 10 of Schedule A1, to the Taxes Management Act 1970.

5. Paragraph 2 of new Schedule 43D provides the definition of responsible partner.

6. Paragraph 3 of new Schedule 43D explains in what circumstances a partnership return is regarded as being made on the basis that tax advantage arises.

7. Paragraph 4 of new Schedule 43D enables a HMRC officer to give a protective GAAR notice to the responsible partner on the basis that a tax advantage might have arisen through abusive tax arrangements reflected in the partnership return.

8. Paragraph 5 of new Schedule 43D enables a "designated HMRC officer" to notify the responsible partner in writing where the officer considers that on the basis of a partnership return one or more partners has obtained a tax advantage which should be counteracted under the GAAR

and lists the information which must be contained in the notice. A designated HMRC officer means an officer of HMRC who has been designated by the Commissioners for the purposes of the GAAR.

9. Paragraph 6 of new Schedule 43D provides that where a notice has been given under paragraph 5, Part 5 of FA 2013 has effect in relation to the tax advantage with the modifications provided for in paragraph 7.

10. Paragraph 7 of new Schedule 43D provides for modifications to Schedule 43 to FA 2013 (procedural requirements) to enable the responsible partner to receive notices, take various steps under the GAAR procedure and take corrective action. It also enables any one, or more, of the relevant partners to take corrective action in relation to their own liability.

11. Paragraph 8 of new Schedule 43D sets out that an officer may give a notice under

this Part 3 of Schedule 43D (notices of proposed counteraction) on the assumption a tax advantage arises without agreeing that it does.

12. Paragraph 9 of new Schedule 43D provides that anything that is done by a given designated HMRC officer under this Part may be done instead by any other designated HMRC officer.

13. Paragraph 10 of new Schedule 43D enables a designated HMRC officer to give a pooling notice or notice of binding in respective of partnership tax arrangements to the responsible partner.

14. Paragraph 11 of new Schedule 43D provides that where a pooling notice or notice of binding is given under paragraph 10 this has effect in relation to the tax advantage with the modifications provided for in paragraphs 12 and 13.

15. Paragraph 12 of new Schedule 43D provides for modifications to Schedule 43A to FA 2013 (procedural requirements:

pooling notices and notices of binding) so that pooling notices and notices of binding may be given to the responsible partner in respect of partnership tax arrangements. The provisions allow for equivalent arrangements used by partnerships and non-partnership entities to be pooled and bound behind the same lead arrangement. They allow the responsible partner to take corrective action, and enable any one, or more, of the relevant partners to take corrective action in relation to their own liability.

16. Paragraph 13 of new Schedule 43D provides for modifications to Schedule 43B to FA 2013 (procedural requirements: generic referral of tax arrangements).

17. Paragraph 14 of new Schedule 43D provides that a designated HMRC officer may give a pooling notice or notice of binding on the assumption a tax advantage arises without agreeing that it does.

18. Paragraph 15 of new Schedule 43D provides that anything that is done by a given designated HMRC officer under this Part may be done instead by any other designated HMRC officer.

19. Paragraph 2 provides for Part 5 of FA 2013 to be amended as follows.

20. Paragraph 3 makes amendments to section 209 FA 2013 (counteracting tax advantages). Section 209 provides that tax advantages arising from abusive tax arrangements are to be counteracted by the making of just and reasonable adjustments, whether in respect of the tax in question or any other tax to which the GAAR applies. The provisions make minor consequential amendments in order to apply section 209 in partnership cases. Paragraph 3(4) substitutes new sub-sections 209(8) and (9), which apply not just in partnership cases, clarifying the closed period during which no GAAR-related adjustments may be made.

21. Paragraph 4 provides for adjustments specified in notices of proposed counteraction and pooling notices and notices of binding made under new Schedule 43D to be treated as if made under section 209 of FA 2013 and the circumstances in which such adjustments take effect.

22. Paragraph 5 sets out minor and consequential amendments to section 209AC (Sections 209AA and 209AB: definitions).

23. Paragraph 6 provides for modifications to section 210 of FA 2013 (consequential relieving adjustments) to allow for notification of the relevant counteraction by the responsible partner in cases where new Schedule 43D applies.

24. Paragraph 7 sets out a minor amendment to section 212A (penalty).

25. Paragraph 8 inserts section 212B (Penalty: partnerships), which provides that each partner is liable to pay a penalty

of 60% of the counteracted tax advantage.

26. Paragraph 9 sets out minor consequential amendments to sub-section 214(1) following from the insertion of new Schedule 43D.

27. Paragraph 10 sets out minor amendments to Schedule 43 (general anti-abuse rule: procedural requirements) to clarify when corrective action can be taken by a taxpayer and allows for anything that may be done by a given designated HMRC officer to be done by any other designated HMRC officer.

28. Paragraph 11 sets out minor consequential amendments to Schedule 43A (procedural requirements: pooling notices and notices of binding) following the insertion of new Schedule 43D.

29. Paragraph 12 sets out minor consequential amendments to Schedule 43B (procedural requirements: generic referral of tax arrangements) following from the insertion of new Schedule 43D.

30. Paragraph 13 sets out minor consequential amendments to Schedule 43C (penalty under section 212A: supplementary provision) following the insertion of section 212B (Penalty: partnerships).

Background note

31. The GAAR was introduced in 2013. It provides HMRC with the ability to challenge "abusive" tax arrangements where those arrangements are designed to achieve a tax outcome clearly outside the intention of the relevant legislation.

32. The GAAR is aimed only at abusive forms of tax avoidance, to deter taxpayers from entering into such abusive arrangements, and to deter would-be promoters from promoting such arrangements. Where such arrangements are entered into the GAAR provides that the tax effect of those arrangements can, if specified procedures are followed, be

counteracted to arrive at the tax outcome originally intended by the legislation.

33. HMRC cannot counteract under the GAAR unless an independent panel has given an opinion or opinions on whether the arrangements constituted a reasonable course of action. The panel opinion(s) must be taken into account by the court or tribunal in any proceedings in connection with the GAAR.

34. This measure was first announced in December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would

amend the GAAR procedure so that it worked consistently with how HMRC conducts enquiries in respect of partnerships.

35. These changes will ensure the GAAR applies equally to partnerships, as always intended, as it does to other entities and individual taxpayers.

Clause 121 and Schedule 32: Licensing authorities: requirements to give or obtain tax information

Summary

1. This clause and Schedule introduce conditionality for applications for licences to drive hackney carriages (taxis) and private hire vehicles (PHVs), to operate a PHV business or deal in scrap metal in England and Wales from 4 April 2022. Licensing bodies will have to signpost first-time applicants to HM Revenue and Customs (HMRC) guidance about their potential tax obligations. An applicant who is not a first-time applicant will have to carry out a tax check. The licensing body will have to obtain confirmation from HMRC that the applicant has completed the check before being able to consider their application.

Details of the clause

2. Subsection 1 introduces the Schedule, which provides for the actions licensing bodies must take before considering an application.

3. Subsection 2 provides for the Schedule to come into force on 4 April 2022.

Details of the Schedule

4. Paragraph 1 provides details of the licences subject to conditionality and explains the meaning of certain words appearing in the Schedule. Licences that are similar in nature but granted under different licensing Acts are grouped together in categories.

5. Paragraph 2 sets out the obligation to which licensing bodies are subject when dealing with first-time applications.

6. Sub-paragraph 1 explains that this paragraph applies to first-time applications from individuals and

companies.

7. Sub-paragraph 2 sets out that, before considering the application, the licensing body must draw the applicant's attention to relevant guidance and legislation.

8. Sub-paragraphs 3 and 4 together define "first-time application". There are two grounds on which an application is a first-time application. The first is where the application is made by an individual or company who has previously held neither the kind of licence now being applied for nor a licence in the same category. The second is where an individual or company did hold such a licence but it ceased to have effect a year or more before the application is made.

9. Paragraph 3 provides that a licensing body may not consider a renewed application made by an individual or company, until it has received confirmation from HMRC that the

applicant has completed a tax check. The tax check must have been completed no more than 120 days before the licensing body requests the confirmation.

10. Paragraph 4 requires HMRC to put arrangements in place to enable applicants to carry out tax checks and for responding to requests made by licensing bodies regarding tax checks. HMRC must also make arrangement to enable licensing bodies to confirm the availability to applicants of HMRC's arrangements for carrying out tax checks.

11. Paragraph 5 provides details of the nature and purpose of a tax check.

12. Sub-paragraph 1 provides that a tax check requires an applicant to provide any information which HMRC may reasonably require for the purpose of being satisfied as to the person's compliance with an obligation to give a notice of liability to tax (defined in sub-paragraph (4)) for the

relevant period (also defined in sub-paragraph (4)) ((a)) and assessing the effectiveness of the Schedule in improving the tax compliance of those carrying on the licensed activities to which the Schedule applies ((c)). A tax check also requires an applicant to confirm whether they declared income from the licensed activity on any return they filed for the relevant period ((b)).

13. Sub-paragraph 2 gives an inclusive list of examples of information which HMRC may ask an applicant to provide during a tax check.

14. Sub-paragraph 3 establishes when the tax check is taken to have been initiated and completed. The concept of "initiating" a tax check is required to determine "the relevant period" for the purposes of this paragraph.

15. Sub-paragraph 4 defines the terms "notice of liability", "relevant authorised

activity income", "the relevant period" and "tax return".

16. Paragraph 6 provides, as a safeguard for licensing bodies and applicants, that in certain scenarios a licensing body will be able to consider an application without first obtaining confirmation that the applicant has completed a tax check. This will apply in cases where the arrangements put in place by HMRC for carrying out and confirming completion of tax checks are unavailable at a relevant time for a period of 5 days.

17. Paragraph 7 authorises HMRC to disclose to a licensing body information (including confirmations) received from an applicant during the course of carrying out their tax check. The disclosure is authorised only so far as is necessary to enable HMRC or the licensing body to comply with the provisions of the Schedule. Limitations are placed on the

licensing body's use and onward disclosure of the information.

18. Paragraph 8 gives HMRC the power to set out in regulations details about the following matters: how information (including confirmations) should be requested or given under the Schedule; when that information should be treated as requested, given or obtained; and about the retention or copying by licensing bodies of information given to them under the Schedule. HMRC may also use regulations to amend time limits set out in the Schedule.

19. Paragraph 9 gives the meaning of certain words and phrases used in the Schedule. In particular, "Tax compliance" is defined as compliance with obligations under the Tax Acts. Schedule 1 to the Interpretation Act 1978 defines "the Tax Acts".

20. Paragraph 10 explains how tax

conditionality applies to partnerships, including limited liability partnerships.

21. Sub-paragraph 1 provides that references in the Schedule to an individual or company making an application, include instances where that individual or company is a partner making an application on behalf of the partnership.

22. Sub-paragraph 2(a) explains how to determine whether an application made on behalf of the partnership by an individual or company acting as a partner in the partnership is a first-time application. For the purposes of paragraph 2(3) of the Schedule, the partnership should be regarded as the applicant. Accordingly, where the partnership has not previously held the kind of licence now being applied for or a licence in the same category, the application is a first-time application.

23. Sub-paragraph 2(b) explains how

conditionality applies to a renewed application made on behalf of a partnership by a partner in the partnership (whether the partner is an individual or a company). In any part of the Schedule other than paragraph 2(3), "applicant" means the individual or company that is the partner. Accordingly, the licensing body must obtain from HMRC confirmation that the partner has completed a tax check, in accordance with paragraph 3(2), before considering the application.

24. Sub-paragraph 3 defines "partnership" and "partner" for the purposes of paragraph 10.

25. Paragraph 11 makes consequential amendments to section 17 of the Transport Act 1985 and paragraph 1 of Schedule 1 to the Scrap Metal Dealers Act 2013.

26. Sub-paragraphs 1 to 3 insert new subsections 12 to 14 and 9B after sub-

section 17(11) of the Transport Act 1985 ("the 1985 Act"). Where an application to renew a licence granted under section 8 of the Metropolitan Public Carriage Act 1869 is made before the licence has expired, subsection 17(7) of the 1985 Act extends the licence's duration. If an applicant refused to complete a tax check and so HMRC could not provide confirmation that they had completed one, the licensing body would be unable to consider the renewal application. An application that is not considered will ordinarily continue, unless it is withdrawn. These new subsections cause a licence that has been extended by subsection 17(7) of the 1985 Act to expire where the licensing body has been unable to obtain confirmation of completion of the tax check for 28 days (or, if later, by the end of the period when the licence would have expired, disregarding any extension under section 17(7) or 17(13) of the 1985 Act). This

ensures that an applicant who does not complete a tax check cannot continue trading indefinitely, relying on the extended licence as their authorisation.

27. Sub-paragraphs 4 and 5 insert new sub-paragraph 2(aa) after paragraph 1(2)(a) of Schedule 1 to the Scrap Metal Dealers Act 2013 ("the 2013 Act"). Where an application to renew a licence granted under section 2 of the 2013 Act is made before the licence has expired, paragraph 1 of Schedule 1 to the 2013 Act extends the licence's duration. If an applicant refused to complete a tax check and so HMRC could not provide confirmation that they had completed one, the licensing body would be unable to consider the renewal application. An application that is not considered will continue unless and until it is withdrawn. This new sub-paragraph causes a licence that has been extended by paragraph 1 of Schedule 1 to the 2013 Act to expire where the licensing body has

been unable to obtain confirmation of completion of the tax check for 28 days (or, if later, by the end of the period when the licence would have expired, disregarding any extension under paragraph 1(2) of Schedule 1 to the 2013 Act). This ensures that an applicant who does not complete a tax check cannot continue trading indefinitely, relying on the extended licence as their authorisation.

Background note

28. The majority of UK taxpayers pay what they owe, but a small minority operate in the hidden economy. The term hidden economy refers to sources of taxable economic activity that are entirely hidden from HMRC.

29. Conditionality will address part of the hidden economy by helping applicants for certain public sector licences better understand their tax obligations and by making access to the licences they need to

trade conditional on completing a tax check.

30. The government's intention is that conditionality will, ultimately, apply across the whole of the UK, but is being legislated in tranches; for England and Wales in this Bill, coming into effect on 4th April 2022; then for Scotland and Northern Ireland in a later Bill. Although licensing regimes contain some similarities, they also contain differences. It is therefore necessary to ensure that conditionality is a good fit with each regime to which it will be applied; hence the phased approach to legislating.

31. HMRC has conducted two public consultations on using conditionality to tackle the hidden economy in 2016 and 2017-2018. A technical consultation on a draft of this clause and schedule took place in 2020.

Clause 122: Financial institution notices

Summary

1. This clause introduces new provisions into HMRC's civil information powers contained in Schedule 36 to the Finance Act 2008 (FA 2008). The provisions introduce a new Financial Institution Notice. The Financial Institution Notice will not require approval from the tribunal or taxpayer before it can be issued to a financial institution to get third party information or documents.

Details of the clause

2. Subsection (1) introduces the amendments to Schedule 36 to FA 2008.
3. Subsection (2) inserts new paragraph 4A into Schedule 36 to FA 2008. The sub-paragraphs of the new paragraph 4A provide for the following.
4. New sub-paragraph 4A(1) provides that HMRC may give a notice to a financial

institution which would require it to provide information, or produce documents, to HMRC, if two conditions, A and B, are met.

5. New sub-paragraph 4A(2) introduces condition A. Condition A is that the information or documents requested should not (in HMRC's reasonable opinion) be onerous for the institution to provide or produce.

6. New sub-paragraph 4A(3) introduces condition B. Condition B is that the information or documents are required for one of two purposes: checking the tax position of a known taxpayer or collecting a tax debt of a known taxpayer. The taxpayer does not have to be an individual (for example, it could be a company).

7. New sub-paragraph 4A(4) defines "Financial Institution Notice" as a notice under the new paragraph 4A.

8. New sub-paragraph 4A(5) provides that a notice may only be given by, or with the

agreement of, an authorised officer of HMRC. An authorised officer is an officer of HMRC specifically trained to undertake certain actions and to agree the use of certain information powers.

9. New sub-paragraph 4A(6) provides that the notice must name the taxpayer.

10. New sub-paragraph 4A(7) provides that an officer must give a copy of the notice and a summary of the reasons why the information and documents are required, to the taxpayer.

11. New sub-paragraph 4A(8) provides that an application may be made to the tribunal by HMRC for permission to issue a Financial Institution Notice without naming the taxpayer, or without sending a summary of the reasons why the information is required and a copy of the notice to the taxpayer. An application must be made by, or with the agreement of, an authorised officer. An application is made without notice and will be heard by

the tribunal without the taxpayer or third party being present.

12. New sub-paragraph 4A(9) applies where there is an application by HMRC to disapply the requirement to naming the taxpayer in the notice. The tribunal must grant the application if satisfied that the HMRC officer has reasonable grounds to believe that naming the taxpayer might seriously prejudice the assessment or collection of tax.

13. New sub-paragraph 4A(10) applies where there is an application by HMRC to disapply the requirement to give a copy of the notice and a summary of the reasons to the taxpayer. The tribunal must grant the application if satisfied that complying with the requirement might prejudice the assessment or collection of tax.

14. Subsection (3) ensures that references to "information notice" in paragraph 6 of Schedule 36 to FA 2008 include references to Financial Institution Notices.

15. Subsection (4) inserts new paragraph 61ZA into Schedule 36 to FA 2008. New paragraph 61ZA defines "financial institution" for the purposes of Schedule 36 to FA 2008 as any person treated as a financial institution for Common Reporting Standard (CRS) purposes, or any person that issues credit cards. There is an exception to this, which applies where an institution is within the CRS definition because (and only because) it is an investment entity within section VIII (A)(6)(b) of the CRS. This exception is to ensure that family trusts and charities, entities not usually considered to be financial institutions, are not within scope of Financial Institution Notices. The CRS is a standard adopted by more than 100 jurisdictions, including the UK, for the exchange of financial account information.

16. Subsection (5) provides that after the end of every financial year, HMRC must provide information to the Treasury. The

information must contain the number of Financial Institution Notices given that year, as well as any other information the Treasury may reasonably ask for.

17. Subsection (6) provides that the information given under subsection (5) must be included in a report laid before the House of Commons by the Treasury.

18. Subsection (7) provides that the report to the House of Commons must be provided by 31 January following the end of the financial year to which the report relates. For example, a report for the year ended 31 March 2023 would be due to the House of Commons no later than 31 January 2024.

19. Subsection (8) provides the meaning of a "Financial Institution Notice" and "financial year" for the purposes of these reporting requirements. A "financial institution notice" is a notice under new paragraph 4A of Schedule 36 to FA 2008. For the first report, the "financial year"

begins on the date on which this Schedule comes in to force and ends on 31 March 2022. For every subsequent report, the "financial year" begins on 1 April and ends on the following 31 March.

20. Subsection (9) provides that a Financial Institution Notice can be issued on or after the day on which this Act becomes law for the purpose of checking a taxpayer's tax position or collecting a tax debt, regardless of when the tax liabilities or tax debt in question arose.

Background note

21. This clause has been introduced to allow HMRC to obtain third party information from financial institutions without tribunal approval. This follows a recommendation from the Global Forum of the Organisation for Economic Co-operation and Development (OECD) that the UK ensures its procedure for accessing third party information is in line with

international standards for exchange of information.

22. This clause has been introduced following a formal consultation process that ran from 10 July 2018 to 2 October 2018.

Clause 123: Collection of tax debts

Summary

1. This clause introduces new provisions into HMRC's civil information powers contained in Schedule 36 to the Finance Act 2008 (FA 2008). It allows information notices under paragraph 1 (taxpayer notices), paragraph 2 (third party notices), paragraph 5 (notices to persons whose identities are not known) and paragraph 5A (notices to persons whose identity can be ascertained) of Schedule 36 to FA 2008 to be issued for the purpose of collecting a tax debt.

Details of the clause

2. Subsection (1) introduces the amendments to Schedule 36 to FA 2008.

3. Subsection (2) inserts an additional phrase into paragraph 1(1) Schedule 36 to FA 2008. This has the effect of allowing an officer of HMRC to give a taxpayer notice

for the purpose of collecting a tax debt of the taxpayer.

4. Subsection (3) inserts an additional phrase into paragraph 2(1) of Schedule 36 to FA 2008. This has the effect of allowing an officer of HMRC to give a third-party notice for the purpose of collecting a tax debt of the taxpayer to whom the notice relates.

5. Subsection (4) inserts an additional phrase into paragraph 5(2) of Schedule 36 to FA 2008. This has the effect of allowing an authorised officer of HMRC to give a notice requiring information about persons whose identity is unknown for the purposes of collecting a tax debt.

6. Subsection (5) inserts additional phrases into paragraph 5A of Schedule 36, which provides the power to obtain information about persons whose identity can be ascertained. These have the effect of allowing an authorised officer of HMRC to give such a notice for the purpose of

collecting a tax debt.

7. Subsection (6) inserts new paragraph 63A after paragraph 63 of Schedule 36 to FA 2008. New paragraph 63A provides the meaning of "collecting a tax debt of a person" for the purposes of Schedule 36. "Collecting a tax debt" refers to any action taken to recover tax due from the person. Any other amounts owed from that person in connection with any tax, such as penalties or interest, are also included. New paragraph 63A also ensures that a notice can be issued where liability for a debt has been transferred to another person, for example as part of insolvency proceedings.

8. Subsection (7) inserts new paragraph 63B after paragraph 63A. New paragraph 63B extends the meaning of "relevant foreign tax" for the purposes of this section. "Relevant foreign tax" includes any taxes or duties within the scope of the Council Directive 2010/24/EU of 16 March 2010.

This directive still applies in certain circumstances in relation to the EU Withdrawal Agreement and the Ireland/Northern Ireland Protocol.

9. Subsection (8) provides that the information notices to which this clause applies can be issued after Royal Assent for the purpose of collecting a tax debt regardless of when the tax debt arose.

Background note

10. This clause allows HMRC to obtain documents or information for debt collection purposes. This could be used, for example, when a taxpayer owes tax and is suspected of having hidden assets. This ensures that everyone pays their fair share of tax. It enables the UK to meet the international standards for exchange of information.

11. This clause has been introduced following a formal consultation process that ran from 10 July 2018 to 2 October

2018.

Clause 124 and Schedule 33: Miscellaneous amendments of Schedule 36 to FA 2008

Summary

1. This clause and schedule make miscellaneous amendments to HMRC's civil information powers contained in Schedule 36 to the Finance Act 2008 (FA 2008).

Details of the clause

2. Clause 124 introduces Schedule 33, which makes a number of amendments to Schedule 36 FA 2008.

Details of the Schedule

3. Paragraph 1 introduces the amendments to Schedule 36 to FA 2008.

4. Paragraph 2 inserts new paragraphs 51A, 51B and 51C into Schedule 36 FA 2008.

5. New paragraph 51A sets out a non-disclosure requirement which may be

imposed on the recipient of either a third-party notice or a Financial Institution Notice (FIN).

6. New sub-paragraph 51A(1) provides that new paragraph 51A only applies when a person is given a third-party notice or a Financial Institution Notice and the tribunal has disapplied the requirement to give a copy of the notice to the taxpayer to whom it relates.

7. New sub-paragraph 51A(2) provides that the third-party notice or Financial Institution Notice may require the recipient of the notice not to disclose the notice to the relevant taxpayer, or to any other person. This includes non-disclosure of the notice itself as well as anything relating to it, such as correspondence. The exception to this is where disclosure is required for purposes relating to compliance with the notice.

8. New sub-paragraph 51A(3) provides that the non-disclosure requirement takes effect from the day on which the person receives

the notice and is imposed for 12 months from that date. The non-disclosure requirement may be lifted before the end of the 12-month period (under new sub-paragraph (4)). The 12-month period may also be extended (under new sub-paragraph (5)).

9. New sub-paragraph 51A(4) provides that the non-disclosure requirement may be lifted by written notice from an officer of HMRC.

10. New sub-paragraph 51A(5) provides that the 12-month period may be extended by written notice from an officer of HMRC. This subsequent 12-month period begins the day after the previous 12-month period ends and can be extended more than once.

11. New sub-paragraph 51A(6) provides that an officer of HMRC may only lift the non-disclosure requirement or extend the 12-month period if they are an authorised officer, or if an authorised officer agrees the

course of action.

12. New sub-paragraph 51A(7) provides that an authorised officer of HMRC may only extend the 12-month period, or agree to such an extension, if they have reasonable grounds to believe that not doing so might prejudice the assessment or collection of tax.

13. New Paragraph 51B provides for a penalty for breach of the requirements under new paragraph 51A.

14. New sub-paragraph 51B(1) provides that any breach by a person subject to a non-disclosure requirement under new paragraph 51A will give rise to liability for a penalty of £1,000.

15. New sub-paragraph 51B(2) provides that, if a person becomes liable for a penalty due to a breach of the non-disclosure requirement and HMRC decide to assess the penalty, the person liable must be notified.

16. New sub-paragraph 51B(3) provides that, if HMRC decide to assess the penalty, the assessment must be made within 12 months of the date on which the breach was discovered by an officer of HMRC.

17. New sub-paragraph 51B(4) provides the modified application of paragraph 41 of Schedule 36 to new paragraph 51B. Paragraph 41 gives the Treasury the power, by regulations, to change the amount of certain penalties in Schedule 36 by regulations where there has been a change in the value of money. New paragraph 51B(4) provides that that the "relevant date" for the purposes of the application of paragraph 41 is the date on which Finance Act 2021 receives royal assent. It also ensures that regulations made under paragraph 41 cannot apply to a breach of a requirement under paragraph 51A occurring before the date on which such regulations come in to force.

18. New Paragraph 51C contains the rules for

appealing against, and enforcement of, a penalty under new paragraph 51B.

19. New sub-paragraph 51C(1) provides that an appeal may be made against a penalty under new paragraph 51B.

20. New sub-paragraph 51C(2) provides that the appeal procedure under paragraph 48 of Schedule 36 applies to a penalty under new paragraph 51B. The reference in paragraph 48 to notification under paragraph 46 is to be understood as reference to notification under new paragraph 51B(2)(b).

21. New sub-paragraph 51C(3) provides that the enforcement procedure under paragraph 49 of Schedule 36 applies to a penalty under new paragraph 51B. The reference in paragraph 49 to notification under paragraph 46 is to be understood as reference to notification under new paragraph 51B(2)(b).

22. Paragraph 3 inserts new sub-paragraph 47(2) into Schedule 36 to FA 2008 and

renumbers the existing paragraph 47 as new sub-paragraph 47(1). New sub-paragraph 47(2) ensures that there is no right of appeal against the amount of an increased daily penalty payable as a result of paragraph 49A (which applies to penalties for failure to comply with a notice to provide information or documents about persons whose identity is not known). This is because the increased daily penalty is determined by the tribunal. The purpose of the amendments made by paragraphs 3 to 7 of this Schedule is to improve the mechanism by which increased daily penalties are approved and assessed. The amendments make it clear that it is for the tribunal to decide a new maximum increased daily penalty amount and the date from which it may be applied, and for HMRC to assess and notify any such penalties. HMRC considered that, as originally drafted, the provisions were not sufficiently clear and may have led to confusion. Similar amendments were made

to Schedule 23 to Finance Act 2011 under section 177 Finance Act 2016.

23. Paragraph 4 amends references to paragraph 47 of Schedule 36 to FA 2008 made in paragraph 48 of Schedule 36 to FA 2008, to reflect the amendments made to the numbering in paragraph 47.

24. Paragraph 5 amends paragraph 49A of Schedule 36 to FA 2008.

25. Sub-paragraph 1 introduces amendments to paragraph 49A of Schedule 36 to FA 2008.

26. Sub-paragraphs 2 and 3 amend sub-paragraphs 49A(1) and 49A(2) to Schedule 36. The word "imposed" is substituted with "assessable". This is to make it clear that HMRC can assess and notify penalties, and it is for the tribunal to decide the amount of the penalty and the date from which it may be applied. Under paragraph 49A(2) HMRC can seek permission from the tribunal to assess an increased daily penalty against the recipient of a notice under paragraph 5

from an applicable date in the future.

27. Sub-paragraph 4 substitutes new sub-paragraphs 49A(3) and 49A(4) into Schedule 36. These provide that, if the tribunal grants HMRC's application for an increased daily penalty to be assessable, it must specify the date from which that penalty takes effect and must determine its maximum amount. The new maximum amount may not be more than £1,000. From the day specified, the new maximum penalty amount replaces the amount of the maximum daily default penalty stipulated in paragraph 40(2) of Schedule 36.

28. Sub-paragraph 5 amends sub-paragraph 49A(5) to Schedule 36. The words "the amount" are substituted with "the new maximum amount".

29. Sub-paragraph 6 amends sub-paragraph 49A(6) to Schedule 36. Sub-paragraph 49A(6) is amended to provide that the "relevant date" for the purposes of the application of paragraph 41 to paragraph

49A(4) is the date on which Finance Act 2021 receives royal assent. Paragraph 41 gives the Treasury the power, by regulations, to change the amount of certain penalties in Schedule 36 by regulations where there has been a change in the value of money.

30. Paragraph 6 amends paragraph 49B of Schedule 36 to FA 2008.

31. Sub-paragraph 1 introduces amendments to paragraph 49B of Schedule 36.

32. Sub-paragraph 2 amends sub-paragraph 49B(1). Sub-paragraph 49B(1) is amended to reflect that the tribunal will make a determination of the maximum amount of an increased daily penalty and the date from which it will apply, and that HMRC's obligation to notify the person subject to the penalty arises when the tribunal makes the determination.

33. Sub-paragraph 3 amends sub-paragraph 49B(2). Sub-paragraph 49B(2) is amended to provide that HMRC's notification should

specify the maximum amount and the effective date determined by the tribunal.

34. Sub-paragraph 4 omits sub-paragraph 49B(3). Sub-paragraph 49B(3) is omitted as the notification sent by HMRC under 49B is not an assessment of the penalty. The intention is to notify the person of new maximum daily penalty amount and the date from which it takes effect. HMRC will assess the penalty under the assessing provision at paragraph 46.

35. Paragraph 7 omits paragraph 49C of Schedule 36 to FA 2008, the effect of which is as follows.

    a. The former requirement for a penalty under paragraph 49A to be paid within 30 days of notification under paragraph 49B is removed. Under the amended provisions, notification under paragraph 49B is not the assessment of a penalty, but merely notice of the date from which the increased penalty will apply and its

maximum amount. HMRC will have to assess the paragraph 49A penalty under the assessing provision at paragraph 46.

b. The former express provision that a penalty under paragraph 49A may be enforced as if it were income tax charged in an assessment is also removed. This will now follow in relation to the increased daily penalty as a result of paragraph 49(2).

36. Paragraph 8 amends paragraph 21A of Schedule 36 to the FA 2008 (Taxpayer notices following a land transaction return).

37. New paragraph 21A(7) introduces a new Condition D allowing a taxpayer notice to be given for the purpose of checking whether relief from stamp duty land tax is to be withdrawn. This power is restricted to the withdrawal of relief under specific sections of Finance Act 2003; namely - section 81 (further return where relief withdrawn); section 81ZA (alternative

property finance; further return where relief is withdrawn); Paragraph 6 of Schedule 6B (transfers involving multiple dwellings)

38. New paragraphs 21A(8) to (10) provide that a notice in reliance on Condition D may be given only up to the end of 4 years from the 'effective date' of the transaction, with the 'effective date' having the same meaning as in section 119 of Part 4 of FA 2003. In relation to relief withdrawn under Schedule 7A to FA2003 (PAIF and COACs seeding relief), the time limit is expressed as 4 years from the first day of the 3 year 'control period' (i.e. the post-transaction period during which the conditions for the relief must continue to be met).

39. Paragraph 9 provides that the amendments made by paragraph (8) have effect, regardless of when the original land transaction return was delivered under Section 76 of FA2003 (Duty to deliver a land transaction return).

Background note

40. This Clause and Schedule have been introduced to allow HMRC to make some miscellaneous changes.

41. In cases where the tribunal disapplies the requirement to give a copy of the Financial Institution Notice or the third-party notice to the taxpayer, then then the notice can specifically provide that the third party or financial institution cannot disclose the notice, or anything related to it to the taxpayer or any other person. This is to ensure that the taxpayer does not hear about the notice from the third party when the tribunal agrees that sending a copy of the notice to the taxpayer could prejudice the assessment or collection of tax.

42. The Schedule corrects a drafting error in the Schedule 36 Finance Act 2008 legislation that governs increased daily penalties for failure to comply with a notice to provide

documents or information about persons whose identity is not known.

43. Certain reliefs from stamp duty land tax, (for example relief for purchases of land and property in a Freeport tax site) whilst claimable from the date of transaction, are withdrawn or otherwise cancelled dependent on what the purchaser does with the property thereafter, typically during or throughout a 3-year period. This Schedule provides that HMRC can give a taxpayer information notice up 4 years from the date of transaction to check the continued entitlement to relief.

Clause 125: International arrangements for exchanging information on the gig economy

Summary

1. This clause introduces a power to make regulations to implement the Organisation for Economic Co-operation and Development (OECD) Model Rules for reporting by platform operators. These rules will require certain UK digital platforms to report information about the income of sellers of services on their platform. The power also allows regulations to be made to implement other, similar international agreements or arrangements.

Details of the clause

2. Subsection 1 gives the Treasury a power to make regulations to implement the OECD Model Rules, or any similar international agreements or arrangements to which the

UK is a party.

3. Subsection 2 allows the Treasury to make further regulations to implement the OECD Model Rules, or similar agreements or arrangements, if they are modified or extended in the future.

4. Subsection 3 sets out a non-exhaustive list of the ways in which the power may be exercised. The regulations may (amongst other things):

    a. make provision for penalties for failure to comply with them,

    b. make it clear that references in the regulations to the Model Rules (or similar agreements) may include the Model Rules or similar agreements as they may be amended in future, and

    c. make consequential, supplementary, incidental, transitional or saving provision, which includes amending, repealing or revoking primary legislation.

5. Subsection 4 provides that the regulations are to be made by statutory instrument.

6. Subsection 5 provides that a statutory instrument will be subject to the negative procedure in the House of Commons.

Background note

7. The OECD issued Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy on 3 July 2020. The rules require certain digital platforms to report information about the income of sellers of services on their platform to their tax authority and to provide a copy of that information to the sellers. The information is then exchanged with other participating tax authorities for the jurisdictions where the sellers are resident.

8. This clause introduces a power so that the Treasury can make regulations incorporating the OECD Model Rules into UK law. The regulations will support the

government's work to make it easier for sellers on these platforms to comply with their tax obligations, and help HM Revenue & Customs (HMRC) to detect and tackle tax evasion when they do not. They will also provide a consistent and standardised reporting regime for platforms.

9. Implementing the OECD Model Rules would also enable HMRC to exchange information with other participating tax authorities to access data from platforms based outside the UK quickly and efficiently. This would improve international cooperation, and will give HMRC similar details of income from taxpayers in the sharing and gig economy as they have for other types of businesses.

10. HMRC will consult on the draft regulations before they take effect.

Clause 126: Unauthorised removal or disposal of seized goods

Summary

1. This clause introduces Paragraphs 18 and 19 to Schedule 3 of the Customs and Excise Management Act 1979 to permit officers to introduce a civil penalty for the unauthorised removal of a thing that has been seized 'in situ'.

Details of the clause

2. Subsection 1 inserts new Paragraphs 18 and 19 in Schedule 3 of the Customs and Excise Management Act 1979, entitled 'Unauthorised removal or disposal: penalties etc'.
3. New Paragraph 18(1) sets out that the paragraph applies where a thing is seized as liable to forfeiture and remains where it was first seized with the responsible person.
4. New Paragraph 18(2) defines who a

'responsible person' is.

5. New Paragraph 18(3) explains how an offence that occasioned the detention of a thing deemed to be seized as liable to forfeiture is treated where a thing is deemed to be seized as liable to forfeiture under paragraph 2(3) of the Schedule 2A.

6. New Paragraph 18(4) provides for which penalty applies if the responsible person fails to prevent the seized thing from being removed or disposed of from the place where they are seized.

7. New Paragraph 18(5) sets out that the removal or disposal of the thing is not authorised unless with the permission of a proper officer of Revenue and Customs.

8. New Paragraph 18(6) (a) and (b) provide that where there is a duty of excise payable, the penalty to be calculated by reference to the amount of duty and applies section 9 of the Finance Act 1994

with modification to take account of this.

9. New Paragraph 18(7) provides for how the penalty is calculated when there is no duty of excise payable.

9. New Paragraph 19(1) (a), (b) and (c) applies when a thing is seized at a revenue trader's premises and are removed from a trader's premises or disposed of without permission of a proper officer of Revenue and Customs. A revenue trader is defined in section 1 of the Customs and Excise Management Act 1979.

10. New Paragraph 19(2) enables the Commissioners to seize from a revenue trader's stock goods of an equivalent value to the seized thing.

11. New Paragraph 19(3) explains that a revenue trader's premises include any premises that are used to hold or store anything for the purpose of revenue trader's trade. It does not matter who

owns or occupies the premises.

12. Subsection 2 sets out when the amendments made by this clause will have effect.

Background note

13. This clause has been introduced to enable HMRC and Border Force officers to fulfil regulation requirements where seizure is necessary and assist officers in tackling non-compliance. The measure seeks to deter the deliberate act to remove things seized in situ by levying a penalty for unauthorised removal. This will align with the existing penalty for the unauthorised removal of detained things, in Schedule 2A of CEMA.

14. HM Revenue & Customs (HMRC) have a duty to take robust action to deal with those who import illicit things of any description into the UK or seek to bring in things on which duty has not been paid. The detention and seizure of

things is a valuable tool in the fight against duty evasion.

Clause 127: Temporary approvals etc pending review or appeal

Summary

1. This clause introduces a new power to grant temporary approval to a business appealing a decision to remove, or reject, a trading approval, in order that its appeal right is safeguarded. The new power will come into force on a future day to be determined by regulations.

Details of the clause

2. Subsection 1 introduces new sections 16A, 16B and 16C to Chapter 2 of Part 1 of Finance Act (FA) 1994.
3. Subsection 2 provides that the new temporary approval process may apply to decisions made prior to this legislation coming into force.
4. Subsection 3 provides that the new section will come into force on a day appointed by regulations made by statutory instrument

by HM Revenue & Customs (HMRC).

Section 16A: Temporary approvals etc pending review or appeal: eligibility

5. New section 16A sets out the type of decisions, and which regimes, are eligible for the new process. It also gives HMRC the power to amend the list of applicable regimes.
    a. Subsection (1) describes that to be eligible, a business must have received an "approval decision" from HMRC, and must have sought a review of, or appealed against, that decision.
    b. Subsection (2) sets out that a relevant "approval decision" is one about the acceptance, or continuation, of an approval under specific legislation. It further lists the relevant legislation of the affected regimes.
    c. Subsections (3) and (4) provide that HMRC may amend the list of approval decisions by regulations.

Section 16B: Temporary approvals etc pending review or appeal: process

6. New section 16B sets out the criteria HMRC will consider when determining each temporary approval application, when a granted temporary approval would begin and end, how it would be subject to conditions, and provides for a right of appeal.

    a. Subsection (1) states that HMRC may grant a temporary approval where they are satisfied, on the basis of an applicant's application, that a business' appeal right would be ineffective without the granting of a temporary approval, and that it is otherwise appropriate to do so.

        - Paragraph (a) establishes a threshold question for the grant of a temporary approval. An applicant must demonstrate that, in the absence of the temporary approval, the applicant's rights of review and

appeal would be rendered nugatory (i.e. of no value). The paragraph provides that this may be because the business is unable to continue as a going concern until the determination of the review and appeal process (provided that would, in fact, render the review and appeal rights nugatory) or for another reason.

b. Subsection (2) describes the criteria HMRC must take into account, where the threshold question is met, when considering a temporary approval application. These are:

- whether the review or appeal by the business has merit (paragraph (a)),
- whether an applicant has considered and taken all available steps to safeguard its own ongoing viability pending the outcome of the review or appeal (paragraph (b)), and

- whether the applicant has acted quickly in pursuing its rights of review and appeal (paragraph (c)).

c. Subsection (3) sets out that any temporary approval granted has effect under the relevant regime legislation, starts on the day the application is granted, ends on a day determined in subsection (4) (below) and would be subject to any conditions or restrictions included in the granting of the temporary approval.

d. Subsection (4) describes when a granted temporary approval would expire, depending on the different possible conclusions to a review or appeal.

e. Subsection (5) provides that HMRC may revoke, or amend the conditions to, a temporary approval where there is a change in circumstances that make it appropriate to do so.

f. Subsection (6) gives HMRC the power

to put details about how an application for temporary approval should be submitted, the timings involved in the process and information required by an applicant, into a notice.

g. Subsection (7) lists the decisions that could be made by HMRC on an application that may be appealed to the First-tier Tribunal, and provides that in order to make such an appeal, the applicant must have first appealed the original approval decision (or review of that decision) to the tribunal.

h. Subsection (8) provides that, where the First-tier Tribunal is satisfied that HMRC should not have made a particular decision on a temporary approval application, it may order HMRC to take a different decision.

i. Subsection (9) sets out that HMRC or the applicant may apply to the First-

tier Tribunal to revoke or vary any order made under sub-section (8). This applies where circumstances have changed since the making of the original order and is in addition to any rights of appeal from the tribunal's decision under the tribunal rules.

j. Subsection (10) sets out that HMRC must notify the applicant of certain decisions relating to a granted temporary approval.

Section 16C: Temporary approvals etc pending review or appeal: modifications

7. New section 16C describes how HMRC may, via regulations, make changes to any legislation to which this clause relates. Changes would be as a result of the new temporary approval process, to ensure the relevant regime continues to operate consistently and effectively in light of the creation of temporary approvals which

were not originally envisaged when the regimes were first created.

Background note

8. Where HMRC has revoked or refused an approval to trade, a business has a right to appeal that decision. If the business cannot survive that appeal process on account of being unable to trade, its appeal right may be rendered ineffective.

9. Prior to the Supreme Court's decision in OWD Ltd v HM Revenue and Customs [2019] UKSC 30, it had been assumed that the High Court had the power to require HMRC to grant temporary approvals to businesses in that situation. However, the Supreme Court's judgment cast doubt on the High Court's jurisdiction in those cases.

10. This measure introduces a new statutory power, based on the power that had been assumed to lie with the High Court, allowing HMRC to temporarily

approve relevant businesses, and provides for a right of appeal to the First-tier Tribunal. This will ensure that a business' right to an effective appeal will be safeguarded.

11. This power will come into force on a date to be set by HMRC, by regulations made by statutory instrument.

Clause 128: Replacement of LIBOR with incremental borrowing rate

Summary

1. This clause substitutes the statutory references to LIBOR in the leasing provisions with 'incremental borrowing rate' as defined by generally accepted accounting practice.

Details of the clause

2. Subsections (1) to (3) replace the statutory reference to LIBOR in three leasing provisions with 'incremental borrowing rate' as defined by generally accepted accounting practice:
    - Subsection (1) amends Section 70O, Capital Allowances Act (CAA) 2001
    - Subsection (2) amends Section 228MB, CAA 2001
    - Subsection (3) amends Section 437C, Corporation Tax Act (CTA) 2010

3. In each case the amendments also provide a power allowing the Treasury to amend the rate by regulations.

4. Subsections (4) to (6) provide that the changes have effect for the application of the above provisions on or after 1 January 2022.

Background note

5. This is the first of two clauses which respond to the reform of LIBOR and other benchmark rates.

6. LIBOR is a set of interest rate benchmarks based on the rates at which banks are willing to borrow wholesale unsecured funds. It is widely used as a reference rate for loans, derivatives and other financial instruments.

7. The Financial Conduct Authority (FCA) has indicated in 2017 that they do not intend to use their power to compel panel banks to contribute to LIBOR after the end of 2021. Panel banks have voluntarily

agreed to continue providing submissions to LIBOR until then, but its publication cannot be guaranteed beyond this date.

8. On 23 June 2020 the Chancellor made a written ministerial statement indicating that the government will ensure the FCA's powers are sufficient to manage an orderly transition from LIBOR. This will include extending the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark and providing the FCA with the ability to specify the limited, continued use of LIBOR in legacy contracts. It remains the case, however, that businesses should continue to transition away from using LIBOR as a reference rate in their financial contracts.

9. The government ran a consultation between 19 March 2020 and 28 August 2020 entitled "Taxation impacts arising from withdrawal of LIBOR"

    - To identify statutory references to

LIBOR that needed amending as a result of the withdrawal of LIBOR

- To ensure HMRC fully understands the tax impacts that could arise from the withdrawal of LIBOR

Clause 129: Tax consequences of reform etc of LIBOR and other reference rates

Summary

1. This clause provides a time limited power for the Treasury to make regulations by statutory instrument to address any unintended taxation issues that arise from the transition away from LIBOR and other benchmark rates by businesses and individuals.

Details of the clause

2. Subsections (1) and (2) provide a statutory power for the Treasury to make regulation in the future to address any tax issues raising from the discontinuation or reform of LIBOR and other benchmark rates.
3. Subsection (3) provides that the scope of such regulations can include provision that has retrospective effect.
4. Subsection (4) requires that if the regulations have retrospective effect for

any person, then the person must be able to elect out of retrospective effect. The regulations may in addition allow the person to elect to limit the retrospective effect.

5. Subsection (5) requires that the regulations must specify how any election must be made and that the regulations may impose a time limit for making the election.

6. Subsection (6) to (10) provide additional detail of what may be done under the power and how regulations are to be made.

7. Subsection (11) provides that the power to make regulations is time limited and can only be used by 31 December 2023.

Background note

8. This is the second of two clauses which respond to the reform of LIBOR and other benchmark rates.

9. LIBOR is a set of interest rate benchmarks based on the rates at which banks are

willing to borrow wholesale unsecured funds. It is widely used as a reference rate for loans, derivatives and other financial instruments.

10. The Financial Conduct Authority (FCA) has indicated in 2017 that they do not intend to use their power to compel panel banks to contribute to LIBOR after the end of 2021. Panel banks have voluntarily agreed to continue providing submissions to LIBOR until then, but its publication cannot be guaranteed beyond this date.

11. On 23 June 2020 the Chancellor made a written ministerial statement indicating that the government will ensure the FCA's powers are sufficient to manage an orderly transition from LIBOR. This will include extending the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark and providing the FCA with the ability to specify the limited,

continued use of LIBOR in legacy contracts. It remains the case, however, that businesses should continue to transition away from using LIBOR as a reference rate in their financial contracts.

12. The government ran a consultation between 19 March 2020 and 28 August 2020 entitled "Taxation impacts arising from withdrawal of LIBOR"

- To identify statutory references to LIBOR that needed amending as a result of the withdrawal of LIBOR
- To ensure HMRC fully understands the tax impacts that could arise from the withdrawal of LIBOR

Clause 130: Powers of the Treasury to amend legislation relating to banks

Summary

1. This clause amends the banking tax rules legislation to update the powers to amend the legislation by regulations. The banking tax rules include the Bank Levy, the Code of Practice on Taxation, the bank compensation restriction, the bank loss restriction and the bank Corporation Tax surcharge. These rules define a banking company and banking group using definitions in the Financial Conduct Authority Handbook from the current IFPRU regulatory regime, which will be replaced by the Investment Firms Prudential Regime from 1 January 2022. This clause has effect from Royal Assent.

Details of the clause

2. Subsection 1 inserts new subsection 3A into section 133N of Corporation Tax Act

(CTA) 2009 ('Banking Companies: Compensation Restriction: Powers to amend'), which allows regulations made under this section to have retrospective effect if laid between 1 January 2022 and 30 June 2022.

3. Subsection 2 introduces amendments to Chapter 2 of Part 7A of CTA 2010 ('banking companies: key definitions'). Part 7A contains the bank loss relief restriction and the Bank Corporation Tax surcharge.
4. Subsection 3 amends the title of section 269BE.
5. Subsection 4 amends section 269BE, inserting new subsections 1A, 1B, 1C and 1D.
6. New subsection 1A allows the Treasury to make amendments by regulations to sections 269B to s269BD of CTA 2010, and consequential amendments to other provisions in Part 7A.

7. New subsection 1B allows these regulations to include transitional provisions.

8. New subsection 1C allows these regulations to have retrospective effect in relation to any accounting period ending on or after 1 January 2022, when the regulations are made on or before 30 June 2022.

9. New subsection 1D ensures that regulations made under new subsection 1A are subject to affirmative procedure.

10. Subsection 5 introduces amendments to Schedule 19 to Finance Act (FA) 2011, the Bank Levy.

11. Subsection 6 amends the title of Part 9 of Schedule 19 to FA 2011. This part originally only allowed consequential amendments to be made by regulations made by statutory instrument where those amendments were required because of certain regulatory or accountancy changes. This clause widens the power to allow

amendments to be made for any reason.

12. Subsection 7 introduces amendments to paragraph 81 of Schedule 19 to FA 2011.

13. Subsection 7(a) inserts new sub-paragraphs (1A) and (1B).

14. New sub-paragraph (1A) allows the Treasury to make amendments to Part 8 of Schedule 19, and consequential amendments to other provisions in Schedule 19, by regulations made by statutory instrument. Part 8 contains the definitions for this Schedule.

15. New sub-paragraph (1B) allows an order under sub-paragraph (1) or regulations under new sub-paragraph (1A) to include transitional provisions.

16. Subsection 7(b) amends sub-paragraph (2) to refer to consequential amendments made under sub-paragraph (1), rather than under new sub-paragraph (1A). The amendments also remove the reference to powers that could have been

exercised in 2011 shortly after the introduction of the Bank Levy, as these powers have expired.

17. Subsection 7(c) inserts new sub-paragraph (2A). This is a temporary power to allow regulations made by statutory instrument under new sub-paragraph (1A) to have retrospective effect, where they are made before 30 June 2022.

18. Subsection 7(d) amends sub-paragraph (3) to clarify that only an order contained in a statutory instrument made under sub-paragraph (1) is subject to negative procedure in the House of Commons.

19. Subsection 7(e) inserts new sub-paragraph (4). This explains that regulations made by statutory instrument under sub-paragraph (1A) will be subject to affirmative procedure in the House of Commons.

Background note

20. Banking tax rules have been in place since 2010. These rules are contained in different locations within the Taxes Acts with each having definitions as to which entities are banks for the purposes of that specific rule.

21. These tax definitions are drawn from common terms used in regulatory definitions, specifically the terms 'IFPRU 730k firm' and 'IFPRU full scope investment firm', which are defined in the Financial Conduct Authority (FCA) Handbook.

22. The FCA is introducing a new UK Investment Firm Prudential Regime ('IFPR') from 1 January 2022, and the IFPRU definitions will cease to exist from that date. The FCA is consulting on the new regime throughout 2021, with final rules to be published over the course of the year.

23. The banking tax rules therefore need

to be updated. This clause amends the powers in the banking tax rules to allow the definitions of a bank to be amended as necessary by regulations made by statutory instrument.

24. Where amendments are made under these new powers, the statutory instruments will be subject to affirmative procedure in the House of Commons.

25. If regulations cannot be made by statutory instruments before 1 January 2022, the commencement date for the IFPR, and the date at which the IFPRU definitions in the FCA Handbook cease to exist, then they can be made with retrospective effect to 1 January 2022, if made before 30 June 2022. This ensures that firms that are subject to the banking tax rules because they meet the IFPRU definitions will not automatically cease to be subject to the banking tax rules at 1 January 2022 until the amendments are made.

Clause 131: Interpretation

1. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "CAA 2001" as an abbreviation for the Capital Allowances Act 2001.

Clause 132: Short title

1. This clause provides for the bill to be known as “Finance Act 2021” upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, there are only ten of the Finance Bill clauses that do not apply to the whole of the United Kingdom.
2. The clauses that do not apply to the whole of the United Kingdom relate to:
    a. the main rates of income tax (clause 2),
    b. the corporation tax position of the Northern Ireland Housing Executive (clause 39),
    c. stamp duty land tax (clauses 87, 88, 89 and 111),
    d. the rates of landfill tax (clause 107),
    e. the designation of places as freeport tax sites (clause 109)
    f. capital allowances in connection with freeport tax sites (clause 110), and
    g. the giving or obtaining of tax

compliance information by licensing authorities (clause 121).

3. Clause 2 sets the main rates of income tax for the tax year 2021-22. The non-savings, non-dividend income of a UK resident individual who is not a Scottish taxpayer or Welsh taxpayer is charged at these main rates. Furthermore, although the non-savings, non-dividend income of a Welsh taxpayer is charged at the Welsh basic, higher and additional rates those Welsh rates are determined in part by reference to the main rates of income tax. But the non-savings, non-dividend income of a Scottish taxpayer is charged at Scottish rates which are set by the Scottish Parliament alone.

4. Clause 39 exempts the Northern Ireland Housing Executive from corporation tax. The Northern Ireland Housing Executive owes its continuing status as a public authority and body corporate to the Housing (Northern Ireland) Order 1981.

5. Clause 87 amends the Stamp Duty Land Tax (Temporary Relief) Act 2020 to provide for reduced rates of stamp duty land tax on residential property to apply for a longer period. Clause 88 provides for increased rates of stamp duty land tax for non-resident transactions. Clause 89 introduces relief from the higher rate of stamp duty land tax in Schedule 4A to the Finance Act 2003 for certain housing co-operatives, with provision for the withdrawal of that relief in certain circumstances. Stamp duty land tax is charged only on the acquisition of an interest in land in England or Northern Ireland (see sections 42(1), 43(1) and 48(1) of the Finance Act 2003). Legislative competence to introduce a corresponding tax in relation to interests in land in Wales was conferred on the National Assembly for Wales by section 116L of the Government of Wales Act 2006 (inserted by section 15 of the Wales Act 2014) and that competence has been exercised with

the enactment of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. Legislative competence to introduce a corresponding tax in relation to interests in land in Scotland was conferred on the Scottish Parliament by section 80I of the Scotland Act 1998 (inserted by section 28(1) of the Scotland Act 2012) and that competence has been exercised with the enactment of the Land and Buildings Transaction Tax (Scotland) Act 2013.

6. Clause 107 increases the rates of landfill tax. Landfill tax is charged on taxable disposals made in England or Northern Ireland (see section 40(1) of the Finance Act 1996). Legislative competence to introduce a corresponding tax in relation to disposals to landfill made in Wales was conferred on the National Assembly for Wales by section 116N of the Government of Wales Act 2006 (inserted by section 18 of the Wales Act 2014) and that

competence has been exercised with the enactment of the Landfill Disposals Tax (Wales) Act 2017. Legislative competence to introduce a corresponding tax in relation to disposal to landfill made in Scotland was conferred on the Scottish Parliament by section 80K of the Scotland Act 1998 (inserted by section 30 of the Scotland Act 2012) and that competence has been exercised with the enactment of the Landfill Tax (Scotland) Act 2014.

7. Clause 109 authorises the designation of areas in Great Britain as freeport tax sites for the purposes of Parts 2 and 2A of the Capital Allowances Act 2001, and, where the area is in England, for the purposes of Part 4 of the Finance Act 2003 (stamp duty land tax)

8. Clause 110 makes provision about first-year allowances under Part 2 of the Capital Allowances Act 2001 (plant and machinery), and about allowances under Part 2A of that Act (buildings and

structures) in connection with freeport tax sites. As noted above, the sites must be in Great Britain

9. Clause 111 provides for relief from stamp duty land tax in the case of transactions relating to land in freeport tax sites in England.

10. Clause 121 makes provision requiring licensing authorities, when licensing certain activities, to give or obtain information relating to tax compliance. This affects licensing regimes applying in England and Wales.

Minor or consequential effects

11. None identified.

FINANCE BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Finance Bill as introduced in the House of Commons on 12 May 2021 (Bill 4).

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