HM Treasury

Finance Bill 2014
Explanatory Notes

Clauses 1 to 67 (Volume 1 of 2)

March 2014

Any queries regarding this publication should be sent to us at: public.enquiries@hm-treasury.gov.uk.

ISBN 978-0215069085

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Finance Bill 2014 as introduced into Parliament on 25 March 2014. They have been prepared jointly by the HM Revenue and 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.

EXPLANATORY NOTE

CLAUSE 1: INCOME TAX: CHARGE, RATES, BASIC RATE LIMIT AND PERSONAL ALLOWANCE FOR 2014-15

SUMMARY

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

DETAILS OF THE CLAUSE

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

3. Subsection 2 provides the main rates of tax.

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

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

BACKGROUND NOTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

BACKGROUND NOTE

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

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

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

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

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

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 4: INDEXATION OF LIMITS AND ALLOWANCES UNDER ITA 2007

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

BACKGROUND NOTE

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

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

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

8. Section 57 of ITA applies where the RPI for the September before the start of the tax year is higher than it was for the previous September. Where section 57 applies, the amount of the personal allowance for people born after 5 April 1948; the married couple's allowance; the minimum amount of married couple's allowance; the income limit that applies to the

higher personal allowances and the married couple’s allowance; and the blind person’s allowance are increased by the annual percentage increase in the RPI (subject to rounding).

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

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

EXPLANATORY NOTE

CLAUSE 5: CORPORATION TAX: CHARGE FOR FINANCIAL YEAR 2015

SUMMARY

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

DETAILS OF THE CLAUSE

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

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

SUMMARY

1. This clause sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2014 at 20% for all profits apart from “ring fence profits” of North Sea oil companies, where the rate is set at 19%. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 1/400 for all profits apart from “ring fence profits”, where the fraction is set at 11/400.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the small profits rate of CT for the financial year beginning 1 April 2014.

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

BACKGROUND NOTE

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

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

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

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

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

*£1,000,000 is the difference between the upper limit and the profit.

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

£500,000 at 30 per cent	£150,000
Minus 11/400 of £1,000,000*	£27,500
Tax payable	£122,500

*£1,000,000 is the difference between the upper limit and the profit

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

EXPLANATORY NOTE

CLAUSE 7 SCHEDULE 1: CORPORATION TAX: RATES FOR RING FENCE PROFITS AND ABOLITION OF SMALL PROFITS RATE FOR NON-RING FENCE PROFITS

SUMMARY

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

DETAILS OF THE SCHEDULE

Part 1

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

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

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

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

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

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

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

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

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

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

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

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

Part 2

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

- Paragraph 6 amends paragraph 8 subsection (1) Schedule 18 FA 1998 (company tax returns, assessments and related matters) so that references to sections 19, 20 and 21 CTA 2010 (marginal relief for companies with small profits) are replaced by Chapter 3A Part 8 CTA 2010 (rates at which CT is charged on ring fence profits.)

- Paragraph 15 subparagraphs (1) to (3) amend sections 614 and 618 CTA 2010 (authorised investment funds) so that the references to sections 18 and 19 CTA 2010 (marginal relief for companies with small profits) are omitted. Authorised investment funds cannot have ring fence profits and marginal relief will no longer be due; and,

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

Part 3

16. Part 3 makes commencement and transitional provisions.

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

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

BACKGROUND NOTE

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

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

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

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

6. Another clause in this Finance Bill sets the AEA for the tax year 2014-15 at £11,000.

EXPLANATORY NOTE

CLAUSE 10 SCHEDULE 2: TEMPORARY INCREASE IN ANNUAL INVESTMENT ALLOWANCE

SUMMARY

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

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 51A(5) of the Capital Allowances Act 2001 (CAA) so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £250,000 to £500,000, in relation to expenditure incurred on or after the start date of 1 April 2014 (CT) or 6 April 2014 (IT) and, in each case, on or before 31 December 2015. For expenditure incurred on or after 1 January 2016, the maximum AIA returns to its previous limit of £25,000.

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

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

DETAILS OF THE SCHEDULE

Part 1

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

6. Paragraph 1(2) provides that the maximum allowance for such a period will be the sum of each maximum allowance that would be found if the actual chargeable period were split into separate chargeable periods by reference to 1 January 2013 and the start date.

The first period

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

The second period

The second period is so much of the actual chargeable period as falls on or after 1 January 2013, but before 1 (or 6) April 2014.

The third or last period

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

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

(a) (if appropriate) the maximum AIA entitlement based on the £25,000 annual cap that applied before 1 January 2013, for the portion of the period falling before that date; and

(b) the maximum AIA entitlement based on the £250,000 annual cap that applied for the portion of the period falling on or after 1 January 2013, but before 1 (or 6) April 2014; and

(c) the maximum AIA entitlement based on the new temporary £500,000 annual cap for the portion of a year falling on or after 1 (or 6) April 2014.

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

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

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

(a) the proportion of the period from 1 December 2012 to 31 December 2012, that is, 1/12 x £25,000 = £2,083

(b) the proportion of the period from 1 January 2013 to 5 April 2014, that is, 15/12 x £250,000 = £312,500; and

(c) the proportion of the period from 6 April 2014 to 31 May 2014, that is, 2/12 x £500,000 = £83,333.

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

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

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

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

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

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

(a) the portion of the period from 1 January 2014 to 31 March 2014, that is, 3/12 x £250,000 = £62,500; and

(b) the portion of the period from 1 April 2014 to 31 December 2014, that is, 9/12 x £500,000 = £375,000.

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

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

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

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

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

(a) the period beginning with the first day of the chargeable period and ending with the day before 1 January 2016, and

(b) the period beginning with 1 January 2016 and ending with the last day of the chargeable period,

were treated as separate chargeable periods.

So a company with a financial year chargeable period, from 1 April 2015 to 31 March 2016, would calculate its maximum AIA entitlement for its 'second straddling period' based on:

(a) the proportion of the period from 1 April 2015 to 31 December 2015, that is, 9/12 x £500,000 = £375,000, and,

(b) the portion of the period from 1 January 2016 to 31 March 2016, that is, 3/12 x £25,000 = £6,250.

The company's maximum AIA for this straddling period would, therefore, be the sum of (a) + (b) = £381,250.

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

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

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

20. Paragraph 5(1) provides that paragraphs 1 to 4 of the Schedule also apply for the purposes of determining the maximum allowance in relation to businesses that are required by CAA to share a single AIA, in a case where one or more of those businesses has a chargeable period that straddles either the start of 1 (or 6) April 2014 or end date of the temporary increase, being 31 December 2015. This provision is stated to be subject to sub-paragraphs (2) and (3).

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

22. For example, four companies in a company group with different chargeable periods of 12 months ending in the financial year 2015-2016 would be required to share a single AIA. In the following example, their individual maximum amounts are as shown in the third column of the table. However, their overall maximum, single AIA (to be shared amongst the group) would be the greatest maximum allowance, in this example, £500,000. So if, say, £500,000 were allocated to Company A, nothing further could be allocated to other companies in the group in this particular year. Alternatively, if, say, £200,000 were allocated to Company C, and the balance of the greatest maximum was to be allocated to Company D, no more than (£500,000 - £200,000 =) £300,000 could be allocated to D in this particular year.

Example: a related group of companies with chargeable periods ending in the transitional year: 1.04.15 to 31.03.16		
Company	**Chargeable period ending on**	**Maximum time-apportioned AIA**
A	31 December 2015	£500,000
B	31 January 2016	£460,417
C	29 February 2016	£420,833
D	31 March 2016	£381,250

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

24. Paragraph 5(4) provides that where an AIA has to be shared the special rules in relation to unincorporated businesses with chargeable periods longer than 12 months are not affected by the transitional provisions in paragraph 5. Paragraph 5(4) preserves the right of the business with the long chargeable period to see if it is entitled to look back to an earlier chargeable period to see if there is potentially an unused AIA entitlement in that earlier chargeable period.

Part 2

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

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

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

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

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

which begins before 1 January 2013 and ends after 31 March (or 5 April) 2014 are given by Paragraphs 1 and 2 of Schedule 1 of Finance Bill 2014 (see above).

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

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

BACKGROUND NOTE

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

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

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

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

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

37. Because the AIA is a generous relief there are certain restrictions. It is available to:

- Any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary property businesses and individuals having an employment or office);

- Any partnership consisting only of individuals; and,

- Any company (subject to certain restriction).

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

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

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

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

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

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

EXPLANATORY NOTE

CLAUSE 11: TRANSFERABLE TAX ALLLOWANCE FOR MARRIED COUPLES AND CIVIL PARTNERS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

BACKGROUND NOTE

9. This measure introduces a transferable personal allowance for married couples and civil partners where neither spouse or civil partner is liable to income tax at the higher or additional rate. From 2015-16, a spouse or civil partner (a transferor) who meets the qualifying conditions will be able to elect to transfer a fixed amount of their personal allowance to their spouse or civil partner (the recipient). Where the qualifying conditions are met, the recipient's income tax liability is reduced by an amount calculated in accordance with new section 55B.

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

EXPLANATORY NOTE

CLAUSE 12: RECOMMENDED MEDICAL TREATMENT

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

9. New subsection 320C(6) clarifies that the value of the exemption in a tax year is an amount equal to the sum of all payments that are classed as earnings under section 62 ITEPA and all benefits that are treated as earnings under the benefits code that would be exempt

from liability to income tax under new subsection 320C(1) if the £500 limit at new subsection 320C(2) did not apply.

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

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

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

SUMMARY

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

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

DETAILS OF THE CLAUSE

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

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

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

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 15 SCHEDULE 3: RESTRICTIONS ON REMITTANCE BASIS

SUMMARY

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

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

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

DETAILS OF THE SCHEDULE

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

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

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

6. New section 24A(3) provides that PAYE will not apply to income taxed on the "arising" basis under new sections 23(1A), 41C(4A), 41H(5) and 554Z9(1A). Section 41H is inserted by clause 50 of, and Schedule 8 to, the Bill

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

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

Condition 1: The UK employments test

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

Condition 2: The associated employer test

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

Condition 3: The related employments test

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

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

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

- Where P provides financial advice to an individual under both a UK and relevant employment.

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

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

Condition 4: The 65% test

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

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

Condition 5: The regulatory requirement test

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 16: TREATMENT OF AGENCY WORKERS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

   (a) a worker personally provides their services;

   (b)
   i.) there is a contract between an end client (the person who the worker is providing their services to) or a person connected to an end client, and

   ii.)a third party (known as the agency in this legislation but could be any third party),

   (c) as a result of which either (i) services of the worker are provided, or (ii)the client pays, or otherwise provides consideration, for services to be provided.

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

   (a) the manner in which the service is provided by the worker is not subject to (or the right of) control, direction or supervision by any person, or

   (b) payments receivable by the worker under or in consequence of the contract are treated as employment income under another chapter before considering this chapter.

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

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

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

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

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

(a) The liability that sits with the agency deemed to be the employer will no longer apply (sub-section 3),

(b) the worker is instead to be treated as having an employment with the end client or as the case may be with the relevant person were the duties consist of services, and

(c) all of the remuneration received by the worker as a result of providing the services is to be treated as earnings from employment for income tax purposes by either the end client or again the relevant person were appropriate.

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

(a) is resident or has a place of business in the United Kingdom, and

(b) is party to a contract with the agency or a person connected with the agency, under or in consequence of which:

i. the services are provided, or

ii. the agency, or the person connected with the agency makes a payment in response to the provision of services.

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

10. Subsection 4 amends section 46 ITEPA 2003:

(a) in (1) (a) the obligation to personally provide is removed.

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

11. Subsection 5 insert 46A Anti-avoidance.

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

(a) an individual (the worker) personally provides services to another person (to be treated as the client) which are not excluded services,

(b) a third person (the agency) enters into arrangements with the main or one of the main purposes being to secure that the services being provided by the worker are not treated for income tax purposes under section 44 as duties of an employment held by a worker with an agency, and

(c) if this section did not exist, section 44 would not apply in relation to the services provided by the worker.

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

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

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

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

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

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

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

(a) Someone other than the third party (agency) or their intermediary makes a payment on account of PAYE income of the worker, and

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

20. In subsection (2) –

(a) “the client is not the deemed employer, and” have been added, and

(b) “agency” has been replaced by “deemed employer”.

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

> “the client” is now defined as the person who is the client for the purposes of section 44; and
>
> “the deemed employer” means the person with whom the individual is treated under section 44 as having an employment, and the duties of which consist of the services,”.

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 17: RECOVERY UNDER PAYE REGULATIONS FROM CERTAIN COMPANY OFFICERS

SUMMARY

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

DETAILS OF THE CLAUSE

Regulation 97ZA

2. Provides the interpretation. In particular it defines:

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

Regulation 97ZB

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

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

5. Paragraph 3 provides for the rate of interest.

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

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

Regulation 97ZC

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

9. Paragraph 1 provides the right of appeal.

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

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

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

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

Regulation 97ZD

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

Regulation 97ZE

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

Regulation 97ZF

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 18: EMPLOYMENT INTERMEDIARIES: INFORMATION POWERS AND RELATED PENALTIES

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

5. The OTS published a report and recommendations on unapproved employee share schemes in January 2013. This report included recommendations for changes to the rules in section 222 of ITEPA, which often applies to taxable income received or treated as received

by an employee under arrangements involving Employment Related Securities, but also applies to notional payments more generally.

6. This measure makes changes to the rules in section 222 of ITEPA following the recommendations made by OTS and which the Government consulted on during summer 2013. A summary of responses to this consultation was published on 10 December 2013. Most of the measures arising from the OTS recommendations in relation to unapproved employee share schemes are in clause 49 (Employment-related securities etc) and Schedule 7.

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

a. the employee works for a person who is not their employer (this person is called the relevant person) and that their working for this person is because another party – the third person (usually a UK agency) has facilitated these arrangements,

b. that the third person (the agency) has not made payments of or on account of PAYE income, and

c. the PAYE regulations would apply to the third person (the agency). For example they are in the UK.

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

   a. *Subsection 1 s*tates the three conditions (subsections 4(1)(a) – (c)) necessary for section 689A to apply.

i. *Subsection (1)(a)*: when a person (employer or intermediary) makes a payment of PAYE income (earnings on which tax is deductable), or what is deemed to be PAYE income, of a continental shelf worker for a certain period. This person can be an employer or an intermediary. An intermediary is someone acting on behalf of the employer or someone acting on behalf of the relevant person. A relevant person is defined in subsection 4(11) as the oilfield licensee or an associated company of the employer (as defined in the Company Tax Act 2010) with a UK base or registered office.

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

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

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

c. *Subsection (4)* defines the amount of payment as:
   i. where the amount of payment made to the recipient has already had income tax and any relevant PAYE debts deducted, the amount referred to is the amount before any income and relevant PAYE debts were deducted,
   ii. where the amount of payment made to the recipient has not had income tax and any relevant PAYE debts deducted, that is the amount to which subsection (3) refers.

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 24: CARS: THE APPROPRIATE PERCENTAGE

SUMMARY

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

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

BACKGROUND NOTE

11. Section 139 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars with CO_2 emissions. The appropriate percentage multiplied by the list price of the car (adjusted for any taxable accessories) provides the level of chargeable benefit for company car tax for employees and of Class 1A NICs for employers.

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

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

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

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

EXPLANATORY NOTE

CLAUSE 25: CARS AND VANS: PAYMENTS FOR PRIVATE USE

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

CLAUSE 27: HOLDINGS TREATED AS RIGHTS UNDER LOAN RELATIONSHIPS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

CLAUSE 29: DISGUISED DISTRIBUTION ARRANGEMENTS INVOLVING DERIVATIVE CONTRACTS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

10. Section 695A(3) applies to credits arising from the arrangements. It provides that credits arising will not be brought into account, but only to the extent that they do not exceed

debits arising from the same arrangements which have not been brought into account as a result of subsection (2).

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 30: AVOIDANCE SCHEMES INVOLVING THE TRANSFER OF CORPORATE PROFITS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAILS OF THE CLAUSE

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

CLAUSE 32: FILM TAX RELIEF

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

BACKGROUND NOTE

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

7. Subject to State aid approval, from 1 April 2014 film tax relief will be available for surrenderable losses at a rate of 25 per cent up to the first £20 million of each production’s UK core production expenditure (to a maximum of 80 per cent of UK core production expenditure) and 20 per cent thereafter (to a maximum of 80 per cent of the UK core

production expenditure), for all productions. Previously the rate of 25 per cent only applied to limited budget films i.e. those with UK core production expenditure up to £20 million.

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

EXPLANATORY NOTE

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

SUMMARY

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

DETAIL OF THE CLAUSE

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

BACKGROUND NOTE

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

4. This tax relief allows qualifying companies engaged in the production of animation and high-end television intended for release to the general public to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender that loss for a payable tax credit.

EXPLANATORY NOTE

CLAUSE 34: VIDEO GAMES DEVELOPMENT

SUMMARY

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

DETAILS OF THE CLAUSE

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

3. Subsection 2 amends section 1217A.

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

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

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

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

8. Subsection 7 amends Schedule 4 to CTA 2009.

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

BACKGROUND NOTE

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

11. The new video games development relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.

EXPLANATORY NOTE

CLAUSE 35: CORPORATE GIFT AID FOR COMMUNITY AMATEUR SPORTS CLUBS

SUMMARY

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

DETAILS OF THE CLAUSE

General provisions

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

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

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

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

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

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

Anti-abuse provisions

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

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

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

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

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

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

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

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

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

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

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

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

Donations from companies to CASCs

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

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

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

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

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

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

BACKGROUND NOTE

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

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

Example 1

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

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

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

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

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

Example 2

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

EXPLANATORY NOTE

CLAUSE 36: CHANGES IN COMPANY OWNERSHIP

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

the shareholders, the classes of shares, the proportion of shares held in each class and the proportion of shares of each class held by each shareholder.

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

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

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

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

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

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

CLAUSE 37: TRANSFER OF DEDUCTIONS: RESEARCH AND DEVELOPMENT ALLOWANCES

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 38: TAX TREATMENT OF FINANCING COSTS AND INCOME

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

14. Finance Act 2009 introduced a package of changes to the taxation of companies on their foreign profits. One of these measures limits the interest and other finance expenses that can be deducted in computing the corporation tax payable by UK members of a worldwide group of companies, and is commonly referred to as the worldwide debt cap (WWDC).

15. The rules broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the rules, with the finance costs of their worldwide group. If the UK costs exceed the worldwide costs then the excess is disallowed and the UK companies do not get any relief for the excess.

16. The WWDC applies to companies that are "relevant group companies" in a "worldwide group". The worldwide group is defined by reference to a group for the purposes of international financial reporting standards. A relevant group company is, broadly, a subsidiary within that group within the charge to UK corporation tax, which is a 75% subsidiary of the ultimate parent. This includes the case where the parent has a beneficial entitlement to 75% of the profits of that company, or 75% of the assets of that company that are available in a winding up.

17. The amendments clarify how the group relief rules are to apply, for the purposes of the WWDC, in the context of a multinational group that may have a complex structure and include a wide range of entities, including companies that do not have ordinary share capital and entities that are not bodies corporate. Such entities may, for example, include a company limited by guarantee. They also ensure that indirect ownership of a company can be traced through intermediate entities without ordinary share capital, and put it beyond doubt that the ultimate parent of a worldwide group may be beneficially entitled to 75% of the profits or assets of a UK group company notwithstanding any intermediate entities in the ownership chain that do not have ordinary share capital.

18. At the same time a minor change is made to the regulation making powers relating to the WWDC, to facilitate the making of regulations to enable companies involved in whole business securitisations to remain bankruptcy remote.

EXPLANATORY NOTE

CLAUSE 39: PENSION FLEXIBILITY: DRAWDOWN

SUMMARY

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

DETAILS OF THE CLAUSE

2. Subsection 1 amends pension rule 5 in section 165 of Finance Act 2004 ('FA 2004') to increase the maximum drawdown pension payable from 120 per cent of the basis amount to 150 per cent of the basis amount. Section 165 defines what are authorised pensions from a registered pension scheme for tax purposes. A drawdown pension is one of the categories of authorised pension payable to a member. Pension rule 5 fixes the maximum rate of a drawdown pension. The basis amount referred to in pension rule 5 is defined in Schedule 28 to the FA 2004. It is the rate of pension which would be payable if an individual of the same age as the drawdown pensioner were to apply their pension fund to buying a level single life annuity without a guaranteed term. The basis amount is commonly referred to as the amount of "an equivalent annuity".

3. Subsection (2) amends pension death benefit rule 4 in section 167 of FA 2004 to increase the maximum dependants' drawdown pension payable from 120 per cent of the basis amount to 150 per cent of the basis amount. Section 167 defines what are authorised pension death benefits from a registered pension scheme for tax purposes. A dependants' drawdown pension is one of the categories of authorised pension death benefit payable to the dependant of a deceased member. Pension death benefit rule 4 sets the maximum rate of this pension.

4. Subsections (3) and (4) reduce the minimum income threshold from £20,000 to £12,000 for members and dependants respectively. A drawdown pensioner whose relevant income is at or above the threshold can apply not to be subject to the restrictions on withdrawals prescribed in pension rule 5 or pension death benefit rule 4 as appropriate.

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

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

BACKGROUND NOTE

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

8. The term "drawdown pension year" is defined in paragraphs 9 and 23 of Schedule 28 to FA 2004 as the period of 12 months starting when the individual first became entitled to a drawdown pension and each succeeding period of 12 months. The date on which an individual's next drawdown pension year starts is not affected by whether or not it coincides with the start of a new reference period, nor by whether new funds have been added to the drawdown pension fund.

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

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

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

12. The clause is covered by a resolution made under the Provisional Collection of Taxes Act 1968. Under this resolution drawdown providers account for income tax under Pay As You Earn procedures before the 2014 Finance Bill receives Royal Assent where they have made payments from a drawdown pension fund which are higher than 120 per cent of the basis amount but are not more than 150 per cent of the basis amount in a drawdown pension year beginning on or after 27 March 2014.

EXPLANATORY NOTE

CLAUSE 40: PENSION FLEXIBILITY: TAKING LOW-VALUE PENSION RIGHTS AS LUMP SUM

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

6. Paragraph (6)(b) and subsection (7) amend secondary legislation and raise the maximum amount of certain payments that can be taken as a trivial commutation lump sum

from £18,000 to £30,000. The affected payments are payments that would be trivial commutation lump sums but for the continuing payment of an annuity, and which also satisfy the other conditions set out in regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

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

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

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

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

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

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

BACKGROUND NOTE

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

14. The clause is covered by a resolution made under the Provisional Collection of Taxes Act 1968. Under this resolution scheme administrators of registered pension schemes account for income tax under Pay As You Earn procedures before the 2014 Finance Bill

receives Royal Assent for lump sums to which the clause applies where paid on or after 27 March 2014.

EXPLANATORY NOTE

CLAUSE 41: TRANSITIONAL PROVISION FOR NEW STANDARD LIFETIME ALLOWANCE FOR 2014-15 ETC

SUMMARY

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

DETAILS OF THE SCHEDULE

Part 1

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

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

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

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

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

7. Paragraphs 1(6) to (9) deal with the position where the pension rights of an individual with IP14 are subject to a pension debit, as a result of the sharing of the individual's pensions rights following a divorce, on or after 6 April 2014. In such a case, the individual's relevant amount is reduced by the amount of the debit. However for IP14 purposes the amount of debit is reduced by 5 per cent for each complete tax year between 5 April 2014 and the date

of the pension debit. The reduction is intended to reflect any increase in the individual's total pension rights between 5 April 2014 and the time of the pension debit. Where the individual's relevant amount is reduced to below £1.25 million as a result of the pension debit, they will no longer be entitled to rely on IP14.

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

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

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

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

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

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

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

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

Part 2

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

Part 3

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

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

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

BACKGROUND NOTE

20. Individuals can save as much as they like in a registered pension scheme subject to overall limits on the amount of tax relief their pension savings can benefit from. These limits are the lifetime and annual allowances. The lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from pension schemes that benefit from UK tax relief, including any UK tax relieved savings the individual has in a relieved non-UK pension scheme.

21. When an individual becomes entitled to their pension benefits, these benefits are tested to see if they exceed the individual's lifetime allowance. If they do the excess is subject to the lifetime allowance charge. The rate of the charge will depend on how the individual takes their benefits. Any amount over the lifetime allowance taken as a lump sum is taxable at 55 per cent whilst any amount taken as a pension is taxable at 25 per cent, and the income will be taxable at the individual's marginal rate.

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

EXPLANATORY NOTE

CLAUSE 42: TAXABLE SPECIFIC INCOME: EFFECT ON PENSION INPUT AMOUNT FOR NON-UK SCHEMES

SUMMARY

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

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

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

5. This clause removes an anomaly resulting from the way in which the employment income tax legislation interacts with the treatment of employer contributions to relevant non-UK schemes, which could have led to another measure in the Finance Bill (Clause 49 - Employment-related securities etc) creating unintended tax and NIC liabilities for internationally mobile employees.

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

RESOLUTION 29 & 30

FINANCE BILL 2014
CLAUSE 43
SCHEDULE 5

EXPLANATORY NOTE

CLAUSE 43 AND SCHEDULE 5: PENSION SCHEMES

SUMMARY

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

DETAILS OF THE SCHEDULE

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

Registration of pension schemes

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

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

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

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

7. Paragraph 3 inserts new sections 153A to 153F into FA 2004. These provide new powers for HMRC to request additional information and documents and a new inspection power, including a power to enter business premises for the inspection, in connection with an

application to register a pension scheme. It also includes a mechanism for appeals and penalties for failure to comply with a notice or the production of inaccurate information or documents.

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

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

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

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

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

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

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

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

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

De-registration of pension schemes

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

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

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

Declarations required from person who is to be a scheme administrator

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

Payments by registered pension schemes: surrender

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

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

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

Orders for money etc to be restored to pension schemes

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

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

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

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

Liabilities of trustees appointed by Pensions Regulator etc

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. New subsection 272C(4) provides that if there was no scheme administrator immediately before the relevant day, the liability falls to the last scheme administrator before the relevant day.

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

54. These changes have been introduced to:

- provide additional powers to HMRC to help it detect and prevent the registration of liberation schemes and to detect and de-register any liberation schemes that have already been registered

- prevent authorised surpluses being artificially created as a potential means of liberation
- ensure that where the Pensions Regulator becomes involved with a pension scheme any tax charges are applied fairly.

EXPLANATORY NOTE

CLAUSE 44: GLASGOW GRAND PRIX

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

6. Subsection (5) defines the terms "accredited competitor", "the games period", "the Glasgow Grand Prix", and "income" for the purpose of this clause.

7. Subsection (6) provides that this clause is treated as having come into force on 6 April 2014.

BACKGROUND NOTE

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

9. Both employment and self-employment income arising to non-UK resident competitors who compete in, or carry out activities primarily to promote or support, the Glasgow Grand Prix will be exempted from income tax under this clause. This exemption will apply only in respect of income arising as a result of activities carried out during the

period 5 July to 14 July 2014. This exemption only applies where the competitor holds a Glasgow Grand Prix accreditation card in the competitors' category which has been issued by UK Athletics Ltd.

10. This exemption will not apply to any non-UK resident officials, sponsors or coaching staff. They will continue to be liable to UK tax on any income which is related to their participation at the Glasgow Grand Prix. The exemption will not apply to any UK tax residents, including athletes. The only exception is for those for whom the year is a split year and where the event falls into the overseas part of the year.

EXPLANATORY NOTE

CLAUSE 45: MAJOR SPORTING EVENTS: POWER TO PROVIDE FOR TAX EXEMPTIONS

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

BACKGROUND NOTE

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

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

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

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

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

EXPLANATORY NOTE

CLAUSE 46: SHARE INCENTIVE PLANS: INCREASES IN MAXIMUM ANNUAL AWARDS ETC

CLAUSE 47: SHARE INCENTIVE PLANS: POWER TO ADJUST MAXIMUM ANNUAL AWARDS ETC

SUMMARY

1. Clause 46 increases the maximum value of the shares that can be awarded or purchased each year under the Share Incentive Plan (SIP) tax advantaged employee share scheme. Clause 47 enables future changes to SIP limits to be made by Treasury Order.

DETAILS OF THE CLAUSES

Clause 46: Share Incentive Plans: increase in maximum annual awards etc

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

Clause 47 : Share incentive Plans: power to adjust maximum annual awards etc

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

BACKGROUND NOTE

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

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

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

RESOLUTION 34

FINANCE BILL 2014
CLAUSE 48
SCHEDULE 6

EXPLANATORY NOTE

CLAUSE 48 SCHEDULE 6: EMPLOYEE SHARE SCHEMES

SUMMARY

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

- replacing approval by HM Revenue & Customs (HMRC) with self certification for three of the tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP);

- introducing online filing for all employee share scheme returns and information, including for Enterprise Management Incentives (EMI) and non-tax advantaged arrangements providing employment-related securities;

- a number of technical changes to the SIP, SAYE and CSOP rules designed to clarify the legislation, including modification of the 'purpose test' that must be met by these schemes.

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

DETAILS OF THE SCHEDULE

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

4. The main legislation as it currently stands is set out in Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The provisions on SIP are in sections 488-515 and Schedule 2 to ITEPA; on SAYE in sections 516-519 and Schedule 3; on CSOP in sections 521-526 and Schedule 4; and on EMI in sections 527-541 and Schedule 5. The rules concerning the provision of information to HMRC in relation to employment-related securities are in sections 421J-421L. Statutory references in this Note are to provisions in ITEPA unless otherwise stated.

Part 1, Share Incentive Plans

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

6. Paragraphs 2-12 make various changes to Chapter 6 to reflect the replacement of the present arrangements for HMRC approval of SIPs with self certification of plans by employers. In particular the paragraphs remove legislative references to 'approved SIPs'. Instead the concept is introduced of SIPs that meet the conditions being certified by employers as 'Schedule 2 SIPs'.

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

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

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

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

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

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

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

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

15. New paragraph 81A of Schedule 2 provides new rules concerning notification of SIPs to HMRC. For a plan to be a Schedule 2 SIP and qualify for favourable tax treatment, the company must give notice to HMRC and make a declaration that the plan meets and, where the declaration is made after the first award of shares, has met the relevant conditions of Schedule 2. The notice should be given by 6 July following the tax year in which the first award of shares is made under the scheme, and sub-paragraph (5) explains when the plan will be a Schedule 2 SIP in cases when this deadline is missed.

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

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

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

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

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

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

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

23. New paragraph 81I sets out the action HMRC may take in cases where a breach of the SIP rules is not considered serious enough for the plan not to be a Schedule 2 SIP. HMRC will require the company to put right any failure within a specified period, and the company is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a plan is not to be a Schedule 2 SIP either from the time of the notice or such time as is specified in the notice, and the company is liable for a further penalty. This will not affect the operation of the SIP rules (and tax advantages available) in relation to shares awarded prior to the time in question.

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

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

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

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

28. Paragraphs 33-43 make amendments to various provisions of Taxation of Chargeable Gains Act 1992 (TCGA) arising from the replacement of HMRC approval of SIPs with self certification.

29. Paragraphs 44-52 make amendments to various provisions of ITEPA and Finance Act 2004 (FA 2004).

30. Paragraphs 53-67 make amendments to various provisions of Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

31. Paragraphs 57 and 63 introduce modifications to the rules that apply to determine for income tax purposes the amount of distribution treated as made to the SIP participant, and the amount of dividend treated as paid to the participant, where dividend shares cease to be

subject to a Schedule 2 SIP within three years of their acquisition on the participant's behalf where shares are required to be offered for sale by a SIP participant.

32. Paragraphs 68-73 make amendments to various provisions of Income Tax Act 2007 (ITA 2007).

33. Paragraphs 74-83 make amendments to various provisions of Corporation Tax Act 2009 (CTA 2009). These amendments arise from the replacement of HMRC approval of SIPs with self certification, and include in paragraph 83 an amendment to section 998 CTA 2009 to enable an officer of HMRC to direct that a deduction made under section 987 CTA 2009 for the costs of setting up a SIP is withdrawn where a plan ceases to be a Schedule 2 SIP.

34. Paragraphs 84-87 make amendments to the Individual Savings Account Regulations 1998.

35. Paragraph 88 revokes the Employee Share Schemes (Electronic Communications of Returns and Information) Regulations 2007, which are superseded by the provisions of this Schedule.

36. Paragraph 89 provides that the new rules for SIPs come into force on 6 April 2014, and paragraph 90 introduces transitional provisions for SIPs approved by HMRC before that date.

37. Paragraph 91 provides that in the case of SIPs approved immediately before 6 April 2014, any provisions of the plan which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 2).

38. Paragraph 92 provides that for these existing approved SIPs the new purpose test introduced by paragraph 19 of this Schedule only applies from such time as there is alteration to a key feature of the SIP or the plan trust.

39. Paragraph 93 provides that these existing approved SIPs have effect from 6 April 2014 as if the SIP and plan trust include various modifications made by Part 1 of this Schedule.

40. Paragraph 94 modifies arrangements for the notification of these plans under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of shares acquired or appropriated under a SIP before 6 April 2014, the SIP code (and tax advantages where appropriate) will still apply in relation to these shares, whether or not the plan is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 2 SIP applies in relation to breaches of the SIP rules that occurred prior to 6 April 2014. An annual return is required in relation to the schemes even if the scheme has not been notified to HMRC.

41. Paragraph 95 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SIP approved by HMRC before 6 April 2014 is not affected by any changes in Part 1 of the Schedule.

Part 2, SAYE Option Schemes

42. Paragraph 97 introduces amendments to Chapter 7 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under SAYE schemes.

43. Paragraphs 98-101 make various changes to Chapter 7, mainly to reflect the replacement of the present arrangements for HMRC approval of SAYE schemes with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved SAYE schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 3 SAYE option schemes'. In addition, paragraph 101 amends section 519 ITEPA to reflect the tax relief available for certain exercises of SAYE options in the case of a 'non-UK company reorganisation arrangement'.

44. Paragraphs 102-120 set out amendments to Schedule 3 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SAYE schemes to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 3 SAYE scheme, and to make enquiries into the running of a scheme.

45. Paragraph 105 amends the introductory provision for the SAYE rules in paragraph 1 Schedule 3, taking account of the new self certification arrangements and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 3 SAYE schemes.

46. Paragraph 108 amends paragraph 5 Schedule 3 to introduce a new purpose test to be met by Schedule 3 SAYE schemes. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 3. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

47 Paragraph 109 amends the requirements relating to shares that may be subject to SAYE options to reflect changes made in paragraph 114 of this Schedule, concerning the exercise of options on certain company events where shares in the company to which an option relates cease to meet the conditions of Schedule 3.

48. Paragraph 111 amends the provisions of paragraph 28 Schedule 3, which allow adjustment of the price, amount or description of shares under an SAYE option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.

49. Paragraph 112 amends the provisions in paragraph 32 Schedule 3 to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.

50. Paragraph 113 amends provisions in paragraph 34 Schedule 3 concerning exercise of options where employment ceases, to remove a minor element of duplication in relation to arrangements under the Transfer of Undertakings (Protection of Employment) Regulations.

51. Paragraph 114 amends provisions in paragraph 37 Schedule 3 allowing exercise of SAYE options where certain 'company events' occur.

- The circumstances in which paragraph 37 may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (4A).

- Where shares in the company to which an option relates cease to meet the conditions of Schedule 3, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (6B) to (6D) of paragraph 37 allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.

- New sub-paragraphs (6E) to (6F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that, if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.

52. Paragraph 115 concerns provisions in paragraph 38 Schedule 3 allowing exchange of options on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

53. Paragraph 116 amends provisions in paragraph 39 Schedule 3 concerning the requirements about share options granted in exchange for other SAYE options on a company reorganisation. In such an exchange, the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation. The market value of shares for the purposes of paragraph 39 must be determined using a methodology agreed by HMRC.

54. Paragraph 117 inserts a new Part 8 in Schedule 3, setting out rules for notification of SAYE schemes, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not to be a Schedule 3 SAYE scheme and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

55. New paragraph 40A of Schedule 3 provides new rules concerning notification of SAYE schemes to HMRC. For a scheme to be a Schedule 3 SAYE scheme and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, if the declaration is made after the date of the first grant of options, has met the conditions of Schedule 3. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme, and sub-paragraph (5) explains when the scheme will be a Schedule 3 SAYE scheme in cases where this deadline is missed.

56. New paragraph 40B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 3 SAYE schemes, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SAYE scheme in the tax year in question and of any variations made to terms of SAYE options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

57. New paragraph 40C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where scheme organisers have a 'reasonable excuse' for the failure.

58. New paragraph 40D provides that notification of SAYE schemes and annual SAYE returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

59. New paragraph 40E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.

60. New paragraph 40F empowers HMRC to make enquiries into an SAYE scheme after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 3 are not or have not been met in relation to the scheme.

61. New paragraph 40G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

62. New paragraph 40H sets out the action HMRC may take where an SAYE scheme does not meet or has not met the conditions of Schedule 3. If the breach of the SAYE rules is considered serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.

63. New paragraph 40I sets out the action HMRC may take in cases where a breach of the SAYE rules is not considered serious enough that the scheme is not to be a Schedule 3 SAYE scheme. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right

within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.

64. New paragraph 40J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

65. New paragraph 40K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 3 SAYE scheme and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

66. Paragraph 118 amends HMRC's powers in paragraph 45 Schedule 3 to require information concerning an SAYE scheme. In particular HMRC are empowered to require information needed to check details supplied by scheme organisers in their notification of an SAYE scheme or annual SAYE returns, or to determine the liability to tax of any relevant person.

67. Paragraph 119 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the SAYE code.

68. Paragraphs 121-128 make amendments to various provisions of TCGA, mainly arising from the replacement of HMRC approval of SAYE schemes with self certification.

69. Paragraphs 129-141 make amendments to various provisions of ITEPA, FA 2004, ITTOIA and CTA 2009.

70. Paragraphs 142-144 make amendments to the Individual Savings Account Regulations 1998.

71. Paragraph 145 provides that the new rules for SAYE schemes come into force on 6 April 2014, and paragraph 146 introduces transitional provisions for schemes approved by HMRC before that date.

72. Paragraph 147 provides that in the case of SAYE schemes approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 3).

73. Paragraph 148 provides that for these existing approved schemes the new purpose test introduced by paragraph 108 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.

74. Paragraphs 149-153 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 2 of this Schedule,

and also provides that other modifications made by Part 2 do not have effect in certain circumstances.

75. Paragraph 154 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of SAYE options granted before 6 April 2014, the SAYE code (and tax advantages where appropriate) will still apply in relation to these options, whether or not the scheme is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 3 SAYE scheme applies in relation to breaches of the SAYE rules that occurred prior to 6 April 2014. An annual return is required in relation to the scheme even if the scheme has not been notified to HMRC.

76. Paragraph 155 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SAYE scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 2 of the Schedule.

Part 3, CSOP Schemes

77. Paragraph 157 introduces amendments to Chapter 8 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under CSOP schemes.

78. Paragraphs 158-161 make various changes to Chapter 7 to reflect the replacement of the present arrangements for HMRC approval of CSOPs with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved CSOP schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 4 CSOP schemes'. In addition, paragraph 161 makes changes to section 524 ITEPA to reflect the tax relief available for certain exercises of CSOP options in the case of a 'non-UK company reorganisation arrangement'.

79. Paragraphs 162- 181 set out amendments to Schedule 4 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of CSOPs to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 4 CSOP, and to make enquiries into the running of a scheme.

80. Paragraph 165 amends the introductory provision for the CSOP rules in paragraph 1 Schedule 4, taking account of the new self certification arrangements for CSOP and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 4 CSOPs.

81. Paragraph 168 amends paragraph 5 Schedule 4 to introduce a new purpose test that must met by Schedule 4 CSOPs. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 4. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

82. Paragraph 170 amends the requirements relating to shares that may be subject to CSOP options, to reflect changes made in paragraph 175 of this Schedule concerning the

exercise of options on certain company events, where shares in the company to which an option relates cease to meet the conditions of Schedule 4.

83. Paragraph 172 inserts new paragraph 21A in Schedule 4, which sets out a series of general conditions that CSOP options must satisfy. In particular, certain terms of the option must be stated at the time the option is granted. Terms of an option may be changed after grant, but only as provided for in paragraph 22 of Schedule 4 (concerning requirements as to the price for acquisition of shares) or on the basis of a mechanism stated at the grant of the option. Any such mechanism must be applied in a fair and reasonable way. The terms of the option and any mechanism for varying it must be notified to the participant as soon as practicable after grant of the option.

84. Paragraph 173 amends the provisions of paragraph 22 Schedule 4, which allow adjustment of the price, amount or description of shares under a CSOP option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.

85. Paragraph 174 amends provisions in paragraph 25 Schedule 4 concerning the exercise of options after the death of the participant, to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.

86. Paragraph 175 amends provisions in paragraph 25A Schedule 4 allowing exercise of CSOP options where certain 'company events' occur.

- The circumstances in which paragraph 25A may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (6A).

- Where shares in the company to which an option relates cease to meet the conditions of Schedule 4, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (7B) to (7D) of paragraph 25A allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.

- New sub-paragraphs (7E) to (7F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.

87. Paragraph 176 concerns provisions in paragraph 26 Schedule 4 allowing exchange of option on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

88. Paragraph 177 amends provisions in paragraph 27 Schedule 4 concerning the requirements about share options granted in exchange for other CSOP options on a company reorganisation. In such an exchange, the market value of the shares and the price payable for the shares by the participant must be substantially the same under the new options as it was under the old options. The market value of shares for the purposes of paragraph 27 must be determined using a methodology agreed by HMRC.

89. Paragraph 178 inserts a new Part 7 in Schedule 4, setting out rules for notification of CSOPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not a Schedule 4 CSOP and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

90. New paragraph 28A of Schedule 4 provides new rules concerning notification of CSOPs to HMRC. For a scheme to be a Schedule 4 CSOP and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, where the declaration is made after the first grant of options, has met the conditions of Schedule 4. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme and sub-paragraph (5) explains when a scheme will be a Schedule 4 CSOP in cases where this deadline is missed.

91. New paragraph 28B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 4 CSOPs, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the CSOP in the tax year in question and of any variations made to terms of CSOP options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. This requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

92. New paragraph 28C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is specified where scheme organisers have a 'reasonable excuse' for the failure.

93. New paragraph 28D provides that notification of CSOPs and annual CSOP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

94. New paragraph 28E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.

95. New paragraph 28F empowers HMRC to make enquiries into a CSOP after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have

reasonable grounds for believing the requirements of Schedule 4 are not or have not been met in relation to the scheme.

96. New paragraph 28G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

97. New paragraph 28H sets out the action HMRC may take where a CSOP does not meet or has not met the conditions of Schedule 4. If the breach of the CSOP rules is considered serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 4 CSOP either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty.

98. New paragraph 28I sets out the action that HMRC may take in cases where a breach of the CSOP rules is not considered serious enough that the scheme is not to be a Schedule 4 CSOP. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 4 CSOP either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty.

99. New paragraph 28J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

100. New paragraph 28K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 4 CSOP and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

101. Paragraph 179 amends HMRC's powers in paragraph 33 Schedule 4 to require information concerning a CSOP. In particular HMRC are empowered to require information needed to check details supplied by a scheme organiser in their notification of a CSOP scheme or annual CSOP returns, or to determine the liability to tax of any relevant person.

102. Paragraph 180 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the CSOP code.

103. Paragraphs 182-188 make amendments to various provisions of TCGA arising from the move to self certification of CSOPs.

104. Paragraphs 189-202 make amendments to various provisions of ITEPA.

105. Paragraph 203 provides that the new rules for CSOPs come into force on 6 April 2014, and paragraph 204 introduces transitional provisions for schemes approved by HMRC before that date.

106. Paragraph 205 provides that in the case of CSOPs approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 4).

107. Paragraph 206 provides that for these existing approved schemes the new purpose test introduced by paragraph 168 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.

108. Paragraphs 207-211 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 3 of this Schedule, and also provides that other modifications made by Part 3 do not have effect in relation to options granted under the scheme before that date.

109. Paragraph 212 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of CSOP options granted before 6 April 2014, the CSOP code (and tax advantages where appropriate) will apply in relation to these options, unless the scheme is not notified to HMRC or prior to 6 April 2014 HMRC refused to approve the scheme or decided to withdraw approval. HMRC's ability to determine that a scheme is not a Schedule 4 CSOP applies in relation to breaches of the CSOP rules that occurred prior to 6 April 2014.

110. Paragraph 213 ensures that the availability of certain corporation tax deductions in relation to set up costs for a CSOP scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 3 of the Schedule.

Part 4, Enterprise Management Incentives

111. Paragraph 215 introduces a series of changes to Schedule 5 ITEPA in respect of EMI.

112. Paragraph 216 makes several amendments to paragraph 44 Schedule 5 concerning the requirement to provide HMRC with notice of EMI options granted:

- The employer company's declaration in the notice must include confirmation that the EMI option holder has made a written declaration that they meet the 'working time requirement' of EMI (paragraph 26 Schedule 5). A copy of this declaration must be given to the option holder within a specified period, and a copy retained and produced to HMRC within a specified period if so requested.

- Notices must be delivered in electronic form in a manner prescribed by HMRC, unless an employer company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

113. Paragraph 217 replaces the existing paragraph 52 Schedule 5, which requires certain companies whose shares are or have been subject to an EMI option to deliver an annual return. New paragraphs 52 and 52A of Schedule 5 reflect the shift to online filing of returns

and are consistent with the new provisions in this Schedule for the other tax advantaged schemes.

114. New paragraph 52 of Schedule 5 obliges companies whose shares are or have been subject to an EMI option to make annual returns containing the information required by HMRC. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of termination of a scheme. This will be where there are no outstanding EMI options over the company's shares, and no intention to grant any further options over the company's shares under the scheme. If companies become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

115. New paragraph 52A provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.

116. Paragraph 218 makes a change to paragraph 53 Schedule 5 to clarify the meaning of 'reasonable excuse' in cases where a person has failed to meet certain time limits set out in Parts 7 and 8 of Schedule 5.

117. Paragraph 219 inserts new provisions on penalties and appeals (at new paragraphs 57A-57E Schedule 5), similar to those in Parts 1, 2 and 3 of this Schedule.

118. New paragraph 57A of Schedule 5 lays down the penalties to which employer companies may be liable for failure to deliver the declarations required by paragraph 44 Schedule 5.

119. New paragraph 57B lays down the penalties to which companies whose shares are or have been subject to EMI options may be liable for failure to deliver annual returns by the specified deadline.

120. New paragraph 57C sets out the penalties that may apply where annual returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the company.

121. New paragraph 57D sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

122. New paragraph 57E provides rights for companies to appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

123. Paragraphs 221-224 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for the tax year 2014-15 onwards.

Part 5, Other Employee Share Schemes

124. Paragraph 225 introduces a series of changes to Chapter 1 of Part 7 of ITEPA, which sets out general rules and requirements in relation to employment-related securities, including arrangements that are not tax advantaged.

125. Paragraphs 226-227 amend section 421J ITEPA concerning the duty to provide information to HMRC, and insert new provisions (new sections 421JA-421JF ITEPA) concerning annual returns, electronic submission, penalties and appeals. These changes reflect the shift to online filing of annual returns for employment-related securities and are consistent with the new provisions in this Schedule for the tax advantaged schemes.

126. New section 421JA ITEPA obliges a responsible person (as defined in section 421L) to make an annual return to HMRC for each tax year within their 'reportable event period'. Returns must contain the information required by HMRC, and be made not later than 6 July following the end of the tax year to which they relate. If they become aware of errors or inaccuracies in returns, the responsible person must provide amended returns correcting the position without delay. Sub-paragraph (7) provides that there is no need to report 'duplicate' information, as defined at sub-paragraph (8).

127. New section 421JB provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a person has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

128. New section 421JC lays down the penalties which may apply for failure to deliver annual returns by the specified deadline. An exception is allowed where a person has a 'reasonable excuse' for the failure.

129. New section 421JD sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the person.

130. New section 421JE sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.

131. New section 421JF provides rights of appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.

132. Paragraphs 231-233 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for tax year 2014-15 onwards.

BACKGROUND

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

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

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

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

137. The OTS published a report on the tax advantaged employee share schemes in 2012. This identified various areas where the present rules created undue complexities or disproportionate administrative burdens for scheme users, and made recommendations on how the legislation and related provisions could be simplified. The Government implemented the first tranche of changes to give effect to these recommendations in Schedule 2 Finance Act 2013.

138. This measure implements the further OTS recommendations that the Government should introduce self certification and a new 'purpose test' for SIP, SAYE and CSOP (self certification already applies in the case of EMI), and online filing for all employment-related securities returns to HMRC. In drawing up these provisions the Government has consulted extensively over the past 12 months to devise arrangements that will meet the needs of scheme users.

139. The measure also includes minor technical changes to clarify or simplify certain aspects of the current statute, where companies might potentially have found it difficult to self certify with confidence as the legislation stood.

EXPLANATORY NOTE

CLAUSE 49 SCHEDULE 7: EMPLOYMENT-RELATED SECURITIES ETC

SUMMARY

1. This clause and Schedule implement a number of recommendations made by the Office of Tax Simplification (OTS) to simplify the tax rules in relation to employment-related securities (ERS) - such as employee shares - or ERS options awarded to employees. It changes the tax treatment of ERS and ERS options awarded to internationally mobile employees, introduces a new relief for certain ERS exchanges, simplifies the rules around nil-paid and partly-paid ERS and extends the corporation tax relief available to companies in relation to employee share acquisitions.

DETAILS OF THE SCHEDULE

Part 1: Internationally mobile employees

2. Paragraphs 1 to 5 amend Part 2 of ITEPA by substituting a new Chapter 5B (taxable specific income from employment-related securities etc: internationally mobile employees) for the current Chapter 5A (taxable specific income: effect of the remittance basis) and making consequential amendments to sections 6 and 10 of ITEPA. The new Chapter 5B comprises sections 41F to 41L, which set out new rules for the taxation of ERS and ERS options received by internationally mobile employees, and also contain provisions on the effect of the remittance basis on ERS income that are currently in Chapter 5A.

3. New sections 41F to 41L of ITEPA set out what income from ERS and ERS options (securities income) is to be subject to UK income tax, either on the normal ‘arising’ basis or the remittance basis where this applies. The effect of the remittance basis for those to whom this applies is that, broadly, income or gains in respect of foreign duties are only taxable in the UK to the extent that they are remitted to the UK. Income or gains are remitted to the UK when they are brought into, used in, or enjoyed in the UK.

4. New section 41F of ITEPA includes subsection (1) and (2), which set out the scope of the new rules. They apply when an amount counts as employment income under Chapters 2 to 5 of Part 7 of ITEPA (which provides rules for the taxation of ERS and ERS options) and at least one of the ‘international mobility conditions’ specified in subsection (2) are met. The rules at subsections (3) and (4) identify the amount of income from relevant employment for the tax year (securities income) that will be subject to income tax on the arising basis. These subsections provide that this amount should be established by deducting securities income that is ‘foreign’ from total securities income. Subsection (5) specifies that the amount of securities income that is foreign is the total of any ‘chargeable foreign securities income’ and any ‘unchargeable foreign securities income’, with reference to new sections 41H to 41L of ITEPA. Subsections (6) and (7) identify chargeable foreign securities income that is remitted

to the UK as 'taxable specific income'. Subsections (8) and (9) make provision in relation to amounts remitted to the UK in a tax year and broadly reproduce certain provisions currently found in section 41A of ITEPA, concerning the effect of the remittance basis on taxable specific income from ERS.

5. New section 41G of ITEPA (at subsections (2) – (8)) defines the 'relevant period' for each type of ERS for the purposes of the international mobility conditions at new section 41F. This is the period over which securities income is to be apportioned between that which is subject to income tax in the UK, and that which is not. Where appropriate, the relevant periods broadly replicate those already in operation for the remittance basis of taxation at the current section 41B of ITEPA. The rules at subsection (2) to (8) are subject to an override (at subsection (9)) where the relevant period they provide is not just and reasonable.

6. New sections 41H to 41L of ITEPA determine how 'unchargeable' and 'chargeable' foreign securities income are to be calculated, for the purposes of establishing how much securities income is not to be subject to UK income tax, or subject to UK income tax only on the remittance basis. Where appropriate, these sections broadly replicate rules currently in sections 41C to 41E of ITEPA, which establish the amount of foreign securities income for the purposes of the remittance basis of taxation.

7. New section 41H of ITEPA sets out rules to determine whether ERS income is 'chargeable or 'unchargeable' foreign securities income. Chargeable foreign securities income will be subject to UK income tax on the remittance basis. Subsection (2) provides that securities income is regarded as accruing equally on each day within the relevant period, as set out in new section 41G of ITEPA. Subsections (3) to (12) provide rules that apply for the calculation of chargeable and unchargeable foreign securities income in various cases. These include (at subsections (3), (4), (6) and (7)) the rules that apply for tax years within the relevant period during which: the remittance basis applies, an individual satisfies or does not satisfy the requirement for a 3-year period of non-residence in the UK at section 26A of ITEPA, or the duties of the relevant employment are performed wholly or partly outside the UK. Subsection (8) provides the rules that apply for tax years for which the individual is not UK resident. Subsection (9) sets out the rules that apply where any part of the relevant period is within the overseas part of a tax year that is a split year (where an individual either leaves the UK to live or work abroad or comes from abroad to live or work in the UK). Subsection (11) links the rules in this new section to new section 41J of ITEPA relating to the location of duties. Subsection 12 provides that the rules in this new section are subject to the rules on overseas Crown employment in new section 41K of ITEPA and to provisions on just and reasonable apportionment at new section 41L of ITEPA. Subsections (5) and (10) specify how new section 41H will interact with new section 24A ITEPA.

8. New section 41I of ITEPA limits the amount of securities income that is chargeable foreign securities income in various cases where an individual has associated employment (in addition to their relevant employment), which involves UK duties. Subsection (2) provides that the amount of chargeable foreign securities income for the period is limited to the amount that is just and reasonable with reference to the factors specified in this subsection.

9. New section 41J of ITEPA concerns the location of employment duties: UK duties which are incidental to overseas employment, duties on board a vessel or aircraft and employment on the continental shelf.

10. New section 41K of ITEPA provides for the treatment of securities income from overseas Crown employment.

11. New section 41L of ITEPA provides an override where the proportion of securities income that is chargeable or unchargeable foreign securities income, as determined under new section 41H, is not just and reasonable in all the circumstances.

12. Paragraph 7 of the Schedule inserts a new subsection (A1) into section 418 of ITEPA. This requires Part 7 of ITEPA (concerning income from ERS and ERS options) to be read alongside the new Chapter 5B of Part 2 of ITEPA.

13. Paragraph 8 repeals section 421E of ITEPA which sets out the current residence provisions for the taxation of certain ERS.

14. Paragraphs 9 to 11 amend sections 425, 430 and 431 of ITEPA to limit the availability of the elections available under these sections (which allow for the dis-application of certain provisions within Chapter 2 of Part 7 of ITEPA concerning restricted securities). They provide that these elections can only be made where at the time of the acquisition of the securities (or in the case of section 430 at the time of a chargeable event in relation to the securities), the charging provisions of Chapters 4 and 5 of Part 2 of ITEPA apply in relation to earnings from the relevant employment (or in cases where there are no earnings from that employment, would apply if there were any earnings). These charging provisions apply where an employee is UK resident, or performs duties in the UK.

15. Paragraph 12 repeals section 474 of ITEPA which provides the current residence provisions for the taxation of ERS options.

16. Paragraph 13 amends section 540 of ITEPA which ensures that no charge arises under Chapter 3C from the exercise of options under the Enterprise Management Incentives scheme.

17. Paragraphs 14 to 17 amend various sections of ITEPA in consequence of the omission of sections 421E and 474 of ITEPA and the insertion of new Chapter 5B of Part 2 of ITEPA.

18. Paragraphs 18 to 29 amends section 700A of ITEPA and various provisions in the Taxation of Chargeable Gains Act 1992, the Corporation Tax Act 2009 (CTA 2009) and the Income Tax Act 2007 in consequence of changes made in this Schedule.

Part 2: Restricted securities and securities acquired for less than market value: replacement and additional securities and rollover relief etc

19. Part 2 of the Schedule provides rollover relief from income tax for certain cases in which restricted securities held by an employee are exchanged for other restricted securities. It also amends the rules at Chapter 3C of Part 7 of ITEPA concerning notional loans, under which tax may be chargeable in relation to nil-paid or partly-paid ERS.

20. Paragraph 31 amends section 421D of ITEPA concerning replacement and additional securities and changes in interests. Sub-paragraphs (2) and (3) address cases in which the value of ERS has been reduced by the issue of certain additional or replacement securities. The provision sets out that, in such cases, the amount of that reduction should be treated as a payment for the acquisition of these new securities for the purposes of Chapter 3C of Part 7 of ITEPA. Chapter 3C provides tax rules for ERS acquired for less than market value, including nil-paid and partly-paid ERS, and taxes certain amounts in relation to these ERS as notional loans.

21. Paragraph 32 inserts new section 430A of ITEPA, which introduces relief from income tax in certain cases where restricted securities held by an individual (‘old securities’) are exchanged for other restricted securities (‘new securities’). Restricted securities are those which have restrictions which reduce their market value. Subsections (3) and (4) of new section 430A concern circumstances in which old securities are exchanged for new securities as well as other consideration, and provide that the new rollover relief will only be available on that part of the consideration that is new securities. That part of the consideration which is not new securities will give rise to a chargeable event on the disposal of the matching proportion of the old securities. Subsection (5) concerns cases in which the only consideration for the old securities is new securities, and provides that neither the disposal of the old securities nor the acquisition of the new securities will give rise to a tax liability and that Chapter 2 of Part 7 of ITEPA applies to the new securities as it applies to the old securities, subject to subsections (6) to (17).

22. Subsections (6) to (17) of new section 430A set out how the new securities are to be treated under Chapter 2 (concerning the taxation of restricted securities). Subsection (6) provides that sections 425 or 431 of ITEPA do not apply in relation to the new securities. Section 425 provides an income tax exemption on the acquisition of certain restricted securities, and sections 425 and 431 allow elections to be made disregarding that exemption and certain other provisions within Chapter 2. The tax arrangements for the old securities will, in certain respects, be transferred to the new securities. This includes (at subsection (7)) any elections to disapply certain provisions of Chapter 2 made in respect of the old securities under sections 430(1) or 431(1); and (at subsection (8) to (10)) the proportions used to calculate the amount of charge under section 428 of ITEPA, in the case of a subsequent chargeable event in relation to the new securities.

23. Subsections (11) to (14) of new section 430A apply where no tax was chargeable on acquisition of the old securities by virtue of section 425(2) of ITEPA, because the securities were ‘forfeitable’ within 5 years, and a forfeiture restriction still applies to the old securities at the time of the exchange. Broadly, on the occurrence of a chargeable event, income tax will apply in relation to these new securities in the same way as would have been the case for

the old securities. Subsection (12) creates a chargeable event immediately after the acquisition of the new securities where the restriction on them is not a forfeiture restriction. Subsections (13) and (14) provide that where the new securities remain forfeitable more than 5 years after the acquisition of the old securities, the forfeiture restriction is treated as having been removed five years after the acquisition of the old securities, so that a chargeable event occurs at that time. Subsections (15) to (17) ensure that these rules apply in relation to subsequent exchanges of these new securities.

24. Paragraph 33 of the Schedule amends the rules at current section 446U of ITEPA concerning the discharge of notional loans, which apply for nil-paid and partly-paid ERS. Sub-paragraph (2) amends the circumstances in which the release of a liability in respect of the ERS will result in a notional loan being treated as discharged. Sub-paragraph (3) removes certain disposals of these ERS from provisions in section 446U that would otherwise treat the outstanding notional loans as employment income subject to tax at that time. Sub-paragraph (4) provides that the notional loan in relation to these ERS is discharged without giving rise to an amount of employment income where these ERS are disposed of in certain circumstances.

25. Paragraph 34 consequentially amends section 554N of ITEPA.

Part 3: Corporation tax relief for employee share acquisitions

26. Part 3 of the Schedule extends the circumstances in which corporation tax relief is available under Part 12 of CTA 2009 in relation to employee share acquisitions.

27. Paragraphs 36 and 37 modify certain interpretations and definitions used for the purposes of Part 12 of CTA 2009, consequential to changes made in this Part of the Schedule.

28. Paragraphs 38, 39, 41 and 42 introduce new sections 1007A, 1015A, 1015B, 1025A, 1025B, 1030A and 1030B of CTA 2009. These new sections concern cases where shares are acquired, or share options are obtained, where an individual is employed by a company not within the charge to corporation tax, and the individual either: (i) works for (but does not have employment with) a company within the charge to corporation tax (for example during a period of secondment); or (ii) takes up employment with such a company.

29. The new sections 1007A and 1015B of CTA 2009 concern employees of non-UK resident companies who work in the UK for (but do not have employment with) a host company that is within the charge to corporation tax - for example under secondment or similar arrangements. These new sections enable the host company to claim relief under Part 12 of CTA 2009 in relation to an acquisition of shares, subject to certain conditions. They provide (at subsection (2) of both new sections) that an individual is treated as having employment with the host company and (at subsection (4) of both new sections) that the shares or option in question are treated as having been acquired or obtained because of work for this host company. Subsection (3) of both new sections makes the application of subsection (4) dependent upon an amount of employment income being charged to tax under ITEPA in respect of the acquisition of the shares, because of work done for the host company. Subsection (6) of both new sections limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to the acquisition.

30. The effect of these new sections is that, subject to certain conditions, the basic requirements for relief at sections 1007 and 1015 of CTA 2009 (concerning the employment of the individual and the employment in respect of which the shares are acquired or the option is obtained) can be satisfied in relation to overseas secondees or similar workers. Relief up to a specified maximum may therefore be available to the host company on the acquisition of the shares. Subsection (5) of both new sections means that relief may be available in relation to an acquisition of shares in the overseas employer. Subsection (7) of both new sections makes provision for cases in which there is more than one company to whom relief might be available in relation to the same acquisition of shares, and sets out that only one company may be given relief.

31. New section 1015A of CTA 2009 concerns share options obtained because of 'overseas employment' with non-UK resident companies, where the employee takes up 'UK employment' with a company within the charge to corporation tax. It provides at subsection (3) that where certain conditions are met, share options obtained because of the overseas employment are treated as if they were obtained because of the UK employment, for the purposes of the requirement at section 1015(1)(c) CTA 2009 (concerning the employment in respect of which the option is obtained).

32. The effect of new section 1015A is that in certain circumstances relief may be available to a UK employer in relation to shares acquired by exercise of an option obtained because of overseas employment. Subsection (2) makes relief as a result of this new section dependent upon an amount of employment income being charged to tax under ITEPA in relation to the acquisition of the shares, because of the UK employment; or the acquisition of the shares taking place because of the UK employment. Subsection (5) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to the acquisition. Subsection (4) means that relief may be available in relation to an acquisition of shares in the overseas employer. Subsection (6) makes provision for cases in which there is more than one company to whom relief might be available in relation to the same acquisition of shares, and sets out that only one company may be given relief.

33. New section 1025A of CTA 2009 concerns the additional relief available under Chapter 4 of Part 12 CTA 2009 where there is a chargeable event involving restricted shares. It addresses cases in which restricted shares have been acquired because of 'overseas employment' with a non-UK resident company, and the employee either takes up 'UK employment' with a company within the charge to corporation tax, or works for such a company on a secondment or similar basis. Subsection (5) means that additional relief under Chapter 4 is available to a UK company, subject to certain conditions. These conditions include a requirement at subsection (1)(h) that, because of the UK employment or work, an amount of employment income is charged to tax under ITEPA in relation to the chargeable event. Subsection (9) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to this chargeable event. Subsection (8) explains how this new section interacts with other provisions of Part 12 that set out how relief is given. Subsection (10) sets out rules for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event.

34. The new sections 1025B and 1030B of CTA 2009 concern the additional relief available under Chapters 4 and 5 of Part 12 CTA 2009 in relation to chargeable events and

restricted shares or convertible securities. These new sections provide, subject to certain conditions, that this additional relief is available to the host company in the secondment or similar arrangements covered by new sections 1007A and 1015B of CTA 2009. Similarly, this relief may be available in cases covered by new section 1015A, where an employee of an overseas company takes up employment with a UK company. Subsection (2) of new sections 1025B and 1030B mean that a host company is treated as the employing company for the purposes of the relief. Provisions within these new sections limit the relief available to the total amount of employment income charged to tax under ITEPA in relation to the chargeable event. These new sections also include provision for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event, and cases in which an employee has died. By virtue of subsection (3) of new section 1030B (concerning convertible securities), the chargeable event for which relief is available may be the conversion of securities into shares in the overseas employer.

35. New section 1030A of CTA 2009 concerns the additional relief available under Chapter 5 of Part 12 CTA 2009 where there is a chargeable event involving convertible securities. It addresses cases in which convertible securities have been acquired because of ‘overseas employment’ with a non-UK resident company, and the employee either takes up ‘UK employment’ with a company within the charge to corporation tax, or works for such a company on a secondment or similar basis. Subsection (5) means that additional relief under Chapter 5 is available to a UK company, subject to certain conditions. These conditions include a requirement at subsection (1)(h) that, because of the UK employment or work, an amount of employment income is charged to tax under ITEPA in relation to the chargeable event. Subsection (10) limits the relief available to the total amount of employment income charged to tax under ITEPA in relation to this chargeable event. Subsection (7) means that relief may be given in relation to shares in the overseas or UK company. Subsection (9) explains how this new section interacts with other provisions of Part 12 that set out how relief is given. Subsection (11) sets out rules for cases in which there is more than one company to whom relief might be available in relation to the same chargeable event.

36. Paragraph 40 of the Schedule extends the availability of corporation tax relief under Chapter 3 of Part 12 CTA 2009 for shares acquired by exercise of a share option, and concerns shares acquired following a company takeover. It introduces new subsections 1(d) and (1A) to section 1016 CTA 2009, which sets out requirements in relation to the shares acquired. The addition of these subsections means relief will be available in relation to the acquisition of shares that – immediately prior to a company takeover – satisfied the requirements at paragraphs (a) to (c) of Condition 2 at section 1016(1), but no longer do so as a result of this takeover. This is subject to the shares in question being acquired within 90 days of the takeover, as well as an anti-abuse provision.

Part 4: Commencement and transitional provision

37. Part 4 specifies the commencement of those changes in the Schedule which do not take effect from Royal Assent, and provides for The Treasury to make transitional, consequential, supplementary or incidental provision in relation to certain changes made by this Schedule.

BACKGROUND NOTE

38. Income tax is generally due where an employer awards shares or other ERS to employees, and tax may also be due on certain disposals of ERS and on the exercise of share options. The tax rules in this area are designed to ensure that the employment income paid in the form of ERS or options is subject to income tax as appropriate. In certain circumstances, corporation tax relief is available to companies in respect of employee share acquisitions.

39. The OTS published a report and recommendations on unapproved employee share schemes in January 2013. This identified a number of areas in which the current tax rules created undue complexity, and included recommendations for how these might be simplified.

40. The Government consulted on the recommendations being taken forward in this measure during summer 2013. A summary of responses to this consultation was published on 10 December 2013.

41. This measure supports the Government's objective to simplify the tax system. Clauses 19 (Payments by employer on account of tax where deduction not possible) and 42 (Taxable specific income: effect on pension input amount for non-UK schemes) of this Bill also form part of the overall package arising from the OTS recommendations in relation to unapproved employee share schemes.

42. This Finance Bill also includes other simplification changes recommended by the OTS in relation to the Government's four tax advantaged employee share schemes – see clause 48 (Employee share schemes) and Schedule 6.

EXPLANATORY NOTE

CLAUSE 50: VENTURE CAPITAL TRUSTS

SUMMARY

1. This clause and Schedule make several changes to the Venture Capital Trust ('VCT') legislation at Part 6 of the Income Tax Act 2007.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends section 270 of Income Tax Act 2007, which provides that an assessment for withdrawing or reducing VCT relief must be made for the tax year for which the relief was obtained. The amendment inserts a time limit of 6 years after the end of that tax year, within which any such assessment must be made. This overrides the general time limit for making assessments, provided for in section 34 Taxes Management Act 1970.

3. Paragraph 2 introduces a new section 264A which imposes restrictions on the availability of VCT income tax relief in respect of a subscription for shares in a VCT, in certain circumstances. New section 264A takes effect in relation to shares issued on or after 6 April 2014.

4. New sections 264A(1), (2) and (3) reduce the amount subscribed for shares in a VCT on which income tax relief may be claimed, by the amount of consideration the investor has received for a sale of shares which is "linked" to the subscription for shares.

5. New sections 264A(4), (5) and (6) explain what is meant by a "linked" sale of shares in this context. A sale is "linked" if an individual has sold shares in the same VCT as the VCT in which the investor has subscribed for shares, or in a VCT which is treated as a successor or predecessor of that VCT, and either the subscription for shares is in any way conditionally linked with the share sale, or the subscription and sale are within 6 months of each other.

6. New section 264A(7) explains what is meant by a "successor" or a "predecessor" VCT for this purpose. Where there has been a merger of two VCTs and section 323 ITA applies to treat one VCT as succeeding another, then for the purpose of section 264A those VCTs are regarded as "successor" or "predecessor" as appropriate. Where a new holding company has been inserted above an existing VCT and section 327 ITA applies to treat the holding company as fulfilling the VCT requirements, then the new holding company and the original VCT are treated for the purpose of section 264A as "successor" and "predecessor" companies as appropriate.

7. New section 264A(8) provides that the restriction does not apply to subscriptions for shares which are funded by the reinvestment of dividends payable by the VCT to the individual in respect of shares already held in the VCT.

8. Paragraph 3 amends section 281, which lists the circumstances in which HM Revenue and Customs may withdraw approval from a VCT. The amendment applies in respect of shares issued by a VCT on or after 6 April 2014.

9. New subsection 281(1)(f) requires a VCT's approval to be withdrawn if the company makes a payment to any of its shareholders which represents a repayment of the share capital subscribed for. This includes repayment of any share premium. This also includes a situation where a company uses an amount representing share capital or share premium to fund the issue of new shares to its shareholders.

10. The restriction applies only during a defined "restricted period" following an issue of shares. That period is the period of 3 years from the end of the company's accounting period during which the shares were issued.

11. The restriction does not apply to payments made by the company to redeem or repurchase its shares, nor does it apply to payments which are distributions of assets made in the course of the company's winding up.

12. New subsection 281(1A) provides key definitions for the purpose of new section 281(1)(f), including the definition of "restricted period"; "payment" and "reduction of share capital".

13. Paragraph 4 introduces a new section 330A, which provides that an individual will qualify for income tax relief on a subscription in VCT shares if that subscription is made on the individual's behalf by a nominee. The tax treatment of holdings of shares or disposals of shares in a VCT will follow in the same way whether the shares are held or disposed of by an individual, or by a nominee acting on behalf of the individual. Section 330A takes effect from the date the Finance Bill receives Royal Assent.

14. Paragraph 4(2) amends section 284 ITA to ensure that any regulations made as to VCT procedures may apply to nominees as well as to other persons holding VCT shares.

BACKGROUND NOTE

15. The VCT regime exists to provide access to finance for qualifying small and medium trading companies, by offering a range of tax reliefs to individuals who invest in VCTs which in turn invest on into such companies. This measure will ensure that the regime continues to be well-targeted and to provide value for money.

EXPLANATORY NOTE

CLAUSE 51: REMOVING TIME LIMIT ON SEIS RELIEF

SUMMARY

1. This clause removes the expiry date from the Seed Enterprise Investment Scheme (SEIS) and makes it permanent.

DETAILS OF THE CLAUSE

2. Subsection 2 amends Section 257A ITA which provides an end date for the SEIS by limiting relief to shares issued on or after 6 April 2012 but before 6 April 2017. The amendment removes the 6 April 2017 restriction and permanently extends the scheme.

BACKGROUND NOTE

3. SEIS was introduced in 2012. It aims to incentivise the provision of equity capital to small early-stage unquoted companies which are carrying on or preparing to carry on qualifying trading activities. It does so by providing a range of income and capital gains tax reliefs for individual investors who subscribe for shares in companies which meet the requirements of the scheme.

EXPLANATORY NOTE

REMOVING THE TIME LIMIT ON CGT RELIEF IN RESPECT OF RE-INVESTMENT UNDER SEIS

SUMMARY

1. This clause makes permanent the capital gains tax (CGT) relief for re-investing chargeable gains into seed enterprise investment scheme (SEIS) shares.

DETAILS OF THE CLAUSE

2. The clause extends the scope of the CGT SEIS reinvestment relief at paragraph 1 of Schedule 5BB to the Taxation of Chargeable Gains Act 1992 by removing the current limitation to tax year 2013-14, applying the relief to any tax year beyond 2012-13. It applies 'the relevant percentage' that is 50 per cent (rather than 100 per cent) for tax year 2013-14 and subsequent years so that half of the amount of the qualifying reinvested gains is relived from CGT; and makes a consequential amendment to section 150G.

BACKGROUND NOTE

3. SEIS was introduced in 2012. It is designed to help small early-stage companies raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in these companies. It complements Enterprise Investment Scheme (EIS) but, in recognition of the particular difficulties that very early stage companies face in attracting investment, offers tax relief at a higher rate than that offered by EIS.

4. To help stimulate interest and demand in SEIS, a CGT re-investment relief was introduced for one year. Under the relief, where a person disposes of assets that give rise to chargeable gains and re-invests all or part of the amount of the gains in shares that qualify for SEIS income tax relief, the amount re-invested can be set against the chargeable gains. This is subject to a £100,000 investment limit (which matches a similar cap on SEIS relief).

5. In 2013 the relief was extended for a further year but provided that half (rather than the whole) of the qualifying re-invested amount can be set against chargeable gains.

EXPLANATORY NOTE

CLAUSE 53 SCHEDULES 9 & 10: RELIEF FOR INVESTMENTS IN SOCIAL ENTERPRISES

SUMMARY

1. This clause and Schedules introduce a range of income and capital gains tax reliefs to encourage individuals to invest in qualifying social enterprises. Investments may be in shares or by way of certain types of debt, and the reliefs will be available in respect of investments made on or after 6 April 2014.

DETAILS OF THE SCHEDULE 9

Part 1

2. Paragraph 1 inserts new Part 5B into the Income Tax Act 2007 ('ITA'). Part 5B is subdivided into several Chapters.

Chapter 1

3. Chapter 1 contains sections 257J to 257JC which introduce the income tax relief available to individuals who invest in social enterprises.

4. New sections 257J(2) to (3) define "social enterprise" as: community interest company, community benefit society or charity, and provide that this definition may be further extended by Treasury order to include other types of body. Any such order may have retrospective effect. No definitions are provided for community interest company or charity, which are defined in other Acts: Part 2 of the Companies (Audit, Investigation and Community Enterprise Act 2004 in the case of Community Interest Companies and Schedule 6 to Finance Act 2010 in the case of charities. "Community benefit society" is explained further at new section 257B.

5. New section 257JA quantifies the amount of the income tax reduction to which an individual is entitled if a claim to relief is made for a tax year.

6. Subsection 257JA(1) provides that an individual may choose to claim relief in respect of some, but not all, of the investment in relation to which the individual is eligible for relief.

7. Subsections 257JA(2) and (3) are expressed in terms of the individual's entitlement to a reduction in tax liability, as a percentage of the amount invested. Relief is given effect in accordance with Chapter 3 of Part 2 ITA, with the reduction being included at Step 6 of section 23.

8. Subsection (2)(b) provides that there is an upper limit on the amount of an individual's entitlement to relief rather than an upper limit on the amount of investment in respect of which the relief can be claimed.

9. Subsection 257JA(4) provides that an individual may elect to have some or all of the investment treated as though made in the tax year preceding that in which it was made, with relief being given accordingly.

10. Subsection 257JA(5) sets the rate of SI relief at 30%.

11. New section 257JB describes what is meant by a "community benefit society". The Co-operative and Community Benefit Societies Acts are in the process of consolidation so section 257B ensures that that definition applies irrespective of which Act is in force at the relevant time.

12. New section 257JC provides that for the purposes of this Part, charitable trusts are to be treated in the same way as companies which are charities.

Chapter 2

13. Chapter 2 sets out some key terms used in determining eligibility.

14. New section 257K(1) provides that the scheme applies in respect of qualifying investments (as defined in Chapters 3 and 4) made on or after 6 April 2014. It sets a limit of five years on the lifespan on the social investment tax relief scheme, but provides that this lifespan may be extended by Treasury order.

15. New section 257K(2) provides that the investor is not eligible for SI relief if the investor has otherwise obtained relief on the investment via the Enterprise Investment Scheme, Seed Enterprise Investment Scheme or the Community Investment tax relief scheme.

16. New section 257K(3) makes it clear that the conditions for relief apply equally whether individuals make the investment on their own behalf or whether the investment is made or held for them by a nominee.

17. Tax relief is contingent upon the individual making an investment, and the timing of the making of that investment determines the tax year for which relief will be due. New section 257KB explains when the investment is to be considered to be "made".

18. In the case of an investment in shares, new section 257KB(2) explains that the investment is considered to be made when the shares are issued to the investor.

19. In the case of an investment in qualifying debt investments, when the investment is considered to be "made" will depend on the nature of the investment agreement. The legislation is intended to cater both for situations where the amount specified in the agreement is all paid over at the outset, as well as situations where an investor may commit to

lend a sum of money to a social enterprise, but rather than drawing down the whole of that sum at the outset, the social enterprise is able to draw down smaller sums at intervals.

20. New subsection 257KB(3) and (4) deal with the situation where either the investment agreement involves only one advance of money being made to the social enterprise, or where an investment is the first of multiple cash advances to be provided to the social enterprise under the terms of the agreement. It provides that the investment is to be regarded as "made" when the enterprise issues the debenture or debentures to the investor. In the case of an investment agreement which does not involve anything being issued to the investor, then the investment is to be regarded as "made" when the debenture or debentures take effect between the social enterprise and the investor.

21. New subsection 257KB(5) provides that if the investment agreement involves multiple advances of money, then for each second and subsequent advance, the investment is to be regarded as "made" at the time of each cash advance to the social enterprise. If the relevant debenture or debentures are issued, or otherwise take effect, at a date later than the date or dates each cash advance is made, the investment is to be regarded as made on the date of issue or the date the debenture becomes effective.

22. New subsection 257KB(6) explains that the term "debenture" in this context should be interpreted widely as including any instrument which creates or acknowledges indebtedness.

23. New section 257KC explains the terms "shorter applicable period" and "longer applicable period". Many of the eligibility conditions relating to the investor, the investment and the investee enterprises have to be met for a continuous period of time rather than merely at the point of investment, for the tax relief to continue to be available. In the case of some conditions, that continuous period of time runs from the date of investment. In the case of other conditions, it runs from an earlier date – either the date of incorporation or, if later, twelve months before the date of investment. In all cases the continuous period ends with the third anniversary of the investment date. Investors are not required to wait until the end of the relevant applicable period before claiming tax relief (see new section 257PA) but if any of the conditions are breached before the end of the applicable period, relief which has been given may be withdrawn or reduced (see Chapter 7).

Chapter 3

24. Chapter 3, sections 257L to 257LH, sets out eligibility conditions relating to the investor and the investment.

25. New section 257L describes the types of investment which may qualify for relief. Investments may be in shares, or in debt instruments including simple loans. The section ensures that either type of investment must be the lowest-ranking of its type in the event of a winding up and therefore exposed to the greatest degree of risk for investors. In the case of qualifying debt investments, these must as far as possible rank equally in a winding up with those shares which rank lowest .Investments in shares may not carry any right to an amount of dividend which is fixed absolutely; or whose rate is fixed either by reference to the amount invested or by reference to some other factor which is not contingent upon the enterprise's

financial success. Irrespective of the nature of the investment, any right of return must not be greater than a reasonable commercial rate. No definition is provided for "reasonable commercial rate".

26. New section 257LA ensures that income tax relief will only be available where the amount in respect of which relief may be claimed has been paid over in cash to the enterprise when the investment is considered to have been made. This means, for instance, that where an investor has undertaken to provide the enterprise with an amount but the enterprise has not drawn down some or all of the amount committed, then relief will be due only on the drawn down amount.

27. New section 257LB ensures both that the investor has no right to have the investment redeemed, repaid or repurchased during the shorter applicable period; and that the investment is not made with the benefit of any arrangement which might guarantee an exit from the investment.

28. New section 257LC(1) prevents the investment from qualifying if at any time in the shorter applicable period, there exist arrangements aimed at protecting the investor's capital, or otherwise protecting the investor from the risks attached to making the investment. This would include, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the investment artificially.

29. Subsection (2) provides an exception for ordinary commercial matters such as insurance by the enterprise against normal trading risks.

30. New section 257LD denies relief if in the longer applicable period, the investor, or any associate, receives a loan from any person which would not have been made, or would not have been made on the same terms, were it not for the making of the relevant investment. This includes cases where credit is given or a debt due from the investor or associate is assigned. This section mirrors the equivalent Enterprise Investment Scheme provision at section 164 ITA. HMRC has published an interpretation of that provision in Statement of Practice SP6/98 and it is anticipated that that interpretation is likely to apply equally here, providing that the Statement of Practice is still in existence.

31. New section 257LE prevents the investment from qualifying if it is made as part of a scheme or arrangement whose purpose is tax avoidance.

32. New section 257LF prevents individuals from qualifying for relief if they are, or their associates are, employees, partners, remunerated directors or trustees of the enterprise, or of other bodies which have certain relationships with the enterprise. Those restrictions apply throughout the longer applicable period described in section 257KC, and therefore exclude individuals who have had (or whose associates have had) one of the relationships mentioned with the enterprise before the date the investment is made, even if that relationship has ended by the time the investment is made. The term "associate" is defined in new section 257TC as including spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

33. Subsection (3) provides definitions of some terms used in section 257LF. The definition of "related person" includes a person connected with the social enterprise or a linked company. In this context, "connected" is as defined by section 993 ITA, as provided by section 1021 ITA. This subsection also defines "subsidiary" as a 51% subsidiary, which is further explained in section 989 ITA.

34. Subsection (4) explains what is meant by a "remunerated director" in this context. A director is "remunerated" if during the longer applicable period he or a partnership of which he is a member receives, or is entitled to receive, a payment from a "related person" as defined in subsection (3). "Director", for the purpose of Part 5B, takes its meaning from section 452 Corporation Tax Act 2010, modified so that references to companies in that section are to be read as including charities which are trusts. See new section 257TE.

35. Subsection (5) provides that certain types of payment are not taken into account in determining whether the director is "remunerated". These are mostly payments of various types which do not constitute payments for services rendered as a director. However, reasonable payments which are for services rendered as a director may also be ignored, if one of two further conditions is met.

36. The first of these conditions is at subsection (6). This is that the investment was made at a time when the investor met the requirements of section 257LF, 257LG and 257LH , and also had never been involved in carrying on the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary.

37. The second of the conditions is at subsection (7). This is that if the first condition is not met, the investment is made before the third anniversary of the last investment made by the director at a time when the investment met the first condition.

38. Subsection (8) provides that in cases where a director is also an employee of an enterprise, for the purposes of new section 257LF the employee relationship is to be disregarded.

39. New section 257LG prevents individuals from qualifying for relief if they, or their associates, have a certain level of interest in the capital of the enterprise or of a 51% subsidiary of the enterprise. This restriction applies throughout the longer applicable period, and it applies in respect of an interest in a company which is a 51% subsidiary at any time in that period, even if it is not such a subsidiary at the time of investment.

40. Subsection (3) prevents an individual from qualifying if that individual or an associate controls the enterprise or a 51% subsidiary. "Control" for this purpose is defined at new section 257TD and takes the meaning in section 450 and 451 of the Corporation Tax Act 2010, expanded so that references to company in those sections are to be read as including references to charitable trusts. Trustees who alone, or together with another person connected with them, have the power to exercise certain trustee functions, are regarded as controlling an enterprise in this context.

41. Subsection (4) prevents an individual from qualifying for relief if at any time in the longer applicable period, that individual or an associate has directly or indirectly more than 30% of any of the following:

- the issued share capital of an enterprise or its 51% subsidiary (as defined in section 989 ITA);
- the loan capital of the social enterprise or its 51% subsidiary;
- the voting power of an enterprise or its 51% subsidiary.

42. Subsection (5) disapplies subsection (3) and (4) in respect of any shareholdings at a time when the enterprise has issued only subscriber shares, and has not yet started its business or any preparations for its business. This prevents an individual from being disqualified merely by virtue of having taken shares in a company for the purpose of registering that company with Companies' House but where it is intended that there will be other investors in due course.

43. Subsection (6) defines "loan capital" for the purpose of subsection (4) as including any debt incurred by the relevant enterprise for any money borrowed or capital asset acquired by it; for any right to receive income created in favour of it; or for consideration the value of which to the enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt). But loan capital is treated as excluding debts arising on a normal bank overdraft.

44. New section 257LH imposes a requirement that there must be no "reciprocal" arrangement allowing individuals to circumvent the restrictions in sections 257LF and LG by investing in each other's social enterprises. This provision would apply, for example, where A, B and C are each directors of community interest companies A Ltd, B Ltd and C Ltd respectively, and A invests in B Ltd, B in C Ltd and C in A Ltd.

Chapter 4

45. Chapter 4, sections 257MA to 257MV, describe the eligibility conditions relating to the social enterprises.

46. New section 257MA sets a limit on the amount of tax-advantaged investment which an enterprise or its qualifying subsidiary may receive in a rolling three year period. This limit is imposed by the need to comply with the European Commission's regulations on de minimis State aid, which restrict such aid to an amount not exceeding €200,000 in a three year period. The guidelines also require de minimis aid to be transparent (i.e. ascertainable) at the point at which it is given. As it is not possible to determine at the time of investment what tax reliefs may actually be claimed, the limit is therefore calculated by reference to the aggregate of the maximum amount of SI tax relief under Part 5B ITA and the maximum amount of capital gains tax relief under Schedule 8B Taxation of Chargeable Gains Act which an investment would be capable of attracting, rather than by reference to amounts of tax relief ultimately claimed.

47. New section 257MB grants a power for Treasury to amend by order the enterprise size and investment limits, or other matters needed in connection with an application for State aid approval.

48. New section 257MC sets out the limits that apply to the value of an enterprise's gross assets before and after an investment. The limits are £15m immediately before investment and £16m immediately after. The requirement differentiates between a singleton enterprise and one which is the parent of a group. Where the latter is the case, it is the value of the group assets which has to be taken into account.

49. Subsection (3) provides that for this purpose, no account is taken of any assets which consist in rights against another member of the group, or any shares in, or securities of, another such group member.

50. Section 257MC mirrors an equivalent provision in the Enterprise Investment Scheme legislation, at section 186 ITA. HMRC has published a Statement of Practice SP2/06 in relation to that provision, indicating that ordinarily the value of a company's assets will be determined by reference to the values shown on its balance sheets as explained in the Statement. It is anticipated that similar considerations are likely to apply for this new relief, subject to that Statement of Practice still being in existence.

51. New section 257MD provides that when the investment is made, none of the enterprise's shares, stocks, debentures or other securities may be listed on a recognised stock exchange or other designated exchange as defined, and there must be no arrangements in place for that to happen. This restriction applies in respect of all such instruments issued by the enterprise, not only those in respect of which tax relief may be claimed.

52. New section 257ME contains two tests, each of which must be met for the duration of the shorter applicable period. Both tests rely on the definition of "control" to be found at section 257T, which in turn relies on the definition at sections 450 and 451 of the Corporation Tax Act 2010, modified to take account of charitable trusts. Both tests also rely on the definition of "connection" in section 993 ITA, which applies by virtue of section 1021 ITA.

53. The first test, at subsection (1), prevents an enterprise from qualifying if it controls (either on its own or together with any person connected with it) any company which is not a qualifying subsidiary. "Qualifying subsidiary" for this purpose is as defined at section 257MU.

54. The second test, at subsection (2), prevents an enterprise from qualifying if it is either a 51% subsidiary of another company, or is under the control of another company (or another company and any person connected with that company) without being a 51% subsidiary of that company.

55. New section 257MF provides that any subsidiary which the enterprise has during the shorter applicable period, must be a qualifying subsidiary. The definition of "qualifying subsidiary" for this purpose is to be found at section 257MU.

56. New section 257MG requires that if the enterprise has a subsidiary whose business consists wholly or mainly of holding or managing land, or property deriving its value directly or indirectly from land, that subsidiary (termed a 'property managing subsidiary') must be a qualifying 90% subsidiary of the company. The legislation does not define what is meant by

"property deriving its value …indirectly from land", but examples might include the enterprise having shareholdings in a company deriving its value directly or indirectly from land; having any interest in settled property deriving its value directly or indirectly from land; or having any option, consent or embargo affecting the disposition of land. For the definition of 'qualifying 90% subsidiary' see section 257MV.

57. New section 257MH requires that at the time of investment, either the enterprise or the group of which it is a parent, as appropriate, must have fewer than 500 full-time equivalent employees. Part-time employees are to be included on any basis which is "just and reasonable". For the purpose of this section, the term "employee" includes directors, but not employees who are on maternity or paternity leave or students who are on vocational training.

58. New section 257MI provides that neither the enterprise, nor any of its qualifying 90% social subsidiaries, may be a member of a partnership at any time during the shorter applicable period. "Partnership" for this purpose will include a limited liability partnership, by virtue of section 863(2) Income Tax (Trading and Other Income) Act 2005.

59. New section 257MJ describes what is termed the "trading requirement". Despite the title, this is not a requirement that the enterprise must either be trading at time of investment or must trade for any specified period of time. Rather, it is a requirement as to the nature of the activities of the enterprise or of the group of which it is a parent. It must be met throughout the shorter applicable period.

60. Subsection (2) provides that the trading requirement can be met in one or other of three ways, depending on whether the enterprise is a single entity or whether it is the parent of a group. The activities of a single enterprise must not consist to any extent in the carrying on of non-qualifying activities. In this context, activities carried on for "incidental" purposes which would have no significant effect on the company's activities as a whole, are ignored. Subsection (7) defines "non-qualifying activities" for this purpose as excluded activities (see section 257MQ), or activities (other than carried on by a charity) which are carried on otherwise than in the course of a trade. Thus, the carrying on of investment activities would disqualify a single social enterprise.

61. A single enterprise which is a charity is treated for the purpose of this section as fulfilling this condition, although charities will by their nature carry on a range of activities in order to fulfil their charitable purpose.

62. An enterprise which is the parent company of a group will fulfil the condition if the business of the group as a whole does not substantially involve non-qualifying activities.

63. Subsection (3) treats an enterprise as a parent company if it intends that one or more companies will become its qualifying subsidiaries to carry on one or more trades which qualify for the purpose of Part 5B. Once it ceases to have this intention, however, it is no longer to be regarded as a parent company for the purpose of this section.

64. To enable a determination of whether the parent company of a group meets the trading condition as outlined above, subsection (4) provides that it is the business of the whole group taken together which is to be considered.

65. Subsection (5) provides that incidental activities carried on by a subsidiary which otherwise exists wholly to carry on a qualifying trade, are to be ignored.

66. Subsection (6) provides that the following types of activity are ignored altogether:

- holding shares in a qualifying subsidiary,
- making loans to a subsidiary, and making loans to the parent company,
- holding and managing property used by any group company for the purpose of one or more qualifying trades

67. A company which goes into administration or receivership may fail the trading requirement at section 257MJ. New section 257MK provides that that will not be the case because of anything done as a result of the company being in administration or receivership providing that the entry into administration or receivership, and any subsequent actions, are undertaken for genuine commercial purposes and not for reasons of tax avoidance. Section 257TB explains further what is meant by a company going into administration or receivership.

68. New section 257ML provides that the enterprise must be party to the relevant investment for the purpose of raising money for a "funded purpose".

69. Subsection (1) provides that a funded purpose can be either a qualifying trade carried on at the time of investment by the enterprise or a qualifying 90% social subsidiary; or activities preparatory to a qualifying trade which the enterprise intends will be carried on either by the enterprise itself, or by a 90% social subsidiary. If it relates to the preparatory activities, then the relevant trade must begin within two years of the date of the investment.

70. New section 257MM imposes requirements on the enterprise as to how it uses the monies raised by the investment, and as to a minimum period of trading.

71. Subsection (1) provides that the monies raised by the investment must be employed wholly for the funded purpose (see section 257ML) within 28 months of the date of the investment. Insignificant uses of the money for other purposes are ignored, by virtue of subsection (4).

72. Subsection (2) provides that the relevant qualifying trade must have been carried on for a period of at least 4 months by either the investee enterprise, or a 90% social subsidiary. This subsection works in conjunction with section 257PB(3) to ensure that an enterprise is not eligible to submit a compliance statement to HMRC until it has completed at least 4 months of trading activity. Subsection (5) and (6) act to ensure that this requirement will still be regarded as having been met if either the enterprise or a qualifying subsidiary is wound up or dissolved, or put into administration or receivership before the end of the 4 month period,

providing that such events occur for genuine commercial purposes and not for reasons of tax avoidance.

73. Subsection (3) provides that employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of the funded purpose. This restriction should not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90% social subsidiary (see section 257MV) and that subsidiary then goes on to use the money for a funded purpose carried on by it (which will exclude the acquisition of shares or stock in another company).

74. New section 257MN provides that at no time during the shorter applicable period must relevant preparation work or the relevant qualifying trade be carried on by someone other the investee enterprise or one of its 90% social subsidiaries.

75. Subsection (2) provides that this rule does not act to deny relief where an existing trade is carried on by another company and making of the investment is preparatory to the carrying of a qualifying trade by the investee enterprise or one of its 90% social subsidiaries.

76. Subsections (3) to (5) further provide that this rule does not act to deny relief in cases in where the investee enterprise (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for genuine commercial reasons.

77. New section 257MP explains what is meant by “qualifying trade” for the purpose of Part 5B.

78. Subsection (1) says that for a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits. In addition, the trade must not consist wholly or as to a substantial part in the carrying on of ‘excluded activities’ as defined in section 257MQ.

79. Subsection (2) provides that what the company does must come within the ordinary meaning of ‘trade’; that is, it must not count as a trade merely because of the extension of the meaning of that word in section 989 ITA to include ‘any venture in the nature of trade’.

80. New section 257MQ provides a list of activities which are “excluded”. This list is needed to determine whether a trade is a qualifying trade and the extent to which the business of a group includes non-qualifying activities.

81. Some activities are necessarily excluded in order to comply with the European Commission’s regulations on de minimis State aid. These include fishery and aquacultural production activities as listed in Council Regulation (EC) No 104/2000; the primary production of agricultural products as listed at Annex 1 to the Treaty on the Functioning of the European Union (which includes both livestock and crops as well as the production of alcohol from plants and fruit); and road freight haulage.

82. In addition to the exclusions made for State aid purposes, the following are also listed in subsection (1) as excluded: dealing in certain types of assets and commodities; certain financial activities; property development; certain subsidised generation or export of electricity; and the provision of certain services to another enterprise in common ownership where that enterprise's trade is excluded.

83. Subsection (2) provides that lending money to a social enterprise is not "excluded". "Social enterprise" for this purpose bears the same meaning as in section 257J.

84. New section 257MR supplements section 257MQ(1)(c) by explaining what is meant by "property development".

85. Subsection (1) explains that property development for this purpose is defined as the development of land in which the enterprise has, or has had, an interest, with the object of realising a gain from the disposal of the land when developed.

86. Subsection (2) provides that for this purpose, 'interest in land' is defined in the legislation as any estate, interest or right over land including any right affecting the use or disposition of land; or any right to obtain such an estate, interest or right from another person, which is conditional upon the other person's ability to grant it.

87. Subsection (3) makes it clear that references to an interest in land for this purpose do not include mortgage creditors or (in Scotland) the interest of a creditor in a charge or security of any kind over land.

88. New section 257MS supplements section 257MQ(1)(e) to exclude the generation or export of electricity in respect of which any person (whether the enterprise undertaking the generation or export or any other person) receives a feed-in tariff under a UK government scheme to encourage small-scale low-carbon generation of electricity or a financial incentive granted under a similar overseas scheme.

89. New section 257MT supplements section 257MQ(1)(h). Together these sections explain that providing services or facilities for any business comprising a trade, profession or vocation carried on by another person (other than the parent of the company) is an excluded activity, where that other business consists to a substantial extent of any activities listed in section 257MQ as excluded, and a controlling interest in that other business is held by a person who also has a controlling interest in the business carried on by the company.

90. Subsection (2) defines a controlling interest in a business as follows. A person has a controlling interest in a business if, in the case of a business carried on by a company, he controls the company, or the company is a close company and he (or an associate of his) is both a director of it and the beneficial owner of, or able directly or through the medium of other companies (or by any other indirect means) to control, more than 30% of its ordinary share capital, or he owns at least one-half of the business by reference to the tests of ownership set out in sections 941 and 942 CTA 2010.

91. Subsection (3) provides that in the case of a business carried on other than by a company, a person is regarded as having a controlling interest in that business if he is entitled to not less than half of the assets used for, or the income arising from, the business.

92. Subsection (4) provides that for these purposes, the rights or powers of any person's associate count as that person's rights and powers.

93. New section 257MU explains what is meant by a "qualifying subsidiary" of an enterprise for the purpose of the sections of Part 5B which use that term.

94. Subsection (1) provides that a company is a qualifying subsidiary if it is a 51% subsidiary of the investee company. The meaning of 51% subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50% of the ordinary share capital. In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary, and there must be no arrangements by virtue of which these requirements could cease to be met. 'Control' for this purpose has the meaning given at section 257TD.

95. Subsections (2) and (3) provide that these conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.

96. New section 257MV explains what is meant by a "90% social subsidiary" of an enterprise.

97. Subsection (1) provides that, for a subsidiary to be a 90% social subsidiary, the following must apply:

- The subsidiary must be a social enterprise
- The parent enterprise must own at least 90% of the subsidiary's issued share capital and voting rights.
- The parent enterprise must be beneficially entitled to at least 90% of the assets available for distribution to equity holders of the subsidiary
- The parent enterprise must be beneficially entitled to at least 90% of any profits of the subsidiary which would be available for distribution to equity holders. "Equity holder" is to be given the same meaning as in Chapter 6 of Part 5 of CTA 2010, as explained at subsection (8) and (9).
- In addition, no person other than the parent enterprise must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions would cease to be met.

98. Subsections (2) to (4) provide that a company is still to be treated as a 90% social subsidiary if it is held indirectly via a company which is a qualifying 100% subsidiary of the relevant company, (based on similar considerations to those above).

99. Subsections (5) and (6) provide that the winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.

100. Subsection (7) provides that arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

Chapter 5

101. Chapter 5, section 257N, deals with attribution of relief to investments.

102. New section 257N sets out how SI relief is to be attributed to investments where only one investment is made, or where several investments are made in the same tax year. This becomes significant if the investor later disposes of some but not all of the investment:,

- for the purpose of determining what relief is to be withdrawn if the disposal takes place within the qualifying period for the investment;
- for the purpose of determining whether the disposal takes place after the end of the qualifying period relevant to that particular investment, and is therefore exempt from capital gains tax by virtue of section 255B TCGA

Chapter 6

103. Chapter 6, sections 257P to 257PD, explains the procedures for making claims.

104. New section 257P explains the time limits for making a claim to SI relief.

105. Subsection (1) says that the claim may not be made earlier than the end of the period of 4 months referred to in section 257MM(2), and not later than the fifth anniversary of the filing date for the tax year in which the investment was made. Note: this overrides the normal claim period provided for in section 43 Taxes Management Act 1970. This is to take account of the fact that the individual's eligibility to claim depends on the enterprise having met certain conditions which may take some time to fulfil.

106. Subsection (2) provides that if the individual has made an election under section 257JA(4) to have some or all of the investment treated as though made in an earlier tax year, then subsection (1) above applies separately to that part of the investment as though it had been made in the earlier tax year.

107. New section 257PA deals with an individual's entitlement to claim SI relief in respect of an investment in a social enterprise.

108. Subsection (1) provides that in order for an individual to be eligible to claim SI relief, the enterprise must provide the individual with a compliance certificate which can be provided to HMRC in support of a claim.

109. Subsections (2) and (3) provide that a claim to SI relief must have been made in order for the individual's PAYE coding to be amended to take account of the SI relief, or for the individual to make any application for tax to be postponed pending the outcome of an appeal made on the grounds that SI relief will be available.

110. New section 257PB provides more detail about the compliance statement referred to in section 257PC(2).

111. Subsection (1) provides that it is a statement to the effect that, in respect of an investment, the conditions for the relief to apply have so far been met (other than those which have to be met by the individual), and the enterprise's intention is that they will continue to be met for the duration of the relevant applicable period. It is therefore not possible for an enterprise to obtain authority to issue certificates under section 257PC once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible.

112. Subsection (2) gives HMRC the power to prescribe the form and content of the compliance statement. The statement must include a declaration to the effect that the statement is correct to the best of the enterprise's knowledge and belief, as well as any other declarations which HMRC may require. It is anticipated that a declaration as to the quantum of de minimis State aid received by the enterprise (see section 257MA) will be required under this section.

113. Subsection (3) provides that an enterprise cannot submit a statement more than two years after the end of the year of assessment in which the investment was made, or more than two years after the end of the period of four months referred to in section 257MM(2).

114. New section 257PC explains in more detail the requirements for an individual to obtain the compliance certificate referred to in section 257PA(1).

115. Subsection (1) explains that a compliance certificate is a certificate issued by the investee enterprise to the individual. It must state that the requirements for SI relief have so far been met (other than those which have to be met by the individual), and it must be in a form prescribed by HMRC.

116. Subsection (2) and (3) provide that the enterprise may not issue a compliance certificate to an individual until it has provided HMRC with a compliance statement (see section 257PB), and before it has had authority to do so from HMRC.

117. Subsection (5) and (6) provides that HMRC must give a decision in respect of any application to it for authority to issue a compliance certificate, and that a refusal to give such

authority is a matter against which the enterprise has the right of appeal as provided for in the Taxes Management Act 1970.

118. New section 257PE grants a power for the Treasury to amend by order the procedures relating to claims.

Chapter 7

119. Chapter 7, sections 257Q to 257RC describes the circumstances in which relief will be withdrawn or reduced.

120. New section 257Q provides for SI relief to be reduced or withdrawn if the investor receives value from the enterprise during the longer applicable period. See also section 257QG which extends the effect of this provision. Whether the relief will fall to be reduced or withdrawn completely depends on the amount of the value received in relation to the amount of relief given, as determined by the formula in subsection (2).

121. Subsection (3) lists provisions which supplement section 257Q.

122. Subsection (6) provides that for the purpose of the value received provisions, a spouse or civil partner who has acquired any part of an investment in the course of a transaction to which section 257T applies is to be treated as the investor.

123. New section 257QA provides that where the amount of the value received is ‘insignificant’ it is ignored. An amount is insignificant for this purpose if it does not exceed £1000, or if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question. ‘Insignificant’ is not defined for this purpose.

124. To ensure that this relaxation is not used for tax avoidance purposes, subsection (3) provides that the amount of any value is not to be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the investment. Subsection (6) extends this to include receipts by an associate of the investor, or provision of value by any person connected with the social enterprise. “Arrangements” is as defined in section 257TE.

125. Subsections (4) and (5) provide that where there is more than one receipt which, on its own, would be regarded as insignificant, the rule must be applied to the total amount received within the longer applicable period.

126. New section 257QB modifies the calculation given at subsections 257Q(1) and (2) for cases where there has been more than one issue of investment attracting SI relief.

127. New section 257QC modifies the calculation given at subsections 257Q(1) and (2) for cases where part of the investment is treated as though made in the tax year preceding that in which it was made (see section 257JA(4)).

128. New section 257QD modifies the calculation given at subsections 257Q(1) and (2) for cases where the investor has not been able to obtain the maximum amount of SI relief available in respect of the investment. This would be the case where the maximum amount of relief available exceeded the investor's liability to income tax for the tax year in question.

129. New section 257QE explains when value is considered to have been received by an investor, for the purposes of sections 257Q and 257QB.

130. Subsections (2) to (6) list a wide range of types of payments, benefits and transactions which will give rise to a withdrawal or reduction of SI relief by virtue of the value received provisions. These will include any repayment or part repayment of the investment in respect of which SI relief has been obtained.

131. Subsection (7) provides that if SI relief is withdrawn because the investor has disposed of the investment within the relevant applicable period, the disposal proceeds are not treated as a receipt of value for the purposes of this section.

132. Subsection (8) provides that if the investor is a director of the enterprise, a payment of reasonable remuneration or the provision of a benefit for services provided in the capacity of director or employee, is not to be treated as value received for the purposes of this section.

133. New section 257QF contains a table setting out how the amount of any value received is to be calculated, depending on the nature of the value received.

134. New section 257QG supplements those sections dealing with receipt of value. It provides that those sections apply equally in cases where the value has been provided indirectly as well as directly to the individual; or where the value has been provided to the individual's associate; or where the value has been provided by a person connected with the social enterprise at any time during the longer applicable period.

135. New section 257QH provides that an individual can avoid the consequences of receiving value by returning the whole of the value to the person that gave it. The value may be returned in a number of ways, depending on the circumstances in which value was received. These may include a cash payment, the reversal of the waiver or discharge of a liability, or the transfer in reverse of an asset at under or over value corresponding to that in the original transaction giving rise to the receipt of value.

136. Subsection (5) lists a number of types of cash payment which are not to be treated as providing replacement value for the purpose of section 257QH. These consist broadly of payments at normal arm's length rates for goods or services received, for assets transferred, or representing interest on money lent..

137. New section 257QI supplements section 257QH.

138. Subsection (1) provides that replacement value cannot be used to offset the receipt of value to the extent that it has already previously been used to do so.

139. Subsection (2) deals with the time within which the replacement value must be given in order for the individual to be able to avoid the consequences of receiving value. The replacement value must be given without unreasonable delay. If the amount of the value received was the subject of appeal proceedings it must be given within 60 days after the final determination of the appeal. A payment made before the value was received may be taken into account as replacement value, provided it was not made before the beginning of the longer applicable period referred to in section 257KC.

140. New section 257QJ acts to ensure that tax relief is not available to the extent that an amount equivalent to any part of an individual's investment is used by the enterprise or by one of its subsidiaries to repay, redeem or repurchase any of that entity's share capital. The restriction applies in respect of any such repayment, redemption or repurchase within the longer applicable period referred to in section 257KC. The aim is to prevent tax advantaged funds from being used to provide an exit for earlier shareholders, rather than being used for the activities of the enterprise.

141. New section 257QK provides that a repayment of share capital falling within section 257QJ is ignored if both it and the market value of the share capital repaid are insignificant compared with the market value of the remaining issued share capital of the company. Note that, unlike section 257QA, this provision does not provide for a specified amount to be treated as insignificant.

142. To ensure that this relaxation is not subject to abuse, subsection (3) provides that the amount of any value shall not be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the share issue.

143. New sections 257QL to 257QO supplement section 257QJ by explaining how the tax reduction is to be calculated where there is more than one issue of shares; where more than one individual is involved; where a single issue of shares has been treated partly as made in the previous tax year by virtue of a claim under section 257JA(4); or where the maximum amount of relief was not obtained for the share issue.

144. New section 257QP provides an exception from section 257QJ, to take account of the fact that it is not uncommon for a company to be established via the issue of redeemable shares, which are then redeemed when the company is acquired by its intended permanent owners. No reduction is to be made where share capital has been issued of a nominal value equal to the authorised minimum required by the Companies Act 2006 for a public company to do business, the Registrar of Companies having issued the company with a certificate under that Section, and any of it is redeemed within 12 months of the date of its issue.

145. New section 257QQ acts to ensure that the legislation serves to encourage genuinely new investment in social enterprises by denying relief to anyone who directly or indirectly owned the trade before it came to be owned by the company.

146. The restriction has effect if at any time within the longer applicable period mentioned in section 257KC, either the individual or any group of persons to which he or she belongs either: has more than a half share interest in the trade or part of the trade as carried on by the social enterprise or its qualifying subsidiary, or controls the social enterprise. In the first

case, the provision will apply if the individual or group also had such an interest in the trade, or a part of the trade, at some previous time in the same period when it was carried on by some person other than the social enterprise. In the second case, the restriction will apply if the individual or group, at some previous time in the same period, controlled another company which was then carrying on the trade or part of the trade. The persons to whom a trade belongs, or the extent of their interests in it, are to be determined in accordance with section 941 CTA 2010.

147. New section 257QR similarly acts to ensure that relief goes only in respect of genuine new investment, by denying relief to anyone who alone or together with others, controlled a company which then carried on the trade and that company has come to be owned by the social enterprise in which the individual has now invested. For this purpose, section 257TF provides that 'control' has the meaning given in section 450 CTA 2010.

148. New section 257QS provides for relief obtained by an investor to be withdrawn if it is subsequently found by HMRC not to be due. Where the reason for this is because the social enterprise does not meet, or has ceased to meet, any of the conditions specified in Chapter 4 of Part 5B, HMRC must give notice to the social enterprise before relief can be withdrawn. The purpose of this procedure is to allow the party to any appeal proceedings to be the social enterprise itself in cases where most of the relevant evidence lies within its own power, and to simplify the withdrawal process in cases where there is a large number of investors. See new section 257SA for further information about appeals, and new section 257SB for information about time limits.

149. New section 257R explains that if the investment is wholly or partly disposed of during the shorter applicable period other than to a spouse or civil partner – see section 257T, then relief is to be reduced or withdrawn.

150. Subsection (2) and (3) treat the disposal differently depending on whether it has been made by way of an arms' length bargain or not. Where the disposal is other than at arms' length, the relief is withdrawn entirely. Where it is an arms' length bargain, relief is reduced (including withdrawn completely) by the application of the formula at subsection (4).

151. New section 257RA supplements section 257R by explaining how the reduction or withdrawal of relief is to be calculated in cases where the investor did not receive the maximum amount of relief for the investment.

152. New section 257RB provides that if the investor grants a call option over any part of the investment, that part is treated as though it had been disposed of with the result that the provisions of section 257R will apply. A call option is defined by the legislation as an option granted by the investor which, if exercised, would bind the investor to sell the whole or part of the investment.

153. New section 257RC has a similar effect where at any time in the longer applicable period referred to in section 257KC, a person grants a put option to the investor. A put option is defined as an option granted to the investor by any person which, if exercised, would bind the grantor to purchase any of the investment.

Chapter 8

154. Chapter 8, sections 257S to 257SJ, explains the procedures for withdrawing or reducing SI relief, and deals with various information obligations and powers.

155. New section 257S provides that where any SI relief is to be reduced or withdrawn, that must be done by HMRC making an assessment to recover the relief.

156. New section 257SA provides that where HMRC has given a notice under section 257QS(3), this is to be treated as a decision disallowing a claim by the social enterprise. This has the effect of allowing the social enterprise to appeal against the decision, and for the appeal then to be dealt with in accordance to the legislation dealing with appeals in Taxes Management Act 1970.

157. New section 257SB explains the time limits within which HMRC may make an assessment to recover relief, or issue a notice under section 257QS(3).

158. New section 257SC explains the circumstances in which assessments are not to be made to recover tax relief once it has been given. The first of these is when the investor has died. The second is when all the investments have been disposed of before the end of the qualifying period, and relief has been partially recovered under section 257R(3). Any balance of relief remaining will be recovered only if the investor subsequently fails the requirements at sections 257LF, 257LG or 257LH.

159. Where SI relief falls to be withdrawn, new section 257SD prescribes the relevant date from which interest starts to run. This date will always precede the date when the SA return is amended or the assessment withdrawing relief is made. Normally the relevant date from which interest starts to run will be 31 January next following the tax year in respect of which the assessment is made.

160. New section 257SE places an obligation on an investor to notify HMRC of certain events relating to the investor which would result in relief falling to be withdrawn or reduced. Events listed include: where there is a loan linked to the investment (section 257LD); where the investor ceases to be a qualifying investor by virtue of being an employee, partner or director (section 257LF) or of having more than a 30% interest in the enterprise (section 257LG); where there is a reciprocal arrangement of the type prohibited by section 257LH; where the shares are disposed of (section 257R); where there are put or call options (section 257RB and 257RC); or where the investor or an associate has received value (section 257Q). The investor must make the notification within 60 days of becoming aware of it.

161. New section 257SF similarly places an obligation on a social enterprise to notify HMRC within 60 days of becoming aware of an event relating to the enterprise which would result in relief falling to be withdrawn or reduced. Events which would trigger this obligation include the enterprise ceasing to be a qualifying enterprise by reference to the requirements included in Chapter 4 of Part 5B; providing value to the investor within section 257Q; repaying share capital to other investors within section 257QJ; or where a trade or company previously owned by an individual or group of individuals come to be owned by the social enterprise, within section 257QQ or 257QR.

162. Where HMRC has reason to believe that a notification should have been made under either section 257SE or 257SF, but no such notification has been made, new section 257SG gives HMRC a power to require a person to provide the information that HMRC believes is reasonably required. HMRC has to give the person at least 60 days in which to provide the information.

163. Where HMRC has reason to believe that certain prohibited arrangements exist, new section 257SH gives HMRC power to require a person to provide the information which it may reasonably require. Again, HMRC must give the person at least 60 days in which to provide the information. In the case of this section, the persons which HMRC may require to provide information will vary as specified, depending on which type of prohibited arrangement exists.

164. New section 257SI provides for some circumstances in which HM Revenue and Customs may disclose information to other parties, in relation to SI relief.

165. Subsection 257SI(1) permits HM Revenue and Customs to disclose to a social enterprise that SI relief has been obtained or claimed, in respect of a particular number or proportion of any investments in it. A social enterprise may require this information, for instance, in the context of a later calculation for de minimis State aid purposes (see section 257MA above).

166. Subsection 257SI(2) permits HM Revenue and Customs to disclose information to the Regulator of Community Interest Companies for the purposes of the Regulator's functions. Similar legal information gateways already exist between HM Revenue and Customs and the Financial Conduct Authority (the body responsible for the accreditation of Community Benefit Societies); and the Charities Commission.

167. Subsection 257SI(3) prohibits onward disclosure of information obtained under subsection 257SI(2), unless HM Revenue and Customs has either consented to that onward disclosure for the purposes of the Regulator's functions, or the disclosure is required by an enactment.

Chapter 9

168. Chapter 9, sections 257T to 257TE contain miscellaneous and supplementary provisions, including definitions of key terms used in Part 5B.

169. New section 257T ensures continuity of tax treatment where shares are transferred between spouses or civil partners in the circumstances specified. No relief is withdrawn where one spouse or civil partner disposes of shares to which relief is attributable to the other. Following such a disposal, for the purposes of any subsequent disposal or other event, the shares are treated as if they had always been owned by the spouse or civil partner to whom they have been transferred.

170. An individual who owns investments to which relief is attributable (see section 257N) may also possess other investments in the same company of the same class. Also, investments to which relief is attributable may have been acquired at various times and at various prices.

Consequently, new section 257TA explains how to identify which investments have been disposed of, where only part of an individual's holding is disposed of.

171. New section 257TB explains what is meant by a company being in administration or receivership, by reference to the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and any corresponding legislation in a country or territory outside of the United Kingdom.

172. New section 257TC explains what is meant by an "associate" of a person in the context of Part 5B. It includes spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

173. New section 257TD explains the term "control" as used in Part 5B.

174. Subsection (1) provides that "control" should be defined in accordance with section s450 and 451 Corporation Tax Act 2010, but with the modification that "company" in those sections should be read as though including a charitable trust.

175. Subsection (2) explains that if the trustees of a charitable trust (acting in their capacity as trustees) either individually or together control another person as defined by sections 450 and 451 CTA 2010, then the charitable trust of which they are trustees is to be regarded as controlling the other person for the purpose of Part 5B.

176. Subsection (3) describes the circumstances in which a person is to be regarded as controlling a charity which is a trust, whether or not a trustee. A trustee who, alone or together with other trustees who are connected with him, can exercise some or all of the powers of the trustees, is to be regarded as controlling the charity. A person who is not a trustee but who either alone or with others has the power to appoint or remove trustees, or to approve or direct the trustees' functions, is to be regarded as controlling the charity.

177. Subsection (4) explains that subsection (3) should be read as expanding upon subsection (1), rather than limiting it.

178. Subsection (5) provides that for the purposes of Part 5B, a regulator is to be treated as not having control of any company merely by virtue of the fact that that company is regulated by that regulator.

179. Subsection (6) disapplies the definition of "control" at section 995 for the purposes of Part 5B. That definition would otherwise apply by virtue of section 1021. Note: this is a departure from the Enterprise Investment Scheme legislation at Part 5 ITA which has been used as a broad model. The EIS legislation uses both the section 995 definition, and that at sections 450 and 451 CTA 2010, at different places.

180. New section 257TE provides minor definitions for various terms used in Part 5B, including what is meant by the term "market value" in relation to an asset.

Part 2

181. Part 2 contains various consequential amendments to the Income Tax Act 2007.

DETAILS OF THE SCHEDULE 10

182. Paragraphs 1 and 2 insert new sections 255A to 255E into the Taxation of Chargeable Gains Act 1992 ('TCGA'). Section 255A directs the reader to new Schedule 8B TCGA where the details of the capital gains tax relief are found.

183. New section 255B provides for special treatment of capital gains and losses which accrue on disposals of assets to which SI relief is attributable.

184. Subsection (1) applies where there would be a loss on a disposal of an asset to which SI relief is attributable. The consideration given for the asset is treated as reduced by the amount of SI relief, so the loss is reduced or eliminated, or becomes a gain.

185. Subsection (2) provides that where an asset to which SI relief is attributable is disposed of three years or more after acquisition, any gain which accrues on the disposal is not a chargeable gain for TCGA purposes. This rule is subject to the effect of section 255C.

186. Subsection (3) disapplies the rule in TCGA which means that a loss is not an allowable loss if, in similar circumstances, a gain would not be a chargeable gain. So although a gain on an asset to which SI relief is attributable is not a chargeable gain, a loss may still be an allowable loss for capital gains tax purposes.

187. Subsection (4) applies the asset identification rules contained in the SI relief provisions for the purposes of deciding which assets have been disposed of from within a holding of social investments, and whether relief is attributable to the assets disposed of.

188. Subsection (5) gives priority to the identification rules in subsection (4) over the normal rules in TCGA.

189. Subsection (6) disapplies the normal asset 'pooling' and identification rules in the TCGA from assets to which SI relief is attributable.

190. Subsection (7) allows HMRC to adjust the capital gains tax due or repayable as necessary when SI relief has been allowed or withdrawn.

191. Subsection (8) defines 'SI relief' as the income tax relief for investments in social enterprises.

192. Subsection (9) states that Part 5B of the Income Tax Act 2007 (income tax relief for investments in social enterprises) applies to determine whether SI relief is attributable to any asset, and the amount of relief so attributable.

193. New section 255C modifies the tax exemption conferred by section 255B(2) in some circumstances. Where the maximum possible SI relief has not been given in respect of the investment in the assets disposed of (other than because the claimant did not have sufficient

income tax payable to absorb the maximum relief), the total gain is apportioned and only an amount attributable to the assets on which SI relief was given is exempt from capital gains tax.

194. New section 255D modifies the tax exemption conferred by section 255B(2) where the SI relief originally given has been reduced eg because the investor has received value from the social enterprise or because the investment has been repaid, redeemed or repurchased.

195. Subsection (2) applies where the SI relief has been reduced but the maximum available relief was originally allowed. In these cases, the exemption only applies to a fraction of the total gain corresponding to the fraction of the original relief which has not been withdrawn by reduction.

196. Subsection (3) applies where the SI relief has been reduced and the relief originally given was less than the maximum available, that is to say where section 255C applies. In these cases, the restriction at subsection (2) applies to the reduced gain determined under section 255C.

197. Subsection (4) requires that the reduction in SI relief used in subsection (2) is the total of all reductions which have applied to SI relief in respect of the assets disposed of.

198. Subsection (5) requires that, when apportioning the total gain under subsection (2), the original SI relief is the relief allowed before any reductions.

199. Section 255E contains special rules which apply when shares to which SI relief is attributable are involved in transactions such as reorganisations of the issuer's share capital, share-for-share takeovers and company reconstructions.

200. Subsections (1) and (2) mean that where a person has a holding of shares the normal TCGA rules which apply eg on a reorganisation of share capital will apply to shares in that holding which have:

- both SI relief and hold-over relief under Schedule 8B attributed to them
- have SI relief but not hold-over relief attributed to them
- have neither relief attributed to them as if those shares were in separate holdings.

201. Subsection (4) is a rule which applies when shares which are involved in a rights issue by the company which issued the shares. If after the rights issue SI relief is attributable either to the existing shares or to the new shares allotted then the normal TCGA treatment of the existing holding and the new shares will not apply: they will not be treated as the same asset, but rather actual disposals and acquisitions will be recognised for tax purposes.

202. Subsection (5) means that, except in the circumstances described by subsection (6), the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will not apply when SI relief is attributable to those shares. The

new holding and the original shares they correspond to will not be treated as the same asset, but rather the actual disposals and acquisitions will be recognised for tax purposes.

203. Subsection (6) specifies the circumstances in which, exceptionally, the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will apply, notwithstanding subsection (5). Broadly,

- the company which issues new shares must have previously issued shares which met the conditions for SI relief to be attributable to them
- that company must have issued compliance certificates to subscribers for those shares
- the takeover or reconstruction must occur more than three years after the investor acquired the original shares, and
- the shares which represent the original shares after the transaction must be new shares which meet the conditions for SI relief to be attributable to them.

204. Paragraph 3 of Schedule 2 inserts new Schedule 8B into the TCGA. Paragraph 1(1) of Schedule 8B applies the Schedule if an individual (the investor) has a chargeable gain and acquires specific assets known as 'the social holding', providing the investor is eligible for SI relief on the consideration paid for those assets. Five further conditions (A, B, C, D and E) must also be met. Where the Schedule applies, the individual may claim for the gain to be reduced as provided for in paragraph (4).

205. Paragraph 1(2) of Schedule 8B sets out the first of the five further conditions: condition A. This is that the gain must either accrue either

- on the disposal of an asset, or
- under the entrepreneurs' relief provisions in section 169N TCGA, or
- when a chargeable event occurs in relation to an asset which is, or forms part of, a social holding (see new paragraph (6)(1), paragraph 209 below).

But if entrepreneurs' relief is claimed then only so much of the gain which exceeds the 'lifetime limit' for that relief is eligible for hold-over relief.

206. Paragraph 1(3) of Schedule 8B sets out the second of the five further conditions: condition B. This is that the gain must accrue on or after 6 April 2014 and before 6 April 2019. The Treasury may substitute a later date for the end of this period by means of a Treasury order (paragraph (1)(7)).

207. Paragraph 1(4) of Schedule 8B sets out the third of the five further conditions: condition C. This is that the investor must be resident in the United Kingdom both when the gain accrues and when the social holding is acquired.

208. Paragraph 1(5) of Schedule 8B sets out the fourth of the five further conditions: condition D. This is that the investor must be acting on his or her own behalf and not in any other capacity in making the investment. For instance, condition D will not be met if the individual makes the investment as a partner for the purposes of the Partnership Act 1890 or the Limited Partnership Act 1907, as a member of a Limited Liability Partnership, as a trustee or as a personal representative of a deceased person.

209. Paragraph 1(6) of Schedule 8B sets out the last of the five further conditions: condition E. This is that the investment must be made either in the three years beginning on the day the gain accrues or in the year ending at the beginning of that day.

210. Paragraph 1(7) of Schedule 8B ensures that entrepreneurs' relief and hold-over relief may not both be claimed in respect of the same gain.

211. Paragraph 2 of Schedule 8B specifies a second, alternative set of conditions, under which the Schedule applies. The effect is that a claim may be made for a chargeable gain which has been deferred, and is attributed to an asset within a social holding, to be further deferred if the asset is replaced by a second social holding issued by the same enterprise, even if no cash is given for the second holding. Without this paragraph the investor could not further defer the gain because he would not be eligible for SI relief on the amount invested in the second holding - section 257LA ITA 2007 and paragraph 1(1)(c) of Schedule 8B TCGA.

212. Paragraph 2(1) of Schedule 8B sets down the circumstances in which this continuing deferral is allowed. They are that

- the social enterprise which issued the first asset must reacquire it from the investor, or must cancel, redeem, extinguish or repay it, so that the deferred gain accrues

- the investor must receive from the social enterprise assets in respect of which he would be eligible for SI relief but for the 'cash investment rule' at section 257LA ITA 2007

- the investor gives nothing for his new assets other than the first asset, or suffers no loss other than the value of the first asset. This subparagraph also applies four conditions which correspond to conditions B - E in paragraph 1 (see above).

213. Paragraph 2(2) to 2(5) of Schedule 8B specify the four conditions F, G, H and J which must be met for the Schedule to apply by virtue of paragraph 2. These correspond to conditions B, C, D and E in paragraph 1 (see paragraphs 194 - 197 of this Note).

214. Paragraph 3 of Schedule 8B defines certain terms used in the Schedule.

215. Paragraph 4(1) and 4(2) of Schedule 8B permit the investor to make a claim for the original chargeable gain to be reduced. Where paragraph 1 applies, the gain may be reduced by an amount specified in the claim, up to a sum equal to the amount invested in the social holding, but not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4)). Where paragraph 2 applies, the gain is

reduced by the amount specified in the claim, regardless of the amount 'invested' in the second social holding, but again not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4))

216. Where paragraph 1 applies, paragraph 4(3) of Schedule 8B prevents the amount invested or any part of it being used more than once to generate relief under any of the provisions listed at paragraph 4(4).

217. Paragraph 4(4) of Schedule 8B lists the provisions mentioned in paragraph 4(3). These are the hold-over relief under this Schedule 8B, enterprise investment scheme (EIS) deferral relief under Schedule 5B TCGA and seed enterprise investment scheme (SEIS) deferral relief under Schedule 5BB TCGA.

218. Paragraph 4(5) of Schedule 8B imposes an upper limit of £1 million on the gains which may be relieved under this Schedule by an individual in any tax year. This is not the same as the limit which applies to the total amount which a single enterprise may receive under EU State aid rules (see paragraph 40 of this Note).

219. Paragraph 4(6) of Schedule 8B explains that when a gain is reduced in this way, the relief represented by the amount of the reduction is 'attributable to' the asset or assets which form the social holding. It also provides that when the person holding an asset dies, or a chargeable event occurs in relation to that asset, the relief ceases to be attributable to it. Paragraph (6)(1) explains what is meant by a 'chargeable event'.

220. Paragraph 5 of Schedule 8B provides for a gain equal to all or part of the reduction made under paragraph 4(1) to accrue and be taxable when a chargeable event occurs in relation to the social holding. If the chargeable event relates only to part of the social holding then a corresponding part of the gain accrues. The total gains which can accrue in relation to a social holding cannot exceed the total amount of the reduction.

221. Paragraph 6(1) of Schedule 8B lists the chargeable events which cause a relieved gain to accrue when they occur. These are:

- the investor disposing of an asset forming all or part of his social holding (but this does not include disposals to their spouse or civil partner)
- the disposal of an asset forming all or part of a social holding by a person who acquired it from their spouse or civil partner (but this does not include disposals back to the investor)
- an asset forming all or part of the holding being cancelled, extinguished, redeemed or repaid
- any of the conditions for eligibility to SI relief in Chapters 3 and 4 of Part 5B of the Income Tax Act 2007 failing to be met

222. Paragraph 6(2) of Schedule 8B means that the death of the investor, or of a person who acquired the social holding or any part of it from the investor as their spouse or civil partner, will not cause a deferred gain to accrue in relation to the assets in the social holding.

Furthermore, nothing which happens at or after the time of death will be a chargeable event, so deferred gains will not accrue.

223. Paragraph 6(3) of Schedule 8B gives rules for identifying assets disposed of out of a holding of fungible assets (such as shares) some of which have one or more reliefs attributable to them. These rules are necessary because in many cases the TCGA 'pools' holdings of assets of the same class and treats them collectively as a single asset. Where some of those assets have relief attributable to them, and their disposal would have particular tax consequences, special rules are needed to identify which assets are disposed of from out of a 'pool'. Under paragraph 4(3)(a) the assets disposed of are identified with assets of the same class on a 'first-in, first-out' basis, taking the acquisitions on a daily basis. Assets acquired on the same day are treated as being disposed of in the following order:

- firstly, assets to which neither hold-over relief under this Schedule 8B nor SI relief under Part 5B of the Income Tax Act 2007 is attributable;
- secondly, assets to which hold-over relief but not SI relief is attributable;
- thirdly, assets to which SI relief but not hold-over relief is attributable
- finally, assets to which both hold-over relief and SI relief are attributable.

Paragraph 6(4) explains what is meant by relief being attributable to an asset

224. Paragraph 6(4) of Schedule 8B ensures that when an asset to which hold-over relief under this Schedule (and not SI relief) is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.

225. Paragraph 6(5) of Schedule 8B ensures that an asset to which SI relief is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.

226. Paragraph 6(6) and 6(7) of Schedule 8B provides for the main asset identification rules in the TCGA to be subject to the special rules in paragraph 6, and for the asset pooling and identification rules in sections 104, 105 and 106A not to apply to assets to which hold-over relief and not SI relief is attributable.

227. Paragraph 6(8), 6(9) and 6(10) of Schedule 8B provide rules for attributing the held-over chargeable gain to assets which are treated for tax purposes as representing, or being the same asset as, an asset in a social holding. The original gain, less any gains treated as accruing under paragraph 5, is to be apportioned between the assets which represent the social holding on a just and reasonable basis, and the asset identification rules in paragraph 6 apply to the latter assets as they would apply to the assets which comprised the social holding.

228. Paragraph 7 of Schedule 8B specifies to whom gains are treated as accruing when there is a chargeable event of one of the types given in paragraph 6(1).

229. Paragraph 8 of Schedule 8B specifies the procedure for making claims to hold-over relief under the Schedule. The procedure and requirements for claiming SI relief in ITA 2007 will apply, with the necessary adaptations, to claims to hold-over relief also. If the SI relief procedure is amended (as permitted by the ITA) by secondary legislation, the procedure for hold-over relief claims will be amended in the same way.

BACKGROUND NOTE

230. These tax reliefs have been introduced to incentivise investment by individuals in social enterprises, to support the Government's aim of stimulating the social enterprise sector.

EXPLANATORY NOTE

CLAUSE 54: RELIEF ON DISPOSAL OF PRIVATE RESIDENCE

SUMMARY

1. This clause reduces, in most cases, the period for which an only or main residence qualifies automatically for final period exemption from 36 months to 18 months. The exception to this change applies to individuals who are disabled or in a care home and with no other property on which they can claim private residence relief, who will continue to get the 36 month final period exemption.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the Taxation of Chargeable Gains Act 1992 (TCGA 1992) shall be amended in accordance with the clause.

3. Subsection (2) amends section 223 of TCGA 1992, which provides for the amount of relief from capital gains tax that is available when an individual disposes of an interest in a private residence (a dwelling-house that is, or has at any time in their ownership been, their only or main residence). It reduces the length of the final period of ownership that is always eligible for relief from 36 months to 18 months; removes the ability to amend that period by Treasury order; and makes section 223 subject to a new relief introduced at section 225E.

4. Subsection (3) inserts new section 225E into TCGA 1992.

5. New section 225E provides for a new relief on disposal of a private residence for an individual who is a disabled person or living in a care home at the time of the disposal; enabling them to retain a final period exemption of 36 months. In order to qualify the individual must not have any other residential property on which they can claim private residence relief.

6. New subsection 225E(3) extends relief to the spouse or civil partner of the individual mentioned above.

7. New subsection 225E(7) provides that where the property is held in trust, private residence relief can be given to the trustees for the final 36 months of ownership where the individual occupying the property meets the conditions in section 225E (2) to (6).

BACKGROUND NOTE

8. The final period exemption allows people 18 months to sell a previous only or main residence after moving to a new one without losing private residence relief for the property they are no longer living in.

9. The final period was reduced from 36 months to 18 months as the longer period was being exploited by individuals with more than one property.

EXPLANATORY NOTE

CLAUSE 55: REMITTANCE BASIS AND SPLIT YEAR TREATMENT

SUMMARY

1. This clause provides that foreign gains arising to a remittance basis user in the overseas part of a split year of residence and remitted in the UK part of the year are not charged to tax.

DETAILS OF THE CLAUSE

2. The clause inserts a new subsection (1A) into section 12 TCGA 1992 ensuring that foreign gains accruing in the overseas part of a split year of residence are not charged to tax regardless of when in the year they are remitted.

3. The rule applies to gains accruing from 6 April 2013.

BACKGROUND NOTE

4. Schedule 45 of FA 2013 introduced a new Statutory Residence Test and contained rules (previously in extra-statutory concessions) to cater for a split year of residence for an individual coming to or leaving the UK. It provided that gains arising in the overseas part of the year were not charged. However, the consequential change in paragraph 95 of Schedule 45 to the rules for remittance basis users contained an inadvertent error, the effect of which is to wrongly charge their gains arising in the overseas part of the year and remitted in the UK part of the year. This measure corrects that error.

EXPLANATORY NOTE

CLAUSE 56: TERMINATION OF LIFE INTEREST AND DEATH OF LIFE TENANT: DISABLED PERSONS

SUMMARY

1. This clause extends, from 5 December 2013, the capital gains tax (CGT) uplift provisions that apply to property held on trust for the benefit of a vulnerable beneficiary to include trusts for the benefit of a disabled person where the beneficiary has no absolute entitlement to the income of the trust.

DETAILS OF THE CLAUSE

2. <u>Subsection (2)(a)</u> extends <u>section 72(1B)(a)(iii)</u> of the Taxation of Chargeable Gains Act 1992 to include all disabled person's interests as defined by section 89B of the Inheritance Tax Act 1984 within those interests to which section 72(1) applies, in particular sections 89B(1)(a) and (b) that provide for interests where the person with the interest is treated as beneficially entitled to an interest in possession in the trust property. Section 73(2A)(a) applies this extension automatically to section 73 in the same way that it applies for section 72. The effect of this change is to apply the same capital gains tax treatment to property within a vulnerable beneficiary trust for a person with a disability where the beneficiary has no interest in possession in the trust property as is available where the beneficiary does have an interest in possession.

3. <u>Subsection (2)(b)</u> inserts new <u>subsection 72(6)</u>, which deems that an interest in possession for the purpose of section 72 includes an interest within the meaning of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984.

4. <u>Subsection (3)</u> amends section 73(3) in order to apply new subsection 72(6) for the purpose of section 73 in the same way that it applies for section 72.

5. <u>Subsection (4)</u> provides for commencement.

BACKGROUND NOTE

6. Section 62 of the Taxation of Chargeable Gains Act (TCGA) 1992 contains provisions concerning CGT on death.

7. They provide that when someone dies there is no deemed disposal on death and, therefore, death is not an occasion of charge to CGT. The assets in a person's free estate are treated as being acquired by personal representatives at their market value at the date of

death. In this way, gains accrued up to the date of death are not subject to double taxation under inheritance tax (IHT) and CGT.

8. Property held on trust is normally subject to IHT at 6 per cent every ten years. As an exception, property held on qualifying trusts for a vulnerable person are taxed to IHT at the normal 40 per cent rate on the death of the vulnerable person as if the property was held by that person rather than the trustees. The exception applies where the person has an interest in possession in the trust property (broadly, an absolute entitlement to the income of the trust). It also applies where the person does not have an interest in possession by deeming that an interest in possession was held.

9. Sections 72 and 73 of the TCGA 1992 contain provisions similar to those in section 62 for property held in a qualifying vulnerable beneficiary trust. However, this is currently restricted to only those trusts where the beneficiary has an actual interest in possession in the trust property. This requirement is distorting decisions on the most appropriate trust structure. The measure extends sections 72 and 73 to include trusts where the vulnerable beneficiary is treated as having an interest in possession.

EXPLANATORY NOTE

CLAUSE 57: CAPITAL GAINS ROLL-OVER RELIEF: RELEVANT CLASSES OF ASSETS

SUMMARY

1. This clause maintains capital gains roll-over relief in relation to payment entitlements under the EU's agricultural subsidy scheme for farmers following changes to the scheme.

DETAILS OF THE CLAUSE

2. Subsections (1) to (3) amend section 155 of the Taxation of Chargeable Gains Act 1992 to include payment entitlements under the basic payment scheme within the list of classes of assets eligible for roll-over relief.

3. Subsection (4) holds that the amendment has effect in relation to disposals of old assets (or interests in them) and acquisition of new assets (or interests in the) from 20 December 2013, the date that the relevant EU Regulation came into force.

BACKGROUND NOTE

4. Roll-over relief (as the relief at sections 152 to 159 of the Taxation of Chargeable Gains Act (TCGA) 1992 is commonly referred to) permits the deferral of some or all of a chargeable gain on the disposal of a qualifying business asset (or interests in them) where the consideration received for that business asset is wholly or partly applied in acquiring replacement qualifying business assets (or interests in them).

5. Qualifying business assets are listed at section 155 of TCGA 1992. Class 7A refers to the single payment scheme (SPS), the EU's main agricultural subsidy scheme for farmers under the common agricultural policy. SPS is designed to give farmers greater freedom to farm to the demands of the market, as subsidies are not linked to production; and environmentally friendly farming practices (known as cross compliance) are better acknowledged.

6. SPS payments will cease in 2014 and are being replaced by payments under the EU's new basic payment scheme (BPS) from 1 January 2015.

7. SPS and BPS payments are made only to farmers who have established entitlements under either scheme. Entitlements are transferrable and are typically transferred when the underlying agricultural land is transferred.

EXPLANATORY NOTE

CLAUSE 58: CAPITAL GAINS ROLLOVER RELIEF: INTANGIBLE FIXED ASSETS

SUMMARY

1. This clause corrects a tax law rewrite error. The clause prevents companies claiming capital gains rollover relief on the disposal of tangible assets where the proceeds are reinvested in an intangible fixed asset. It also adjusts the tax cost of the replacement intangible fixed asset where rollover relief has been given for claims made on or after 1 April 2009 and before 19 March 2014, in order to prevent double tax relief being given.

DETAILS OF THE CLAUSE

Amendment to Section 156ZB TCGA 1992

2. Subsection (1) amends subsection (1) of section 156ZB of the Taxation of Chargeable Gains Act 1992 (TCGA) to restrict its application to subsection (2) so that subsection (3) operates independently. This amendment prevents capital gains rollover relief claims where the disposal proceeds are applied on the acquisition of new chargeable intangible assets within Part 8 of the Corporation Tax Act 2009 (CTA 2009).

New section 870A CTA 2009

3. Subsection (2) inserts new section 870A into Part 8 CTA 2009.

4. Subsection (1) of new section 870A explains when subsection (2) applies. It provides that subsection (2) applies whenever a claim to capital gains rollover relief is made in the circumstances where the proceeds are applied in acquiring an intangible fixed asset within Part 8 CTA 2009.

5. Subsection (2) of new section 870A provides for a reduction in the tax cost of the asset under Part 8 CTA 2009 by the amount of the capital gains rollover relief claim. This ensures that any future debits and credits under Part 8 CTA 2009 reflect the capital gains rollover relief given, preventing relief being given twice. The reduction to tax cost is made on 19 March 2014.

6. Subsection (3) of new section 870A restricts the adjustment in subsection (2) so that the asset cannot have a negative written down value.

7. Subsection (4) of new section 870A ensures that the reduction in subsection (2) is also applied when calculating the tax written-down value of the asset in subsequent accounting periods.

Commencement

8. Subsection (3) provides the effective date for the amendment to section 156ZB TCGA is 19 March 2014 for all claims under section 152 or 153 TCGA.

9. Subsection (4) provides the effective date for new section 870A CTA 2009 is accounting periods beginning on of after 19 March 2014.

10. Subsection (5) provides that an accounting period straddling 19 March 2014 is treated as two separate accounting periods. The consequence of subsections (4) and (5) is that where new section 870A CTA 2009 applies, an accounting period will always commence on 19 April 2014 and the tax cost of the asset will be adjusted to reflect a claim made under section 152 or 153 TCGA on the first day of that accounting period.

BACKGROUND NOTE

11. Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) introduced a new regime from 1 April 2002 to deal with the taxation of companies' intangible fixed assets. It also withdrew capital gains rollover relief on disposals of tangible assets where the proceeds were reinvested in replacement intangible fixed assets acquired on or after 1 April 2002.

12. The legislation was subsequently rewritten in Part 8 CTA 2009 with minor amendments also being made to section 156ZB TCGA. There was no intention to change the rules under the tax law rewrite project. HM Revenue & Customs (HMRC) have been made aware of a drafting error in the rewritten legislation contained in section 156ZB TCGA. This error might suggest that capital gains rollover relief has been reinstated even when replacement intangible fixed assets are acquired on or after 1 April 2002. HMRC consider that this is not correct.

13. These changes correct the drafting error and restore the legislation to what was intended by Parliament. The new legislation at section 870A CTA 2009 also ensures that where rollover relief is given any entitlement to future relief under Part 8 CTA 2009 is adjusted by the amount of any rollover relief given.

14. The changes made by the clause are effective from 19 March 2014, the date on which HMRC published the draft legislation.

EXPLANATORY NOTE

CLAUSE 59: AVOIDANCE INVOLVING LOSSES

SUMMARY

1. This clause clarifies the operation of one of the Chargeable Gains Targeted Anti-Avoidance Rules. In doing so it confirms the rule will apply to arrangements that use statutory provisions outside of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) that specify that a chargeable gain or a capital loss accrues.. It also confirms the rule applies to arrangements which generate an income deduction by whatever means. The changes put beyond doubt that the rule acts generally to counter the contrived use of capital losses to reduce income profits.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 184G of TCGA 1992. References to "receipt" in the current section have been changed to confirm that the term includes any amount taken into account in calculating a chargeable gain. The references to disposal in Conditions A and B have been removed.

3. Subsection (2) amends section 184H of TCGA 1992. The amended section now uses the term "income deduction" instead of "expenditure". A definition of income deduction is now within sub-section (10) to explain that it includes any form of deduction in the computation of income or profits. The reference to a disposal in Condition A has been removed.

4. Subsection (3) provides that the amendments will apply from the date of announcement where a gain accrues on a disposal on or after that date or, in the case where there is no disposal, to arrangements that are entered into on or after that date.

BACKGROUND NOTE

5. The three Targeted Anti-Avoidance Rules within TCGA 1992 have wide application to counter arrangements that seek to misuse capital losses to obtain a tax advantage. The abuses they are intended to counter are:

- TAAR 1 - the contrived creation of capital losses where there has been either no economic loss or a disposal of any substance,
- TAAR 2 – the sale of companies between groups to allow losses incurred by one group to be relieved against the gains of another, and
- TAAR 3 – the use of capital losses to shelter income profits.

6. The clause confirms that TAAR 3 applies generally to the contrived use of capital losses to reduce income profits.

EXPLANATORY NOTE

CLAUSE 60: EXTENSION OF CAPITAL ALLOWANCES

SUMMARY

1. This clause gives the Treasury the power to extend by Treasury Order the duration of four 100 per cent first-year capital allowances, Enhanced Capital Allowance (ECA), schemes.

2. It also extends the ECA scheme for expenditure on plant and machinery for use in designated assisted areas (enterprise zones), due to expire on 31 March 2017, for an additional three years to 31 March 2020.

DETAILS OF THE CLAUSE

3. This clause amends the following sections of the Capital Allowances Act 2001 (CAA):

- section 45D - expenditure on cars with low carbon dioxide emissions.
- section 45DA - expenditure on zero-emission goods vehicles.
- section 45E - expenditure on plant or machinery for gas refuelling station.
- section 45K - expenditure on plant and machinery for used in designated assisted areas.

In each case a new subsection (1A) is added, permitting the Treasury to extend the duration of the schemes by way of Treasury Order.

4. It also amends section 45K(1)(b) CAA by substituting “8 years” for “5 years” extending the duration of the scheme for enterprise zones to 31 March 2020.

BACKGROUND NOTE

5. Capital allowances allow the cost of capital assets to be written off against taxable profits. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax.

6. Most businesses are entitled to a 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant or machinery (excluding cars) up to an annual limit, which for the period 1 April 2014 for businesses within the charge to corporation tax and 6 April 2014 for businesses within the charge to income tax to 31 December 2015 has been temporarily increased to £500,000. For expenditure above that

limit, writing-down allowances (WDA) are available, which are given at the main rate of eighteen per cent or the special rate of eight per cent per annum.

7. ECAs are available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. ECAs, currently available at a rate of 100 per cent, accelerate the rate at which tax relief is available for capital spending and allow a greater proportion of the cost of an investment to qualify for tax relief against a business's taxable profits of the period in which the investment is made. 100 per cent ECAs therefore provide business with a valuable tax-timing benefit.

8. Expenditure on electric cars or cars with very low carbon dioxide emissions (up to 95g/km driven from 1 April 2013) qualify for ECAs. The allowance aims to encourage investment in cleaner cars by providing a tax incentive for businesses to invest in those cars with the lowest carbon dioxide emissions. The government announced in Budget 2013 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015 and the qualifying CO_2 threshold reduced to 75 gms per km driven.

9. ECAs for expenditure on zero-emission good vehicles were introduced in 2010. It is one of a number of measures designed to help businesses reduce their CO_2 emissions and to encourage a shift to cleaner goods vehicles. The government announced in Budget 2014 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015. To comply with EU State aid rules the availability of the ECAs will also be limited to businesses that do not claim the Government's Plug-in Van Grant.

10. ECAs for expenditure on gas refuelling equipment aim to encourage the up-take of natural gas, hydrogen and biogas as fuels for vehicles by providing a tax incentive for businesses to invest in the necessary refuelling infrastructure, and complements wider measures to encourage the up-take of alternatively fuelled vehicles. The government announced in Budget 2013 that the scheme would be extended for further three years to March 2018 when the existing scheme ends at the end of March 2015.

11. ECAs for expenditure on plant and machinery for use in enterprise zones were introduced in Finance Act 2012 originally for a five year period to 31 March 2017. This measure will extend that period by three years to 31 March 2020. ECAs are part of a package of measures designed to encourage economic growth and investment in enterprise zones, including simplified planning and business rates discounts.

EXPLANATORY NOTE

CLAUSE 61: BUSINESS PREMISES RENOVATION ALLOWANCES

SUMMARY

1. This clause provides for amendments to business premises renovation allowances (BPRA) in order to clarify the expenditure that qualifies for relief. It also reduces the balancing adjustment period from seven to five years.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for changes to be made to Section 360B of the Capital Allowances Act 2001 (CAA). The changes are specified in subsections 2 to 5.

3. Subsection 2 substitutes a new subsection (1). This substitution provides that qualifying expenditure incurred after the commencement date and before 1 April 2017 for corporation tax purposes and 6 April 2017 for income tax purposes must satisfy conditions A and B and not be excluded by subsections (3), (3A) or (3C).

4. Subsection 3 inserts new subsections (2A) to (2C). These require that qualifying expenditure must satisfy Conditions A and B.

5. New subsection (2A) defines expenditure for the purposes of Condition A and is modelled on the existing section 360B(1) CAA with the deletion of "in connection with".

6. New Subsection (2B) defines expenditure for the purposes of Condition B as:

(a) Building works, which applies to the cost of labour and materials.

(b) Architectural and design services, which includes the detailed design of the building and its future layout.

(c) Surveying or engineering services, which includes services to check the structure of the building or specialists checking for asbestos.

(d) Planning applications, which cover the costs of obtaining essential planning permissions to alter, for example, a listed building, including legal fees.

(e) Statutory fees and statutory permissions to include the costs of building regulation fees; obtaining listed building consent; closing roads in order that certain works can be carried out or the costs of obtaining necessary statutory permissions from utilities.

7. New subsection (2C) provides that certain expenditure that meets Condition A but does not fall within Condition B, and is not specifically excluded, may still be qualifying expenditure but is limited to 5 per cent of the expenditure incurred on items (a) to (c) of new subsection (2B). This encompasses expenditure incurred on activities in respect of the conversion or renovation of the qualifying building but not specifically listed in Condition B, such as project management services.

8. Subsection 4 makes various amendments to current subsection (3), which excludes certain expenditure from the scheme.

9. Subsection 5 inserts new subsections (3A) to (3D).

10. New subsection (3A) provides that expenditure is not excluded if it incurred on fixtures that are integral features or are otherwise listed.

10. New subsections (3B) and (3C) provide that expenditure is excluded to the extent that expenditure on the works, services or other matters to which it relates exceeds the normal market value amount.

11. New subsection (3D) provides that expenditure does not qualify for relief before the qualifying building has been unused for a period of 12 months.

12. Subsection 6 amends section 360B(5), to allow new subsection (3A) to be amended by Treasury Order.

13. Subsection 7 inserts a new section 360BA. New subsections (1), (2) and (6) provide that where qualifying expenditure has been incurred, the works, services or other matters to which that expenditure relates must be completed within 36 months. If after 36 months those works, services or other matters have not been completed, then the expenditure for those not completed will be treated as never having been incurred. Where those works are eventually provided the expenditure will be treated as being incurred at that time.

14. For example, if a return containing a claim for £100,000 of qualifying expenditure was made and after 36 months only works or services relating to £90,000 has been carried out, then in respect of the remaining £10,000 of expenditure the relevant tax assessments will need to be revised.

15. New subsections (3), (4) and (5) provide for the making of assessments, or amendments to assessments, that may be necessary to give effect to this requirement and provide that a person who has made a tax return, and later becomes aware that it is incorrect must give notice of the required amendments to HM Revenue & Customs (HMRC) within three months of the day on which the person became aware that the return had become incorrect.

16. Subsection 8 inserts a new section 360L. New section 360L is designed to ensure that BPRA is fully compliant with the General Block Exemption Regulation (GBER) rules about cumulation of State aid.

17. New section 360L(1) provides that no allowances are to be made if a relevant grant or relevant payment is made towards qualifying expenditure, or any other expenditure incurred by any person in respect of the same building and on the same "single investment project". For example, a business renovating a qualifying property in an assisted area cannot receive both BPRA and any other State aid, such as regional aid funding in respect of the same building**.** If both forms of funding are available then the business will have to decide which State aid to receive.

18. New subsections 360L(2) to (5) provide that if a relevant grant or payment is made after the making of BPRA, the allowance is to be withdrawn if the relevant grant or payment is made towards the expenditure. If the relevant grant or payment is made toward any other expenditure incurred on the same building and single investment project then the relief is only withdrawn if the relevant grant or payment is made within 3 years of the qualifying expenditure being incurred. Provision is made for all necessary assessments and adjustments to be made for this purpose. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

19. New sections 360L(6) and (8) define various terms. For example "single investment project" takes its meaning from the GBER. This requires that a "single investment project" is not limited to the project of a single company, but includes one carried out by an undertaking or undertakings, for example, a joint venture. So, if, for example, two businesses are involved in the same "single investment project" as a joint venture, for example refurbishing different floors of a disused office block which will be let as one building, and one business receives any form of State aid (other than BPRA) in relation to the project, then neither company can claim BPRA even if one of the companies did not receive any other State aid in respect of that joint venture project. It also give the Treasury a power to amend this section should the GBER be replaced by another instrument.

20. New section 360L(7) makes clear that any reference to State aid in the section is not to be read narrowly, so as to apply only to State aid that is required to be notified to, and approved by, the European Commission. So, for example, State aid that is brought within the terms of the GBER, so that it is exempt from prior notification, is still a relevant grant or payment.

21. Subsection 9 amends section 360M(4). This provides that where qualifying expenditure has been incurred on a qualifying building, and a balancing event occurs within seven years a balancing adjustment must be made. This subsection reduces that period to five years.

22. Subsections 10 and 12 provide that the amendments take effect from a "specified day". This is defined as being the 1 April 2014 for the purposes of corporation tax and 6 April 2014 for the purposes of income tax.

23. Subsection 11 provides that new section 360L takes effect

(a) in relation to a relevant grant or relevant payment made at any time (whether before or on or after the specified day) towards expenditure incurred on or after that day, and

(b) in relation to a relevant grant or relevant payment made on or after the specified day toward expenditure incurred before that day.

24. This means new section 360L applies where:

- BPRA qualifying expenditure has been incurred on or after 6 April 2014 and a grant that is a State aid was received before that date.
- BPRA qualifying expenditure has been incurred on or before 5 April 2014, and a grant that is a State aid is received on or after 6 April 2014
- BPRA qualifying expenditure has been incurred on or after 6 April 2014, and a grant that is a State aid is received on or after 5 April 2014.

BACKGROUND NOTE

25. Capital allowances allow the cost of capital assets to be written off against taxable profits. Not all expenditure qualifies for allowances.

26. BPRA aims to bring long-term vacant business properties in disadvantaged areas back into business use. It does this by providing a 100 per cent capital allowance for the capital costs incurred of renovating, converting or repairing certain business properties that have been unused for at least a year in assisted areas of the United Kingdom. A writing down allowance of 25 per cent on the straight line basis is also available, where the 100 per cent initial allowance is not claimed, or not claimed in full. It therefore offers both an enhanced rate of allowance and a relief for otherwise irrecoverable expenditure.

27. Following an increase in DOTAS (Disclosure of Tax Avoidance Schemes) disclosures, involving BPRA, which appeared to contain features aimed at exploiting the relief in ways that Parliament had not intended, a written ministerial statement by the Exchequer Secretary to the Treasury was published on 18 July 2013, authorising HMRC to conduct a technical review of the BPRA legislation, with a view to making its policy purpose clearer, more certain in its application and at the same time reducing the risk of exploitation. Following the publication of that statement, HMRC published a Technical Note inviting comments on legislative proposals, with a view to introducing new legislation in 2014.

28. Following the responses to the Technical Note, draft legislation was published in December for consultation. Following that consultation the clause published in December has been amended to address some of the concerns expressed. This clause clarifies the expenditure eligible for relief. It also requires that where expenditure is incurred for works and services to be carried out over a period of time, or in the future, those works and services

must be complete within 36 month to prevent some, or all, the relief given in respect of the expenditure being withdrawn.

29. The clause also includes a provision designed to ensure that BPRA remains fully compliant with the GBER rules about the cumulation of State aid, and ensures that businesses can only claim BPRA or another State aid but not both.

30. The legislation presently prevents a balancing adjustment being made if certain balancing events take place more than seven years after the time when the qualifying building was first used or suitable for letting. This period will be reduced to five years.

EXPLANATORY NOTE

CLAUSE 62: MINERAL EXTRACTION ALLOWANCES: ACTIVITIES NOT WITHIN THE CHARGE TO TAX

SUMMARY

1. This clause introduces legislation relating to the treatment of Mineral Extraction Allowances (MEAs) where the mineral extraction activity enters or ceases to be within the charge to UK tax. It ensures that the treatment of MEAs is certain and consistent between businesses and aligns with the existing principles for plant and machinery allowances. It also confirms that for the purposes of MEAs a mineral extraction trade consists of activity within the charge to UK tax.

DETAILS OF THE CLAUSE

2. Subsections 2 to 6 amend, respectively, sections 394, 399, 160 and 161 of the Capital Allowances Act 2001 (CAA) to confirm that for the purposes of MEAs, a mineral extraction trade consists of activity that is within the charge to UK tax.

3. Subsection 7 inserts a new section 431A CAA to provide for the activity of an exempt foreign permanent establishment (FPE) to be treated as a separate mineral extraction trade for the purposes of MEAs.

4. Subsection 7 inserts a new section 431B CAA which provides transitional rules for MEAs similar to those for plant and machinery allowances. The transitional rules provide that where a disposal value is required to be brought into account this will not, in most cases, give rise to a balancing allowance or a balancing charge when a company elects into FPE exemption. However, for some assets, where the company's qualifying expenditure exceeds £5 million, the normal disposal value will be brought into account for capital allowance purposes.

5. Subsection 7 inserts a new section 431C CAA which provides that notional capital allowances will be given automatically in calculating the profits or losses of the exempt FPE, as if the exempt FPE were within the charge to UK tax.

BACKGROUND NOTE

6. This clause is being introduced following consultation to confirm the treatment of MEAs where the mineral extraction activity enters or ceases to be within the charge to UK tax.

7. There are a number of changes to existing legislation:

- to confirm that for the purposes of MEAs a mineral extraction trade consists of an activity that is within the charge to UK tax;
- to confirm that the activity of an exempt FPE is treated as a separate mineral extraction trade for the purposes of MEAs;
- to align the treatment of MEAs with the existing principles for plant and machinery allowances; and
- to confirm that notional allowances will be given automatically in calculating the profits or losses of the exempt FPE as if the exempt FPE were within the charge to UK tax.

8. The amendments made by this clause are treated as having come into force from 1 April 2014 for corporation tax and 6 April 2014 for income tax.

EXPLANATORY NOTE

CLAUSE 63: MINERAL EXTRACTION ALLOWANCES: EXPENDITURE ON PLANNING PERMISSION

SUMMARY

1. This clause extends the scope of qualifying expenditure on mineral exploration and access to include expenditure on seeking planning permission where that planning permission is granted.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the clause amends Part 5 (mineral extraction allowances) of CAA 2001.

3. Subsection (2) amends section 396(2) of CAA 2001 by substituting "and not as expenditure on acquiring a mineral asset" for "if planning permission is not granted".

4. Subsection (3) amends section 398 of CAA 2001 by inserting "section 396(2) and" after "Subject to".

5. Subsection (4) provides that amendments made by this section have effect in relation to expenditure incurred on or after Royal Assent to Finance Act 2014.

BACKGROUND NOTE

6. The mineral extraction allowances legislation at Part 5 of CAA 2001 provides that allowances are available, amongst other categories, in respect of expenditure on mineral exploration and access (which is qualifying expenditure under Chapter 2) and expenditure on acquiring a mineral asset (which is qualifying expenditure under Chapter 3). Qualifying expenditure under Chapter 3 is given relief at 10% per chargeable period whereas qualifying expenditure under chapter 2 is given relief at 25% and, for expenditure allowable for the purposes of a ring fence trade, 100%.

7. Prior to changes provided by this clause, qualifying expenditure on seeking planning permission necessary to enable mineral exploration and access to be undertaken at any place, or any mineral deposits to be worked, is treated as expenditure on mineral exploration and access (and thus obtaining relief at the higher rates) if planning permission is not granted. However if planning permission is granted then such expenditure is treated as acquiring a mineral asset with relief being given at the lower rate of 10%.

8. This clause aligns the treatment of both successful and unsuccessful planning permission with successful planning permission now qualifying for allowances at the higher rates.

EXPLANATORY NOTE

CLAUSE 64 SCHEDULE 11: OIL AND GAS FISCAL REGIME: EXTENDED OF THE RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

SUMMARY

1. This clause and Schedule will extend from 6 to 10 the number of accounting periods for which a company can claim ring fence expenditure supplement (RFES) in relation to qualifying expenditure or losses from onshore oil and gas activity.

DETAILS OF THE SCHEDULE

2. <u>Paragraph 1</u> inserts a new chapter after Chapter 5 of Part 8 of Corporation Tax Act 2010 (CTA). <u>New Chapter 5A</u> contains <u>new sections 329A to 329T</u>.

3. <u>New Section 329A</u> provides an overview of the chapter.

4. <u>Subsection (1)</u> explains that the new provisions allow a company which has a ring fence trade to claim additional RFES for a) qualifying pre-trade onshore expenditure, b) onshore losses, c) supplement which they have received in relation to RFES claims made under Chapter 5 CTA 2010, and d) the additional supplement claimed under new Chapter 5A, in respect of onshore oil related activities.

5. <u>Subsection (2)</u> refers to the interpretative provisions at new sections 329B to 329H that apply for the purposes of Chapter 5A.

6. <u>Subsections (3) and (4)</u> explain that provisions about pre-trade expenditure are at <u>new Sections 329I to 329M</u>, and those related to losses are at <u>new Sections 329N to 329T.</u>

7. <u>Subsection (5)</u> explains that a company may only make 4 claims for additional supplement.

8. <u>Subsection (6)</u> sets out the adjustments which need to be made to the qualifying expenditure and losses before the claim for supplement is allowed.

9. <u>New Section 329B</u> defines a “qualifying company”.

10. <u>New Section 329C</u> provides definitions for “onshore oil-related activities” and “offshore oil-related activities”.

11. <u>New Section 329D</u> defines key terms relating to accounting periods, by reference to whether a company commenced its ring fence trade in that accounting period (“the commencement period”), and whether, or not, a company was carrying on a ring fence trade in an accounting period that ended on or after 5 December 2013 (a “post-commencement

period" and a "pre-commencement period" respectively). It also introduces the concept of a "straddling period" as an accounting period straddling 5 December 2013.

12. New Section 329E sets the "relevant percentage" for an accounting period (that is, the rate at which supplement is payable on an amount specified under the Chapter) as 10 per cent and provides that the relevant percentage can be varied by order by the Treasury.

13. New Section 329F provides that a company may make no more than 4 claims for additional supplement, and the claims need not be consecutive, but can only be made after 6 claims allowed under Chapter 5.

14. New Section 329G subsections (1) to (5) define "qualifying pre-commencement onshore expenditure". Subsections (6) to (9) define research and development expenditure that qualifies for RFES for SMEs and large companies.

15. New Section 329H provides the same definition for "unrelieved group ring fence profits" as is contained in the existing provisions in Chapter 5.

16. New Section 329I is concerned with the availability of additional supplement in respect of a pre-commencement accounting period.

17. Subsection (1) makes provision for a qualifying company to claim additional supplement for pre-commencement onshore expenditure relating to a ring fence trade.

18. Subsection (2) sets out that any additional supplement allowed on a claim made for a pre-commencement period is to be treated as expenditure incurred by the company in the commencement period and allowable as a deduction in calculating profits.

19. Subsection (3) states that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329M, in relation to the "mixed pool" as described by s329J) for that period.

20. Subsection (4) states that the reference amount for the pre-commencement period is calculated in accordance with new sections 329J to 329M.

21. Subsection (5) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is shorter than 12 months.

22. Subsection (6) provides that any claim for pre-commencement supplement must be made as a claim for the commencement period.

23. Subsection (7) specifies that existing provisions on the time limit for claims for group relief apply for claims for pre-commencement additional supplement.

24. New Section 329J makes provision for, and determination of the amount of, a mixed pool of qualifying pre-commencement onshore expenditure and supplement.

25. Subsections (1) and (2) provide that during pre-commencement periods, a company is considered to have had a continuing mixed pool comprising qualifying pre-commencement

onshore expenditure, and pre-commencement supplement under new Chapter 5A and Chapter 5, as further described by new subsections (3) to (8).

26. Subsection (3) gives instructions on how to calculate the amount of qualifying pre-commencement onshore expenditure to allocate to the mixed pool for any pre-commencement period.

27. Subsections (4) and (5) provide for any pre-commencement supplement, claimed under Chapter 5, to be allocated to the mixed pool to the extent that it relates to qualifying pre-commencement onshore expenditure, based on the proportion of that supplement attributable, on a just and reasonable basis, to the company's qualifying pre-commencement onshore expenditure ('the appropriate proportion").

28. Subsection (6) concerns claims for pre-commencement supplement made under Chapter 5 in respect of pre-commencement expenditure incurred in a straddling period. In that case pre-commencement supplement claimed under Chapter 5 that is attributable to qualifying pre-commencement onshore expenditure on a just and reasonable basis is to be allocated to the mixed pool, according to the proportion of that expenditure incurred on or after 5 December 2013.

29. Subsection (7) provides that a company may elect to use an alternative apportionment method if the time basis in (6) is unjust or unreasonable.

30. Subsection (8) provides for any pre-commencement additional supplement, claimed under Chapter 5A, to be allocated to the mixed pool.

31. New Section 329K provides for reductions to the mixed pool in respect of disposal receipts for expenditure for which allowance would be given under the Capital Allowances Act 2001.

32. New Section 329L provides for reduction to the mixed pool in respect of unrelieved group ring fence profits.

33. Subsection (2) provides for reductions to be made firstly under Section 329K (disposal receipts) before reducing the net onshore expenditure by a sum equal to the unrelieved group ring fence profits.

34. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.

35. Subsections (4) and (5) provide that, in the case where a company carries on both onshore and offshore oil related activities in the pre-commencement period, unrelieved group ring fence profits should be set against "net offshore expenditure" first.

36. Subsection (6) gives instructions for calculating the "net offshore expenditure" of the company for that period.

37. Subsection (7) defines "pre-commencement offshore expenditure".

38. Subsections (8) and (9) provide that where there are disposal receipts relating to expenditure for which allowance would be given under the Capital Allowances Act 2001, representing pre-commencement expenditure used for offshore activities, the amount of pre-commencement offshore expenditure should be reduced by those disposal receipts. It should be set against expenditure incurred in the most recent periods first.

39. Subsections (10) and (11) provide for, in the case of a “mixed-activities asset”, only the proportion which is just and reasonable having regard to that expenditure is to be brought to account.

40. New Section 329M defines the reference amount (on which the rate of additional supplement will be calculated under s329I(3)) for a pre-commencement period.

41. New Section 329N is concerned with the availability of additional supplement in respect of a post-commencement period.

42. Subsection (1) provides for a qualifying company to claim additional supplement where it incurs a loss in respect of its onshore ring fence trade in a post-commencement period.

43. Subsection (2) provides that post-commencement additional supplement should be treated as a loss incurred in carrying out the ring fence trade.

44. Subsection (3) specifies that existing provisions on the time limit for claims for group relief apply for claims for post-commencement additional supplement.

45. New Section 329O makes provision for the calculation of the amount of post-commencement additional supplement for a post-commencement period.

46. Subsection (1) provides that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329T in relation to the “onshore ring fence pool” as described by s329Q) for that period.

47. Subsection (2) states that the reference amount for the post-commencement period is to be calculated in accordance with new sections 329P to 329T.

48. Subsection (3) provides for proportional reduction of the amount of additional supplement where the post-commencement period is a period of less than 12 months.

49. New Section 329P makes provision for the determination of onshore ring fence losses.

50. Subsection (1) provides that if in a post-commencement period, a company’s ring fence trade consists solely of onshore oil-related activities, then so much of the loss incurred as is available to be carried forward under section 45 is the “onshore ring fence loss” of the company .

51. Subsections (2) and (3) provide that where a company incurs a loss and carries on both onshore and offshore activities as part of a ring fence trade in a post-commencement period, only the proportion of that loss that is, on a just and reasonable basis, attributable to

the company's onshore oil-related activities in that trade ("the appropriate proportion") is the "onshore ring fence loss" of that company.

52. Subsection (4) provides that in the case of a straddling period, a company's onshore ring fence losses are the portion that, if the whole amount is apportioned according to the number of days falling before, and on and after, 5 December 2013, is apportioned to the later period.

53. Subsection (5) provides that a company may elect to use an alternative apportionment method if the time basis in (4) is unjust or unreasonable.

54. Subsections (6) to (9) set out the assumptions to be used in calculating how much of the loss falls to be used under section 45 CTA 2010 for the purposes of sub-section (1)(b) and (2)(b). That is, every claim that could be made under section 37 CTA10 is made, and that section 42 CTA10 applies.

55. New Section 329Q makes provision for, and determination of the amount of the onshore ring fence pool.

56. Subsections (1) to (3) makes provision that during post-commencement periods, a company is considered to have a continuing mixed pool comprising the company's onshore ring fence loses, post-commencement supplement under Chapter 5 and post-commencement additional supplement under Chapter 5A, as further described by new subsections (4) to (9).

57. Subsection (4) sets out how allocations are to be made to the onshore ring fence pool in respect of a) onshore ring fence loss in the period of the loss, b) the "appropriate proportion" of post-commencement supplement allowed under a claim under Chapter 5, and c) any post commencement additional supplement claimed under Chapter 5A.

58. Subsection (5) provides that the "appropriate proportion" of Chapter 5 post-commencement supplement is either 100% of that amount, or, where the company has at any time carried on offshore oil related activities, the proportion attributable, on a just and reasonable basis, to the company's onshore oil related activities in the period of Chapter 5 claim.

59. Subsection (6) concerns claims for post-commencement supplement made under Chapter 5 in respect of losses incurred in a straddling period. In that case the "appropriate proportion" of Chapter 5 post-commencement supplement under new subsections (4) and (5) is proportionately divided between the number of days falling before, and on and after, 5 December 2013, and only the amount apportioned to the later period is added to the onshore pool.

60. Subsection (7) provides that a company may elect to use an alternative apportionment method if the time basis in (6) is unjust or unreasonable.

61. Subsections (8) and (9) make provision for the order of making additions to the pool (as provided by section 329Q(4) to (7)) and reductions to it (as provided by sections 329R and 329S).

62. New Section 329R provides for reductions to the onshore ring fence pool to be made in respect of utilised onshore ring fence losses.

63. Subsection (1) provides that losses used under section 45, a reduction is to be made in that period.

64. Subsection (2) provides that the onshore ring fence pool is to be reduced by the amount of losses carried forward under s45 that are onshore ring fence losses.

65. Subsection (3) provides that, in the case where a company carries on both onshore and offshore oil related activities in the post-commencement period, the company's offshore losses are to be used in priority to onshore ring fence losses.

66. Subsection (4) defines "relevant offshore loss".

67. Subsection (5) provides that where the loss is incurred in a straddling period, the amount of the relevant offshore loss is proportionately apportioned to the period falling on or after 5 December 2013.

68. Subsection (6) provides that a company may elect to use an alternative apportionment method if the time basis in (5) is unjust or unreasonable.

69. New Section 329S Subsections (1) and (2) provide that the onshore ring fence pool is to be reduced by amounts of unrelieved group ring fence profits, after any reductions to be made for utilised onshore ring fence losses under section 329R.

70. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ends on the date that the straddling period ends.

71. Subsection (4) provides that, in the case where a company has at any time carried on offshore oil related activities, the sum to be set against the onshore ring fence pool is to be first reduced by the "notional offshore loss pool".

72. Subsection (5) defines the "notional offshore loss pool".

73. New Section 329T defines the reference amount (on which the rate of additional supplement will be calculated under s329O(1))for a post-commencement period.

74. Paragraph 2 inserts a new subsection after subsection (5) in section 270 of CTA 2010 to make provisions for the new Chapter 5A.

75. Paragraph 3 inserts defined expressions into Schedule 4 to CTA 2010.

76. Paragraph 4 states that the amendments made by the Schedules have effect in relation to accounting periods ending on or after 5 December 2013.

BACKGROUND NOTE

77. In addition to corporation tax (CT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. For the oil and gas industry, CT is set at 30 per cent for profits of more than £1.5m and 19 per cent (the small profits rate) for profits of more than £300k. The SC is set at 32 per cent.

78. Companies are allowed to set qualifying expenditure against profits for CT purposes. For companies engaged in a trade where it may take some years to show a profit, the value of the expenditure will be reduced by the time they come to be utilised.

79. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their “qualifying pre-commencement expenditure”, by 10 per cent for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

80. The early development of projects for shale gas and other onshore hydrocarbons is expected to have longer payback periods than offshore hydrocarbon projects and to be dominated by companies which do not have existing ring fence profits against which to set their expenditure. Extending the number of accounting periods for which these companies can claim RFES allows them to maintain the value of their expenditure for longer to recognise the extended period before they are able to utilise those amounts.

EXPLANATORY NOTE

SUPPLEMENTARY CHARGE: ONSHORE ALLOWANCE

SUMMARY

1. This clause and Schedule introduce a new allowance, which will remove an amount equal to 75 per cent of capital expenditure incurred by a company in relation to an onshore site from its adjusted ring fence profits for the purposes of supplementary charge (SC).

DETAILS OF THE SCHEDULE

PART 1

AMENDMENTS TO PART 8 OF CTA 2010

2. Paragraph 1 provides that the Schedule amends Part 8 of CTA 2010.

3. Paragraph 2 provides that section 357 is renumbered as section 356AA.

4. Paragraph 3 inserts after Chapter 7 a new Chapter 8 entitled "Supplementary Charge: Onshore Allowance" which makes provision for a new allowance (reducing the Supplementary Charge) for capital expenditure on "on-shore oil-related activities".

5. New section 356B provides an overview of new Chapter 8. It explains that relief is given by way of an allowance for capital expenditure incurred on onshore oil-related activities, said allowance operating by way of reducing a company's adjusted-ring fence profits for the purpose of the Supplementary Charge; that the new allowance is activated by relevant income in relation to a site; that allowances are transferred on disposal of a licence interest; and that a company may elect to transfer allowances between different sites for which it holds a licence.

6. New Section 356BA defines "Onshore oil-related activities".

7. New Section 356BB defines "activities".

8. New Section 356BC defines what is meant by "site".

9. New Section 356C explains how onshore allowance is generated, including that an amount of "relievable capital expenditure" (as defined by reference to activities in the course of which it is incurred, and disqualifying conditions) generates an allowance of 75 per cent of that amount, and that allowance is generated in relation to a "qualifying site" (as defined by reference to date of development authorisation). There is also provision for cases where, in relation to a qualifying site, relievable capital expenditure is incurred there only partly for the purposes of onshore oil-related activities, or is incurred only partly in relation to the site; in that case the expenditure is to be apportioned to that site on a just and reasonable basis.

10. New section 356CA defines the conditions which disqualify capital expenditure from being "relievable capital expenditure".

11. New section 356CB provides for how a company is to treat capital expenditure incurred before a site is established.

12. New Section 356D provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the total amount of activated allowances held by the company in that period.

13. New Section 356DA provides that a company's unused activated allowances are carried forward to the next accounting period.

14. New Section 356DB provides that where a company holds both field allowances and onshore allowances it may choose the order in which the allowances are to be used.

15. New Section 356E provides, in the case where during an accounting period a company's share of the equity in the site remains unchanged, that a company is to have activated allowances no greater than the relevant income from that site. "Relevant income" is also defined in this section.

16. New Section 356EA provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.

17. New Section 356EB provides that an amount equal to the a company's closing balance of unactivated allowances, less relevant income for the period, is to be carried forward to the next accounting period.

18. New Section 356F provides that, where a company has an interest in a licence for more than one site, it may elect for the whole or part of its unactivated allowances in one site to be transferred to another site.

19. New Section 356G introduces new sections 356GA to 356GD, which provide for the case where a company's share of the equity in a licensed area changes in any one accounting period. In summary, those provisions introduce a reference period to identify those parts of the accounting period for which the company is a licensee, and make provision for the activation of allowance for those reference periods.

20. New Section 356GA defines a "reference period".

21. New Section 356GB provides for the calculation of a company's activated allowance in any reference period.

22. New Section 356GC provides that the unactivated allowance in a reference period is carried forward to the next period (being either a reference period or an accounting period).

23. New Section 356GD provides for the calculation of the amount of total unactivated allowances attributable to a reference period and a site.

24. New Section 356H introduces new sections 356HA and 356HB which apply where a company holds unactivated allowances and disposes of some or all of its equity interest in a licensed area.

25. New Section 356HA provides for the calculation of the amount to be deducted from a company's unactivated allowances attributable to a reference period and a site following the disposal of an equity interest in the licensed area.

26. New Section 356HB provides for the calculation of the amount of unactivated allowance generated by a company for a reference period and in relation to a site following the acquisition of an equity interest in the licensed area.

27. New Section 356I provides that any alteration to a company's adjusted ring fence profits is reflected in the operation and calculations of Chapter 8.

28. New Section 356IA provides that Treasury may by Order make adjustments to the percentage specified at section 356C(2) and the also the cap on production specified in section 356CA(1) or (2).

29. New Section 356J explains how references in new Chapter 8 to "authorisation of development": drilling and extraction sites are to be interpreted.

30. New Section 356JA explains when capital expenditure can be said to be incurred for the purposes of new Chapter 8.

31. New Section 356JB provides interpretation on definitions for "adjusted ring fence profits", "cumulative total amount of activated allowance", "licence", "licensed area", "licensee", "onshore allowance", "relevant income", and "site".

32. Paragraph 4 of the Schedule makes provision for existing field allowances to be unavailable in respect of fields licensed for onshore activity on or after commencement of Chapter 8.

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

33. Paragraph 5 makes minor consequential amendments to Part 8 as follows.

34. Paragraph 5(2) inserts in section 270 (overview of Part 8) a new subsection (7A) to introduce the onshore allowance.

35. Paragraph 5(3) amends section 333 (reduction of adjusted ring fence profits) to bring the wording in line with that used for the onshore allowance with regard to field allowances.

36. Paragraph 5(4) amends the definition of adjusted ring fence profits in section 357 to insert a reference to allowances under Chapter 8.

37. Paragraph 5(5) amends Schedule 4 of CTA 2010 to substitute "357" for "356AA".

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISIONS

38. Paragraph 6 provides that the amendments are to have effect in relation to capital expenditure incurred on or after 5 December 2013.

39. Paragraph 7 introduces transitional arrangements for onshore oil fields, allowing a company to elect to defer commencement of the onshore allowance until 1 January 2015.

40. Paragraph 8 introduces arrangements in paragraphs 9 and 10 for accounting periods which straddle the commencement date of 5 December 2013 (or, if applicable, 1 January 2015).

41. Paragraph 9 provides for the apportionment of a company's adjusted ring fence profits in a straddling accounting period according to the number of days falling on or after the commencement day.

42. Paragraph 10 provides for the apportionment of relevant income for determining activated allowance in a straddling accounting period according to the number of days falling on or after the commencement day.

BACKGROUND NOTE

43. In addition to ring fence corporation tax (RFCT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. The rate of SC is set at 32 per cent.

44. Field allowances provide relief by reducing the amount of adjusted profits on which SC is due for oil and gas projects which meet certain conditions. Existing field allowances are provided by Part 8, Chapter 7 Corporation Taxes Act 2010 and apply to both onshore and offshore projects which satisfy the relevant criteria.

45. This clause introduces a new allowance, replacing field allowances for onshore projects.

EXPLANATORY NOTE

CLAUSE 66: OIL AND GAS: REINVESTMENT AFTER PRE-TRADING DISPOSAL

SUMMARY

1. This clause makes provision for relief from corporation tax on chargeable gains where a company disposes of certain assets that were used by it for the purpose of oil and gas exploration and appraisal (E&A) activities. The relief applies where the proceeds are then reinvested in the UK or in the UK sector of the continental shelf.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new sections 198J-198L after section 198I of Chapter 2 of Part 6 of Taxation of Chargeable Gains Act 1992 (TCGA).

New section 198J

3. New subsection (1) specifies the assets whose disposal may benefit from the relief. To qualify for the relief, the company making the disposal must be an "E&A company" disposing of "relevant E&A assets", as those terms are defined in subsection (7). Additionally, the assets disposed of must either be used by the company in an area in which it is licensed to carry out E&A activities (also defined in subsection (7)), or be a licence (or licence interest) relating to an undeveloped area.

4. An "E&A company" is a company engaged in E&A activities outside the oil and gas ring fence (see s277 Corporation Tax Act 2010). The definition of "E&A activities" refers to UK or UK continental shelf "oil and gas exploration and appraisal", that term being defined at section 1134 Corporation Tax Act 2010. "Relevant E&A assets" are defined in subsection (7) as assets used solely by the company for E&A activities that are within a class of assets listed in section 155 TCGA 1992.

5. New subsection (2) sets out that the relief will be available if the disposal proceeds are reinvested on "E&A expenditure" (defined in subsection (7) as expenditure on E&A activities treated as such under generally accepted accounting practice) whilst the company is an E&A company, or on "oil assets" (as defined in 198E(5) TCGA 1992) for the purposes of the company's ring fence trade. This definition includes the incurring of exploration, appraisal and development expenditure as provided for by section 198I. Subsection (2) also specifies that the disposal proceeds must be reinvested within the "permitted reinvestment period" as defined in subsection (5), and sets out that the effect of making a claim for relief is that the gain on the disposal will not be chargeable.

6. New subsections (3) and (4) provide that partial relief is available where only part of the proceeds of the disposal has been reinvested as required by subsection (1).

7. New subsection (5) defines “the permitted reinvestment period”.

8. New subsection (6) specifies that certain existing provisions under roll-over relief for capital gains, modified as necessary, are to be used for the purpose of apportioning consideration, and so calculating the disposal proceeds that may benefit from the relief, where the assets disposed of have not been used only for E&A activities.

9. New subsection (7) defines key terms used in new sections 198J-198L.

New section 198K

10. New subsections (1) and (2) allow the relief at 198J(2) and (4) to be applied provisionally.

11. New subsections (3) and (5) specify the conditions in which any provisional relief ceases to apply, and subsection (4) specifies the tax adjustments to be made in that event.

12. New subsection (6) replicates as necessary new 198J(6) (apportioning consideration and calculating disposal proceeds where asset disposed of was not used only for E&A activities) for the purposes of provisional application of the relief, and adopts the definitions in new s198J(7).

New Section 198L

13. New section 198L allows the disposal and expenditure to be made by different companies within the same capital gains group.

14. Subsection (2) provides that the provisions inserted by paragraph (1) are to have effect in relation to disposals made on or after 1 April 2014.

BACKGROUND NOTE

15. Companies are subject to corporation tax (CT) on chargeable gains that arise when they dispose of assets. When the proceeds of a disposal of an asset used for the purposes of a trade are invested in new assets, which are also used only for the purpose of the trade, within certain time limits, sections 152 and 154 TCGA 1992 provide that the chargeable gain is not charged to tax immediately but instead is deducted from the allowable cost of the new assets or, in certain circumstances, is deferred until the sale of the replacement business assets (roll-over relief).

16. Reinvestment relief was introduced as one of a number of measures in Finance Act 2009 for companies with ring fence oil and gas trades. Reinvestment relief provides that, in circumstances where disposal proceeds are reinvested in new oil trade assets, and the disposal and acquisition qualify for roll-over relief, chargeable gains will not arise (rather than, as under roll-over relief, being deferred until the sale of the replacement assets).

17. Companies carrying on oil and gas exploration and appraisal activity who have not commenced trading are not eligible for existing reinvestment relief due to the trading

requirement for roll-over relief. The new exemption will allow these companies to make disposals and reinvestments without a chargeable gain arising. This will provide an equivalent to the exemption given by existing reinvestment relief for companies carrying on exploration and appraisal activities who have commenced a trade.

EXPLANATORY NOTE

CLAUSE 67: SUBSTANTIAL SHAREHOLDER EXEMPTION: OIL AND GAS

SUMMARY

1. This clause amends Schedule 7AC of the Taxation of Chargeable Gains Act 1992 (TCGA) to extend the scope of the substantial shareholding exemption. A company disposing of a substantial shareholding in a subsidiary will be treated as having owned that shareholding for twelve months prior to disposal (a condition of the exemption), where the subsidiary is using assets for oil and gas exploration and appraisal activity that have been transferred from other group companies.

DETAILS OF THE CLAUSE

2. The clause inserts new subparagraph (2A) into paragraph 15A Schedule 7AC of the TCGA 1992 and provides that the amendments will take effect for disposals made on or after 1 April 2014.

3. New subparagraph (2A) amends the definition of "trade" at subparagraphs (2)(b) and (2)(d) of paragraph 15A to include oil and gas exploration and appraisal. "Oil and gas exploration and appraisal" is defined at section 1134 Corporation Tax Act 2010.

BACKGROUND NOTE

4. The substantial shareholding exemption provides that where a company disposes of shares or an interest in shares that it holds in a second company, the gain is not a chargeable gain, and a loss is not allowable, if certain conditions are met. Those conditions include the substantial shareholding requirement, as set out in paragraph 7 of the Schedule. This requires that, in the period starting two years before the disposal, there is a continuous period of 12 months when the shareholding company holds a "substantial shareholding" in the company whose shares it then disposes of.

5. At paragraph 15A of the Schedule, the rules also provide that as long as the shareholding company holds a substantial shareholding immediately before the disposal, in certain circumstances the company does not need to have held it for a 12 month period within the previous two years. The circumstances concerned are where there has been an earlier transfer of assets used in a trade between members of the same group.

6. If, at the time of the disposal, the company whose shares are being disposed of is using an asset which was transferred to it from another company within the same group of companies, and both companies were using the asset for the purposes of their trades, the period during which the shareholding company is treated as having a substantial shareholding

is extended to include the earlier period when the asset was used by the other company in the capital gains group for the purposes of its trade. This can enable the shareholding company to meet the 12 month requirement at paragraph 7 of the Schedule, even where the disposal is of shares in a company that is newly incorporated, provided that all other requirements for the exemption are met.

7. The substantial shareholding exemption allows companies flexibility in restructuring their business by removing potential tax barriers to that flexibility. This amendment will ensure that the structure of the oil and gas fiscal regime does not prevent E&A companies from benefiting from the amendments made to SSE in Finance Act 2011. It will remove a barrier to the transfer of companies from a group undertaking E&A activity in the oil and gas sector to another group in that sector.