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Explanatory Notes

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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 68 SCHEDULE 13: PARTNERSHIPS (PART 1): LIMITED LIABILITY PARTNERSHIPS: TREATMENT OF SALARIED MEMBERS

SUMMARY

1. This clause and Schedule remove the presumption of self-employment for some members of limited liability partnerships (LLPs) to tackle the disguising of employment relationships through LLPs.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new sections 863A to 863G into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 863A provides that the consequences in subsection (2) apply at any time when conditions A to C are met in the case of an individual ("M") who is a member of an LLP to which section 863(1) of ITTOIA 2005 applies. Conditions A, B and C are detailed in new sections 863B, 863C and 863D respectively.

4. Subsection (2) of new section 863A provides the consequences if the circumstances and conditions in subsection (1) are met. It explains that M is to be treated as being employed by the LLP under a contract of service, instead of being a partner, and that, accordingly, M's rights and duties as a member of the LLP are to be treated as arising under that contract of service.

5. Subsection (1) of new section 863B details the times at which condition A needs to be considered. These are the 6 April 2014 or, if later, when M becomes a member of the LLP (if relevant arrangements are in place at those times). Otherwise, the time is any subsequent time when relevant arrangements are put in place or changed, or the time when relevant arrangements for a relevant period were expected to be modified or end but in fact they carry on. These are each a "relevant time".

6. Subsection (2) of new section 863B defines the term "relevant arrangements".

7. Subsection (3) of new section 863B uses a 2 step process to determine the question whether condition A is met at a relevant time.

8. Step 1 requires the identification of the relevant period. This is the period beginning with the relevant time and ending when it is reasonable to expect that the relevant arrangements for the period will end or be changed. The relevant arrangements for the period are those in place at the relevant time.

9. Step 2 provides that condition A is met at the relevant time if it is reasonable to expect that at least 80% of the total amount payable by the LLP for M's performance, during the relevant period, of services for the LLP, in M's capacity as a member, will be disguised salary. The term "disguised salary" is defined in Step 2.

10. Subsection (4) of new section 863B provides that the determination of whether condition A is met at the relevant time continues until such time as the question has to be re-determined because of a change to the relevant arrangements or the end of the period for which the condition was considered.

11. Subsection (5) of new section 863B defines "arrangements" for the purposes of new section 863B.

12. The application of condition A and the process of determining if the condition applies is illustrated in the following example.

13. Example 1: M becomes a member of an LLP on 1 July 2014 and arrangements are made that in return for working for the LLP M will receive a fixed salary for the period from 1 July 2014 to 30 June 2015. It is expected that a new annual arrangement will be put in place from 1 July 2015.

14. The relevant time at which condition A is to be determined is 1 July 2014 being the date when M became a member and the relevant pay arrangements were put in place. The relevant arrangements are the pay arrangements for the period from 1 July 2014 to 30 June 2015. The relevant period is from 1 July 2014 to 30 June 2015. The latter date is the date on which it is expected that the arrangements will end. M's services are the work that M will do for the LLP in the capacity as a member in the period from 1 July 2014 to 30 June 2015.

15. On 1 July 2014, it is expected that M will receive a fixed salary for the period 1 July 2014 to 30 June 2015. It is therefore reasonable to expect that at least 80% of the amount payable for M's services under the arrangements in place for that period will be disguised salary and condition A will be met. The determination will apply until the end of 30 June 2015 unless the arrangements change during the period.

16. New section 863C details condition B which is that M does not have significant influence over the affairs of the LLP.

17. Subsection (1) of new section 863D details condition C which is that, at the relevant time, M's contribution to the LLP is less than 25% of the amount specified by subsection (2).

18. Subsection (2) of new section 863D details the amount that is to be taken into account for the purpose of subsection (1). This is the total amount of disguised salary which, it is reasonable to expect, will be payable by the LLP for M's performance, during the relevant year, of services for the LLP in M's capacity as a member of the LLP. It also explains the meaning of "the relevant tax year" and that "disguised salary" has the meaning given in paragraphs (a) to (c) at Step 2 of new section 863B(3).

19. Subsections (3) and (4) of new section 863D detail when the question of whether condition C is met is to be determined or re-determined.

20. Subsection (5) of new section 863D provides that where condition C is determined to be met, or not met, at the relevant time, it is treated as met, or not met, until the question is re-determined either, at the start of the next tax year, or because there is a change in M's contribution to the LLP or another change of circumstances which might affect the question as to whether condition C is met.

21. Subsections (6) and (7) of new section 863D provide that an increase in M's contribution which would result in condition C not being met is not to have that effect unless it is reasonable to expect that condition C will not be met for the remainder of the tax year in which the increase falls.

22. Subsections (8) to (11) of new section 863D provide for the amount of the contribution to be treated as reduced in certain circumstances.

23. New section 863E explains what is meant by the term "M's contribution to the LLP" and how the basic calculation is to be made. The legislation labels M's contribution to the LLP as "amount A".

24. Subsection (1) of new section 863F details the circumstances in which a deemed contribution is to be taken into account as a contribution to the LLP under subsection (2) of new section 863F. These circumstances are where an existing member at 6 April 2014 gives an undertaking by 6 April 2014 to make a contribution to the capital of the LLP by 5 July 2014, or a new member gives an undertaking, by the date they became a member, to make a contribution by 5 July 2014, or within 2 months of the date of their becoming a member, if later, and the contribution, when made, would be a contribution included in amount A in new section 863E. An undertaking does not have to be legally enforceable.

25. Subsection (2) of new section 863F provides the consequences of new section 863F being met. In determining if condition C is met M is treated as having made the contribution on 6 April 2014, or the date on which M became a member, as appropriate. M is also treated as having made the contribution if there is a re-determination in the 3 month period to 5 July 2014, or the 2 month period from M becoming a member, to the extent that M has not actually made the contribution.

26. Subsection (3) of new section 863F provides that a re-determination of condition C is not triggered when M makes the actual contribution, in whole or in part, in the 3 month period to 5 July 2014, or the 2 month period from M becoming a member, as appropriate.

27. Subsections (4) and (5) of new section 863F provide the consequences of M failing to meet the undertaking to make the contribution, either in whole or in part. If M fails to make all, or part, of the contribution then the determination of whether condition C was met on 6 April 2014, or the date on which M became a member, is revisited without taking into account the deemed contribution or the part not paid. If the re-calculation shows that condition C would have been met it is treated as being met on 6 April 2014, or the date on which M became a member, as appropriate.

28. The following examples illustrate how the deemed contributions rules work.

29. Example 2: M is an existing member of an LLP at 6 April 2014 who has not previously contributed capital to the LLP. On 5 April 2014, M gives an undertaking to the LLP that he will make a contribution of £50,000 by 5 July 2014. The contribution when made would constitute amount A in new section 863E. The question whether condition C is met is determined on 6 April 2014 and takes into account the deemed contribution of £50,000 resulting in condition C not being met. On 30 June 2014, M contributes £50,000 to the LLP. This contribution does not trigger a re-determination and condition C is treated as not met until the end of the 2014-15 tax year or unless there is a later change that requires a re-determination.

30. Example 3: M is an existing member of an LLP at 6 April 2014 who has not previously contributed capital to the LLP. On 5 April 2014, M gives an undertaking to the LLP that he will make a contribution of £50,000 on 5 July 2014. The contribution when made would constitute amount A in new section 863E. The question whether condition C is met is determined on 6 April 2014 and takes into account the deemed contribution of £50,000 resulting in condition C not being met. M fails to make any of the contribution by 5 July 2014. On 6 July 2014, the question whether condition C was met at 6 April 2014 is revisited. M is not treated as having made a contribution so condition C is met. M also met conditions A and B on 6 April 2014 so is treated as a salaried member from that date.

31. New section 863G contains anti-avoidance rules.

32. Subsection (1) of new section 863G provides that no regard is to be had to any arrangements with a main purpose of securing that new section 863A(2) of ITTOIA 2005 does not apply to an individual member of the LLP.

33. Subsections (2) and (3) of new section 863G detail the circumstances in which the consequences in subsection (4) apply. These are where an individual ("X"), who is not a member of the LLP, performs services under arrangements involving a non-individual member of the LLP ("Y"), a main purpose of the arrangements is to secure that new section 863A(2) of ITTOIA 2005 does not apply to that individual, alone or with other individuals, and an amount arises to Y relating to X's services which would have been employment income of X if X was treated as employed by the LLP.

34. Subsection (4) of new section 863G provides the consequences if the circumstances in subsections (2) and (3) arise. X is treated as a member of the LLP in whose case section 863A(2) of ITTOIA 2005 applies and the amount arising to Y relating to X's services is treated as employment income of X. It also ensures that the amount treated as employment income of X is not to be treated as income of X again for income tax purposes under another charging provision.

35. Subsection (4A) of new section 863G prevents new section 863A(2) of ITTOIA 2005 from applying in the case of a member if it would apply because of arrangements with a main purpose of securing that new section 850C of ITTOIA 2005 (excess profit allocation to non-individual partners) does not apply in relation to that member, alone or with others.

36. Subsection (5) of new section 863G defines “arrangements” for the purposes of new section 863G.

37. Paragraph 2 inserts new section 1273A into Part 17 of the Corporation Tax Act 2009 (CTA 2009).

38. New section 1273A applies at any time when new section 863A(2) of ITTOIA 2005 applies and makes corresponding provision for corporation tax purposes.

39. Paragraph 3(2) inserts new section 94AA into Chapter 5 of Part 2 of ITTOIA 2005.

40. Subsections (1) to (3) of new section 94AA apply where a member (“M”) of an LLP is treated as being employed under new section 863A(2) of ITTOIA 2005 and provide for a deduction for expenses paid by the LLP in respect of M’s employment under new section 863A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 2 of ITTOIA 2005 and those listed in subsection (3).

41. Paragraph 3(3) applies new section 94AA of ITTOIA 2005 to property businesses.

42. Paragraph 4(2) inserts new section 92A into Chapter 5 of Part 3 of CTA 2009.

43. Subsections (1) to (3) of new section 92A apply where new section 1273A(2) of CTA 2009 applies in the case of a member (“M”) of the LLP and provide for a deduction for expenses paid by the LLP in respect of M’s employment under new section 1273A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 3 of CTA 2009 and those listed in subsection (3).

44. Paragraph 4(3) applies new section 92A of CTA 2009 to property businesses.

45. Paragraph 4(4) amends Chapter 2 of Part 16 of CTA 2009 and inserts new section 1227A.

46. Subsections (1) and (2) of new section 1227A detail the circumstances in which the section applies and the consequences of it applying. This section provides a deduction for management expenses purposes where a company with investment business is a member of an LLP, expenses of management of the company’s investment business are paid in respect of the employment of a member of the LLP to whom new section 1273A(2) of CTA 2009 applies and the expenses paid would not otherwise be referable to any accounting period. The availability of a deduction is subject to the existing prohibitions that apply to deductions for management expenses.

47. Paragraph 5 makes supplementary provision in Chapter 8 of Part 2 of Income Tax (Earnings and Pensions) Act 2003.

48. Paragraph 6 provides for commencement.

BACKGROUND NOTE

49. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

50. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

51. This element of the partnerships review measure is discussed in the consultation document under the heading: *Disguised Employment.*

52. On 19 March 2014, a resolution was made providing for the operation from 6 April 2014 of Pay As You Earn in respect of income tax payable on behalf of Salaried Members. This resolution has statutory effect under the Provisional Collection of Taxes Act 1968.

53. The National Insurance Contributions (NICs) Act 2014 and associated regulations provide for the changes to NICs legislation that will take effect from 6 April 2014.

FINANCE BILL 2014

RESOLUTION 42 CLAUSE 68

SCHEDULE 13

EXPLANATORY NOTE

CLAUSE 68 SCHEDULE 13: PARTNERSHIPS (PART 2): PARTNERSHIPS WITH MIXED MEMBERSHIP

SUMMARY

1. This clause and Schedule counter tax advantages arising to individuals in partnership with persons who are not individuals (mixed membership partnerships) by way of excess allocations of profits or losses to certain members.

DETAILS OF THE SCHEDULE

2. Paragraph 7(3) inserts new sections 850C to 850E into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 850C provides that the consequences in subsections (4) and (5) apply in the circumstances where an individual ("A") is a partner in a firm that has a profit for a relevant period of account and a non-individual partner ("B") has a profit share and either of conditions X or Y is met.

4. Subsections (2) and (3) of new section 850C detail conditions X and Y. Condition X relates to where A's profit is deferred. Condition Y relates to where A has the power to enjoy B's profit share.

5. Subsection (4) of new section 850C provides the consequences for A if the circumstances and conditions in subsection (1) are met. It explains how A's profit share is to be increased by the amount of B's profit share that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. The increase in the case of A's power to enjoy B's profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is calculated by reference to B's appropriate notional return on capital (as defined in subsection (11)) and appropriate notional consideration for services (as defined in subsection (15)).

6. Subsection (5) of new section 850C provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit for a period of account adjustments are to be made to reflect the increase in A's profit share on a just and reasonable basis.

7. Subsection (6) of new section 850C defines an "individual partner" and "non-individual partner". A "non-individual" would include, for example, a company or an individual acting as a trustee. It does not include the firm itself where it is treated as a partner under new section 863I (allocation of profit to AIFM firm).

8. Subsection (7) of new section 850C specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

9. Subsection (8) of new section 850C defines the term "A's deferred profit" used in condition X.

10. Subsection (9) of new section 850C defines the term "the relevant tax amount" used in conditions X and Y.

11. Subsection (10) of new section 850C defines the term "the appropriate notional profit" used in condition Y as the sum of the appropriate notional return on capital and the appropriate notional consideration for services.

12. Subsections (11) and (12) of new section 850C define the term "the appropriate notional return on capital" used in subsection 10 and specify how it is to be calculated by reference to B's contribution to the firm.

13. Subsections (13) and (14) of new section 850C specify how the amount of B's contribution to the firm for the purposes of subsections (11) and (12) is to be determined.

14. Subsections (15) to (17) of new section 850C define the term "the appropriate notional consideration for services" used in subsection 10 and specify how it is to be calculated.

15. Subsection (18) of new section 850C details the circumstances in which A has the power to enjoy B's profit share. This is the case if A is a connected person in relation to B other than being connected by reason of being partners in the partnership, or if A is party to arrangements with a main purpose of securing that an amount included in B's profit share is charged to corporation tax rather than income tax or is otherwise subject to corporation tax rules rather than income tax rules, or if any of the enjoyment conditions specified in subsection (20) are met in relation to all or part of B's profit share.

16. Subsection (19) of new section 850C defines the term "arrangements".

17. Subsections (20) and (21) of new section 850C detail the enjoyment conditions including making clear that references to A include any person connected with A apart from B. .

18. Subsections (22) and (23) of new section 850C apply where all or part of the increase in A's profit share is allocated by A to the firm under new section 863I of ITTOIA 2005, which modifies the rules for the taxation of partnerships that manage alternative investment funds, and B makes a payment representing income tax to the firm. For income tax purposes, the payment is not to be treated as income of any partner in the firm or to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B.

19. Subsection (1) of new section 850D provides that the consequences in subsections (4) and (5) apply in the circumstances where a non-individual partner ("B") has a profit share for a relevant period of account, and individual ("A") personally performs services for the firm, it is reasonable to suppose that A would have been a partner in the firm but for the rules in new section 850C and either of conditions X or Y is met.

20. Subsections (2) and (3) of new section 850D set out conditions X and Y. Condition X relates to amounts representing A's deferred profit in B's profit share. Condition Y relates to where A has the power to enjoy B's profit share.

21. Subsection (4) of new section 850D provides the consequences for A if the circumstances and conditions in subsection (1) are met. A is treated as a partner in the firm for the relevant period of account, except for the purposes of new section 863I of ITTOIA 2005, and as having a share of the firm's profit for the relevant period of account which is chargeable to income tax. A's share of the profit is the amount of B's profit that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. A's share of the profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is determined in the same way as in new section 850C of ITTOIA 2005.

22. Subsections (5) and (6) of new section 850D provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit share for a period of account adjustments are to be made to reflect A's share of the firm's profit on a just and reasonable basis.

23. Subsection (7) of new section 850D specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

24. Subsection (8) of new section 850D provides an automatic assumption in relation to a member of a partnership which is associated with the firm. The assumption is that it is reasonable to suppose that the member would have been a partner in the firm at a time during the relevant period of account, or an earlier period of account, but for the provision contained in new section 850C of ITTOIA 2005.

25. Subsection (9) of new section 850D provides the circumstances in which a partnership is "associated" with the firm.

26. Subsections (10) to (13) of new section 850D provides definition and interpretation of the terms used in new section 850D: "partnership", "A's deferred profit", "the appropriate notional profit" and "A's power of enjoy B's profit share".

27. Subsection (1) of new section 850E applies subsection (2) if new section 850C(4) of ITTOIA 2005 applies to increase A's profit share, or new section 850D(4) of ITTOIA 2005 applies to treat A as having a share of the firm's profit, and as a result of an agreement in relation to the excess of B's profit share, B makes payment to another person out of the excess part of B's profit share and the payment is not made with a main purpose of obtaining

a tax advantage. The "excess part of B's profit share" is the amount of B's profit share that represents the amount of the increase in A's profit share under new section 850C(4) or A's share of the firm's profit under new section 850D(4).

28. Subsection (2) of new section 850E provides that, for income tax purposes, the payment is not to be income of the recipient, is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B, and is not to be regarded as a distribution.

29. Subsection (3) of new section 850E provides definitions relevant to subsection (1).

30. Paragraphs 8(1) and 8(2) amend the overview of Chapter 3 of Part 4 of Income Tax Act 2007 (ITA 2007).

31. Paragraph 8(3) inserts new section 116A into Chapter 3 of Part 4 of ITA 2007.

32. Subsections (1) to (5) of new section 116A provide that no relevant loss relief is to be given to an individual for a loss made in a trade or profession as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section, it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

33. Subsection (6) of new section 116A defines "arrangements" and "relevant loss relief" for the purposes of this section.

34. Paragraphs 9(1) and 9(2) amend the overview in Chapter 4 of Part 4 of ITA 2007.

35. Paragraph 9(3) inserts new section 127C into Chapter 4 of Part 4 of ITA 2007.

36. Subsections (1) to (5) of new section 127C provide that no relevant loss relief is to be given to an individual for a loss made in a property business as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

37. Subsection (6) of new section 127C defines "arrangements" and "relevant loss relief" for the purposes of this section.

38. Paragraphs 10(1) and 10(2) amend Part 17 of the Corporation Tax Act 2009 (CTA 2009).

39. Paragraph 10(3) inserts new section 1264A into Part 17 of CTA 2009.

40. Subsections (1) and (2) of new section 1264A provide for the situation where the income tax provisions in new sections 850C(4) or 850D(4) of ITTOIA 2005 apply to increase

individual A's profit share, or to treat A as having a share of the firm's profit, and a company is non-individual B in relation to A. In determining the company's profits from the firm for an accounting period, adjustments are to be made to reflect the increase in A's profit share, or the amount of profit treated as A's share of the firm's profit, on a just and reasonable basis.

41. Subsection (3) of new section 1264A makes corresponding provision for corporation tax in respect of sections 850C(23) and section 850E(2) of ITTOIA 2005.

42. Paragraphs 11 to 14 provide commencement rules. The changes will take effect from 6 April 2014 with the exception of anti-avoidance rules concerning tax-motivated profit allocations. These rules came into force on 5 December 2013 in order to protect against risks to tax revenue.

BACKGROUND NOTE

43. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

44. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

45. This element of the partnerships review measure is discussed in the consultation document under the headings: *Partnerships with mixed membership – profits and Partnerships with mixed membership - losses.*

EXPLANATORY NOTE

CLAUSE 68 SCHEDULE 13 PARTNERSHIPS (PART 3): ALTERNATIVE INVESTMENT FUND MANAGERS: DEFERRED REMUNERATION ETC

SUMMARY

1. This clause and Schedule introduces a mechanism for members of alternative investment fund managers (AIFM) partnerships (including their delegates and sub-delegates) to allocate certain 'restricted' profits to the partnership.

2. These are profits that those members cannot immediately access because of requirements under the Alternative Investment Fund Managers Directive (AIFMD) (2011/61/EU) to defer remuneration of 'key staff'.

3. The legislation imposes a charge to tax on these profits at the additional rate of tax (45 per cent) to be paid by the AIFM partnership.

4. It also sets out the capital gains treatment where the partner's remuneration is in the form of instruments in the fund under management.

DETAILS OF THE SCHEDULE

5. Paragraph 15 inserts new sections 863H to 863L into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

6. New section 863H(1) states that new section 863I will apply to an AIFM trade of an AIFM firm if the AIFM firm elects for that section to apply.

7. Subsection (2) of new section 863H states that the election must be made within 6 months after the end of the first period of account for which the election is to have effect.

8. Subsection (3) of new section 863H contains definitions. An AIFM firm is a firm, the regular business of which is managing one or more alternative investment funds itself, or carrying out one or more management functions as the delegate or sub-delegate of the manager.

9. Subsection (4) of new section 863H defines the AIFM trade as a trade which involves the activities mentioned in new section 863H(3).

10. Subsection (5) of new section 863H says that subsection (3) is to be construed as if it were contained in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

11. New section 863I sets out a mechanism for collection of income tax if the election is made.

12. Subsection (1) of new section 863I applies to the 'relevant restricted profit' of a partner in an AIFM firm. This includes profit which has been reallocated to the partner under the excess profit allocation rules in the new section 850C in Part 2 (subsection (1)(b) of new section 863I).

13. Subsection (2) of new section 863I allows the partner to allocate all or part of the relevant restricted profit ("the allocated profits") of the AIFM trade earned by that partner to the AIFM firm.

14. Subsection (3)(a) of new section 863I excludes the allocated profit from the partner's taxable profit in the period of account.

15. Subsection (3)(b) of new section 863I treats the AIFM firm as if it was a partner in itself.

16. Subsection (3)(c) of new section 863I states that the income tax provisions will apply subject to subsection (5).

17. Subsections (4) of new section 863I stipulates that the firm is subject to income tax on the allocated profit. The profit is treated as chargeable under Chapter 2 of Part 2 ITTOIA for the tax year in which the firm's relevant period of account ends. The rate of tax payable is the additional rate

18. Subsection (5) of new section 863I provides a power for HMRC to make regulations to modify applicable income tax provisions.

19. Subsection (6) of new section 863I defines 'relevant restricted profit' as including two categories of variable remuneration. The first category is deferred remuneration including remuneration in cash or instruments. The second category is upfront remuneration (i.e. remuneration which is not deferred) which vests in the partner in the form of instruments with a retention period of at least six months.

20. Subsection (7) of new section 863I limits the application of the mechanism to remuneration which is awarded to a partner under arrangements that are consistent with the AIFMD remuneration guidelines.

21. Subsection (8) of new section 863I limits the application of the mechanism in the case of AIFM firms which qualify for the mechanism only because they are delegates of AIFM managers to partners who are 'identified staff' as defined in the guidelines.

22. Subsection (9) of new section 863I states that terms used in subsection (6) to (8) have the same meaning s in the AIFMD remuneration guidelines.

23. New section 863J sets out the tax treatment when the relevant restricted profit vests in the partner who initially allocated it to the partnership.

24. Two situations are covered. The first is where at the time the remuneration vests, the partner is still carrying on the AIFM trade, whether as a partner in the AIFM firm or otherwise (subsection (1) of new section 863J). In this case, under subsection (2) of new section 863J, the amount determined by subsection (5) of new section 863J is treated as a profit of the relevant tax year, made in the AIFM trade and taxable under Chapter 2 of Part 2 of ITTOIA 2005.

25. The second situation is where the individual in whom the allocated profit vests is no longer carrying on the AIFM trade (subsection (3) of new section 863J). In that case, the individual is not treated as receiving trading income but as in receipt of income liable to income tax in the relevant tax year (subsection (4) of new section 863J). This income tax is not chargeable under Chapter 2 of Part 2 of ITTOIA 2005 but is a stand alone charge on the individual.

26. Subsection (5) of new section 863J states that the amount which is treated as a profit or income is the amount of the allocated profit net of the income tax for which the AIFM firm is liable plus the amount of that income tax paid by the firm by the time when the vesting occurs or, if the tax is payable by the firm in the same tax year in which the individual is chargeable, so much of that tax as is paid.

27. Subsection (6) of new section 863J specifies that the income tax which has been paid by the AIFM firm or is paid on time in the same year as the profits vest is credited to the partner in whom the income vests and is taken into account in determining the income tax payable by, or repayable to, that individual.

28. Subsection (7) of new section 863J defines the ‘relevant tax year’ as the year of vesting, in the case of deferred remuneration, and, in the case of upfront remuneration in the form of instruments, the tax year in which the allocated profit would otherwise have been chargeable to income tax for the partner.

29. Subsection (8) of new section 863J explains that terms used in this section take their meaning from the AIFMD remuneration guidelines.

30. Subsection (9) of new section 863J provides that the provision in the excess profit allocation rules which permits certain adjusting payments to be made without tax consequences is ignored for the purposes of this provision.

31. New section 863K gives a partner who has allocated profit to an AIFM firm under the mechanism, and in whom the profit then vests, the right to obtain from the firm a statement showing details of the amount of the profits, the tax for which the firm is liable and the tax paid.

32. New section 863L defines the AIFMD remuneration guidelines. The effect of these guidelines and the AIFMD is broadly that certain AIFM firms must defer 40 to 60 per cent of the variable remuneration of key staff by up to three to five years and pay at least 50 per cent of the variable remuneration in units or shares of the funds they manage, or equivalent ownership interests, rather than cash.

33. Paragraph 16 inserts a new section 12ADA into Taxes Management Act 1970 (TMA 1970).

34. Subsection (1) of new section 12ADA provides that where a partnership has made an election under 863H, an officer of HMRC may by notice require the firm to supply such information as the officer may reasonably require for the purposes of the operation of new sections 863H to 863L in relation to the firm and its members. Subsection (2) of new section 12ADA stipulates that the information must be provided within such reasonable time as is specified.

35. Subparagraph (3) inserts a reference to new section 12ADA into the table in section 98 of TMA 1970.

36. Paragraph 17 inserts new sections 59B and 59C into Taxation of Chargeable Gains Act 1992 (TCGA 1992).

37. Under the new section 59B, where there has been a disposal to the partner of instruments which are partnership assets for the purposes of section 59 TCGA 1992 and, by virtue of that disposal, the variable remuneration vests in the partner, both the persons making the disposal and the partner are to be treated as making the disposal and acquisition respectively for an amount equal to the allocated profit net of the tax for which the partnership was liable.

38. New section 59C has the same effect where there is a disposal of instruments by a company which is a partner in the partnership and the company would, as a partner in the firm, have been charged to tax on the allocated profit but for adjustments under the excess profit allocation provisions.

39. Paragraph 18 inserts a new section 189(2B) into Finance Act 2004. This is to ensure that income charged under new section 863J on vesting is also treated as partnership income for pension purposes.

40. Paragraph 19 inserts the charging of AIFM partnership profits into Step 4 in the calculation of income tax liability under section 23 of Income Tax Act 2007.

41. Paragraph 20 gives power to HMRC to amend any Act by regulations for equivalent provisions to apply in future if necessary to other firms regulated under the Financial Services and Markets Act 2000.

42. Paragraph 21 provides that the amendments made by this Part (Part 3) of the Schedule have effect for the tax year 2014-15 and subsequent tax years.

BACKGROUND NOTE

43. These provisions are part of a wider review of certain parts of the partnership rules announced at Budget 2013.

44. A consultation document *Partnerships: A review of two aspects of the tax rules* was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

45. This element of the partnerships review measure is discussed in the consultation document under the headings: *Partnerships with mixed membership – profits: Profit deferral and working capital arrangements.*

EXPLANATORY NOTE

CLAUSE 68 SCHEDULE 13: PARTNERSHIPS (PART 4): DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

SUMMARY

1. This clause and Schedule will prevent tax-motivated disposals of income streams or assets within the charge to tax on income through partnerships giving rise to tax advantages.

2. The legislation will impose a charge to tax on income on the person making the disposal.

DETAILS OF THE SCHEDULE

Income tax

3. Paragraph 22 of the Schedule is introductory.

4. Paragraph 23 amends section 809AZF in Chapter 5A of Income Tax Act (ITA) 2007 (transfers of income streams) so that Chapter 5A cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 6 April 2014.

5. Paragraph 24(1) inserts new Chapter 5AA into ITA. The Chapter introduces new section 809AAZA, which covers disposals of income streams by persons within the charge to income tax by or through partnerships.

6. New section 809AAZA(1) provides that the Chapter applies if there are arrangements between a transferor and a transferee as a result of which the conditions set out in new subsections (1)(a) to (1)(d) are met.

7. New section 809AAZA(1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.

8. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.

9. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

10. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

11. New subsection (2) provides that the legislation does not however apply if the disposal is to a spouse or civil partner or relative of the transferor.

12. New subsection (3) defines disposal as including anything that is a disposal for the purposes of Taxation of Chargeable Gains Act (TCGA) 1992. This includes a part disposal.

13. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

14. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

15. New subsection (6) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

16. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

17. New subsection (8) provides definitions. “Relevant receipts” takes its definition from the transfer of income streams legislation in Chapter 5A of Part 13 ITA 2007, which is income that would otherwise have been taxable income of the transferor. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.

18. New section 809AAZB(1) sets out the treatment where new section 809AAZA applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.

19. New subsection (2) gives ’relevant amount’ the same meaning as in the transfers of income streams legislation in Chapter 5A of Part 13 of ITA 2007, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

20. New subsection (3) states that in subsection (2) to (6) that references to the transfer of the right are to be read as references to the disposal of the right.

21. New subsection (4) explains the interaction of new Chapter 5AA with new Chapter 5D of ITA 2007 (Disposals of assets through partnerships). If both apply then new Chapter 5AA will not apply if the charge under new Chapter 5D is greater.

22. Paragraph 24(2) covers commencement of new Chapter 5AA. The legislation applies where the arrangement referred to in new section 809AAZA(1) is made on or after 6 April 2014.

23. Paragraph 25(1) of the Schedule inserts new Chapter 5D into ITA. The Chapter introduces new section 809DZA, which covers disposals of assets by or through partnerships.

24. New section 809DZA(1) provides that the Chapter applies if both Condition A and Condition B are met.

25. New section 809DZA(2) contains Condition A which is that there are arrangements involving a transferor and a transferee as a result which all of the conditions set out in new subsections (2)(a) to (2)(d) are met.

26. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset .

27. New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

28. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

29. New subsection (2)(d) requires that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

30. New subsection (3) provides that the legislation does not, however, apply if the disposal is to a spouse or civil partner or relative of the transferor.

31. New subsection (4) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

32. New subsection (5) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

33. New subsection (6) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

34. New subsection (7) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

35. New subsection (8) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

36. New subsection (9) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to tax on income would have applied to the "relevant amount" received by the transferee.

37. New subsections (10) to (12) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

38. New subsection (13) provides definitions. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

39. New section 809DZB(1) sets out the treatment where new section 809DZA applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

40. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

41. New subsection (3) explains the interaction of Chapter 5D with new Chapter 5AA (disposals of income streams through partnerships). If both apply then Chapter 5D will not apply if the charge under Chapter 5AA is equal or greater.

42. Paragraph 25(2) covers commencement. The legislation applies where the arrangement is made on or after 6 April 2014.

Corporation tax

43. Paragraph 26 of the Schedule is introductory.

44. Paragraph 27 amends section 756 in Chapter 1 of Part 16 of Corporation Tax Act (CTA) 2010 (factoring of income etc) so that Chapter 1 cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 1 April 2014.

45. Paragraph 28(1) inserts new Chapter 1A into CTA 2010. The Chapter introduces new section 757A, which covers disposals of income streams by companies by or through partnerships.

46. New section 757A(1) provides that the Chapter applies if there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (1)(a) to (1)(d) are met.

47. New subsection (1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.

48. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.

49. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

50. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

51. New subsection (2) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

52. New subsection (3) provides that the disposal might in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

53. New subsection (4) makes clear that the transferor and the transferee do not have to be members of the partnership at the same time.

54. New subsection (5) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

55. New subsection (6) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if, for example, the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

56. New subsection (7) provides definitions. “Relevant receipts” takes its definition from the transfer of income streams legislation in Chapter 1 of Part 16 ITA 2007, which is income that would otherwise have been taxable income of the transferor. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.

57. New section 757B(1) sets out the treatment where new section 757A applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.

58. New subsection (2) gives ‘relevant amount’ the same meaning as in the transfers of income streams legislation, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

59. New subsection (3) stipulates that references to the transfer of the right in the transfers of income streams legislation are to be read as references to the disposal of the right.

60. New subsection (4) explains the interaction of Chapter 1A with new Chapter 4 (Disposals of assets through partnerships). If both apply then Chapter 1A will not apply if the charge under Chapter 4 is greater.

61. Paragraph 28(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

62. Paragraph 29(1) inserts new Chapter 4 into CTA 2010. The Chapter introduces new section 779A, which covers disposal of assets by or through partnerships.

63. New section 779A(1) provides that the Chapter applies if both Condition A and Condition B are met.

64. New section 779A(2) contains Condition A which is that there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (2)(a) to (d) are met.

65. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset.

66 New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

67. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

68. New subsection (2)(d) states that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

69. New subsection (3) defines disposal of an asset as including anything that is a disposal for the purposes of TCGA1992. This includes a part disposal.

70. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

71. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

72. New subsection (6) is intended to put beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

73. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

74. New subsection (8) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to corporation tax on income would have applied to the "relevant amount" received by the transferee.

75. New subsections (9) to (11) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

76. New subsection (12) provides definitions. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

77. New section 779B(1) sets out the treatment where new section 779A applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

78. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

79. New subsection (3) explains the interaction of Chapter 4 with new Chapter 1A (disposals of income streams through partnerships). If both apply then Chapter 4 will not apply if the charge under Chapter 1A is the same or greater.

80. Paragraph 29(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

BACKGROUND NOTE

81. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.

82. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

83. This element of the partnerships review measure is discussed in the consultation document under the heading: *Partnership members with differing tax attributes.*

EXPLANATORY NOTE

CLAUSE 69: TRANSFER PRICING: RESTRICTION ON CLAIMS FOR COMPENSATION ADJUSTMENTS

SUMMARY

1. This clause introduces amendments to the rules in Chapter 4 of Part 4 of Taxation (International and Other Provisions) Act 2010 limiting the circumstances in which a claim for a compensating adjustment by a disadvantaged person may be made. It also clarifies the tax treatment of interest that has been subject to a transfer pricing adjustment.

DETAILS OF THE CLAUSE

2. Subsection (3) of the new clause inserts new section 174A. This section limits the affect of section 174 so that a claim for a compensating adjustment may not be made by a person (the disadvantaged person) that is within the charge to income tax to the extent that the person that is subject to the transfer pricing adjustment (the advantaged person) is a company.

3. Subsection (4) of the clause inserts new section 187A and sets out the tax treatment of interest where new section 174A limits the ability of the disadvantaged person to make a compensating adjustment claim. Where the specified conditions are met, new section 187A treats the non arm's length interest that is subject to the transfer pricing adjustment as a qualifying distribution.

4. Subsections (5) and (6) state that the amendments will affect amounts arising on or after 25 October 2013 but that they will not apply to interest that is, in accordance with generally accepted accounting practice, referable to a period before that date.

BACKGROUND NOTE

5. The intention to introduce this legislation was announced by the Exchequer Secretary to the Treasury in a Written Ministerial Statement on 25 October 2013. This clause and an HMRC technical note were published on the same day. The amendments set take effect from that day.

EXPLANATORY NOTE

CLAUSE 70: RATES OF ALCOHOLIC LIQUOR DUTIES

SUMMARY

1. This clause provides for a reduction in the rates of excise duty on general beer duty beer. It also provides for increases in the rates of excise duty charged on wine and made-wine not exceeding 22 per cent and sparkling cider of a strength exceeding 5.5 per cent and high strength beer duty. These changes will have effect on and after 24 March 2014.

DETAILS OF THE CLAUSE

2. Subsection (2)(a) substitutes a new rate of excise duty for lower strength beer in section 36(1AA)(za) of the Alcoholic Liquor Duties Act 1979 (ALDA). (This is beer of a strength exceeding 1.2 per cent but not exceeding 2.8 per cent.) The previous rate of £9.17 is replaced by £8.62.

3. Subsection (2)(b) substitutes a new standard rate of excise duty for beer in section 36(1AA)(a) of ALDA. (This is beer of a strength which exceeds 2.8 per cent and is not small brewery beer.) The previous rate of £19.12 is replaced by £18.74.

4. Subsection (3) substitutes a new rate of excise duty for high strength beer in section 37(4) of ALDA. (This is beer of a strength which exceeds 7.5 per cent.) The previous rate of £5.09 is replaced by £5.29.

5. Subsection (4) substitutes a new rate of excise duty for sparkling cider of a strength exceeding 5.5 per cent in section 62(1A)(a) of ALDA. The previous rate of £258.23 is replaced by £264.61.

6. Subsection (5) substitutes new rates of excise duty for wine and made-wine in Part 1 of the table in Schedule 1 to ALDA. The new rates are as follows:

- wine or made-wine of a strength not exceeding 4 per cent: £84.21;
- wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent: £115.80;
- wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling: £273.31;
- sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent: £264.61;

- sparkling wine or sparkling made-wine of a strength of at least 8.5 per cent or more, but not exceeding 15 per cent: £350.07;

- wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent: £364.37.

BACKGROUND NOTE

7. Budget 2014 announced a reduction in the rates of excise duty on beer by 6 per cent for lower strength beer and 2 per cent for the standard rate of beer duty. The duty rate for high strength beer duty will increase by 3.9 per cent, which will result in the total duty rate for high strength beer being reduced by 0.75 per cent. The rates of duty on spirits and other drinks of a strength exceeding 22 per cent, still cider and perry and sparkling cider and perry of a strength of 5.5 per cent or less will be frozen in 2014-15; this does not require legislation. This clause also increases the excise duty on wine and made-wine by the rate of inflation (based on the retail price index).

EXPLANATORY NOTE

CLAUSE 71: RATES OF TOBACCO PRODUCTS DUTY

SUMMARY

1. This clause provides for changes in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) to have effect from 6pm on 19 March 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes a new table of rates of duty into Schedule 1 to the Tobacco Products Duty Act 1979. The duty rates on tobacco products are changes as follows:

   i. cigarettes – the ad valorem element remains unchanged at 16.5 per cent; the specific duty is increased from £176.22 to £184.10 per 1000 cigarettes;

   ii. cigars – increased from £219.82 to £229.65 per kilogram;

   iii. hand-rolling tobacco – increased from £172.74 to £180.46 per kilogram; and

   iv. other smoking tobacco and chewing tobacco – increased from £96.64 to £100.96 per kilogram

3. Subsection (2) provides for the new table of duty rates to have effect from 6pm on 19 March 2014.

BACKGROUND NOTE

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The Government is committed to maintaining high tobacco duty rates to support health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

5. This clause increases the excise duty on all tobacco products by 2 per cent above the rate of inflation (Retail Price Index). The Government will continue to raise all tobacco duties rates by 2 per cent above inflation each year between 2015-16 and 2019-20 inclusive.

6. The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 24p, a pack of 5 small cigars by 8p, a 25 gram pack of hand-rolling tobacco by 23p; and a 25 gram pack of pipe tobacco by 13p.

EXPLANATORY NOTE

CLAUSE 72: AIR PASSENGER DUTY: RATES OF DUTY FROM 1 APRIL 2014

SUMMARY

1. This clause provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of Finance Act 1994. The rates of APD to Band A destinations are unchanged. Reduced rates to Bands B and C destinations will rise by £2 and standard rates by £4. The reduced rate to Band D destinations will rise by £3 and standard rate by £6. These changes to the rates of APD come into effect in relation to the carriage of passengers beginning on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection 2 amends the APD rates to Band B destinations.

3. Subsection 3 amends the APD rates to Band C destinations.

4. Subsection 4 amends the APD rates to Band D destinations.

BACKGROUND NOTE

5. In response to the airline industry's request for Government to give sufficient advance notice of changes in APD rates, Budget 2013 announced that APD rates for 2014-15 would increase in line with inflation (based on the retail price index (RPI)).

EXPLANATORY NOTE

CLAUSE 73: AIR PASSENGER DUTY: RATES OF DUTY FROM 1 APRIL 2015

SUMMARY

1. This clause provides for the number of destination bands to be reduced from four to two by merging bands B, C and D. The new band B includes destinations that are over 2000 miles from London. The clause also provides for the rates of duty for 2015-16 and provides that the higher rate is six times the reduced rate, rather than twice the standard rate. It also makes consequential amendments. The changes come into effect in relation to the carriage of passengers beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. <u>Subsection 3</u> omits the subsections on APD rates to destinations in bands B and C.

3. <u>Subsection 4</u> sets the APD rates to destinations that are not in band A.

4. <u>Subsection 5</u> sets the APD higher rates and omits the sections on the APD higher rates to destinations in bands B and C.

5. <u>Subsections 7 to 9</u> makes consequential amendments to the provisions that transferred the setting of long haul rates of APD in Northern Ireland to the Northern Ireland Assembly.

6. <u>Subsection 10</u> omits Parts 2 and 3 of Schedule 5A which list the destinations in Bands B and C.

BACKGROUND NOTE

7. Budget 2014 announced that the number of Air Passenger Duty destination bands will be reduced from four to two. This will contribute to the UK's growth opportunities by cutting APD rates on flights to many emerging market destinations such as China, India and Brazil.

8. The higher rate of APD is applied to aircraft with an authorised take off weight of 20 tonnes or more and equipped to seat fewer than 19 passengers. These aircraft provide enhanced levels of comfort and will not benefit from the rate cuts as part of the banding reform.

EXPLANATORY NOTE

CLAUSE 74: AIR PASSENGER DUTY: ADJUSTMENTS TO PART 3 OF SCHEDULE 5A TO FA 1994

SUMMARY

1. This clause updates the list of territories in Part 3 of Schedule 5A to Finance Act 1994. It replaces the Ascension Island and Saint Helena with Saint Helena, Ascension and Tristan da Cunha (as one territory), and the Netherlands Antilles with Bonaire, Curaçao, Saba, Sint Maarten and Sint Eustatius (as separate territories). These changes come into effect at Royal Assent.

DETAILS OF THE CLAUSE

2. Subsection 1 amends the list of territories in Part 3 of Schedule 5A to Finance Act 1994.

3. Subsection 2 provides for the changes to come into effect at Royal Assent.

BACKGROUND NOTE

4. The list of territories included in the current Band C destination band is set out in Part 3 of Schedule 5A to Finance Act 1994. The changes made by this clause do not affect the APD rate applicable to the destinations.

EXPLANATORY NOTE

CLAUSE 75: VED RATES FOR LIGHT PASSENGER VEHICLES, LIGHT GOODS VEHICLES, MOTORCYCLES ETC.

SUMMARY

1. This clause provides for changes to certain rates of Vehicle Excise Duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (2) amends Schedule 1 to VERA to increase the general rate of duty by £5 to £230 for vehicles with an engine size of more than 1549cc and by £5 to £145 for vehicles with an engine size of 1549cc or less.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to change most of the graduated rates of duty which apply generally to light passenger vehicles first registered on or after 1 March 2001. Table 1 provides the rates payable on a first vehicle licence for a vehicle and table 2 provides the rates on all other licences for a vehicle registered on or after 1 March 2001. Table 2 operates so that vehicles emitting over 225 grams of carbon dioxide per kilometre that were registered in the United Kingdom or overseas before 23 March 2006 pay a lower rate than those registered from 23 March 2006 onwards.

4. Subsection (4) amends paragraph 1J of Schedule 1 to VERA to increase the rate of duty by £5 to £225 for Light Goods Vehicles which are not lower-emission vans.

5. Subsection (5) amends paragraph 2(1) of Schedule 1 to VERA to increase the rate of duty by £1 to £38 for motorbicycles with an engine size of over 150cc but not more than 400cc; by £1 to £58 for motorbicycles with an engine size of over 400cc but not more than 600cc; and by £2 to £80 for motorbicycles with an engine size over 600cc, motortricycles with an engine size over 150cc and trade licences for motorcycles.

BACKGROUND

6. The rate of Vehicle Excise Duty (VED) chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emissions data. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle's carbon dioxide emissions. A reduced rate of VED applies to cars using alternative fuels or featuring a hybrid fuel-electric powertrain. Alternative fuels include Liquefied Petroleum Gas, Compressed Natural Gas and high blend (at least 85 per cent content) bioethanol.

7. Cars and vans registered prior to 1 March 2001, and all motorcycles, are taxed by reference to the engine size.

8. The Government intends to increase VED rates in 2014-15 by no more than inflation for cars, motorcycles and the main rates for vans.

EXPLANATORY NOTE

CLAUSE 76: VED RATES: RIGID GOODS VEHICLE WITH TRAILERS

SUMMARY

1. This clause provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces tables which set rates of VED for rigid goods vehicles that draw trailers when such trailers may weigh 4,000kg or more and the vehicle 12,000kg or more. This includes a rate which is applicable where a vehicle does not fall within the tables introduced by the subsection.

3. Rates for these vehicles are to be determined by reference to the following new factors: the presence of road-friendly suspension on the vehicle; how many axles the vehicle has; the vehicle's HGV road user levy banding; the trailer's plated gross weight; and the total of that weight and the vehicle's revenue weight.

4. Subsection (2) makes a consequential amendment to paragraph 2(2) of schedule 1 of the HGV Road User Levy Act 2013 to refer to the new definition of relevant rigid goods vehicle which is being introduced by subsection 2.

BACKGROUND NOTE

5. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and in the case of rigid goods vehicles that draw trailers only those drawing trailers weighing 4,000kg or more. It is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

EXPLANATORY NOTE

CLAUSE 77: VED RATES: VEHICLES WITH EXCEPTIONAL LOADS, RIGID GOODS VEHICLES AND TRACTIVE UNITS

SUMMARY

1. This clause provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (2) reduces the rate of VED for a vehicle used to carry or draw a trailer carrying an exceptional load.

3. Subsections (3) and (4) maintain the rates of VED for rigid goods vehicles weighing less than 12,000kg and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

4. Subsections (6) and (7) maintain the rates of VED for tractive units to which semi-trailers may be attached that weigh less than 12,000kg, and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

5. Subsection (8) reduces the rate of VED for tractive units to which semi-trailers may be attached when these are used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin.

6. Subsection (9) removes the rates of VED for certain vehicles without road friendly suspension which were introduced to Schedule 1 of VERA through Section 22 of Finance Act 2011.

BACKGROUND NOTE

7. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

EXPLANATORY NOTE

CLAUSE 78: VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2014

CLAUSE 79: VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2015

SUMMARY

1. Section 1 of the Vehicle Excise and Registration Act 1994 (VERA) provides for the charging of Vehicle Excise Duty (VED) in respect of mechanically propelled vehicles and Schedule 1 of VERA sets out the rates of duty. Paragraph 1A of Schedule 2 of VERA provides a VED exemption in respect of vehicles constructed before 1 January 1973.

2. Clause 78 provides for an extension to the scope of the exemption to include vehicles constructed before 1 January 1974 and will come into force on 1 April 2014. Clause 79 provides for further extension to the scope of the exemption to include vehicles constructed before 1 January 1975 and will come into force on 1 April 2015. Both clauses amend Paragraph 1A of Schedule 2 of VERA.

DETAILS OF CLAUSE 78

3. Subsection (1) of Clause 78 extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1974.

4. Subsection (2) of Clause 78 provides for the extension of the exemption to come into force on 1 April 2014.

5. Subsection (3) of Clause 78 provides a transitional provision so that a nil licence does not need to be in force on 1 April 2014 for a vehicle constructed before 1 January 1974 if there is a vehicle licence already in force in respect of that vehicle. However, the vehicle licence will still need to be displayed on the vehicle. When that existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

DETAILS OF CLAUSE 79

6. Subsection (1) of Clause 79 extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1975.

7. Subsection (2) of Clause 79 provides for the extension of the exemption to come into force on 1 April 2015. It also provides a transitional provision so that a nil licence does not need to be in force on 1 April 2015 in respect of a vehicle constructed before 1 January 1975 if there is a vehicle licence already in force in respect of that vehicle. When the existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

BACKGROUND NOTE

8. The Government considers classic vehicles to be an important part of the nation's historical heritage. The VED exemption is, therefore, designed to support classic vehicle industry within the UK.

9. Budget 2013 announced a measure to extend the scope of the VED exemption to classic vehicles by one additional year. From the 1 April 2014, vehicles constructed in 1973 will be added to the exemption for this category.

10. Budget 2014 announced the Government's intention to legislate in each year's Finance Bill to extend the old vehicle exemption by a further year so that vehicles which were constructed 40 years previously will be exempt from paying VED.

11. Budget 2014 announced that the extension to the exemption for vehicles constructed before 1 January 1975 would be included in Finance Bill 2014. From the 1 April 2015, vehicles constructed in 1974 will be added to the scope of the exemption.

EXPLANATORY NOTE

CLAUSE 80 SCHEDULE 14: ABOLITION OF REDUCED VED RATES FOR VEHICLES SATISFYING REDUCED POLLUTION REQUIREMENTS

SUMMARY

1. This clause introduces Schedule 14 to set the dates from which the availability of reduced rates of Vehicle Excise Duty (VED) for reduced pollution buses and goods vehicles cease by amendment of the Vehicle Excise and Registration Act 1994 (VERA).

DETAILS OF THE SCHEDULE

2. Paragraphs 2 and 3 abolish the procedure for accrediting buses and goods vehicles as meeting reduced pollution requirements and, consequentially, delete all references to the procedure in VERA.

3. Paragraphs 4, 5 and 6 abolish the reduced rates of VED for reduced pollution buses, vehicles used for exceptional loads and haulage vehicles.

4. Paragraphs 7, 8, 9 and 10 abolish the reduced rates of VED for reduced pollution rigid goods vehicles and reduced pollution tractive units.

5. Paragraph 12 sets 1 April 2014 as the date from which reduced rates of VED cease to be available to goods vehicles that meet the reduced pollution requirements and which are inside the HGV Road User Levy.

6. Paragraphs 13 and 14 set 1 April 2016 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro I, Euro II and Euro III reduced pollution requirements.

7. Paragraphs 15, 16 and 17 set 1 January 2017 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro IV, Euro V and Euro VI reduced pollution requirements.

BACKGROUND NOTE

8. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

9. Goods vehicles and buses have qualified for reduced rates of VED when achieving reduced pollution requirements early, ahead of the mandatory adoption of those standards. Reduced rates first became available in 1999.

EXPLANATORY NOTE

CLAUSE 81: SIX MONTH LICENCE: TRACTIVE UNITS

SUMMARY

1. This clause makes a six month vehicle licence available to combined transport goods vehicles, even though their annual rate of Vehicle Excise Duty (VED) will be below the £50 threshold that otherwise determines availability. This change is by amendment of the Vehicle Excise and Registration Act 1994 (VERA) with effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) maintains the availability of a six month vehicle licence where the applicable annual rate of VED exceeds £50, and introduces a new circumstance where a six month licence is available.

3. The new circumstance is if the vehicle is one that is used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin. Such a vehicle does not have to have an annual rate of VED in excess of £50 to qualify for a six month vehicle licence.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

EXPLANATORY NOTE

CLAUSE 82: VEHICLES SUBJECT TO HGV ROAD USER LEVY: AMOUNT OF 6 MONTH LICENCE

SUMMARY

1. This clause provides for the rate of vehicle excise duty (VED) payable for a six month vehicle licence for a vehicle subject to HGV road user levy by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. <u>Subsections (2) and (3)</u> introduce subsection (2A) to section 4 of VERA to set the six month rate of VED at fifty per cent of the applicable annual rate where the vehicle licence is being taken out in respect of a vehicle that is subject to HGV road user levy.

BACKGROUND NOTE

3. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and in the case of rigid goods vehicles that draw trailers only those drawing trailers weighing 4,000kg or more. It is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

EXPLANATORY NOTE

CLAUSE 83: PAYMENT OF VEHICLE EXCISE DUTY BY DIRECT DEBIT

SUMMARY

1. This clause allows vehicle excise duty (VED) to be paid by direct debit instalments with effect from 1 October 2014 and sets out what is the consequence of defaulting on payment.

DETAILS OF THE CLAUSE

2. Subsection (2) provides for a new higher rate of VED where a 12-month vehicle licence is taken out and paid for by direct debit in one more than one instalment. Where a 12-month vehicle licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

3. The rate of VED that will apply to six-month vehicle licences paid for by means other than direct debit is 55 per cent of the annual rate of duty applicable to that vehicle. Where a six-month licence is paid for by direct debit, the rate is 52.5 per cent of the applicable annual rate for that vehicle.

4. Subsections (3) and (4) provide for a new higher rate of VED when a trade licence is taken out for a calendar year and paid by more than one instalment by direct debit. Where a 12-month trade licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

5. Where a six-month trade licence is taken out the rate of VED is 52.5 per cent of the applicable annual rate, where payment is by direct debit.

6. Subsection (6) provides for payment of VED to be made by instalments. In addition, it allows for the liability of the instalments to cease following a notification that the vehicle has been stolen, destroyed, a nil licence was obtained, a licence taken out at a reduced rate, notified off road, sold or disposed or exported.

7. Subsection (6) introduces a new provision where a person defaults on an agreement to pay monthly. Where a person defaults the Secretary of State will send a notice requesting payment of the outstanding value of VED. Failure to comply with this notice will result in a further notice being sent advising the person that the licence is void from a time specified in the notice.

8. Subsections (7) and (8) amend section 35A and section 36 of the Vehicle Excise and Registration Act 1994 so that those sections can also apply to failed payments by direct debit.

8. Subsection (9) provides for the amendments made by this section to come into force on 1 October 2014

BACKGROUND NOTE

9. These provisions enable the Driver and Vehicle Licensing Agency (DVLA) to collect VED via direct debit monthly should motorists wish to pay by direct debit. Currently VED can be paid by cash, cheque and credit or debit cards but none of these payment methods allow the cost of VED to be spread.

10. Motorists will be able to pay VED via direct debit in an annual, one-off payment or 12 equal monthly payments. A six month vehicle licence can also be paid for by direct debit. Paying for VED by direct debit does not alter the fact that a new licence may only be taken out provided the customer has a valid MOT in place.

11. At present, paying for a six-month vehicle licence costs 55 per cent of the applicable annual rate for that vehicle. This will reduce to 52.5 per cent if the payment is made by direct debit. Where a 12-month licence is paid by monthly instalments, the cost of the vehicle licence will be 105 per cent of the applicable annual rate for that vehicle.

EXPLANATORY NOTE

CLAUSE 84: DEFINITION OF "REVENUE WEIGHT"

SUMMARY

1. This clause amends the definition of vehicle weight in the Vehicle Excise and Registration Act 1994 (VERA), consequent to revised secondary legislation specifying that goods vehicle operating weights are up to, but do not include the exact weight displayed on the plate affixed to a vehicle or a trailer.

DETAILS OF THE CLAUSE

2. Subsection (2) provides that the confirmed maximum weight of a vehicle, for the purpose of defining the vehicle's revenue weight, is determined if it has a plated gross weight or a plated train weight and meets the conditions introduced to VERA by the subsection.

3. Subsection (3) provides that a reference in VERA to the plated gross weight of a goods vehicle or trailer is a reference to the maximum gross weight which may not be equalled or exceeded.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. To ensure that the cost of the Levy can be offset to the greatest extent, the Road Vehicles (Construction and Use) Regulations 1986 are being amended. This will mean that a goods vehicle with a plated weight will be able to be loaded up to but not including that weight. For example, a vehicle plated at 21,000kg will be able to be loaded to around 20,999.99kg. This clause aligns VERA with that change.

5. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

EXPLANATORY NOTE

CLAUSE 85 SCHEDULE 15: VEHICLE EXCISE AND REGISTRATION: OTHER PROVISIONS

SUMMARY

1. This clause introduces Schedule 15 which makes amendments to the Vehicle Excise and Registration Act 1994 (VERA) that are required as a consequence of the Driver and Vehicle Licensing Agency's intention to no longer issue paper based vehicle licences, trade licences or nil licences. These amendments to VERA will be followed by changes to secondary legislation which will remove the requirement for vehicle licences, trade licences and nil licences to be displayed in the vehicles to which they relate.

DETAILS OF THE SCHEDULE

2. Paragraph (2) amends section 7 of VERA to remove a regulation-making power which may be used to provide for the return of a vehicle licence when the vehicle licence has been damaged, become illegible or is lost or stolen. As a consequence of no longer issuing a paper based vehicle licence, it removes a requirement for a weight to be shown on a vehicle licence in respect of goods vehicles where a licence is issued at a rate of duty applicable to a lower weight than the vehicle's actual weight.

3. Paragraphs (3), (4), (8) and (10) amend sections 7A, 10, 29 and 31A respectively of VERA so that it will no longer be possible for a vehicle licence to be transferred when there is a change of registered keeper. As a consequence of this, where there is a new registered keeper he/she will be obliged to take out a new vehicle licence when the vehicle to which the vehicle licence relates is transferred to him/her.

4. It is a necessary feature of paperless licences for the vehicle licence to cease to be in force when it is transferred from one registered keeper to another. If it were the case that the vehicle licence did not cease to be in force when transferred then, in the absence of a paper licence confirming the licensed status of the vehicle, the new registered keeper could unknowingly be keeping an unlicensed vehicle.

4. Paragraph (5) repeals section 14(4). This section provided for the issue of a new trade licence where an existing licence has been lost, damaged, etc. Paragraph (5) further amends section 14 so that a holder of a trade licence may request that the Secretary of State may cancel their trade licence at any time.

5. Paragraph (6) amends section 19 so that a person is entitled to a rebate of the duty paid on a licence they have taken out when they notify the Secretary of State their vehicle was stolen, destroyed, a nil licence was obtained, a licence taken out at a reduced rate, notified off road, sold or disposed of, or exported. The amount of the rebate will be

calculated by dividing by twelve the amount of duty chargeable on the licence at the time it was taken out, and multiplying that amount by the number of complete months that are unexpired on the licence from the point when a valid notification is received by the Secretary of State. Section 19 is also amended so that where a rebate condition is fulfilled the licence ceases to be in force. Sections 19(8) is amended so where a request is made to cancel a trade licence, the holder of the trade licence is entitled to a rebate of the duty paid on the licence, when the request is received by the Secretary of State.

6. Paragraphs (9), (11) and (12) amend the sections 31, 31B and 31C respectively of VERA as a consequence of the amendments to section 19.

7. Paragraph (13) repeals section 33 of VERA. As there are no longer paper licences it will no longer be necessary to have an offence of failing to display a vehicle licence, trade licence or nil licence on a vehicle which is used or kept on a public road.

8. As a consequence of repealing section 33, section 33A is repealed (paragraph (14)) so that the now-unnecessary 14 day period of grace for not exhibiting a newly issued vehicle licence, trade licence or nil licence is removed.

9. Paragraph (15) repeals section 35 of VERA. This section provided for an offence where a person knowingly failed to comply with section 10(3) of VERA. However, section 10(3) was repealed by Finance Act 2008. Therefore, this section is no longer required.

10. Paragraph (16) amends section 35A of VERA specifying what happens where payment for VED fails and a notice is served which voids the licence. The notice will no longer require the vehicle licence or trade licences to be returned and instead the notice will only require payment of a sum in respect of the amount of VED which should have been paid. The period of time used to calculate the sum due has been amended.

11. Paragraph (17) amends section 36 of VERA setting out how the amount which may be payable where a court order is made under this section is calculated. The period of time used to calculate the sum due in relation to vehicle licences has been amended.

12. Paragraph (18) amends section 44 to remove the offence of forging, fraudulently altering, using, or lending a vehicle licence, trade licence or nil licence or fraudulently allowing a vehicle licence, trade licence or nil licence to be used by another person.

13. Paragraph (22) provides that the amendments made by the Schedule come into force on 1 October 2014.

BACKGROUND NOTE

14. Currently, a paper based vehicle licence, trade licence or a nil licence is issued by the Driver and Vehicle Licensing Agency (DVLA) or the Post Office on behalf of the DVLA, following a valid application to license a vehicle. Historically, this has provided a visual aid for demonstrating the payment of VED and helped aid the identification of unlicensed vehicles.

15. The DVLA and police now rely on DVLA's electronic vehicle register and use tools like Automatic Number Plate Recognition to ensure that vehicles are correctly licensed and that VED has been paid. Largely due to electronic enforcement, motorists are better informed of their responsibility to ensure that their vehicles are continuously licensed. Enforcement from the record has helped to improve compliance with non-payment of VED running at a historical low. Current estimate of VED evasion is 0.6 per cent which implies VED is a tax with which people are very compliant.

16. As the benefits of a paper vehicle licence, trade licences and nil licence have significantly diminished over time, the Government now believes that the requirement to display a paper licence is redundant.

17. Various provisions in VERA were drafted on the basis of there being paper based vehicle licences, trade licences and nil licences so now need to be amended.

18. Currently, a person must make a separate application for a rebate after having notified DVLA that a vehicle was stolen, destroyed, a nil licence was obtained, another licence has been taken out at a reduced rate, notified off road, sold or disposed, or exported. The Government now believes that there is no longer a need for a separate qualifying application for a rebate now that there will be no requirement to return the paper tax disc. The requirement is that registered keepers, who have satisfactorily notified the Secretary of State (DVLA) of the relevant events described above, will be entitled to a rebate of their VED.

19. The requirement to display vehicle licences and nil licences is contained in the Road Vehicles (Registration and Licensing) Regulations 2002. Amendments to the Road Vehicles (Registration and Licensing) Regulations 2002 are intended to be made which will remove the requirement to display vehicle licences, trade licences and nil licences.

EXPLANATORY NOTE

CLAUSE 86: HGV ROAD USER LEVY: RATES TABLES

SUMMARY

1. This clause revises the rates tables in schedule 1 of the HGV Road User Levy Act 2013 to also include rates of Levy which are applicable to goods vehicles that are in weight categories which are in excess of permitted maximum operating weights.

DETAILS OF THE CLAUSE

2. Subsection (2) revises paragraph 4 of Schedule 1 to the HGV Road User Levy Act 2013, so that heavy goods vehicles with a revenue weight in excess of 44,000kg are subject to Levy Band G, but for rigid goods vehicles that meet this revenue weight condition when drawing trailers exceeding 4,000kg plated weight, which are subject to Levy Band E(T).

3. Subsection (3) introduces revised tables to the HGV Road User Levy Act 2013. These will allow the Levy to be collected from certain categories of goods vehicle weighing 12,000kg or more when these vehicles operate in excess of permitted maximum operating weights.

4. The applicable categories of goods vehicle are: 2 axle rigid and 3 axle rigid goods vehicles, and the same types of vehicle that draw trailers when such trailers weigh 4,000kg or more; as well as tractive units that draw semi-trailers consisting with any number of axles, or with two or more axles.

BACKGROUND NOTE

5. HGV Road User Levy rates will begin to take effect from 1 April 2014. The Levy is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

6. Operators of UK licensed tractive units are able to gain operational flexibility by licensing these vehicles to draw semi-trailers with any number of axles or two or more axles or three or more axles.

7. Vehicles that are in weight categories which are in excess of permitted maximum operating weights will remain liable to tax.

8. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates.

EXPLANATORY NOTE

CLAUSE 87: HGV ROAD USER LEVY: DISCLOSURE OF INFORMATION BY HMRC

SUMMARY

1. This clause provides for an information sharing gateway to enable HM Revenue and Customs (HMRC) to share information for the purposes of the Secretary of States' functions under the HGV Road User Levy Act 2013 (HGVA).

DETAILS OF THE CLAUSE

2. Subsection 1 inserts a new section 14A into the HGVA .

3. New subsection 14A(1) provides that HMRC information can be disclosed for the purposes of the HGVA.

4. New subsection 14A(2) provides that information disclosed under the gateway provided for in subsection (1) cannot be further disclosed without the consent of the Commissioners unless the disclosure is to someone to whom the information could have been disclosed under the new gateway.

5. New subsection 14A(3) provides that the criminal offence in section 19 of the Commissioners for Revenue and Customs Act 2005 (CRCA) will apply where identifying information has been disclosed in contravention of subsection (2).

6. Subsection 2 removes a previous gateway for disclosure by HMRC for the purposes of the HGVA which was contained in secondary legislation.

BACKGROUND NOTE

7. The Department for Transport (DfT) and its agency the Vehicle and Operator Services Agency (VOSA) require information that HMRC holds about heavy goods vehicles. This information is needed to implement a levy on UK and foreign hauliers, although UK hauliers will have their levy offset by a reduction in Vehicle Excise Duty. The information needed is held on the Freight Targeting System (FTS).

8. HMRC agreed to provide the information to DfT and VOSA by creating a legal gateway in a statutory instrument utilising powers contained in the HGVA. Those powers did not however enable the creation of a criminal offence for wrongful disclosure of identifying information so this was not provided for. Therefore, this clause has been included in the Finance Bill 2014 amending the HGVA. This clause ensures that taxpayer confidentiality

continues to be safeguarded with the addition of a criminal sanction, as detailed in section 19 CRCA.

EXPLANATORY NOTE

CLAUSE 88: AGGREGATES LEVY: REMOVAL OF CERTAIN EXEMPTIONS

SUMMARY

1. This clause suspends the exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are subject to the European Commission's State aid investigation, from 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (3) inserts a new sub-paragraph into section 17(3) of the Finance Act 2001 ('the Act') to provide that aggregate is exempt if it is made up entirely of the by-products from either an industrial combustion process or the smelting or refining of metal. It also repeals the exemptions where aggregate consists wholly of:

- by-products (excluding the overburden) from the extraction or other separation from a quantity of aggregate of any china clay or ball clay; and
- the spoil from a process by which coal, lignite, slate, shale or any of the substances listed in section 18(3) of the Act has been separated from other rock after having been extracted from that rock.

3. Subsection (4) amends section 17(4) of the Act to omit the exemption for coal, lignite, slate, shale, clay and to make a consequential amendment relating to the removal of the exemption for the by-products from an industrial combustion process and the smelting or refining of metal.

4. Subsection (6) amends section 18(1) of the Act to ensure substances listed in section 18(3) are brought into the definition of aggregate in Part 2 of the Act.

5. Subsection (7) adds two new exempt processes to section 18(2) of the Act relating to the production of clay or shale ceramic construction products and of gypsum or anhydrite plaster, plasterboard or related products.

6. Subsections (9) and (10) amend the definition of commercial exploitation in section 19 of the Act. Subsection (10) adds two new sections 19(1A) and (1B). The first defines what is meant by commercial exploitation and the second applies this definition to certain specified materials and processes being brought into tax by this clause. Subsection (9) disapplies the existing definition of commercial exploitation set out in section 19 of the Act to these materials.

7. <u>Subsection</u> (11) amends section 22 of the Act to ensure that anyone to whom the materials specified in section 19(1B) are or are to be supplied becomes responsible for their commercial exploitation where that person intended that they be used for construction purposes.

8. <u>Subsection (12)</u> sets out the commencement provisions for the clause.

BACKGROUND NOTE

9. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

10. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

11. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

12. Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. All those that registered an interest were sent questions with a deadline of 15 November 2013 for responses. Officials from HM Treasury and HM Revenue and Customs also held a number of meetings with interested businesses, their professional advisers and industry representative bodies. Legislation prepared to give effect to the suspension was then published in draft, for consultation, on 18 December 2013. The deadline for responses was 12 February 2014. This clause takes account of the views received during the course of both exercises.

EXPLANATORY NOTE

CLAUSE 89: AGGREGATES LEVY: POWER TO RESTORE EXEMPTIONS

SUMMARY

1. This clause provides for secondary legislation to be introduced to enable the Treasury to restore certain exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are being suspended from 1 April 2014 under a separate clause in the Bill. It provides that this restoration can be introduced with effect from a date earlier than the secondary legislation is made.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the Treasury may introduce an Order to restore any of the exemptions removed by the clause in the Bill dealing with the removal of certain aggregates levy exemptions.

3. Subsection (2) provides that any restoration of an exemption introduced under the Order may apply in relation to commercial exploitation of aggregates taking place on a date earlier than the Order is made. It also provides that the Order may include transitional provisions as the Treasury deem fit.

4. Subsection (4) provides that any Order made under this clause will be subject to the negative procedure of the House of Commons.

BACKGROUND NOTE

5. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

6. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

7. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

8. This legislation provides for secondary legislation to restore any suspended exemption and for this restoration to take effect earlier than the date the secondary legislation is made. This will mean that tax paid as a result of the suspension of an exemption can be repaid to the person who accounted for it following the conclusion of the Commission's investigation, should the terms of the Commission's final decision allow. HM Revenue and Customs would need to be satisfied that the taxpayer would not be unjustly enriched as a result of receiving the repayment. Businesses may therefore decide to keep records to demonstrate that they would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to their customers to cover all or part of the cost of the levy in the event that the taxpayer is repaid the tax.

EXPLANATORY NOTE

CLAUSE 90: CLIMATE CHANGE LEVY: MAIN RATES FOR 2015-16

SUMMARY

1. This clause amends Schedule 6 to the Finance Act ('FA') 2000 to increase the main rates of climate change levy ('CCL') broadly in line with inflation (based on the Retail Prices Index), with effect from 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) replace the table of rates in paragraph 42(1) of Schedule 6 and provide the commencement date.

BACKGROUND NOTE

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels), and is aimed at promoting energy efficiency and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Since the main rates of CCL were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the main rates have increased the changes have been legislated for in the previous year's FA.

EXPLANATORY NOTE

CLAUSE 91: CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES FOR 2014-15 AND 2015-16

SUMMARY

1. This clause amends the carbon price support (CPS) rates of climate change levy (CCL) for coal and other solid fossil fuels with effect from 1 April 2014 and 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Paragraph 42A of Schedule 6 to Finance Act 2000 which sets out the CPS rates of CCL to be amended.

3. Subsection (2) provides a revised CPS rate for coal, lignite, coke and semi-coke of coal and lignite, and petroleum coke and subsection (3) provides for this amendment to be effective from 1 April 2014.

4. Subsection (4) provides a revised CPS rate for the same types of coal and other solid fossil fuels referred to in paragraph 3 above and subsection (5) provides for this amendment to be effective from 1 April 2015.

BACKGROUND NOTE

5. The carbon price floor (CPF) came into effect in Great Britain in April 2013. It is designed to provide an incentive to invest in low carbon generation, promoting energy efficiency and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

6. CPF is a tax on fossil fuels (gas, liquefied petroleum gas and solid fuels), used to generate electricity. It is made up of the price of carbon from the EU Emissions Trading System (EU ETS) and the headline CPS rate which is the UK-only additional tax per tonne of carbon emitted in the power sector. The headline CPS rate is used to set the individual CPS commodity rates - for fuels covered by CCL these are known as the CPS rates of CCL and are legislated for in the Finance Act.

7. The CPS rates of CCL are legislated two years in advance based on a rate per tonne of carbon set for that year by the Government. An error in published data resulted in the CPS rate for coal and other solid fossil fuels being set too high for 2014-15 and 2015-16 when the rates were legislated in Finance Act 2013. Data on the carbon content of coal used in UK power stations has been significantly improved and consequently the rates have been

corrected, bringing them into line with the rate per tonne of carbon, and ensuring that they are proportionate with the CPS rates on other taxable commodities.

EXPLANATORY NOTE

CLAUSE 92: CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES FROM 1 APRIL 2016

SUMMARY

1. This clause amends Schedule 6 to the Finance Act 2000 ('Schedule 6') to cap the carbon price support (CPS) rates of climate change levy (CCL) with effect from 1 April 2016.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces the table of rates in paragraph 42A (3) of Schedule 6.

3. Subsection (2) provides for the change to have effect for supplies treated as taking place on or after 1 April 2016.

BACKGROUND NOTE

4. The carbon price floor (CPF) came into effect in Great Britain in April 2013. It is designed to provide an incentive to invest in low carbon generation, promoting energy efficiency and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

5. CPF is a tax on fossil fuels (gas, liquefied petroleum gas and solid fuels), used to generate electricity. CPF is made up of the price of carbon from the EU Emissions Trading System (EU ETS) and the headline CPS rate which is the UK-only additional tax per tonne of carbon emitted in the power sector. The headline CPS rate is used to set the individual CPS commodity rates - for fuels covered by CCL these are known as the CPS rates of CCL and are legislated for two years in advance in the Finance Bill. These rates are based on a rate per tonne of carbon set for that year by the Government.

6. Since the CPF was introduced the EU ETS carbon prices have fallen, meaning the gap between UK energy prices and energy prices abroad has grown and would continue to do so if the original CPF trajectory was maintained. The introduction of a cap on the UK-only element of the CPF is intended to limit the disparity between UK and non-UK energy costs.

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SCHEDULE 16

EXPLANATORY NOTE

CLAUSE 93 SCHEDULE 16: CLIMATE CHANGE LEVY: EXEMPTIONS FOR METALLURGICAL AND MINERALOGICAL PROCESSES

SUMMARY

1. This clause and Schedule amend Schedule 6 to the Finance Act 2000 ('Schedule 6') to introduce new exemptions from the main rates of climate change levy (CCL) for the energy used in mineralogical and metallurgical processes and remove certain existing reliefs from CCL which will be superseded by the new exemptions, all from 1 April 2014.

DETAILS OF THE SCHEDULE

PART 1

2. Paragraph 2 inserts a new paragraph 12A into Schedule 6. New sub-paragraph 12A(1) exempts CCL taxable commodities used in mineralogical and metallurgical processes. New sub-paragraph 12A(2) defines a mineralogical process by reference to Article 2(4)(b) of Council Directive 2003/96/EC of 27 October 2003, which deals with the taxation of energy products. New sub-paragraphs 12A(3) and (4) define a metallurgical process as a process falling within Division 24 (excluding class 24.46), Group 25.5 and Class 25.61 of the NACE Codes Revision 2.

3. Paragraphs 3, 4, 5, 6, and 7 amend paragraphs 42(1) and 101(2)(a)(ii), and omits paragraphs 42(1ZA), 43A, 43B(1)(b)(i), 62(1)(ca) and (cb) and 101(2)(a)(iiia) of Schedule 6, to remove references to the partial relief from CCL for taxable commodities used in scrap metal recycling, since this is superseded by the new exemption for metallurgical processes. The paragraphs also make a number of consequential amendments.

4. Paragraph 8 makes consequential amendments to the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ('the general regulations') to remove various references to the lower rate for scrap metal recycling. Sub-paragraph (8) adds a reference to new paragraph 12A of Schedule 6 into regulation 34 of the general regulations requiring that those carrying out mineralogical and metallurgical processes submit certificates to their energy supplier. Sub-paragraph (12) amends the CCL relief formula in Schedule 1 to the general regulations to take account of the removal of the lower rate for scrap metal recycling and the addition of the new exemptions for mineralogical and metallurgical processes. Sub-paragraph (16) provides that that the changes to sub-paragraphs (8) and (12) are to be treated as having been made under the power given to the Commissioners for Her Majesty's Revenue and Customs under paragraph 22 of Schedule 6.

5. Paragraph 9 makes amendments to Schedule 1 to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (SI 2005/1715) to remove various metals

and associated provisions from the CCL fuel use exemption as taxable commodities used to produce these metals will become exempt under the metallurgical exemption. It also provides that the amendments are to be treated as having been made by the Treasury under the power given to it by paragraph 18(2) of Schedule 6.

6. Paragraph 10 sets out the commencement provisions for part 1 of the Schedule.

PART 2

7. Paragraph 12 adds additional sub-paragraphs (5) and (6) to the new paragraph 12A (as inserted by paragraph 2 of this Schedule). Sub-paragraph (5) provides that the Treasury may amend the definition of "mineralogical process" in new paragraph 12A by regulations and sub-paragraph (6) provides that the Treasury may, in relation to the definition of "metallurgical process" in new paragraph12A, amend sub-paragraph (4) of that paragraph by regulations.

8. Paragraph 13 amends paragraph 13A(3) of Schedule 6 so that draft instruments made under paragraph 13A that have to be approved only by the House of Commons have to be laid before that House only, and not Parliament.

9. Paragraph 14 inserts new sub-paragraphs (3A) and (3B) into paragraph 146 of Schedule 6 to require that any regulations made under new paragraph 12A(5) and (6) that removes an exemption in paragraph 12A or narrows its scope are made under the draft affirmative procedure. It also makes amendments to paragraph 146(2) and (3) so that draft instruments that are to be approved only by the House of Commons have to be laid before that House only, and not Parliament.

BACKGROUND NOTE

10. The CCL was introduced on 1 April 2001. Its main rates tax electricity, natural gas, solid fuels and liquid petroleum gas when used as fuels by business and the public sector. The levy's purpose is to encourage energy efficiency.

11. The Government announced at Budget 2013 that it would exempt from the main rates of CCL the energy used in mineralogical and metallurgical processes, from 1 April 2014 and that it would seek views from industry after the Budget to inform the draft legislation. The new exemptions will ensure the UK's tax treatment of these highly energy intensive processes is in line with tax treatments elsewhere in the European Union (EU), thereby reducing any distortion of competition.

12. The exemptions will be defined by reference to the NACE code system, the EU system of classifying economic activity; the codes are widely used in data gathering and statistical reporting.

13. Certain existing reliefs from the CCL will become redundant as they will be covered by the exemptions. This includes the lower rate for taxable commodities used in metal

recycling and taxable commodities used in certain fuel uses. As a result, these superseded reliefs will be removed at the same time the new exemptions for mineralogical and metallurgical processes come into force.

EXPLANATORY NOTE

CLAUSE 94: RATES OF LANDFILL TAX

SUMMARY

1. This clause amends section 42 of the Finance Act (FA) 1996 to increase the standard and lower rates of landfill tax in line with inflation (based on the Retail Prices Index (RPI)), rounded to the nearest 5 pence, for disposals of relevant waste made (or treated as made) at authorised landfill sites on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsections (2) and (3a) substitute "£80" with "£82.60" in section 42(1)(a) and (2) of FA 1996. Subsection (3b) substitutes "£2.50" with "£2.60" in section 42(2) of FA 1996.

3. Subsection (4) provides the commencement date for the change.

BACKGROUND NOTE

4. Landfill tax was introduced on 1 October 1996 to increase the cost of disposing of waste by landfill and thereby encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste. There is a lower rate of tax, which applies to less polluting qualifying wastes listed in a Treasury Order, and a standard rate which applies to all other taxable waste disposed of at authorised landfill sites.

5. In the June 2010 Budget, the government announced that the standard rate of landfill tax would rise by £8 per tonne on 1 April each year up to and including 2014. It also announced a floor under the standard rate of landfill tax so that the rate will not fall below £80 per tonne from 2014-15 to 2019-20.

6. Budget 2014 clarified that the floor of £80 per tonne in the standard rate should be interpreted in real terms and announced that the lower rate will, in future, also increase each year in line with inflation (based on the RPI).

7. Following industry engagement to address compliance, Budget 2014 announced that the government will introduce a loss on ignition testing regime on fines (residual waste from waste processing) from waste transfer stations by April 2015. Only fines below a 10 per cent threshold would be considered eligible for the lower rate. Full proposals will be set out in a consultation document later in 2014. Budget 2014 also announced that the government intends to provide further longer term certainty about the future level of landfill tax rates once the consultation process on testing regime has concluded.

EXPLANATORY NOTE

CLAUSE 95: GOODS CARRIED AS STORES

SUMMARY

1. This clause will update the legislation relating to ship and aircraft stores to provide flexibility to facilitate trade practices and increase controls on areas of revenue risk. This will enable HM Revenue & Customs (HMRC) and Border Force to work with the Industry to improve compliance and is in line with our wider commitment to bring customs and excise law up to date to protect customs and excise revenues

DETAILS OF THE CLAUSE

2. This clause introduces Schedule 17 which contains provision about goods shipped or carried as stores on ships or aircraft.

DETAILS OF THE SCHEDULE

3. Paragraph 1(1) of the Schedule introduces the amendment to section 1 of the Customs and Excise Management Act 1979 (CEMA).

4. Paragraph 1(2) removes the reference to 'relevant journey' in section 1(4)(a)(i) of CEMA and replaces it with a 'journey made by the ship or aircraft'.

5. Paragraph 1(3) removes section 1(4A) of CEMA which defines "relevant journey" for the purposes of section 1(4).

6. Paragraph 2 substitutes subsection (1) to section 39 of CEMA with a new subsection to provide that surplus stores may remain on board a ship or aircraft without payment of duty or be entered for warehousing

7. Paragraph 3 introduces a new section 60A to CEMA, which provides a new power to make regulations about stores.

8. New subsection (1) of section 60A provides that the Commissioners may make regulations in relation to goods for use on a ship or aircraft stores.

9. New subsection (2) of section 60A provides for what can be included in the regulations.

10. New subsection (2)(a) provides that the regulations may specify the circumstances when goods can be shipped or carried as stores without payment of duty or on drawback.

11. New subsection (2)(b) provides that the regulations may include provision requiring authorisation to be obtained, in specified circumstances, for goods to be shipped or carried as stores without payment of duty.

12. New subsection (2)(c) provides that the regulations may include provision about obtaining such authorisation.

13. New subsection (2)(d) provides that the regulations may include provision about the circumstances when such authorisation can be withdrawn.

14. New subsection (2)(e) provides that the regulations may include for the supply, shipping or carriage of goods as stores without payment of duty to be subject to specified conditions or restrictions.

15. New subsection (2)(f) provides that the regulations may include provision about the procedures to be followed when supplying goods to be shipped or carried as stores without payment of duty.

16. New subsection 3 of section 60A provides that where the regulations provide for goods to be shipped or carried as stores without payment of duty they may also include provision requiring duty to be paid on such goods where they are consumed on a journey of a specified description or consumed in specified circumstances in port and provision about the persons by whom such duty is payable and the way in which, and the time at which, it is to be paid. It also provides for the regulations to make provision for goods, in specified circumstances, to be treated as having been consumed on a journey or in port.

17. New subsection 4 of section 60A provides that the regulations may make different provision for different cases and incidental, supplemental, consequential or transitional provisions or savings.

18. New subsection 5 of section 60A provides that 'specified' in the section means specified in the regulations or specified by the Commissioners under the regulations.

19. Paragraph 4 amends the heading to section 61 of CEMA, omits subsections (1) to (4) of that section (which are replaced by the regulation making powers in new section 60A) and makes some consequential amendments.

20. Paragraph 5 amends section 103 of the Finance (No. 2) Act 1987 by removing subsections (1), (2) and (4) to (7).

21. Paragraph 6 introduces a new section 60B to CEMA to provide for penalties when any provision made by or under the regulations, or any condition or restriction imposed under the regulations, are contravened and to provide that any goods in respect of which a person contravenes a provision of the regulations are liable to forfeiture.

22. New subsection 60B(1) provides that the new section 60B to CEMA applies if a person contravenes any provision made by or under the regulations made under section 60A or any condition or restriction imposed under the regulations.

23. New subsection 60B(2) provides that the contravention will attract a penalty under section 9 of the Finance' Act 1994

24. New subsection 60B(3) provides that any goods in respect of which a person fails to comply with a provision, or a condition or restriction, imposed by or the regulations are liable to forfeiture

25. New subsection 60B(4) provides that a person is not liable to a penalty under section 9 of the Finance Act 1994 if that person is liable to a penalty under Schedule 55 or 56 to the Finance Act 2009 .

26. Paragraph 7 amends Schedule 55 to the Finance Act 2009 by inserting a new item 20A in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make a return under regulations under new section 60A of CEMA.

27. Paragraph 8 amends Schedule 56 to the Finance Act 2009 by inserting a new item11GA in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make payments under regulations under new section 60A of CEMA on time.

28. Paragraph 9 amends paragraph 2 of Schedule 5 to the Finance Act 1994 to provide that any decision about granting or withdrawing authorisation for goods to be shipped or carried as stores without payment of duty is a decision which is subject to review and appeal.

29. Paragraph 10 contains commencement provisions and provides that the power to make regulations in the Schedule comes into force on Royal Assent and that the other amendments made by the Schedule come into force in accordance with provisions in an order made by the Commissioners for Her Majesty's Revenue and Customs.

30. Paragraph 11 contains commencement provisions and provides that the amendments to Schedules 55 and 56 to the Finance Act 2009 come into force when paragraphs 7 and 8 of the Schedule are brought into force by an order made by the Commissioners for Her Majesty's Revenue and Customs.

BACKGROUND NOTE

31. The measure will amend the law to clarify that surplus stores can remain on board a ship or aircraft without payment of duty and make provision for the introduction of procedures to account for duty retrospectively on stores consumed in port or on an intra-UK flight and impose penalties for failing to do so. It will also make provision to allow the Commissioners for Her Majesty's Revenue and Customs (HMRC) to make regulations for an authorisation procedure to control goods moving from warehouses to be shipped as stores, in order to address an area of revenue risk, and to specify the circumstances in which goods can be shipped or carried as stores without payment of duty. These circumstances will include the journeys on which stores can be shipped or carried without payment of duty. The measure also imposes a penalty for contravening any provision, or condition or restriction, imposed by or under the regulations.

EXPLANATORY NOTE

CLAUSE 96: PENALTIES UNDER SECTION 26 OF FA 2003: EXTENSION TO EXCISE DUTY

SUMMARY

1. This clause will introduce legislation to apply provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of any duty, obligation, requirement or condition imposed by section 78 of Customs and Excise Management Act 1979 (CEMA). The new penalty will then be introduced by amendment to the secondary legislation to describe as a relevant rule a failure to declare goods in excess of the allowance under section 78(1).

DETAILS OF THE CLAUSE

2. Subsection 1 defines dutiable excise goods as goods subject to excise duty whether or not that duty is charged or paid

3. Subsection 1(a) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained outside the United Kingdom where they are not entitled to be exempt from relief of the payment of duty.

4. Subsection 1(b) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained in the United Kingdom without payment of duty, where they are not entitled to be exempt from relief of the payment of duty.

5. Subsection 2 provides for the application of the penalty provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of a contravention of a rule under section78 of CEMA.

BACKGROUND NOTE

6. This measure has been introduced to provide for a customs civil penalty, in cases where there is no allegation of dishonest conduct, when goods are wrongfully imported from a non-EU country.

7. HM Revenue & Customs (HMRC) will provide for the issue of a customs civil penalty to travellers entering the UK from outside the EU who have failed to declare goods in excess of their allowance when stopped before clearing customs controls. This penalty will be used in cases where we find there is no dishonest conduct, as an alternative to existing

customs civil evasion penalties and existing criminal penalties, for use in the case of less serious contraventions, and to allow us more flexibility in our treatment of customers. As with all customs civil penalties there will be strict liability subject to reasonable excuse.

EXPLANATORY NOTE

CLAUSE 97: VALUE ADDED TAX: SPECIAL SCHEMES

SUMMARY

1. This clause introduces Schedule 18 which provides for the implementation of the optional special accounting schemes for persons making supplies of broadcasting, telecommunication or electronically supplied services (BTE) to non-business customers in the EU.

2. The Schedule implements the provisions for the schemes set out in Council Directive 2008/8/EC and a Transposition Note setting out how the Government will transpose into UK law the main elements of this Directive is annexed to these Explanatory Notes.

DETAILS OF THE SCHEDULE

Part 1

3. Paragraph 1 inserts the new Schedule 3BA into the VAT Act 1994, which contains the provisions establishing the special accounting scheme for persons established in the Member States (MS) supplying BTE services to non-business customers belonging in other MSs, to be known as the Union scheme.

4. New Schedule 3BA Part 1 gives an overview and explains the meaning of scheme services.

5. New Schedule 3BA Part 2 provides for who may register in the UK to use the Union scheme, how they may apply to register, the obligations to notify any changes to the registration, and when a registration may be cancelled.

6. New Schedule 3BA Part 3 sets out the responsibility of a person registered to use the Union Scheme in the UK to submit returns to the Commissioners for the VAT due in the consumers' MS and to pay the VAT due. It specifies when the return and payment are to be made and the way they are to be submitted. It also places an obligation upon the registered business to produce the relevant business records to the Commissioners in electronic format upon request.

7. New Schedule 3BA Part 4 places obligations upon persons registered for another MS's equivalent to the Union Scheme in respect of their UK supplies. It sets out that a person registered for such a scheme is not liable to register in the UK on the basis of the BTE supplies made to UK consumers. It permits the Commissioners to deregister a person who has registered in the UK for such supplies but wishes to use the non-UK scheme provided by another MS. It also imposes a record keeping requirement and sets out the rules for

amendments, error corrections, late returns and charges to interest applying to declarations of UK VAT made in a non-UK scheme return.

8. New Schedule 3BA Part 5 sets out the rights of appeal of those persons registered to use the Union Scheme and those declaring UK VAT through a non-UK scheme return.

9. New Schedule 3BA Part 6 details the interpretive provisions.

Part 2

10. Paragraphs 3 to 7 amend the special scheme for supplies of electronic services detailed in the VAT Act 1994 Schedule 3B Part 2 to include supplies of telecommunications and broadcasting services from 1 January 2015. This special scheme will become known as the non-Union scheme and provides an accounting scheme for suppliers of BTE services not established within the EU.

11. Paragraph 8 inserts the new Part 3 of Schedule 3B which contains the provisions for scheme returns that are late or incomplete or need amendment.

12. Paragraphs 9 & 10 include interpretive and consequential amendments to Schedule 3B.

Part 3

13. Paragraphs 11 to 18 introduce amendments to the VAT Act 1994 in section 3A, section 76, section 77, section 80, section 84(6) and Paragraph 12 of Schedule 1A to include the special schemes.

14. Paragraph 19 amends the Table in paragraph 1 of Schedule 24 to the Finance Act 2007 and inserts new sub-paragraphs 4A-C to include the special scheme returns into the penalty regime for errors.

15. Paragraph 20 includes special scheme liabilities within the provision for suspension of penalties during an agreement for deferred payment, and in Schedule 53 to the Finance Act 2009 in relation to interest on amounts payable to HMRC.

16. Paragraphs 21 and 22 include the special scheme returns and payments into Schedules 10 and 11 to Finance (No 3) Act 2010 which prospectively amends Schedules 55 and 56 to Finance Act 2009 to provide for penalties for failure to make returns and payments.

Part 4

17. Paragraphs 23 to 25 make provision for commencement of the special schemes and for when persons may begin to register.

BACKGROUND NOTE

18. These schemes, known collectively as the Mini-One Stop Shop or MOSS, are being introduced as part of the final stage of the 2008 European agreement on changes to the VAT place of supply of services rules (known as the VAT Package) and were announced at Budget 2013. The supply of BTE services to non-business customers is currently taxable where the supplier is located (save for supplies of e-services made by those outside the EU to such customers in the EU). This will change on 1 January 2015 to where the customer belongs.

19. This rule change may increase administration costs of suppliers of BTE services as they are liable to register for VAT in every Member State where they have non-business customers. To mitigate such costs the MOSS IT system will be implemented across the EU from 1 January 2015. MOSS is formed of two parts: the Union Scheme for those that have an establishment in the EU; and the Non Union scheme for those that do not have such an establishment. This Schedule enacts those elements of EU law which are not directly applicable to set up the legal framework for the special schemes.

20. The Union Scheme gives EU BTE suppliers the option to register and to account to the Member State where they are established for the VAT on all their BTE supplies to customers in the other Member States on one MOSS VAT return. If businesses do not register for MOSS they must register in each Member State in which they supply a non-business customer with BTE services.

21. The Non Union Scheme allows suppliers of BTE services which are not established in the EU to register in one Member State of their choosing to account for the VAT on all their BTE supplies within the EU on one MOSS VAT return. The VAT on Electronic Services (VoES) scheme currently allows this treatment for non EU suppliers of electronic services; MOSS will extend this to broadcasting and telecommunication services. Those already registered for the VoES scheme, may transfer over to the Non-Union scheme and continue to get the benefit of this simplification measure.

22. The provisions relating to the correction of declarations made under either scheme seek to apply the rules that would be applicable if the schemes did not exist so that scheme users are subject to the same rights and responsibilities as those who choose not to use the schemes.

Transposition note

With effect from 1 Jan 2015 Council Directive 2008/8/EC Article 5 amends Directive 2006/112/EC (PVD) regarding the place of supply of telecommunications, broadcasting and electronically supplied services (BTE) to non-taxable persons and the optional special accounting scheme for suppliers based outside the Member States (the non-Union scheme) and inserts the special scheme for those based within the EU but not in the same member state as their customers (the Union scheme).

Reference should also be made to Council Regulation (EU) No 967/2012 amending Implementing Regulation (EU) No 282/2011, section 2 of Council Regulation (EU) No 904/2010 and Commission Implementing Regulation (EU) No 815/2012 which contain directly applicable provisions.

The changes to the VAT Act 1994 and subordinate legislation do not go beyond what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Unless otherwise specified the implementation is made by existing provision in or amendment to the VAT Act 1994.*

PVD Amended Article	Objective	Implementation*
58	Moves the place of supply to where the non-taxable person is established, has his permanent address or usually resides.	SI 2014/*** The Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014 and section 98 of the Finance Act 2014.
204(1) 3rd paragraph	Prevents the use of a tax representative by persons not established in the EU using the special scheme for supplies of BTE services.	Sch 3B (Electronic, Telecommunications and Broadcasting services: non-Union scheme) para 19.
358	Defines and amends the services covered by the non-Union scheme, the VAT return and the Member State of consumption (MSC).	Sch 3B para 3.
358a	Defines a taxable person not established in the Community (NETP) and the Member State of	Sch 3B para 2.

	identification (MSI) for the purposes of the non-Union scheme.	
359	Obliges Member States to allow a NETP making the BTE supplies to register for the special scheme.	Sch 3B para 4 (1).
360	Obliges the NETP to electronically inform the MSI when it starts or ceases making BTE supplies or otherwise ceases to be eligible for the non-Union scheme.	Sch 3B para 4(5) and para 7(3).
361	Defines the information the NETP must provide to the MSI on commencement of BTE supplies to non-taxable persons in the Community and obliges them to inform the MSI of any changes in that information.	Sch 3B para 4(3) HMRC also propose to make regulations regarding registration requests under Sch 3B para 4(5).
362	Obliges the MSI to allocate a unique identification number to the NETP.	Sch 3B para 6.
363	Obliges the MSI to remove the NETP from their VAT register where the NETP has ceased (or can be assumed to have ceased) making BTE supplies; where the conditions for the scheme are no longer met or where the NETP has persistently failed to comply with the special scheme rules.	Sch 3B para 8(1).
364	Requires the NETP to electronically submit a declaration of BTE supplies (whether or not any have been made) to the MSI on a calendar quarter basis.	Sch 3B para 11 and see Article 4 of Commission Implementing Regulation (EU) No 815/2012.
365	Requires the VAT return	See Article 4 of

	to include the NETP's identification number, to identify value, VAT, rate of VAT applied per MSC.	Commission Implementing Regulation (EU) No 815/2012.
366(1)	Permits VAT returns to be denominated in local currencies where the Euro has not been adopted and specifies the date upon which any currency conversion must take place.	Sch 3B para 12.
367	Requires the NETP to make payment of the VAT due with reference to the relevant return and by the deadline for the submission of the return, payment being made to the bank account specified by the MSI.	Sch 3B para 13.
368	Forbids deduction of input tax through the special scheme. Any refund of VAT incurred on expenses within the EU must be made through the refund system. Certain restrictions within the refund scheme are disapplied for NETPs using the special scheme.	Sch 3B para 10(6) & para 22.
369(1)	Requires the NETP to keep sufficient records of their BTE supplies for the MSC to verify the correctness of the return.	Sch 3B para 14.
369a	Defines the MSI and the taxable persons eligible to use the Union Scheme, dependent upon where their business is established or, if there is no such establishment, from any fixed establishment located within the EU. If the taxable person has a	Sch 3BA (Electronic, telecommunication and broadcasting services: Union scheme) para 4(1)(b) & (c).

	choice they shall notify the MSI and be bound by that choice for two years.	
369b	Requires Member States to permit a taxable person not established in the MSC to use the Union scheme for BTE supplies to non-taxable persons belonging in the EU.	Sch 3BA para 5 (1).
369c	Requires the taxable person to notify the MSI when BTE supplies to MSCs start, cease or the activity changes so as to be no longer eligible for the scheme and that such information be submitted electronically.	Sch 3BA para 6.
369d	Requires the scheme user to be registered in the MSI only and that the MSI may use their normal VAT register.	Sch 3BA para 3 & 5. HMRC also propose to make regulations regarding registration requests using the powers in Sch 3BA para 5(5).
369e	Requires the MSI to exclude the taxable person from the special scheme where BTE supplies are, or may assumed to be, no longer made, the taxable person is no longer eligible or the scheme conditions are persistently not complied with.	Sch 3BA para 7.
369f	Requires the scheme user to electronically submit a VAT return on a calendar quarter basis to the MSI whether or not any BTE supplies have been made. The return must be submitted within 20 days of the quarter end.	Sch 3BA para 9; para 10(3)(a).
369g (1st paragraph)	The VAT return is required to show the identification number; the	Sch 3BA para 10(3)(b). See also Article 4 of Commission Implementing

	value, VAT and VAT rate per MSC.	Regulation (EU) No 815/2012.
369g (2nd paragraph)	Where a taxable person has one or more fixed establishments outside the MSI from which BTE supplies are made, the VAT return must also show the information in the 1st paragraph for each MS in which there is an establishment, with reference to the local VAT number and broken down by MSC.	Sch 3BA para 10(3)(b) See also Article 4 of Commission Implementing Regulation (EU) No 815/2012.
369h	Where the MSI has not adopted the Euro the VAT return can be made out in the local currency. Any conversions required are to be made on the last day of the tax period using the rate published by the ECB.	Sch 3BA para 10(2).
369i	Requires the scheme user to make payment of the total VAT due, referring to the relevant VAT return, by the due date for the return and to a bank account specified by the MSI and in the currency specified where the Euro has not been adopted.	Sch3BA para 10(2) & para 11.
369j (1st paragraph)	The scheme user may not deduct VAT incurred in making BTE supplies through the special scheme but may use the special refund scheme.	Sch 3BA para 8(3) and regulations to be made under section 39 of the VAT Act 1994 in reliance on paragraph 19 of Sch 3BA.
369j (2nd paragraph)	If the scheme user is registered in the MSC for other taxable activities he may use the VAT return to recover VAT incurred in making BTE supplies in that MSC.	Sections 24-26 of the VAT Act 1994.
369k	The scheme user must	Sch 3BA para 12 and para

	keep sufficient records of the BTE supplies made to allow the MSC to verify the figures declared on the VAT return. These records must be kept for a period of 10 years and, upon request, made available electronically to the MSI or MSC.	31.

EXPLANATORY NOTE

CLAUSE 98: VAT: PLACE OF BELONGING

SUMMARY

1. This clause ensures that bodies corporate or legal persons that are not in business are treated as belonging in the place where they are established rather than where they are legally constituted or anywhere else.

2. The clause introduces an explicit reference to "permanent address" as the place of belonging for both persons in business and persons not in business in certain circumstances.

BACKGROUND NOTE

3. The Value Added Tax Act 1994 currently treats bodies corporate that are not in business as belonging in the country where they are legally constituted. This provides scope for the use of such entities in certain types of avoidance. The VAT Act 1994 is also inconsistent with the Principal VAT Directive 2006/112/EC. The change will make the place of belonging for the purposes of the VAT Act 1994 the place of establishment. The clause also provides that other legal persons who are not in business belong where they are established.

4. Section 9 provides that in certain circumstances a person may be treated as belonging at their usual place of residence. This may be the same as where they have their permanent address, although need not be. This clause expressly refers to the concept and better reflects the wording of the Directive.

EXPLANATORY NOTE

CLAUSE 99: VAT: PLACE OF SUPPLY ORDERS: DISAPPLICATION OF TRANSITIONAL PROVISIONS

SUMMARY

1. The purpose of this clause is to dis-apply transitional provisions in section 97A of the Value Added Tax Act 1994 ("the Act") to new orders made under section 7A(6) of the Act which take effect from 1 January 2015 and make provision about the place of supply of broadcasting, telecommunications and electronically supplied services.

BACKGROUND NOTE

2. The Act contains transitional provisions in section 97A that apply to orders made under section 7A(6) regarding the place of supply of services. Directly applicable transitional provisions are also contained in Article 2 of Council Implementing Regulation (EU) No 1042/2013 in respect of EU changes made to the place of supply rules for broadcasting, telecommunications and electronically supplied services made to non-taxable persons. Accordingly, this clause dis-applies section 97A in respect of new orders made under section 7A(6) in the case of supplies to which Article 2 applies.

EXPLANATORY NOTE

CLAUSE 100: VALUE ADDED TAX: SUPPLY OF SERVICES THROUGH AGENTS

SUMMARY

1. This clause disapplies the UK's derogation from Article 28 of the principal VAT Directive 2006/112/EC for telecommunication and electronically supplied services.

BACKGROUND NOTE

2. The UK legislation currently allows HMRC to treat services supplied through agents acting in their own name as either a supply to and by the agent or a supply by the principal. HMRC's practice is to allow such agents to choose how to treat such supplies. This treatment is allowed because the UK derogates from EU VAT legislation that would otherwise see supplies through agents acting in their own name as though they were made by the agent. In order to ensure the effective taxation of telecommunication and electronically supplied services through internet portals and marketplaces the UK is disapplying its derogation for telecommunication and electronically supplied services.

EXPLANATORY NOTE

CLAUSE 101: VAT: REFUNDS TO HEALTH SERVICE BODIES

SUMMARY

1. The Care Act 2014, if passed, will introduce two new NHS bodies: Health Education England and the Health Research Authority. This clause adds these new bodies to the list of bodies within the definition of Government departments which may claim refunds of the VAT they pay on certain goods and services.

DETAILS OF THE CLAUSE

2. The clause amends section 41(7) of the Value Added Tax Act 1994 to add Health Education England and the Health Research Authority to the list of bodies to be regarded as persons exercising functions on behalf of a Minister of the Crown.

BACKGROUND NOTE

3. Section 41(3) provides that a Government department may claim a refund of the VAT it pays on certain goods and services, if and to the extent that the Treasury so directs. This is to ensure that VAT is not an obstacle to the contracting out of activities to the public and voluntary sectors.

4. Section 41(6) provides that "Government department" includes "any body of persons exercising functions on behalf of a Minister of the Crown". For the purposes of subsection (6) bodies listed in subsection (7) are to be regarded as a body of persons exercising functions on behalf of a Minister of the Crown".

5. The bodies named in section 41(7) are NHS bodies.

6. The Care Act 2014 will – if passed - establish the NHS bodies referred to in the clause.

7. This measure ensures that the bodies referred to in the clause may reclaim the VAT they pay on certain goods and services as provided for in section 41(3).

EXPLANATORY NOTE

CLAUSE 102: VAT: PROMPT PAYMENT DISCOUNTS

SUMMARY

1. This clause replaces paragraph 4 of Schedule 6 to the Value Added Tax Act 1994. It will ensure that where suppliers offer prompt payment discounts to customers that VAT is declared on the consideration actually received.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces the new paragraph 4 to Schedule 6 to the Value Added Tax Act 1994.

3. Subsections 2 to 4 deal with the commencement provisions.

BACKGROUND NOTE

4. The Principal VAT Directive (PVD) requires VAT to be accounted for on the consideration actually received. Existing UK legislation may be interpreted as being in line with the PVD but has a degree of ambiguity so is being amended to provide clarity on the VAT treatment of prompt payment discounts.

5. This measure will for supplies of telecommunication and broadcasting services where there is no obligation to provide a VAT invoice, have effect for supplies made on and after 1 May 2014. For all other supplies the measure will have effect for supplies made on and after 1 April 2015; unless, for revenue protection purposes, it is necessary to bring forward the implementation date for specified supplies.

EXPLANATORY NOTE

CLAUSES 103 - 104: ANNUAL TAX ON ENVELOPED DWELLINGS

SUMMARY

1. These clauses extend the Annual Tax on Enveloped Dwellings. From 1 April 2015 there will be a new charge of £7,000 for properties worth more than £1m and up to £2m that are held in corporate structures. From 1 April 2016 there will be an additional band for properties worth more than £500,000 and up to £1m with an annual charge of £3,500.

DETAILS OF THE CLAUSES

CLAUSE [103]: ATED REDUCTION IN THRESHOLD FROM 1 APRIL 2015

2. Subsection (1) provides for an amendment to Part 3 of Finance Act 2013 (Annual Tax on Enveloped Dwellings).

3. Subsection (2) amends the threshold from more than £2 million to more than £1 million.

4. Subsection (3) specifies the annual chargeable amount for residential properties valued at more than £1 million but not more than £2 million as £7,000.

5. Subsection (4) provides for subsections (2) and (3) to come into effect for the chargeable periods beginning on or after 1 April 2015.

6. Subsections (5) to (7) provide for a transitional rule for those persons falling within the "more than £1 million but not more than £2 million" band so that returns for the chargeable period 1 April 2015 to 31 March 2016 must be filed by 1 October 2015 and payment made by 31 October 2015.

CLAUSE [104]: ATED FURTHER REDUCTION IN THRESHOLD FROM 1 APRIL 2016

7. Subsection (1) provides for an amendment to Part 3 of Finance Act 2013 (Annual Tax on Enveloped Dwellings).

8. Subsection (2) amends the threshold from more than £1 million to more than £500,000

9. Subsection (3) specifies the annual chargeable amount for residential properties valued at more than £500,000 but not more than £1 million as £3,500.

10. Subsection (4) provides for subsections (2) and (3) to come into effect for the chargeable periods beginning on or after 1 April 2016.

BACKGROUND NOTE

11. The Annual Tax on Enveloped Dwellings (ATED) was introduced in Finance Act 2013 and came into effect on 1 April 2013. It is payable by companies, partnerships with a corporate member and collective investments schemes that own interests in UK residential property valued at more than £2 million.

12. Most residential properties are owned directly by individuals. But in some cases they may be owned by a company, a partnership with a corporate member or other collective investment vehicle. In these circumstances the dwelling is said to be 'enveloped' because the ownership sits within a corporate 'wrapper' or 'envelope'.

13. ATED is an annual tax and is charged in respect of “chargeable periods” running from 1 April to 31 March. The amount of tax charged is based on the value of the dwelling as at 1 April 2012. Thereafter revaluation occurs at each 1 April at intervals of 5 years. Where a dwelling is acquired the valuation date is the effective date of acquisition. Where there is a substantial disposal of part (but not the whole) interest, the valuation date is the date of disposal.

14. Returns and payments are usually due by 30 April in the chargeable period. The amount of tax charged is calculated using a banding system based on the value of the property. The charges are increased in line with the previous September's Consumer Prices Index (CPI) (rounded down to the nearest £50).

15. There are a number of reliefs available, for example for the purposes of letting, trading or property development. There are also a number of exemptions from the tax, most significantly, charitable companies using the dwelling for charitable purposes.

16. Budget 2014 announced a reduction in the threshold from £2 million to £500,000 to be introduced over 2 years. From 1 April 2015 a new band will come into effect for properties with a value greater than £1 million but not more than £2m million with an annual charge of £7,000. For those persons who fall into this new threshold there is a transitional rule where returns will be due by 1 October 2015 and payment by 31 October 2015. From 1 April 2016 a further new band will come into effect for properties with a value greater than £500,000 but not more than £1 million with an annual charge of £3,500. For future years these charges will be indexed in line with the previous September CPI.

17. This clause and the related changes to the 15% SDLT threshold (clause 105) are part of a package of measures intended to tackle tax avoidance and to ensure that those wrapping residential property into corporate and other ‘envelopes”, and not using them for commercial purposes, such as renting them out, pay their fair share of tax.

EXPLANATORY NOTE

CLAUSE 105: STAMP DUTY LAND TAX: THRESHOLD FOR HIGHER RATE APPLYING TO CERTAIN TRANSACTIONS

SUMMARY

1. This clause reduces the starting threshold for the 15 per cent higher rate Stamp Duty Land Tax (SDLT) charge from £2 million to £500,000.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for amendment of Schedule 4A to Finance Act 2003 (higher rate for certain transactions).

3. Subsection (2) amends the definition of "higher threshold interest" for the purposes of Schedule 4A by substituting a threshold of £500,000 for the existing threshold of £2,000,000.

4. Subsection (3) makes consequential amendments wherever the £2,000,000 figure appears.

5. Subsection 4 provides that the measure commences for land transactions where the effective date is on or after 20 March 2014.

6. Subsection 5 provides that (with exceptions set out in subsections (6) and (7)) the £2,000,000 threshold is retained for transactions where contracts were entered into before 20 March 2014.

7. Subsection 6 excludes from the transitional provision at subsection 5 certain transactions where the outcome is different from that provided for in the contract due to an event which occurs on or after 20 March 2014.

8. Subsection 7 applies a transitional rule in cases where a partnership acquires a dwelling and there is a subsequent transfer of a partnership interest or withdrawal of money from the partnership which is treated as a land transaction for SDLT purposes. In these cases the £2,000,000 threshold applies to the subsequent transfer where the effective date of the earlier acquisition is before 20 March 2014.

BACKGROUND NOTE

9. Schedule 4A Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT. This charge applies to acquisitions of a ‘higher threshold interest’ by a ‘non-natural person’ – that is, a company, a partnership with a corporate member or a collective investment scheme. A ‘higher threshold interest’ is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £2,000,000 is attributable. This clause reduces the threshold to £500,000.

10. The 15 per cent higher rate charge was introduced in Finance Act 2012 as part of a package of measures affecting residential property wrapped in corporate and other ‘envelopes’, which is not used for a commercial purpose. The other measures in the package are the Annual Tax on Enveloped Dwellings (ATED) and ATED-related Capital Gains Tax on disposal of property that was subject to ATED.

11. Acquisitions by trustees or for the purposes of letting, trading or redevelopment, trades involving making a dwelling available to the public, providing dwellings for occupation by certain employees or use as a farmhouse are excluded from the higher rate charge.

12. This clause and the related changes to the ATED threshold (clauses 103-104) are intended to tackle tax avoidance and to ensure that those wrapping residential property in corporate and other ‘envelopes’ and not using them for a commercial purpose, such as renting them out, pay a fair share of tax.

EXPLANATORY NOTE

CLAUSE 106: STAMP DUTY LAND TAX: CHARITIES RELIEF

SUMMARY

1. This clause and Schedule introduce amendments to Schedule 8 of the Finance Act 2003 (FA2003) to make it clear that partial relief is available where a charity purchases land jointly, as tenants in common, with a person who does not have charitable status.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts new sub-paragraph (3A) into paragraph 1 of Schedule 8, which defines "qualifying charitable purposes" for the purposes of the schedule as being:

   a. for use in furtherance of the charitable purposes of the charity or another charity; or
   b. as an investment the profits of which are applied to the charitable purposes of the charity.

3. Paragraph 3 inserts new paragraphs 3A, 3B and 3C into Schedule 8.

4. New paragraph 3A provides for partial relief for joint purchasers.

5. Sub-paragraph 1 provides that sub-paragraphs 3 to 5 apply where –

   a. there are two or more purchasers under a land transaction;
   b. the purchasers acquire the land as tenants in common (or, in Scotland, owners in common);
   c. at least one of the purchasers is a qualifying charity and at least one is not; and
   d. the transaction is not being entered into for the avoidance of SDLT, by any of the purchasers or any other person.

6. Sub-paragraph 2 defines a "qualifying charity" as a charity which intends to hold its share in the property for qualifying charitable purposes.

7. Sub-paragraph 3 provides for partial relief to be available by reducing the SDLT due on the transaction by the amount of relief provided for under sub-paragraph (4).

8. Sub-paragraph 4 provides that the relief available is equal to the "relevant proportion" of the tax that would otherwise have been chargeable on the transaction.

9. Sub-paragraph 5 defines the relevant proportion as the lower of:

a. the proportion of the land that is acquired by the qualifying charity or charities; and
b. the proportion of the chargeable consideration for the transaction that is given by the charity or charities.

10. New paragraph 3B provides for withdrawal of the relief given under paragraph 3A.

11. Sub-paragraph 1 provides that paragraph 3B applies where relief has been given under paragraph 3A and a disqualifying event occurs.

12. Sub-paragraph 2 defines a "disqualifying event" as:

a. the charity ceasing to be established for charitable purposes, or
b. the share in the property held by the charity, or any interest derived from it, being used or held by the charity for non-charitable purposes.

13. Sub-paragraph 3 provides that a disqualifying event must occur before the end of three years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that three year period.

14. Sub-paragraph 4 provides that, at the time of the disqualifying event, the charity must hold a chargeable interest in, or an interest derived from, the land that was acquired under the original transaction.

15. Sub-paragraph 5 provides that the relief under paragraph 3A, or an appropriate proportion of it, is withdrawn, and tax becomes chargeable.

16. Sub-paragraph 6 provides that the amount of tax chargeable, in respect of a charity, is the amount of relief given under paragraph 3A, or an appropriate portion of that relief.

17. Sub-paragraph 7 provides that the amount of tax chargeable is dependant on whether the relief given under paragraph 3A(5) was based on P1 or P2.

18. Sub-paragraph 8 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P1 (the proportion of the land acquired by the charities). This is:

$$\frac{p1}{P1} \times R$$

where –
p1 is the proportion of the land that was acquired by the charity;
P1 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

19. Sub-paragraph 9 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P2 (the proportion of the chargeable consideration given by the charities). This is:

$$\frac{p2}{P2} \times R$$

where –
p2 is the proportion of the chargeable consideration given by the charity;
P2 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

20. Sub-paragraph 10 provides that in determining the appropriate proportions, as referred to in sub-paragraphs (5) and (6), account must be taken of –

a. what the charity acquired and what it held at the time of the disqualifying event; and
b. the extent to which what is held by the charity at the time of the disqualifying event is used or held for non-charitable purposes.

21. New paragraph 3C allows for relief to be available where the charity does not fully meet the "qualifying charity" condition.

22. Sub-paragraph 1 provides that paragraph 3C applies where –

a. a charity is acquiring land jointly as tenants in common (or, in Scotland, owners in common) with a non-charity purchaser;
b. the charity does not meet the qualifying charity condition in relation to the land,
c. partial relief would apply if that condition were met, and
d. the charity intends to hold the greater part of its share in the property for qualifying charitable purposes.

23. Sub-paragraph 2 provides that in such a case paragraph 3A applies but that, for the purposes of withdrawal of the relief under paragraph 3B, "additional disqualifying events" apply.

24. Sub-paragraph 3 defines "additional disqualifying transactions" as –

a. any transfer by the charity of a major interest in the whole or any part of its share in the property; and
b. any grant by the charity at a premium of a low-rental lease if the whole or any part of its share in the property.

25. Sub-paragraph 4 imports the definitions of "at a premium" and "low-rental" from paragraph 3(3).

26. Sub-paragraph 5 provides that for the purposes of paragraph 3B the date of the disqualifying event is the effective date of the transaction.

27. Sub-paragraph 6 sets out some modifications that apply to paragraph 3B in its application to an additional disqualifying event.

28. Paragraph 4 makes consequential amendments to paragraph 4 of Schedule 8.

29. Paragraph 5 provides that the amendments made by paragraphs 1 to 4 will have effect for transactions with an effective date on or after the date on which Finance Bill 2014 receives Royal Assent.

BACKGROUND NOTE

30. These changes are being made as a result of the Court of Appeal judgement in the cases of The Trustees of the Pollen Estate Company Limited and Kings College London v HM Revenue and Customs. The Court ruled that, where a charity purchased property jointly, as tenants in common, with a non-charity purchaser, relief from SDLT is available on the charity's share of the property.

31. Amending the legislation to provide for partial relief will provide clarity for taxpayers on how partial relief will apply. In addition, to ensure that that the availability of partial relief cannot be exploited to avoid SDLT, the SDLT relief that the charity can claim will be restricted to the lower of:

- the percentage share which the charity holds in the property; and
- the percentage of the purchase price paid by the charity for its share in the property.

EXPLANATORY NOTE

CLAUSE 107: ABOLITION OF STAMP DUTY RESERVE TAX ON CERTAIN DEALINGS IN COLLECTIVE INVESTMENT SCHEMES

SUMMARY

1. This clause abolishes the special stamp duty reserve tax (SDRT) charge on UK unit trusts and open-ended investment companies in Part 2 of Schedule 19 to the Finance Act 1999.

DETAILS OF THE CLAUSE

2. Subsection (1) is the substantive repeal of the charging provisions.

3. Subsection (2) amends section 90(1B) of the Finance Act 1986 in two ways. Firstly, it restricts the scope of this subsection to *in specie* redemptions that are pro rata, meaning that non-pro rata *in specie* redemptions will no longer be exempt. Secondly, it defines the term "surrender" since the definition in Schedule 19 to the Finance Act 1999 is being repealed.

4. Subsection (3) makes consequential amendments to primary legislation.

5. Subsection (4) is the commencement provision. The abolition is effective from a Sunday so as to minimise any computational difficulties.

6. Subsection (5) allows consequential amendments to secondary legislation to be made with retrospective effect. This is to allow the amendments to secondary legislation to have the same effective date as the changes to primary legislation.

BACKGROUND NOTE

7. There is a special SDRT charge (known as the "Schedule 19" charge) on UK unit trusts and open-ended investment companies. This is a 0.5 per cent charge on the value of surrenders, by investors, of units or shares in a fund to the fund manager, although this charge may be reduced in two different ways when the amount of tax is calculated. The tax is generally accounted for by the fund manager but ultimately borne by investors.

8. The Government announced at Budget 2013 that the Schedule 19 charge would be abolished in Finance Bill 2014 as part of a package of measures to make the UK more attractive as a domicile for investment funds.

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SCHEDULE 20

EXPLANATORY NOTE

CLAUSE 108: ABOLITION OF STAMP DUTY AND STAMP DUTY RESERVE TAX (SDRT): SECURITIES ON RECOGNISED GROWTH MARKETS

SUMMARY

1. This clause introduces an exemption from stamp duty and stamp duty reserve tax (SDRT) for transfers of securities admitted to trading on recognised growth markets.

DETAILS OF THE SCHEDULE

PART 1

Stamp Duty Reserve Tax (SDRT)

2. Paragraph 1 introduces changes to Part 4 Finance Act 1986.

3. Paragraph 2 inserts new sub-sections (4B) and (4C) into section 99 Finance Act 1986 and amends the definition of chargeable securities for SDRT purposes to exclude securities admitted to trading on a recognised growth market but not listed on any market.

4 Paragraph 3 inserts new section 99A into Finance Act 1986.

5. New section 99A(1) provides that new section 99A is for the purposes of new sub-section (4B) of section 99.

6. New section 99A(2) provides that 'listed' means the same as it does in the Income Tax Acts.

7. New section 99A(3) defines what is meant by 'recognised growth market'.

8. New section 99A(4) provides that HMRC will be responsible for recognising a market as a growth market on the basis of evidence provided by the market upon application for recognition.

9. New section 99A(5) sets out the criteria for qualification as a recognised growth market. The market must be a recognised stock exchange, where the majority of companies admitted to trading on the market have a market capitalisation of less than £170 million (new section 99A(5)(a)) and/or the market's admission criteria require companies to demonstrate a recent record of growth in either gross revenue or employment over the three periods of account immediately preceding the date of the application (new section 99A(5)(b)).

10. New section 99A(6) defines 'period of account' and 'recognised stock exchange' for the purposes of new section 99A(5).

11. New section 99A(7) – (10) explain how a company's market capitalisation for the purposes of new section 99A(5)(a)) is to be calculated.

12. New section 99A(11) – (12) sets out the formula by which compounded annual growth is to be demonstrated for the purposes of new section 99A(5)(b).

13. New section 99A(13) – (15) give the Treasury power, under regulations, to make provision for revocation of a market's recognition, or to amend the rules under which HMRC can recognise a growth market.

14. New section 99A(16) provides that new section 99A is to be construed as one with the Stamp Act 1981.

15. Paragraph 4 brings into force the changes in Paragraph 2 for agreements to transfer securities that are made, or become unconditional, on or after 28 April 2014; brings into force the changes in Paragraph 3 as coming into force on 28 April 2014; and that where HMRC has formally recognised a market as a growth market before that date, the recognition will have effect from 28 April 2014.

PART 2

Stamp Duty

16. Paragraph 5 exempts from stamp duty transfers of stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

17. Paragraph 6 exempts from stamp duty a purchase of its own shares by a company where the shares are admitted to trading on a recognised growth market but not listed on any market.

18. Paragraph 7 provides that an Act of Parliament that vests stock or marketable securities does not attract stamp duty where the stock or securities are admitted to trading on a recognised growth market but not listed on any market.

19. Paragraph 8 provides that 'listed' and 'recognised growth market' in Paragraphs 5 – 7 are to be construed as set out in new section s99A.

20. Paragraphs 9 – 10 remove a stamp duty charge from instruments that transfer, to a depositary receipt regime or clearance service, stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

21. Paragraph 11 amends the rules for transfers of partnership interests in Schedule 15 to Finance Act 2003 to ensure that stamp duty is not chargeable to the extent that the partnership property includes stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

22. Paragraph 12 brings into force the stamp duty provisions in Paragraphs 5 – 11 with effect from 28 April 2014 but ensures that a transfer executed after 28 April 2014, but pursuant to an agreement made before that date, will not be exempt.

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BACKGROUND NOTE

23. This exemption has been introduced to support the Government's policy of encouraging growth in smaller companies.

24. Transfers of shares and securities of UK registered companies on sale generally attract stamp duty or SDRT charges at the rate of 0.5 per cent. Stamp duty is charged if the transfer is effected by the execution of a written instrument. SDRT applies to transfers in respect of which no written instrument is executed.

25. The new provisions ensure that transfers of shares and securities admitted to trading on markets specifically designed for smaller companies, or for companies that can demonstrate a sustained record of growth, will no longer attract stamp tax charges.

EXPLANATORY NOTE

CLAUSE 109: TEMPORARY STATUTORY EFFECT OF HOUSE OF COMMONS RESOLUTION

SUMMARY

1. This clause amends section 50 Finance Act 1973 (FA 1973) to ensure that, following the change to spring to spring parliamentary sessions, it will remain effective and continue to enable the Government to vary or abolish stamp duty on a provisional basis.

DETAILS OF THE CLAUSE

2. Subsection 3 substitutes a new section 50(2)(d) FA 1973, which provides that a resolution can have statutory effect for a maximum period of seven months.

3. Subsection 4 inserts new sub-sections (2A) to (2D) to section 50 FA 1973. The effect is that, if Parliament is prorogued at the end of a session, a resolution will cease to have statutory effect; unless proceedings on a Bill containing an equivalent provision, which have begun but have not been completed, are to be resumed in the next session, and re-introduced in the first thirty sitting days.

4. New sub-section (2A) provides that new sub-section (2B) will apply where Parliament is prorogued at the end of a session and lists at (a) to (c), the specific circumstances.

5. New sub-section (2B) allows a resolution to retain its statutory effect, provided a Bill containing equivalent provisions is presented to the House within the first thirty sitting days of the next session.

6. New sub-section (2C) defines 'sitting day'.

7. New sub-section (2D) makes it clear that if a Bill has been amended as envisaged in new sub-section (2A)(a), it does not matter if an order to resume the proceedings in the next session, is made before the amendment.

BACKGROUND NOTE

8. Section 50 FA 1973 provides temporary statutory effect to House of Commons resolutions for stamp duty. The principal practical application of this is to allow the Government to vary or abolish stamp duty on a provisional basis between the Budget and the enactment of the Finance Bill.

9. Under current legislation, such a resolution will fall if Parliament is prorogued. This became an issue when the Government moved to spring to spring parliamentary sessions, as it is now more likely that Parliament will be prorogued in May, between Budget Day and Royal Assent to the Finance Bill.

10. These changes will ensure that a resolution for stamp duty will remain effective until replaced by an Act of Parliament. It will bring the provisions regarding resolutions for stamp duty into line with the changes made for other taxes in the Provisional Collection of Taxes Act 1968 by Finance Act 2011.

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CLAUSE 110

SCHEDULE 21

EXPLANATORY NOTE

CLAUSE 110 SCHEDULE 21: INHERITANCE TAX

SUMMARY

1. This Schedule makes a number of amendments to the Inheritance Tax Act 1984 (IHTA). The Schedule:

a. extends the freeze on the inheritance tax (IHT) nil-rate band at £325,000 until 2017-18;
b. ensures that funds in foreign currency accounts in UK banks which are disregarded for inheritance tax (IHT) purposes in determining the value of a person's estate on death are treated in a similar way to excluded property for the purposes of restricting the deduction of a liability;
c. introduces a new provision to treat income arising in "Relevant Property" trusts which remains undistributed for more than five years as part of the trust capital when calculating the ten year anniversary charge; and
d. changes the dates by which trustees must deliver an Inheritance Tax (IHT) account and pay tax due for charges arising under Chapter 3 of Part 3 of IHTA.

DETAILS OF THE SCHEDULE

Rate bands for tax years 2015-16, 2016-17 and 2017-18

2. Paragraph 2 disapplies section 8 of IHTA for the tax years 2015-16, 2016-17 and 2017-18. Section 8 applies if the consumer prices index (CPI) for September is higher than it was for the previous September, and provides for an increase in the nil-rate band from the following April by the same percentage as the increase in CPI (rounded up to the nearest £1,000). The effect of the clause is that the nil-rate band is not increased for the years 2015-16 to 2017-18 inclusive.

Treatment of certain liabilities

3. Paragraph 3(1) inserts new section 162AA into IHTA.

4. New section 162AA sets out how liabilities attributable to financing non residents' foreign currency accounts will be treated.

5. New section 162AA(1) explains that the section applies where a balance on a qualifying foreign currency account (the "relevant balance") is to be left out of account under section 157 IHTA in determining the value of a deceased person's estate, and that person had borrowed money which was held in that account or had a liability which indirectly financed

the funds held in that account. Section 157 provides that balances on UK bank accounts denominated in a foreign currency held by an individual who is not domiciled and not resident in the UK immediately before death will not be taken into account in determining the value of that person's estate.

6. New section 162AA(2) provides that the liability may only be allowed as a deduction to the extent permitted in subsection (3). This subsection therefore disallows the liability if the borrowed money financed the relevant balance, unless it is allowed by subsection (3).

7. New sections 162AA(3) and (4) provide that if the if the liability exceeds the relevant balance, the excess may be allowed as a deduction as long as the excess has not arisen as a result of tax avoidance arrangements as defined in subsection (5) or due to manipulation of the value of the liability.

8. Paragraph 3(2) makes amendments to section 162C of IHTA which contain supplementary provisions for sections 162A and 162B.

9. Paragraph 3(3) and (4) make consequential amendments as a result of the insertion of new section 162AA.

10. Paragraph 3(5) inserts new subsection 162C(1A) which provides a priority order for how a partial repayment of the liability before death should be applied when determining the value of an estate on death. The repayment is applied first to any part of the liability that was not attributable to excluded property or to property which qualifies for relief (relievable property) or to relevant balances, then to any part used to finance relievable property, then to any part attributable to relevant balances, and finally to any part attributable to excluded property. The effect of this subsection is that any part of the liability which might be allowable as a deduction is treated as paid off before any part which would be restricted or disallowed.

11. Paragraph 3(6) makes consequential amendments to section 162C(2) which provides a similar priority rule for partial repayment of the liability in cases other than on death. In these cases, section 157 does not apply so any part of a liability that was attributed to financing a relevant balance is treated as paid off before any part which would be restricted or disallowed.

12. Paragraph 3(7) inserts new paragraph 175A(7)(aa) into section 175A of IHTA which deals with partial repayment of liabilities after death. Where a liability has been partially repaid after death, the new paragraph specifies that any part of the liability attributable to relevant balances is taken to be repaid after any part which is attributable to excluded property, but before any part which is attributable to relievable property.

13. Paragraph 3(8) explains that the amendments have effect for transfers of value made, or treated as made, on or after the date of Royal Assent to Finance Act 2014.

Ten year anniversary charge

14. Paragraph 4 adds new subsections (1A), (1B) and (1C) to section 64 of IHTA.

15. New subsection (1A) sets out the conditions for treating property held by the trustees of a settlement as part of the trust capital when calculating the ten year charge (the deeming rule). Those conditions are that the property is income of the settlement, it arose before the start of the five years ending immediately before the ten year anniversary, it arose from relevant property comprised in the settlement and when the income arose no person was beneficially entitled to an Interest in Possession in the underlying property.

16. New subsection (1B) excludes from the deeming rule (in the case of settlements made by persons not domiciled in the UK) income which arose from relevant property but is at the ten year charge represented by property situated outside the UK or is represented by a holding in an Authorised Unit Trust or Open-Ended Investment Company.

17. New subsection (1C) excludes from the deeming rule income which arose from relevant property but which is reinvested in exempt gilts which would (if properly treated as accumulated income) be excluded property.

18. New subsection (1C)(b) ensures that that exempt gilts within a settlement will only be excluded property where all the beneficiaries who could ever become entitled to capital or income from the settled property meet the necessary condition.

19. Paragraph 4(2) amends section 66 of IHTA and adds new subsection 2A. The effect of the amendment is that income brought within the charge as a result of s 64(1A) is charged to tax at the full rate in section 66(1).

20. Paragraph 4(3) provides for the changes to apply to tax charges arising under section 64 IHTA on or after 6 April 2014.

Delivery of account and payment of tax

21. Paragraph 5(1) adds a new paragraph (ad) to subsection 216(6) of IHTA. The effect of paragraph (ad) is that trustees of settlements on which tax is chargeable under Chapter 3 of Part 3 of IHTA, must deliver the IHT account six months after the end of the month in which the chargeable event occurs.

22. Paragraph 5(2) adds a new subsection (3C) to section 226 of IHTA. The effect of subsection (3C) is that the due date for payment of tax chargeable under Chapter 3 of Part 3 of IHTA 1984, is six months after the end of the month in which the chargeable transfer is made. Subsection (3C) does not affect the provision at section 226(3B) which sets out the payment date where a settlor dies within seven years of a transfer and additional liability arises under Chapter 3 of Part 3 IHTA.

23. Paragraph 5(3) amends section 233 IHTA (interest on unpaid tax) to bring it into line with the new payment date.

24. Paragraph 5(4) provides for the changes to apply to tax charges arising on or after 6 April 2014.

BACKGROUND NOTES

Rate bands for tax years 2015-16, 2016-17 and 2017-18

25. The rates of IHT are set out in the Table in Schedule 1 of IHTA. The IHT nil-rate band is the amount below which no IHT is charged. It is automatically indexed in line with inflation each year unless the Government decides otherwise and has generally increased every year up to 2009-10.

26. Section 8 of Finance Act 2010 set the limit of the nil-rate band at £325,000 for the years 2010-11 to 2014-15 inclusive.

27. At Budget 2013 the Government announced that the nil-rate band would remain frozen until 2017-18. This supersedes previous announcements.

Treatment of certain liabilities

28. IHT is normally charged on the net value of a deceased person's estate after deducting liabilities outstanding at the date of death, reliefs, exemptions and the nil-rate band. Property which is situated outside the UK and which belongs to, or was settled by, a non-UK domiciled individual is 'excluded property'. It does not form part of a person's estate and is not chargeable to IHT.

29. New provisions in section 162A IHTA introduced by Schedule 36 of Finance Act 2013 disallow a deduction for a liability if it has been used directly or indirectly to acquire excluded property, or to maintain or enhance such property, except in a few specified circumstances, because the excluded property is not chargeable to IHT.

30. Balances in a UK bank account which is denominated in a foreign currency and which are not taken into account in determining the value of a person's estate on death are not chargeable to IHT yet are not excluded property. They would therefore not be affected by the provisions in section 162A and could still be used to allow an individual to secure a debt against property situated in the UK to reduce its value for IHT purposes, but retain the borrowed money in such a way that it was not subject to IHT.

31. The amendments made by this clause will prevent the use of foreign currency accounts held by an individual who is not domiciled and not resident in the UK as a means of sidestepping the new provisions in section 162A.

Ten year anniversary charge

32. Where income is regularly or formally accumulated there is little doubt about the correct treatment of the accumulations within the calculation of relevant property charges. But it can be different where income remains undistributed for long periods and the trustees have not made any formal accumulation. In such cases there can be uncertainty about how the calculations should be undertaken, resulting in questions to, or correspondence with, HMRC to establish an acceptable treatment.

33. New s64(1A) will treat income that has remained undistributed for more than five years at the date of the ten year anniversary as if it was part of the trust capital for the purposes of the ten year anniversary charge. To avoid the need for trustees to keep very detailed records, tax would be charged on the ten year anniversary at the full rate on any such undistributed income without any proportionate reduction to reflect the period during which the income has been retained.

Delivery of account and payment of tax

34. The time limits for reporting IHT periodic and exit charges arising under chapter 3 part 3 of IHTA that trustees are accountable for differ from the time limits for paying any IHT due under chapter 3 part 3 IHTA.

35. The time limit for delivering an account is currently 12 months from the end of the month in which the transfer is made or if later, three months from the date when the trustee first becomes liable for the tax.

36. The time limits for paying IHT charges are:

- for chargeable events after 5 April and before 1 October, on 30 April in the following year; and
- for chargeable events after 30 September and before 6 April, six months after the end of the month in which the chargeable event took place.

37. This change aligns and simplifies the filing and payment dates for these charges.

EXPLANATORY NOTE

CLAUSE 111: GIFTS TO THE NATION: ESTATE DUTY

SUMMARY

1. This clause corrects a technical flaw in the legislation and will ensure that the Cultural Gifts Scheme works in line with the publicly stated policy.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new paragraph 32A to schedule 14 to FA 2012. New paragraph 32A(1) provides that it applies to a gift of an object which, if it had been a sale, would give rise to a charge to estate duty under section 40 of FA 1930. This is to ensure that it catches only objects where there is still latent estate duty.

3. New sub-paragraph 32A(2) provides that estate duty becomes chargeable on such a gift as if it were a sale, subject to the limitation imposed by paragraph 33(2) of Schedule 14, which stipulates that where the rate of tax on the disposal is higher than the maximum rate of inheritance tax the donor will need to only pay the difference.

4 New sub-paragraph 32A(3) applies the new paragraph 32A to Northern Ireland.

5. Subsections 2 and 3 provide for the removal of the latent estate duty liability in cases where objects with the latent liability are gifted under the scheme prior to the date the amendment to the legislation receives Royal Assent. This will avoid any unintended consequences for receiving institutions.

6. Subsection 4 states that a "qualifying gift" referred to in subsection 2 has the same meaning as in Schedule 14 to FA 2012.

7. Subsection 5 applies the provisions in subsections 2 and 3 to Northern Ireland.

BACKGROUND NOTE

8. The Cultural Gifts Scheme was introduced by Schedule 14 to the Finance Act (FA) 2012 and commenced on 1 April 2013 by virtue of the Finance Act 2012, Schedule 14 (Appointed Day) Order 2013.

9. Paragraph 33 of Schedule 14 provides a partial exemption from estate duty on exempt objects which would otherwise have become chargeable under Schedule 5 of the Inheritance Tax Act 1984 on a gift of property under the scheme.

10. The exemption is intended to be limited to the amount that would be chargeable if the rate of tax were the same as the rate of Inheritance Tax, currently 40 per cent. Where the rate of estate duty attached to the exempt object is more than the rate of inheritance tax, the policy intention is that the excess amount should become chargeable.

11. The technical flaw in the existing legislation meant that in some cases the latent estate duty would not have come into charge on a gift, and hence remained with the gifted object. New paragraph 32A ensures that the intended amount of estate duty comes into charge and extinguishes any further liability in the future.

EXPLANATORY NOTE

CLAUSE 112: BANK LEVY: RATES FROM 1 JANUARY 2014

SUMMARY

1. This clause amends the rate at which the bank levy is charged from 1 January 2014 onwards.

DETAILS OF THE CLAUSE

2. Subsection (2) increases the bank levy rates from 1 January 2014.

3. Subsection (3) introduces into the table of rates at paragraph 7(2), Schedule 19 to Finance Act 2013 the new bank levy rates for the period 1 January 2014 onwards.

4. Subsection (4) removes section 203 of FA 2013 which contained the previous rates applicable from 1 January 2014 (old rates).

5. Subsection (5) provides that the new rate changes made by subsections (2) to (4) are treated as having come into force on 1 January 2014. As a consequence of this, section 203 of FA 2013 is treated as never having come into force.

6. Subsections (6) to (12) provide transitional provisions for collecting the additional amounts of bank levy that arise from the introduction of the new rates. Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent to Finance Bill 2014, the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

7. Subsection (13) provides definitions of terms used in this clause.

BACKGROUND NOTE

8. The bank levy is an annual balance sheet charge based upon the chargeable equities and liabilities of all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

9. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the “the responsible member” (see paragraph 54, Schedule 19) is required to

both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

10. Entities that pay the bank levy are required to do so under the provisions of The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175).

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SCHEDULE 22

EXPLANATORY NOTE

CLAUSE 113 SCHEDULE 22: THE BANK LEVY: MISCELLANEOUS CHANGES

SUMMARY

1. This Schedule introduces changes to the bank levy arising from a review of the operational efficiency of the levy.

DETAILS OF THE SCHEDULE

2. Paragraphs 2 -7 remove the existing rules in paragraphs 15, 17, 19, 21 and 27, Schedule 19 Finance Act 2011 that require items that qualify as High Quality Liquid Assets to be deducted firstly from long term liabilities. This rule is replaced by a new rule, which restricts the reduction in respect of items that qualify as High Quality Liquid Assets to half, where they are set against short term liabilities.

3. Paragraph 8 amends the rule for calculating protected deposits. It removes the provisions in paragraph 29(4) – (6), Schedule 19, Finance Act 2011 which allow protected deposits to be calculated by reference to the amount of deposit, or other amount, on which the deposit protection fee or premium is calculated.

4. Paragraph 9(2) replaces the existing definition of Tier 1 capital at paragraph 30(2), Schedule 19, Finance Act 2011 with a new definition of Tier 1 capital based upon Article 25 of the Capital Resources Directive ("CRR") including the transitional provisions in Part 10. This ensures that the bank levy definition of equity and liabilities that are excluded as Tier 1 capital remains aligned with the regulatory definition. Paragraph 9(2) also introduces new paragraph 30(3).

5. New paragraph 30(3)(a) ensures that when calculating Tier 1 capital equity and liabilities, that for the purposes of the CRR the Prudential Regulation Authority ("PRA") is the competent authority in all cases.

6. New paragraph 30(3)(b) ensures that when calculating Tier 1 capital equity and liabilities, the only determinations and discretions that can be taken into account are those that have been published in accordance with the requirements in the CRR. Any determination and discretions that are not published cannot be taken into account when calculating Tier 1 capital equity and liabilities.

7. New paragraph 30(3)(c) provides that the CRR will apply as if all entities and groups were subject to the PRA handbook before 1 January 2014, ensuring that the transitional rules within the CRR that apply to the "old" PRA Handbook rules can be applied fully.

8. As part of the regulatory reform agenda, there is a drive to introduce central clearing of derivatives and securities via regulated central counterparties. Paragraph 10 introduces new paragraph 38A which excludes liabilities that arise on banks' balance sheets in respect of collateral provided as Qualifying Central Counterparty ("QCP") margin that banks have passed on to a central counterparty, authorised or recognised under European Markets Infrastructure Regulations.

9. New paragraph 38A(2) determines the amount that can be excluded as QCP margin. It provides that QCP margin is the cash collateral that exceeds the fair value of the underlying traded instrument, and relates to an asset (or reduced liability) arising from collateral passed on to the QCP.

10. Paragraph 11 prevents derivative contract liabilities from being long term for bank levy purposes. As a result any un-netted derivative contract liabilities will be deemed to be short term.

11. Paragraph 12 widens the scope of the power at paragraph 81, Schedule 19, Finance Act 2011, so that it can be used to make secondary regulations where new regulatory requirements are introduced by any EU or other domestic legislation.

12. Paragraph 13 provides transitional provisions for collecting additional amounts of bank levy that may arise from the bank levy review changes that have effect from 1 January 2014 (Tier 1 regulatory capital definition and client clearing exclusion). Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent to Finance Bill 2014, the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

BACKGROUND NOTE

13. The Government announced when it introduced the bank levy that it would review the design of the levy in 2013. A consultation document was published on 4 July 2013 setting out various areas where the Government sought views. The consultation closed on 26 September 2013. A consultation response document was published on 10 December 2013 and is available on the GOV.UK website.

14. The changes above arise as a result of this consultation and will be introduced in Finance Bill 2014.

EXPLANATORY NOTE

CLAUSE 114: RATES OF GAMING DUTY

SUMMARY

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes a new table for the existing table in section 11 (2) of the Finance Act 1997 which has the effect of increasing the gross gaming yield bands for gaming duty.

3. Subsection (2) provides for this change to have effect for accounting periods on or after 1 April 2014.

BACKGROUND NOTE

4. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of GGY (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £2,302,000 of GGY, then 20 per cent for the next £1,587,000 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October, with an interim payment which is calculated and due after three months.

5. The change made by this measure increases the GGY bands but makes no changes to the rates. The basis of revalorisation of the bands is the Retail Price Index (RPI) for the year ended 31 December 2013. In this case the RPI was calculated at 2.64 per cent.

EXPLANATORY NOTE

CLAUSE 115: RATE OF BINGO DUTY

SUMMARY

1. This clause provides for a reduction in the rate of bingo duty for accounting periods beginning on or after 30 June 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) reduces the rate of bingo duty in section 17(1)(b) of the Betting and Gaming Duties Act 1981 from 20 per cent to 10 per cent.

3. Subsection (2) provides that this has effect in relation to bingo duty accounting periods beginning on or after 30 June 2014.

BACKGROUND NOTE

4. Bingo duty is currently charged at the rate of 20 per cent of a person's bingo promotion profits for an accounting period. The amount of a person's bingo promotions profits is the amount of bingo receipts minus the amount of expenditure on bingo winnings. This amendment reduces the rate to 10 per cent.

EXPLANATORY NOTE

CLAUSE 116: EXEMPTION FROM BINGO DUTY: SMALL-SCALE AMUSEMENTS PROVIDED COMMERCIALLY

SUMMARY

1. This clause provides for an amendment to the bingo duty exemption provision affecting adult gaming centres (AGC).

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes the reference to an amusement machine licence in paragraph 5(1) of Schedule 3 to the Betting and Gaming Duties Act 1981 with a reference to machine games duty.

3. Subsection (2) provides that the amendment made by this section shall apply to games of bingo which begin to be played on or after the date of Royal Assent.

BACKGROUND NOTE

4. The law providing for exemption from bingo duty is to be found in Part 1 of Schedule 3 to the Betting and Gaming Duties Act 1981. Paragraph 5 deals with the exemptions available to small-scale amusements provided commercially.

5. Paragraph 5 (1) (b) describes the conditions that must be met for small-scale amusements provided commercially to be exempted from bingo duty. One condition is that an amusement machine licence should be in force. However, amusement machine licence duty was repealed by the Finance Act 2012 when it was replaced by machines games duty. The reference to an amusement machine licence in paragraph 5 (1) (b) became redundant at that point. This clause replaces the reference with an equivalent requirement in relation to machine games duty.

EXPLANATORY NOTE

CLAUSE 117: RATES OF MACHINE GAMES DUTY

SUMMARY

1. This clause amends the machine games duty (MGD) legislation in Schedule 24 to Finance Act 2012 by introducing a third type of machine for duty purposes and a higher rate of duty.

DETAILS OF THE CLAUSE

2. Subsection (2) substitutes a new paragraph 5 of Schedule 24 to FA 2012 to make provision for three types of machine to be defined by reference to the highest charge payable for playing a game and the highest cash prize that can be won from playing a game, and to provide that the specified values may be increased by secondary legislation.

3. Subsection (3) amends paragraph 6 of Schedule 24 to FA 2012, which describes how the duty is charged, to introduce a third type of machine, "type 3 machines", into the equation..

4. Subsection (4) substitutes a new paragraph 9 of Schedule 24 to FA 2012, which provides the MGD rates, to introduce a higher rate.

5. Subsection (5) makes a consequential revocation of secondary legislation.

BACKGROUND NOTE

6. The MGD legislation has been amended to introduce a high rate of 25 per cent that will apply to the net takings from a specific type of high stake and high prize gaming machine. Under the Gambling Act 2005 these machines are regulated as Category B2 gaming machines and are typically found in betting shops.

FINANCE BILL 2014

RESOLUTION 81 **CLAUSES 118-191**

SCHEDULES 23-25

EXPLANATORY NOTE

CLAUSES 118–191 SCHEDULES 23–25: BETTING AND GAMING DUTIES

SUMMARY

1. These clauses and Schedules make provision for changing the scope of general betting duty, pool betting duty and remote gaming duty so that they are charged on a place of consumption basis. They replace the taxing, administration and enforcement provisions for these duties in the Betting and Gaming Duties Act 1981.

DETAILS OF THE CLAUSES AND SCHEDULES

Part 3 – General betting duty, pool betting duty and remote gaming duty

Chapter 1 General betting duty

2. Chapter 1 contains clauses 118 to 135 which make provision for general betting duty.

3. .Clause 119 defines a general bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at clause 180.

4. Clause 120 describes how a bookmaker's profits are calculated for the purpose of charging duty on general bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

5. Clause 121 defines a spread bet, describes when such bets are to be treated as "financial spread bets" or "non-financial spread bets", and allows HM Revenue & Customs (HMRC) to provide by secondary legislation whether a bet is or is not to be treated as a financial spread bet.

6. Clause 122 provides for general betting duty to be charged on financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how a bookmaker's profits are calculated for the purpose of charging duty on financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

7. Clause 123 provides for general betting duty to be charged on non-financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how

a bookmaker's profits are calculated for the purpose of charging duty on non-financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

8. Clause 124 describes how a bookmaker's "ordinary profits" are calculated for the purpose of charging duty under clauses 120, 122 and 123. These are stakes that fall due in a period minus amounts paid as winnings) in the accounting period.

9. Clause 125 describes a bookmaker's "retained winnings profits" for the purpose of charging duty under clauses 120, 122 and 123. These are amounts which have previously been transferred to the account of a person ("P") as winnings under clause 133, but which P is subsequently prevented from withdrawing.

10. Clause 126 provides that where a person (a "bet-broker") provides facilities in the course of a business (other than a betting exchange under clause 134) that allows a "bettor" to make bets with a "bet taker", or acts as an agent for the bettor, the bet-broker will be treated as a bookmaker and will have the same liability as the bet taker to account for duty on those bets.

11. Clause 127 defines a "Chapter 1 pool bet" as one that relates only to horse racing or dog racing, is made by any person at a place in the United Kingdom where bets are taken, is made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at clause 180.

12. Subsections 127(5) and (6) divide Chapter 1 pool bets into "pooled stake" and "ordinary" bets and describe pooled stake Chapter 1 bets as bets where the bookmaker assigns some, or all, of the customers' stake money to a fund from which winnings will be paid.

13. Clause 128 describes how a bookmaker's profits are calculated for the purpose of charging duty on Chapter 1 pool bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

14. Clause 129 describes how a bookmaker's profits from pooled stake Chapter 1 bets are calculated for the purpose of charging duty under clause 128. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant stake money".

15. Clause 130 describes how a bookmaker's profits from ordinary Chapter 1 pool bets are calculated for the purpose of charging duty under clause 128. These are stakes due in the accounting period minus winnings paid in an accounting period.

16. Clause 131 describes a bookmaker's profits on retained winnings on Chapter 1 pool bets for the purpose of charging duty under clause 128. These are amounts which have previously been transferred to the account of a person ("P") as winnings under clause 133 and been included in the duty calculations at clauses 129 or 130, but which P is subsequently prevented from withdrawing.

17. Clause 132 makes provision about stake money for the purposes of Chapter 1 of this Part. Subsection (3) provides that where a person knows how much they stand to lose when they make a bet, the bookmaker must account for the stake when the bet is made regardless of whether the money has actually been paid; subsection (4) provides that where a bookmaker offers free or cut price bets, the full notional value of the stake will be deemed to be due to the bookmaker at the time the bet is made; subsection (5) provides that any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise; and subsection (6) prevents a bookmaker from making any deductions to reduce the value of dutiable stakes,

18. Clause 133 makes provision about winnings for the purposes of Chapter 1 of this Part. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Subsection (3) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.

19. Clause 134 defines a betting exchange as a business that allows one person to make a bet with another person but does not provide premises for use by those persons, and provides that general betting duty will be charged on any commissions from a UK person.

20. Clause 135 provides that all general betting duty that is chargeable shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

Chapter 2 Pool betting duty

21. Chapter 2 contains clauses 136 to 146 which make provision for pool betting.

22. Clause 136 defines a Chapter 2 pool bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Bets made for community benefit are described at clause 146, and excluded bets are defined at clause 180.

23. Subsections 136 (5) and (6) divide Chapter 2 pool bets into "pooled stake" and "ordinary" bets and describe pooled stake Chapter 2 bets as bets where the bookmaker assigns some, or all, of the customers' stake money to a fund from which winnings will be paid.

24. Clause 137 describes how a bookmaker's profits are calculated for the purpose of charging duty on Chapter 2 pool bets and provides that if the calculation produces a negative

amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

25. Clause 138 describes how a bookmaker's profits from pooled stake Chapter 2 bets are calculated for the purpose of charging duty under clause 137. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant stake money".

26. Clause 139 describes how a bookmaker's profits from ordinary Chapter 2 pool bets are calculated in an accounting period for the purpose of charging duty under clause 137. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.

27. Clause 140 describes a bookmaker's profits on retained winnings on Chapter 2 pool bets for the purpose of charging duty under clause 137. These are amounts which have previously been transferred to the account of a person ("P") as winnings under clause 142 and been included in the duty calculations at clauses 138 or 139, but which P is subsequently prevented from withdrawing.

28. Clause 141 makes provision about stake money for the purposes of Chapter 2. Stake money is the aggregate of all amounts due in respect of a bet. Any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise. Subsections (6) and (7) make provision about the timing of when stakes fall due, subject to any regulations made under subsection (8).

29. Clause 142 makes provision about winnings for the purposes of Chapter 2. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Under subsection (3) no account is to be taken of winnings that relate to free bets, and subsection (4) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.

30. Clause 143 provides that specified payments will be treated as bets.

31. Clause 144 provides that all pool betting duty that is chargeable on Chapter 2 pool bets shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

32. Clause 145 provides that notice must be given to HM Revenue & Customs when someone relies on the "community benefit" provisions at clause 146 for an exemption from pool betting duty. Subsection (2) allows the Commissioners to publish a notice setting out how and when such notifications are to be made, and it allows the Commissioners to waive the requirement to notify in certain situations.

33. Clause 146 describes the circumstances under which a pool bet may be regarded as a bet made "for community benefit". Such bets are excluded from any liability to pool betting duty.

Chapter 3 Remote gaming duty

34. Chapter 3 contains clauses 147 to 155 which make provision for remote gaming.

35. Clause 147 defines "remote gaming". Subsections (2) and (3) separate it into "pooled prize gaming" and "ordinary gaming" and describe pooled prize gaming as remote gaming where the provider assigns some, or all, of the customers' gaming payment to a gaming prize fund from which prizes will be provided.

36. Clause 148 provides that duty will be charged when a "chargeable person" participates in remote gaming. Subsection 2 defines a chargeable person as being any UK person, and any non-UK corporate body if the gaming provider knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Subsections (4) and (5) describe how a provider's profits are calculated for the purpose of charging duty, and provide that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.

37. Clause 149 describes how a gaming provider's profits from pooled prize gaming are calculated for the purpose of charging duty under clause 148. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the "relevant proportion" if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of "relevant gaming payment".

38. Clause 150 describes how a gaming provider's profits from ordinary gaming are calculated for the purpose of charging duty under clause 148. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.

39. Clause 151 describes a gaming provider's profits on retained prizes for the purpose of charging duty under clause 148. These are amounts which have previously been transferred to the account of a person ("P") as winnings under clause 153 and been included in the duty calculations at clauses 149 or 150, but which P is subsequently prevented from withdrawing.

40. Clause 152 provides that any amounts that are paid in connection with, or that entitle a UK person to participate in, remote gaming will be treated as a "gaming payment". Payments will be treated being made no later than the time when a person begins to participate in the gaming, and, by means of secondary legislation, where a provider offers free or cut-price gaming, the Treasury may require full notional value to be taken into account.

41. Clause 153 provides that the calculation of expenditure on prizes shall include the payment of winnings to a customer's account, and also allows for the return of any part of customers' gaming payments to be regarded as an expenditure on prizes. This clause further provides valuation provisions in respect of non-money prizes.

42. Clause 154 specifies the circumstances under which remote gaming duty will not apply and provides for additional exemptions to be granted, or existing exemptions to be amended through secondary legislation.

43. Clause 155 describes the persons who are liable for the duty, and those from whom it may be recovered.

Chapter 4 General

44. Chapter 4 contains clauses 156 to 191 which make provision relating to administrative matters, security and enforcement, offences and evidence, reviews and appeals, definitions and supplementary matters.

45. Clause 156 provides that the Commissioners are responsible for the collection and management of general betting duty, pool betting duty and remote gaming duty. Commissioners' regulations may: require the manner and time in which the duties are to be accounted for and paid, and; provide as appears necessary for the administration, enforcement of and protection of revenue from the duties.

46. Clause 157 provides for registration for the duties. The Commissioners must keep registers, those carrying on relevant businesses or entering into relevant arrangements may not do so without registering and the Commissioners may make regulations about registration. Inter alia, these regulations may provide that: the Commissioners can, in specified circumstances require the appointment of a United Kingdom representative responsible for making returns and/ or discharging liability, and; for the registration of groups including that group members are jointly and severally liable for each others' liabilities for the duties.

47. Clause 158 provides that an accounting period is three consecutive months or another period as provided for by Commissioners' regulations. The first day of an accounting period is as directed by the Commissioners. With the agreement of the Commissioners, a person may have accounting periods longer or shorter than three months and/ or periods may begin on days other than that specified in the Commissioners' direction on the matter. The Commissioners may make transitional arrangements by direction.

48. Clause 159 provides for Commissioners' regulations about returns for the duties.

49. Clause 160 provides for Commissioners' regulations about payment of the duties and that, subject to these regulations, section 12 of the Finance Act 1994 applies in relation to assessments to duty.

50. Clause 161 provides for Commissioners' regulations about the provision and display of information and records by specified persons.

51. Clause 162 provides for the Treasury to make regulations about when stake money and gaming payments are or are not treated as assigned to a stake fund or gaming prize fund. The Commissioners may, by notice, make provision about stake funds and gaming prize funds.

52. Clause 163 provides that the Commissioners, may by notice, require a registrable person to give security or further security in the following circumstances: there is a serious risk that the duty will not be paid, or: the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

53. Clause 164 provides that the Commissioners may, by notice, require a registrable person to appoint a UK representative, who must be approved by them, in circumstances where the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. This notice may be combined with a notice under clause 163, and the appointment of a representative may remove the need for a security under that clause. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

54. Clause 165 provides for the review and appeal of a Commissioners' notice requiring a person to give security or to appoint a UK representative.

55. Clause 166 provides that a person who does not comply with a notice requiring them to give security or to appoint a UK representative is guilty of a summary offence.

56. Clause 167 provides that the fraudulent evasion of general betting duty, pool betting duty or remote gaming duty is an offence and further provision is made in respect of penalties for such an offence.

57. Clause 168 makes provision for specified failures and contraventions to attract penalties under the Finance Act 1994.

58. Clause 169 makes provision for any interest that may be charged under the Finance Act 2009 on general betting duty, pool betting duty or remote gaming duty may be enforced as if it were an amount of duty.

59. Clause 170 introduces Schedule 23 which sets out the process under which the Commission may direct the Gambling Commission to revoke a person's Remote Operating Licence. The process may be begun where the person: is required to register for a duty but has not done so; does not comply with conditions or requirements relating to registration; has not paid a duty, or; is required to give security but has not done so. The Commissioners' decision is subject to review and appeal; following the review and appeal procedures in Finance Act 1994. Provision is made for a Remote Operating Licence to be suspended as a stage before final revocation – a suspended licence may be reinstated if, for example, the

Commissioners' decision to seek revocation is upheld at one stage in the appeal process but overturned at a subsequent stage. This Schedule further provides for the Gambling Commission to seek the Commissioners' consent before issuing a licence to the holder of a licence that has been suspended or revoked under the provisions of this Schedule.

60. Clause 171 provides that an offence committed by a body corporate is also committed by any officer of that body corporate (except in certain circumstances).

61. Clause 172 prevents HMRC officers from committing offences in the course of enforcing these duties under the instructions of the Commissioners.

62. Clause 173 provides for the circumstances in which a Commissioners' certificate that something has or has not happened, constitutes evidence of that occurrence until the contrary is proved, and that copies of documents certified by the Commissioners as such are admissible in proceedings.

63. Clause 174 provides that, in proceedings, on the question of whether relevant gambling facilities were capable of being used in or from the United Kingdom, the burden of proof lies on the person claiming that the facilities were not capable of being so used.

64. Clause 175 provides for certain decisions to be treated as if they were appealable under FA 1994.

65. Clauses 176-182 define terms used in this Part of the Bill.

66. Clause 183 provides an index to some of the expressions used in this Part.

67. Clause 184 provides that if an amount of money (stake money, gaming payment etc.) is in a currency other than sterling it must be converted into sterling using the London closing exchange rate for the previous day. If such an exchange rate does not exist, the rate to be used is that as set out in a Commissioners' notice.

68. Clause 186 provides that this Part does not cause anything unlawful to be lawful (except insofar as the Part makes specific provision).

69. Clause 189 introduces Schedule 24 which contains consequential amendments to other Acts that flow from this new legislation.

70. Clause 190 introduces Schedule 25 provides for transitional arrangements about the tax treatment of bets etc. that are made before 1 December 2014 but where receipts are not due, or winnings are not paid until after that date.

71. Clause 191 makes provision for these changes to come into effect on the dates specified.

BACKGROUND NOTE

72. These amendments have been made to ensure that general betting duty, pool betting duty and remote gaming duty will be charged in relation to transactions made with bookmakers or remote gaming providers by UK persons, or on premises in the UK.

EXPLANATORY NOTE

CLAUSES 192 - 226 SCHEDULES 26 - 29: FOLLOWER NOTICES AND ACCELERATED PAYMENTS

SUMMARY

1. These clauses and Schedules introduce two new consequences for certain users of tax arrangements.

2. The first is a power for HMRC to issue a ‘follower notice’ where those tax arrangements have been shown in a relevant judicial ruling not to give the asserted tax advantage. The legislation sets out the steps that a taxpayer should take to settle their dispute with HMRC in response to the ‘follower notice’, and what happens if a taxpayer elects not to take those steps, including the possibility of a penalty. The taxpayer has a right of appeal against any penalty charged under these provisions.

3. The second is a requirement to pay the amount of the asserted tax advantage to HMRC on receipt of an ‘accelerated payment notice’. This notice can be given in three cases:

- (i) where a follower notice is issued, as described above;
- (ii) where the tax arrangements are discloseable under the Disclosure of Tax Avoidance Scheme (DOTAS) rules; or
- (iii) where HMRC is taking counteraction under the General Anti-Abuse Rule (GAAR).

4. The measure applies to Income Tax (IT); Capital Gains Tax (CGT); Corporation Tax (CT), including amounts chargeable as or treated as CT; Inheritance Tax (IHT); Stamp Duty Land Tax (SDLT); and the Annual Tax on Enveloped Dwellings (ATED). The legislation provides for further taxes to be added to the measure by Treasury Order.

DETAILS OF THE SECTIONS

Chapter 1 Introduction

Overview

5. Clause 192 is introductory

Main definitions

6. Clauses 193 to 196 contain definitions that apply across the whole Part.

Chapter 2 Follower Notices

Giving of follower notices

7. Clause 197 defines the conditions which must apply for HMRC to issue a follower notice to a person.

8. Subsection (2) provides the first condition that there is an open tax enquiry into that person's return or claim, or the person has made a tax appeal.

9. Subsection (3) provides the second condition that the return or claim subject to the enquiry, or the appeal, is made on the basis that the person obtains a tax advantage from the use of tax arrangements.

10. Subsection (4) provides the third condition that there has been a judicial ruling relevant to the person's return/claim or appeal.

11. Subsection (5) provides the fourth condition, that no previous follower notice has been given to the person in respect of the same tax arrangements and tax advantage, unless it was withdrawn.

12. Clause 198 sets out the conditions in which a judicial ruling is treated as 'relevant'.

13. Subsection (3) provides that a judicial ruling in another party's litigation is relevant to a person if the ruling relates to tax arrangements; the principles or reasoning behind the ruling would, if applied to those arrangements, deny the advantage claimed or part of it; and it is a final ruling.

14. Subsection (4) defines a ruling as final if it is made by the Supreme Court or, if made by a lower court or tribunal, no appeal is made against it, permission to appeal is refused or, if an appeal is made, it is abandoned or otherwise disposed of before it was determined.

15. Clause 199 provides that a follower notice must identify the judicial ruling on which it is based, explain why HMRC consider it is relevant to the person's tax arrangements, and set out the consequences of the taxpayer's action in response to the notice.

Representations

16. Clause 200 provides that a person may make representations to HMRC within 90 days of a follower notice being issued. The person may object to a follower notice because there is no open tax enquiry or appeal or no tax advantage was obtained by the return/claim; that he has already been given a follower notice in respect of the tax arrangements or tax advantage; that the judicial ruling is not relevant to his circumstances; or that HMRC did not issue the notice within the time allowed following the relevant judicial ruling. HMRC must consider the representations and notify the person that the follower notice is confirmed or amended, or withdrawn.

Penalties

17. Clause 201 sets out the steps a taxpayer would need to take in response to a follower notice in order to be regarded as having taken the necessary corrective action. The taxpayer is not compelled to take those steps, but the clause sets out the consequences where those steps are not taken.

18. Subsection (2) provides that a person who is issued with a follower notice becomes liable to a penalty if he does not take corrective action before the specified time.

19. Subsection (5) defines the first step of the corrective action as the taxpayer amending his return or claim to counteract the tax advantage claimed if the follower notice is in respect of an open tax enquiry, or taking all necessary action to reach agreement with HMRC to relinquish the denied advantage if the notice is issued in respect of a tax appeal.

20. Subsection (6) defines the second step of the corrective action as the taxpayer confirming to HMRC that he has taken the first step and advising them of the advantage that will be denied and the further tax due as a result of the amendment to his return or claim.

21. Subsection (8) sets out the time limits for taking the necessary corrective action.

22. Subsection (9) provides that any time limit applied to prevent a taxpayer amending his return or claim before the end of the tax enquiry is disregarded for the purposes of this clause.

23. Subsection (10) provides that a taxpayer may not appeal against a notice closing an enquiry into his return or claim where that notice gives effect to any amendment made by the taxpayer in response to a follower notice.

24. Clause 202 sets out the amount of a penalty under clause 201.

25. Subsection (3) makes clear that where the taxpayer takes corrective action, within the required time, to counteract or relinquish part of the denied advantage, any penalty under clause 201 is to be based on the amount not counteracted or relinquished.

26. Clause 203 sets out how a penalty may be reduced for co-operation.

27. Subsection (3) sets out how the taxpayer can provide the co-operation required for HMRC to reduce the penalty. The penalty can be reduced if the taxpayer:

- Gives reasonable help to HMRC to quantify the tax advantage;
- Counteracts the tax advantage (but after the time specified in clause 201);
- Provides sufficient information for HMRC to counteract the tax advantage or to reach agreement with the taxpayer to relinquish the tax advantage; and/or
- Gives HMRC access to records to allow HMRC to ensure the advantage is counteracted.

28. Clause 204 sets out how a penalty under this Chapter is assessed.

29. Subsection (2) requires HMRC to notify the taxpayer when a penalty is assessed, and requires that the notice must state the tax period to which the penalty relates.

30. Subsection (5)(a) provides that in the case of a follower notice issued in respect of an open tax enquiry, the penalty must be notified no later than 90 days after the enquiry is closed.

31. Subsection (5)(b) provides that in the case of a follower notice issued in respect of a pending appeal case, the penalty must be notified no later than 90 days after the taxpayer takes the necessary action to agree his case with HMRC or withdraws his appeal. If the litigation proceeds, the penalty must be issued no later than 90 days after the final ruling is made.

32. Clause 205 deals with situations where more than one penalty may arise in respect of the same amount, and one of those penalties is a penalty under this Chapter.

33. Subsection (2) establishes a limit on the total amount of penalties where penalties may apply under more than one penalty provision to the same amount of tax, and include a penalty under clause 10.

34. Subsection (2)(a) sets the general rule – that the aggregate amounts of the penalties cannot exceed the "relevant percentage", defined in subsection (5).

35. Subsection (2)(b) applies if one of the penalties applying is issued under Schedule 55 to the Finance Act 2009 (Penalty for Failure to Make Returns) because a return is more than 6-months or 12-months outstanding. In such cases the maximum amount of penalties aggregated under this clause must not exceed the "relevant percentage", or £300 if greater.

36. Subsection (5) sets the "relevant percentage" applicable in each case by reference to the penalty provision under which the other penalty is imposed reflecting the seriousness of the default and whether the penalty concerns an offshore matter.

37. Clause 206 sets out that HMRC may alter an assessment to a penalty, either to increase it where the denied advantage was underestimated, or to reduce it where the denied advantage was overestimated.

38. Clause 207 provides that a person may appeal against HMRC's decision that a penalty is payable and against the amount of any penalty. A person does not have to pay a penalty before the appeal is determined. The grounds for appeal under this clause include an appeal on the basis that there was no judicial ruling relevant to the taxpayer's arrangements.

Partners and partnerships

39. Clause 208 makes reference to Schedule 2, which sets out how the rules of Chapter 2 apply to partners and partnerships.

Appeals out of time

40. Clause 209 sets out what happens when there is a late appeal against a final judicial ruling, so that the judicial ruling is no longer final. This could happen some time after HMRC issues a 'follower notice', at a time when that decision was regarded as final.

41. Subsection (2) provides for a follower notice to be suspended if an appeal is accepted by a court out of time in respect of a relevant ruling, until HMRC notifies the taxpayer that the appeal has been abandoned or has reached a final ruling.

42. Subsection (3) states that the limits of 90 days, or where appropriate 30 days, for the taxpayer to comply with a follower notice do not include the period during which a notice is suspended. This also applies to the 'payment period' for an accelerated payment.

43. Subsection (6) provides that unless cancelled a follower notice continues once HMRC notifies the taxpayer that the suspension is over and, if relevant, that the new judicial ruling is now the final one for the purposes of the notice.

44. Subsection (7)(b) requires HMRC to include in a notice issued under subsection (2) any changes to the final notice needed to take account of a new final ruling.

45. Subsection (8) prevents the issue of further follower notices to other taxpayers in respect of the matter under appeal, unless that appeal is abandoned or otherwise disposed of before it is determined. If the late appeal results in a new final ruling, subsection (9) permits follower notices to be issued in relation to that new ruling.

46. Subsection (10) provides that when such an appeal is abandoned, the period between when the person was given leave to appeal and the abandonment of the appeal does not count towards the limit of 12 months from the date of the final ruling for HMRC to issue a follower notice.

Transitional provision

47. Clause 210 provides that where a judicial ruling was made before the date this Act was passed, a follower notice may not be issued later than a date two years from the day this Act was passed or one year from the day the return or claim was submitted or appeal made, if later.

Defined terms

48. Clause 211 contains definitions.

Chapter 3 Accelerated Payments

Accelerated payment notices

49. Clause 212 explains the circumstances in which an accelerated payment notice may be given. Three conditions must be met.

50. Subsection (2) sets out Condition A, which stipulates that there must be a tax enquiry or a tax appeal.

51. Subsection (3) sets out Condition B, which stipulates that a tax advantage has been claimed that results from the arrangements in question.

52. Subsection (4) sets out Condition C, which has three alternatives. Any one of these is sufficient to trigger a notice (provided that Conditions A and B are also satisfied) but more than one of them may be relevant and may be specified in the notice.

53. Subsection (5) explains what is meant in subsection (4) by "DOTAS arrangements". The starting point is that HMRC has issued a Scheme Reference Number (SRN) under section 311 of FA 2004. In order to do so, HMRC must have received a disclosure of notifiable arrangements or a notifiable proposal under Part 7 of FA 2004, or must have successfully taken proceedings to require such a disclosure. Subsection 5(c) addresses the situation under section 312(2)(b) of FA 2004 where the promoter must also provide the SRN to clients of arrangements that are substantially the same as those that were the subject of the notified arrangements or notified proposal.

54. Subsection (6) provides that the DOTAS criterion ceases to be satisfied if HMRC gives notice under section 312(6) of FA 2004 that a promoter is no longer required to notify a client of the SRN.

55. Clause 213 sets out the contents of an accelerated payment notice given while an enquiry is in progress.

56. Subsection (3) requires that the amount of any accelerated payment must be determined by a designated HMRC officer.

57. Subsections (4) and (5) set out how the amount is to be determined. For those cases linked to a notice under Chapter 2, the amount is the same as would be required if the taxpayer were to have taken the necessary action to settle the dispute. For cases subject to the GAAR, the amount will be the same as specified in the GAAR counteraction notice. Where DOTAS is the only criterion, the amount must be determined to the best of the designated officer's information and belief.

58. Subsection (6) deals with the situation where more than one Condition C under clause 21 may be relevant. In such a case, HMRC must stipulate which of them is being applied to determine the amount of the accelerated payment. See clause 220(5) and (6) for circumstances where HMRC subsequently amends a notice where more than one Condition C initially applied, but the Condition specified under this subsection or clause 214(5) falls away, but an alternative Condition C is still applicable.

59. Clause 214 sets out how an accelerated payment notice is given for cases that are under appeal. The 'disputed tax' is all or part of the tax charged in the assessment or determination, or arising in consequence of a conclusion stated in a closure notice that is the subject of the appeal.

60. Clause 215 explains how representations may be made to HMRC about an accelerated payment notice, the time limit for making those representations, and what HMRC must do in response.

Forms of accelerated payment

61. Clause 216 explains the consequences of an accelerated payment notice given while a tax enquiry is in progress.

62. Subsection (3) explains that the accelerated payment is to be treated as a payment on account of the tax in dispute. When the final liability is agreed, this payment will be set against it, and any interest payable on that final liability will be adjusted so that no interest will be charged on the amount of the accelerated payment from the date that it is paid. If the final liability is lower than the accelerated payment any excess will be repaid with interest.

63. Subsections (4) and (5) set out the time limits for making an accelerated payment.

64. Subsection (6) deals with the special case where Inheritance Tax is payable by instalments. The due date for an accelerated payment that relates to those instalments cannot be earlier than the due date for paying the instalment to which it relates.

65. Subsection (7) deals with the situation where the taxpayer pays some or all of the tax in dispute before an accelerated payment is made. The amount paid will reduce the amount of the accelerated payment that is outstanding.

66. Clause 217 sets out how an accelerated payment notice operates for cases under appeal. It operates by amending section 55 of TMA 1970, which applies to income tax, PAYE, corporation tax and capital gains tax; and the equivalent rules for IHT, SDLT and ATED. Any tax that is the subject of an accelerated payment notice cannot be postponed under section 55 of TMA 1970 (and the equivalents), and if the tax has already been postponed the accelerated payment notice has the effect that it is no longer postponed. The time limits for making the payment are the same as in clause 216.

67. Clause 218 amends the rule in section 56 of TMA 1970 (and its parallels for SDLT and ATED) which directs that the tax in dispute should be paid to the successful litigant pending any further appeal. The amendment permits HMRC to apply to the tribunal or court for an order not to repay the tax where HMRC pursues a further appeal and HMRC considers there would be risk to the Exchequer in making the repayment at that stage.

Penalties

68. Clause 219 establishes a late payment penalty in respect of an accelerated payment. The rates and structure are based on Schedule 56 to FA 2009, and a number of paragraphs of that Schedule are applied with any necessary modification.

Withdrawal etc of accelerated payment notice

69. Clause 220 explains the process for and consequences of the withdrawal or amendment of an accelerated payment notice.

70. Subsections (3) to (5) explain that where a particular Condition C ceases to apply, the related accelerated payment notice must be withdrawn, but only to the extent that it was given on the basis of that Condition. If another Condition C remains in effect the accelerated payment notice also continues to have effect.

71. Subsections (6) and (7) explain what happens where more than one Condition C was originally applicable, and one of them was referenced as the basis of the accelerated payment notice. Where that Condition no longer applies, HMRC must amend the notice to state the alternative Condition C and must make any consequent reduction in the amount of the accelerated payment.

72. Subsections (8), (9), (10) and (11) explain what happens when a notice given under Chapter 2 is suspended while application is made for a late appeal against a relevant judicial ruling. The accelerated payment notice is also suspended, but where the notice is also given under an alternative Condition C the notice remains in effect in relation to that Condition.

73. Subsection (12) covers the situation where an accelerated payment notice is withdrawn. Any amount paid is to be repaid with interest.

74. Subsection (13) covers the situation where the accelerated payment notice remains in place, but the amount is reduced. If the taxpayer has paid more than the amount specified in the modified notice any excess is repaid with interest.

Partners and partnerships

75. Clause 221 refers to the provisions for partners and partnerships in Schedule 3.

Defined terms

76. Clause 222 contains definitions for the purposes of Chapter 3.

Chapter 4 Miscellaneous and general provision

Stamp duty land tax and annual tax on enveloped dwellings

77. Clause 223 makes specific modifications to apply these rules to Stamp Duty Land Tax (SDLT).

78. Subsections (2) to (8) bring in the effect of existing SDLT rules to different types of joint purchaser, including partnerships and bodies of trustees.

79. Subsection (2) applies the general principle of joint and several liability for SDLT in the case of joint purchasers, apart from members of a partnership or trustees of a settlement, to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

80. Subsections (4) and (5) apply the general principle of joint and several liability for SDLT in the case of members of a partnership to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

81. Subsections (6) and (7) apply the general principle of joint and several liability for SDLT in the case of trustees of a settlement to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to a liability to SDLT.

82. Clause 224 makes specific modifications to apply these rules to the Annual Tax on Enveloped Dwellings (ATED).

83. Subsection (2) applies the general principle of joint and several liability for ATED in the case of members of a partnership to a payment or penalty that may arise under Chapter 2 and/or Chapter 3 in relation to an ATED liability.

84. Subsection (3) applies the general principle of joint and several liability for ATED to the penalty that may arise under Chapter 2 in relation to an ATED liability.

85. Subsection (4) applies the general principle of joint and several liability for ATED to an accelerated payment and any related late payment penalty in relation to an ATED liability.

86. Subsection (5) requires HMRC to issue a notice under Chapter 2 and/or Chapter 3 to all persons who may be jointly and severally liable for a penalty or payment under these rules that relates to ATED.

Extension of Part by order

87. Clause 225 provides for the Treasury to make an order to add other taxes to the scope of the measure. This must be approved by Parliament under the affirmative procedure.

Consequential amendments

88. Clause 226 introduces Schedule 29, which contains consequential amendments.

DETAILS OF THE SCHEDULES

Schedule 26: Section 201 Penalty: Value of the denied advantage

89. Paragraph 2(1) defines the value of the denied advantage as the additional amount of tax due or payable resulting from the advantage being counteracted.

90. Paragraph 2(3) excludes two specific items from the calculation of the denied advantage in respect of Corporation Tax. These are group relief and relief under section 458 of CTA 2010 in respect of repayment of loans, where that relief is deferred under section 458(5) of CTA 2010.

91. Paragraph 3(2)(b) provides that 10 per cent of any part of a loss not used to reduce the amount of tax due and payable shall be included in the value of the denied advantage.

92. Paragraph 3(4) provides that where a group of companies has an aggregate loss (for Corporation Tax) group relief is not disregarded when quantifying the relevant denied advantage.

93. Paragraph 3(5) provides that where the nature of the loss is, or the person's circumstances are, such that there is no reasonable prospect of the loss being used to reduce a tax liability of any person, there will be no penalty.

94. Paragraph 4 provides a special rule for quantifying a tax advantage which comprises the deferral of tax.

Schedule 27: Follower notices and partnerships

95. Paragraph 3(3) states that in respect of partnership returns, a tax advantage arises from tax arrangements if the arrangements increase or reduce any of the items required to be included in a partnership return, and result in a tax advantage for at least one of the partners.

96. Paragraph 3(4)(a) provides that any follower notice given to a representative partner or his successor is not treated as a notice given to that person in any other capacity.

97. Paragraph 3(4)(b) provides that a representative partner and his successor are to be treated as the same person in respect of any follower notice given to them in that capacity.

98. Paragraph 4(2) provides that a penalty for not taking corrective action within the specified time is payable by each relevant partner.

99. Paragraph 5(2)(b) provides that each partner's share of the total penalty is the appropriate share.

100. Paragraph 5(3) defines the appropriate share as the same share of profits or losses apportioned to that partner in the accounting period, but if that information is not available to HMRC, any such share as an officer of HMRC may determine.

101. Paragraph 5(4) provides that any reduction to the penalty for co-operation under clause 203 is calculated and applied to the total amount of penalties issued to the partners.

102. Paragraph 5(6) provides that for the purposes of applying the maximum sum of aggregated penalties under clause 205, a penalty charged to a relevant partner is to be treated as if it were calculated by reference to the amount of tax due from the partner and so be subject to the aggregation limits.

103. Paragraph 5(7) states that an appeal may be made against a decision that the partners are liable to penalties or against the sum total of those penalties.

104. Paragraphs 5(10) and 5(11) provide for the Treasury to make an order using the negative procedure to vary the rates applied under this paragraph.

Schedule 28: Accelerated payments and partnerships

105. Paragraphs 2 to 8 provide rules on when an accelerated payment notice can be sent to partners in a partnership, in a case where there is an open enquiry, or a live appeal, which relates to the partnership return given under section 12AA of TMA 1970 (but not to any other partnership circumstance, such as SDLT or ATED – for which, see clauses 223 and 224 respectively). These rules mirror the general position, but adapted as appropriate for this special case.

106. Paragraph 2(2) makes clear that an accelerated payment notice may not be given to the representative partner in that capacity. An accelerated payment notice may be given to that person if they are also a relevant partner (defined in paragraph 1(4)).

107. Paragraph 3 makes clear that although the open enquiry or appeal relates to the partnership return, an accelerated payment will be required from each of the partners individually, in the same way as the tax that they each pay on their share of the partnership profits. As a result, all other provisions and consequences, such as the right to make representations and the provision for a late payment penalty, apply to each partner individually.

108. Paragraph 4 sets out the necessary modifications for the contents of a 'partner payment notice', and sets out the meaning of 'understated partner tax'.

109. Paragraph 5 makes clear that the right to make representations applies to each partner individually.

110. Paragraph 6 makes clear that it is each partner individually who must make the accelerated payment.

111. Paragraph 7 makes clear that the late payment penalty rules of clause 219 apply in respect of each partner individually, and applies clause 219 with appropriate modifications.

112. Paragraph 8 applies, with appropriate modifications, the provisions of clause 220 concerning withdrawal or modification of an accelerated payment notice to partner payment notices.

Schedule 29 Consequential amendments

113. Paragraph 1 extends the ability of a taxpayer under section 9B of TMA 1970 to amend their return during an enquiry to enable an amendment to be made for the purposes of this Part.

114. Paragraph 2 disapplies the assessment provisions for penalties in sections 100 to 103 of TMA 1970 as the penalties under this Part either have their own assessing provision (see clause 13) or adopt other provisions (see clause 28(6), adopting provisions in Schedule 56 to FA 2009).

115. Paragraph 3 disapplies the interaction provision in Schedule 24 to FA 2007 (penalties for errors) so that a penalty under that Schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

116. Paragraph 4 disapplies the interaction provision in Schedule 41 to FA 2008 (penalties for failure to notify and certain VAT and excise offences) so that a penalty under that schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

117. Paragraph 5 disapplies the interaction provision in Schedule 55 to FA 2009 (penalties for failure to make returns) so that a penalty under that schedule is not reduced by the amount of a penalty charged under this Part, calculated by reference to the same amount of tax.

BACKGROUND NOTE

115. HMRC sometimes have to deal with a large number of taxpayers' returns that claim a tax advantage from the same or similar tax arrangements, or large numbers of appeals against HMRC's conclusion that the arrangements do not work. This measure gives HMRC the power to issue a notice to a taxpayer to the effect that they should settle their case with HMRC once a tribunal or court has concluded in another party's litigation that the arrangements do not produce the asserted tax advantage.

116. Under current legislation, HMRC may deny a claimed repayment of tax while a dispute is resolved, but in the general scheme of self assessment the taxpayer is able to claim the effect of the tax advantage while the enquiry and any subsequent tax appeal is unresolved. This measure gives HMRC the power to issue a notice to require an accelerated payment of the amount in dispute, in certain defined circumstances, while an enquiry is in progress or while there is an open appeal.

FINANCE BILL 2014
CLAUSES 227-276
SCHEDULES 30-32

EXPLANATORY NOTE

CLAUSES 227-276 PROMOTERS OF TAX AVOIDANCE SCHEMES

SUMMARY

1. These clauses and the related Schedules introduce new legislation applying to certain promoters of tax avoidance schemes. In broad outline, the provisions define promoters of avoidance schemes, identify when they have triggered “threshold” conditions targeting specified behaviours, and provide for a “conduct” notice to be applied to these promoters. Those who fail to comply with a conduct notice may be issued with a “monitoring” notice, which requires pre-approval by a Tribunal. Names of promoters subject to a monitoring notice will be published by HMRC, including details of how the conduct notice was breached, and the promoter will be required to publish its monitored status to clients. Information requirements will apply to monitored promoters, and intermediaries and clients of monitored promoters.

DETAILS OF THE CLAUSES

Introduction

2. Clause 227 is the first of a series of clauses defining terms in the legislation. It defines the tax avoidance schemes classed as “relevant arrangements” and “relevant proposals” in relation to which a person may be a promoter. “Relevant arrangements” enable, or might be expected to enable, someone to obtain a tax advantage. Obtaining the tax advantage must be the main benefit or one of the main benefits of entering into the arrangements. “Tax advantage” is defined in subsection (3). “Arrangements” is widely defined to include agreements, schemes, arrangements and understanding, whether or not they are legally enforceable. “Relevant proposal” is a proposal for something which, if entered into, would be relevant arrangements and may relate to a single person or to a number of people.

3. Clause 228 defines “promoter” in similar terms to sections 306 and 308 Finance Act 2004 (Disclosure of Tax Avoidance Schemes), but is not restricted to providers of tax or banking services. A person is a promoter only in respect of relevant proposals and relevant arrangements. Subsection (2) provides that a person is a promoter in respect of a relevant proposal if, at any time, the person is responsible for the design of the proposed arrangements, makes a “firm approach” to someone with a view to making the proposal available for implementation by that person or another, or makes the relevant proposal available for implementation by others. Subsection (3) of clause 228 defines a promoter in relation to relevant arrangements as a person who at any time is a promoter for a relevant proposal which becomes the relevant arrangements, or is responsible for the design, organisation or management of the arrangements.

4. Subsections (4) and (5) of clause 228 define "firm approach". This is concerned with communicating information about the relevant proposal, at a stage when it has been "substantially designed" and includes an explanation of the expected tax advantage, to another person with a view to that person entering into the arrangements. Subsection (5) of clause 228 explains when proposed arrangements have been "substantially designed". This is when the transactions forming part of the proposed arrangements have been sufficiently developed, so that someone wanting to obtain the tax advantage could enter into those or similar transactions.

5. Subsections (6) and (7) contain a power to allow the definition of promoter to be amended to exclude persons from being a promoter in prescribed circumstances with retrospective effect. Regulations to exclude from the definition of promoter those providing advice on the commercial aspects of a proposal or arrangement are planned for later in 2014 with retrospective effect to Royal Assent.

6. Clause 229 defines intermediary for the purposes of these provisions. There are three differences between the definition of promoter and intermediary. The first two are that the promoter definition includes the design of the proposed arrangements and making the relevant proposal available for implementation by others. The third difference is that a person who explains about the tax advantage is a promoter; an intermediary for the purposes of this legislation does not. Instead an intermediary is defined as a person who communicates information about the relevant proposal to another person with a view to that other person entering into the proposed arrangements. Anyone who does this is an intermediary unless they are also a promoter.

Conduct notices

7. Clause 230 describes the circumstances under which an authorised officer can issue a conduct notice and introduces Schedule 30 which includes the threshold conditions. A conduct notice can be issued if the promoter has, within the previous three years, triggered a threshold condition, and there is not an extant conduct notice or monitoring notice. The threshold conditions are described in the related Schedule. Subsections (2), (4) and (5) allow the authorised officer to ignore insignificant breaches of threshold conditions or cases where little tax is at risk. However a breach of a threshold condition cannot be considered "insignificant" if it is one of those listed in subsection (6).

8. Clause 231 is concerned with the contents of the conduct notice. When a conduct notice is issued the recipient must comply with the conditions specified in the notice (subsection (1)). Subsection (2) allows the potential recipient an opportunity to comment on the proposed terms of the notice before it is issued. Subsection (3) lists the purposes for which issues can be included as conditions in the conduct notice. Each conduct notice will be tailored to the promoter. For example, if the promoter does not provide sufficient information about its proposals and arrangements to its clients there may be a condition in the conduct notice that it does so. If the promoter requires clients to enter into confidentiality agreements or contribute to a fighting fund while preventing them from settling their cases independently with HMRC, then a condition to address that may be included in the conduct notice.

9. Subsections (4) and (5) provide further explanation of the terms “adequate information” and “specified disclosure provision” in subsection (3). Subsection (6) enables a conduct notice to be issued to a promoter in a personal capacity or on a partnership. Subsection (8) includes a power to amend the definition of disclosure provisions for subsection (5) by regulation.

10. Clause 232 provides definitions of “adequate”, “client” and “promotes”.

11. If a promoter abides by its conduct notice so that some conditions are no longer required or there is evidence that the underlying reason for the conduct notice has been addressed Clause 233 allows an authorised officer of HMRC to amend or withdraw the conduct notice. Clause 234 provides that the maximum length for a conduct notice is two years and provides that a conduct notice ceases to have effect once the promoter is subject to a monitoring notice.

Monitoring notices: procedure and publication

12. If a promoter fails to comply with a conduct notice then clause 235 requires the authorised officer to apply to the Tribunal for approval to give a monitoring notice. A monitoring notice can only be issued if approval is granted by the Tribunal. The promoter must be given notice of the application. If the breach of the conduct notice related to the provision of information to customers or intermediaries, or to the promoter’s duty to supply information to HMRC, is insignificant then the authorised officer is not under a duty to apply to the Tribunal for approval and consequently a monitoring notice is not issued (subsection (3)). The monitoring notice will state the reasons for its issue, in particular the condition in the conduct notice that the promoter breached. An effect of a monitoring notice is that the promoter may be subject to specific information notices with penalties for non-compliance.

13. Clause 236 provides that the Tribunal may only approve a monitoring notice if it is satisfied that it is justified. The promoter has the opportunity to make representations to the Tribunal including representations about the reasonableness of the conditions in the conduct notice which HMRC considers it to have breached. The Tribunal may amend the proposed monitoring notice. Subsection (3) allows the monitored promoter to include in its representations to the Tribunal about the proposed monitoring notice its view that a condition in the conduct notice was unreasonable. If the Tribunal decides that a condition in the conduct notice is unreasonable subsections (3) and (4) operate so that the Tribunal will not approve the giving of a monitoring notice for a breach of only that condition. If the proposed monitoring notice identifies a breach of more than one condition of the conduct notice then the Tribunal will only refuse to approve the giving of a monitoring notice if it holds that all of the conditions were unreasonably imposed (assuming it is accepted that there was a breach on the facts and that the giving of the monitoring notice would be a justified response to that breach).

14. Clause 237 describes the content of the monitoring notice and how it is issued. The monitoring notice is issue by an authorised officer of HMRC. All monitoring notices must explain the effect of the monitoring notice (including the date it takes effect) and the right of the recipient to request the withdrawal of the monitoring notice. In addition a monitoring notice being issued for the first time must include the condition or conditions of the conduct

notice that it is has been determined that the promoter has breached. If them monitoring notice is a replacement monitoring notice then it must refer to the original monitoring notice. A promoter who is subject to a monitoring notice is referred to as a monitored promoter.

15. Clause 238 provides the monitored promoter with the right to request that the monitoring notice should be withdrawn. For example the promoter may consider that it has complied with all of its obligations as a monitored promoter and has satisfied all the conditions of the preceding conduct notice, so that the monitoring notice is no longer necessary. Subsection (2) ensures that all the consequences of a monitoring notice runs for at least 12 months. An authorised officer has 30 days to respond to the request and when considering whether or not to reject the request, takes into account the behaviour of the promoter while it was being monitored (subsection (5)), the promoter's likely future behaviour and its compliance with this Part. In addition the authorised officer can, when deciding to withdraw the notice, decide to issue a follow-on conduct notice so that the promoter continues to be subject to some supervision.

16. The notification of the authorised officer's decision on withdrawal of the monitoring notice is made under clause 239. The authorised officer may decide to accept or reject the request for withdrawal, but if they do the latter they must give their reasons. A right to appeal against a refusal to withdraw a monitoring notice is in clause 240.

17. Clause 241 allows an authorised officer to publish the fact that a person is a monitored promoter. Publication can include the promoter's name, address, the nature of its business and other appropriate information, including the conditions in the conduct notice that were breached. A promoter's details cannot be published until their right to appeal against the Tribunal's approval has been exhausted (subsections (5) and (6)). Additionally if a monitoring notice is withdrawn it is incumbent on the authorised officer to publish the fact of the withdrawal in the same way.

18. Clause 242 complements clause 241 by requiring a promoter to publish to its clients that it is a monitored promoter and which of the conditions in the conduct notice have been breached. For existing clients the promoter must publish that it is monitored within 10 days of its right to appeal the Tribunal's approval being exhausted (subsections (4) and (5)). For new clients the ten day period applies from the date that they became new clients (subsection (9)). HMRC may make regulations requiring a promoter to publish that it is a monitored promoter on the Internet or in other publications or correspondence, such as marketing material and communications with clients (subsections (3) and (10)). The form and manner of the publication is to be prescribed in regulations.

Allocation and distribution of promoter reference number

19. Clause 243 requires HMRC to issue the monitored promoter with a promoter reference number. This can only be done after the promoter's right to appeal against the Tribunal's approval decision on an original monitoring notice is exhausted or if later the date that a replacement monitoring notice takes effect. The promoter reference number will enable HMRC to identify the monitored promoter's clients so that its compliance efforts can be suitably directed. If the monitored promoter is offshore HMRC must issue the promoter reference number to intermediaries of the monitored promoter. Within thirty days of receipt

of the promoter reference number from HMRC, clause 244 requires the promoter to pass on the promoter reference number to their clients. If the monitoring notice is an original monitoring notice then the definition of clients also includes those who, from the date that the conduct notice took effect, have entered into transactions which enable or are likely to enable the person to obtain a tax advantage during the time that the monitoring notice has effect. There are two time limits for passing on the promoter reference number depending on whether or not the client is a current client or a new client of the promoter.

20. Clause 245 requires clients of a promoter, within thirty days of receiving the promoter reference number, to pass on the promoter reference number to anyone who they know, or might reasonably be expected to know, is likely to be a client of the monitored promoter. This obligation also applies to intermediaries. This requirement will ensure that as many clients or people likely to be clients as possible are given the promoter reference number.

21. Clause 246 requires the person notified of the promoter reference number to report the number to HMRC if they expect to obtain a tax advantage from the monitored promoter's relevant arrangements. If the person makes a tax return then the promoter reference number should be included on the return. If the person does not make a tax return or the tax advantage arises in respect of stamp duty land tax, stamp duty reserve tax, inheritance tax or petroleum revenue tax then the promoter's reference number should be notified to HMRC in the form and manner prescribed in regulations. Notification of the promoter reference number will enable HMRC to track taxpayers who have used the monitored promoter's products and to target their compliance efforts accordingly.

Obtaining information and documents

22. Clause 247 defines "monitored proposals" and "monitored arrangements" for the purposes of the information requirements that apply to monitored promoters. Monitored proposals and arrangements are those where certain actions take place after the date that the monitoring notice comes into effect. For example subsection (1) (a) defines monitored proposals as proposals for which the promoter makes a firm approach to another person after the date that the monitoring notice took effect. Subsection (2) defines monitored arrangements and includes arrangements which may have been entered into before the date that the monitoring notice takes effect but where the tax advantage generated arises on or after the date that the monitoring notice took effect (subsection (2) (c)).

23. Clause 248 is the targeted information power for monitored promoters and relevant intermediaries. It is to be operated by, or with the approval of, authorised HMRC officers only and applies only if the information or documents are requested in writing. The information or documents requested must be reasonably required to meet certain purposes, specified in subsection (3), which includes considering the tax consequences of implementing a monitored proposal and to check the "tax position" of any person who is reasonably believed to have implemented monitored proposals or monitored arrangements. Only intermediaries who, having been notified of the promoter's reference number, continue to communicate the promoter's proposals are subject to the information requirement (subsection (4)). "Tax position" is widely defined in subsections (6) and (7). The time limit for providing

the information or documents is a minimum of ten days but may be longer as directed by the officer giving the notice (subsection (10)).

24. If an HMRC officer wishes to use clause 248 to obtain information which relates to a person other than a monitored promoter, their intermediary, or a subsidiary undertaking of either, clause 249 requires the officer to obtain prior approval of the Tribunal. This is similar to paragraph 3 of Schedule 36 to Finance Act 2008.

25. Clause 250 provides for the ongoing duty of the monitored promoter to provide information to HMRC. It takes effect once HMRC has notified the monitored promoter. This enables HMRC to obtain information about all monitored proposals and monitored arrangements that were in existence at the time the monitoring notice comes into effect and throughout the period that the promoter is monitored. Unlike DOTAS, which relies on identifying proposals or arrangements using hallmarks, this power is not limited to specific proposals or arrangements. The time limit for provision of the information and documents is variable and will be specified in the notification from HMRC. The information and documents to be provided under this duty will be detailed in secondary legislation.

26. If the monitored promoter is offshore and has failed to provide the information required under clauses 248 and 250 about monitored proposals or monitored arrangements then HMRC may approach an intermediary to provide the information under clause 251. In the absence of an intermediary then HMRC may require the person who has implemented the monitored proposal or all or part of the monitored arrangements to provide the information. The minimum period for the provision of the information is ten days.

27. Clause 252 is concerned with the provision of information about the clients of the monitored promoter. HMRC may serve a notice under this clause, after which time the monitored promoter has to make returns supplying names and addresses for its clients (as well as other prescribed information) on a calendar quarterly basis. The first return must contain details about current clients, and thereafter there is an on-going duty to file returns with details of new clients. The clients are those to whom the promoter has made a firm approach, made a relevant proposal available for implementation or those in relation to whom the promoter has taken part in the organisation or management of relevant arrangements. Clients that are entering into transactions for arrangements that the promoter has previously promoted are included in the information requirement if the tax advantage arises in a relevant period (subsection (8)). The information provided by the monitored promoter can be cross-checked against its client's returns and notifications to HMRC for compliance purposes. Once the HMRC notice has been issued the duty to make returns continues until the promoter is no longer monitored.

28. Clause 253 is the equivalent provision for intermediaries. HMRC may issue a notice to the intermediary requesting details of its clients in relation to a monitored proposal of the monitored promoter for a relevant period. The relevant period cannot begin before the intermediary received the promoter reference number (subsection (3)) and comes to an end once the monitoring notice ceases to have effect for that promoter. The intermediary has to provide the names and addresses (and other prescribed information) of the clients to whom it communicated information about the monitored proposal on an ongoing basis for each relevant period.

29. Clause 254 only applies where a client return has been provided under clause 252 or 253 and an authorised officer suspects that a person not included in the return is party to transactions implementing a proposal or arrangement. In these circumstances the officer can require the monitored promoter to provide prescribed information about that person. This will allow the officer to confirm or dismiss relevant suspicions. The minimum time for the provision of the information is ten days.

30. Clause 255 applies to promoters who are subject to a conduct notice. The clause allows HMRC to request information or documents that are reasonably required to enable HMRC to monitor the conduct notice. Any information or documents provided under clause 255 may provide evidence to support the amendment or withdrawal of the conduct notice.

31. Clause 256 places an obligation on the monitored promoter to inform an authorised officer of its current address within 30 days of the end of each calendar quarter for the period that the monitoring notice has effect.

32. If a promoter provides information under clauses 248, or 250 to 255, but an authorised officer suspects that not all of the information or documents have been provided then clause 257 enables the authorised officer to apply to the Tribunal for an order requiring the promoter to provide specified information or documents. The Tribunal needs to be satisfied that the authorised officer has reasonable grounds for suspecting that the information or documents are reasonably required or will support or explain information already required. The time limit for the provision of the information or documents is ten days or any longer period as the authorised officer directs.

33. Clause 258 is equivalent to a similar DOTAS provision requiring a client to provide the promoter with their national insurance number and unique taxpayer reference. This will enable the promoter to provide this information to an authorised officer if required to do so under clause 252 and will assist HMRC in tracking the promoter's clients.

Obtaining information and documents: appeals

34. Appeal rights against the information notices are provided for in clause 259. The time limit for an appeal is thirty days and the Tribunal can confirm or vary the notice or its requirement or set it aside.

Obtaining information and documents: supplementary

35. Clauses 260 to 264 are administrative provisions for the information notice clauses 248 to 255. They are equivalent to similar provisions in Schedule 36 Finance Act 2008. Clause 260 allows the Commissioners to specify the form and manner in which information and documents are to be provided. Clause 261 allows the person who has received the notice to provide a copy of a document unless required to provide the original. Clause 262 exempts certain documents from the information notice and clause 263 limits the production of documents to those in the person's possession or power and excludes certain old documents. Clause 264 exempts from disclosure any privileged information. This is information subject to legal professional privilege, or for Scotland, confidentiality of communications.

36. Clause 265 only applies to notices under clause 25 (3) – the duty of a person dealing with a monitored promoter outside the UK. It provides an exemption where the person to whom the authorised officer serves the information notice under clause 25 (3) is a tax adviser. The exemption applies to information and documents about or which are relevant communications between the tax adviser and its clients or another tax adviser of that client (subsections (2) and (5)).

37. Clause 266 enables clients and intermediaries to ignore a non-disclosure agreement they have with the monitored promoter if they want to provide information to HMRC. The information can be about the monitored promoter itself or its relevant proposals and relevant arrangements. The information is not restricted to proposals and arrangements that the client or intermediary has used or communicated about; it can be information about other proposals or arrangements of the monitored promoter.

Penalties

38. Clause 267 introduces Schedule 31 which contains provisions about the penalties for this Part.

39. Clause 268 introduces a higher standard of reasonable excuse and reasonable care for monitored promoters and their clients for certain obligations under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. A reasonable excuse for failing to comply with an obligation under the Taxes Acts can be, for example an unforeseen event or illness that prevents the person from meeting that obligation. What constitutes reasonable excuse in any particular case depends on the specific facts of that case. Sometimes a person will obtain professional advice about whether or not they are required to meet that obligation. They may then want to rely on the existence of that advice to argue that they have a reasonable excuse for not meeting it. Whether or not this advice is sufficient to provide a reasonable excuse will depend on such factors as the competency of the adviser and the relevance of the advice to the facts. There is a requirement to take reasonable care when submitting returns and other information to HMRC. What is reasonable care for a person will vary according to the circumstances of the case; again someone may argue that they have taken reasonable care because they have obtained professional advice. There is detailed guidance on reasonable excuse and reasonable care in HMRC's Compliance Handbook.

40. The higher standard of reasonable excuse and reasonable care for clients in these clauses ensures that the client cannot rely on legal advice provided to them by the monitored promoter in order to claim that they had a reasonable excuse or took reasonable care. This does not meant that the person cannot have a reasonable excuse at all, there may be other circumstances or they may have obtained independent legal advice that will allow HMRC or the Tribunal to consider if they have a reasonable excuse.

41. The higher standard of reasonable excuse and reasonable care for promoters is different. The higher standard is based on the relevance of the legal advice and it ensures that the monitored promoter cannot rely on legal advice for the defences of reasonable excuse and reasonable care if the advice was not based on a full and accurate description of the facts or if the conclusions in the advice were unreasonable.

42. Clause 268 introduces the higher standard for reasonable excuse for a client by inserting new subsection (2EA) into section 98C Taxes Management Act 1970 (the DOTAS penalty provisions). It applies where the client of an offshore promoter has failed to comply with their obligation to provide information about notifiable arrangements either under section 309 or 310 Finance Act 2004. If the client wishes to argue that they have a reasonable excuse under section 118 Taxes Management Act 1970 then they cannot rely on legal advice given to them or obtained by the monitored promoter.

43. New subsection (2EB) introduces the higher standard of reasonable excuse for a monitored promoter's DOTAS obligations. For example this applies to the monitored promoter's duty to notify proposals and arrangements under DOTAS, to provide clients with scheme reference numbers and to provide details of clients. Clause 269 introduces the higher standard of reasonable care for clients' tax returns and accounts (as listed in paragraph 1 of Schedule 24 Finance Act 2007). The higher standard is as described in paragraph 41 above and ensures that the client cannot rely on legal advice provided to them by the monitored promoter in order to claim that they had a reasonable excuse or took reasonable care.

44. Where tax is lost due to the client's failure to notify HMRC of the monitored promoter's reference number clause 270 provides for an extended time limit of 20 years for raising assessments in respect of income tax, capital gains tax, corporation tax, petroleum revenue tax, stamp duty land tax, and the annual tax on enveloped dwellings.

Offences

45. Clauses 271 to 273 mirror the provisions in Part 8 Schedule 36 Finance Act 2008 for offences in relations to information notices. Clause 271 applies if a person conceals, destroys or disposes of or arranges for the concealment, destruction or disposal of a document that is subject to an information notice under clause 248. Clause 272 contains a similar provision where the person has been informed by HMRC that they are likely to be given an information notice under clause 248 and where necessary HMRC is going to apply to the Tribunal for permission to issue the information notice. Clause 273 provides that the penalties for such offences are a fine or imprisonment for a maximum of two years or both.

Supplemental

46. Clause 274 introduces Schedule 32 which contains provisions for partnerships.

47. Clause 275 allows regulations to be made for the purposes of the legislation. Apart from statutory instruments to make regulations to add new disclosure provisions, threshold conditions, to change the amount of a penalty or the definition of control which are made under the affirmative procedure, all other regulations are made under the negative procedure. Finally clause 276 provides a number of definitions to support the clauses.

DETAILS OF THE SCHEDULES

Schedule 30 Part 1

48. Part 1 includes the threshold conditions. If a promoter has met any one of the 11 conditions in Schedule 1 in the last three years it is to be considered for a conduct notice.

49. Paragraphs 2 to 12 set out the 11 conditions.

50. Paragraph 2 sets out the first condition which relates to the publication of information about the promoter as deliberate tax defaulter.

51. Paragraph 3 sets out the second condition which relates to the promoter being named in a report for a breach of the Code of Practice on Taxation for Banks.

52. Paragraph 4 sets out the third condition which relates to the promoter receiving a conduct notice as a dishonest tax agent.

53. Paragraph 5 sets out the fourth condition which is that the person has failed to comply with an obligation either to disclose a tax avoidance scheme or to provide details of clients to HMRC. Subparagraph (2) provides that the condition is met even if the person had a reasonable excuse for failing to meet the obligation.

54. Paragraph 6 sets out the fifth condition which is that the promoter has been charged with a specified tax offence. Subparagraphs (2) and (3) make provision about acquittals and similar matters. Subparagraph (4) sets out the offences which are to be taken into account.

55. Paragraph 7 sets out the sixth condition which is that the majority of a sub-panel of the General Anti-Abuse Rule Advisory Panel has given an opinion that entering into one of the promoter's tax avoidance schemes is not a reasonable course of action.

56. Paragraph 8 sets out the seventh condition which is that the promoter has been found guilty of misconduct by a professional body. Subparagraph (2) restricts the type of misconduct to which the paragraph can apply. Subparagraph (3) lists relevant professional bodies and paragraph 15 allows additions to the list by regulations. HMRC will be consulting with professional bodies to identify the relevant offences so that they may be prescribed in regulations.

57. Paragraph 9 sets out the ninth condition which is that a regulatory authority has imposed a sanction on the promoter. Subparagraph (2) requires HMRC to specify the sanctions to which the paragraph applies. Subparagraph (3) lists relevant regulatory authorities and paragraph 15 allows additions to the list by regulations. HMRC will be consulting with regulatory authorities to identify the relevant offences so that they may be prescribed in regulations.

58. Paragraph 10 sets out the ninth condition which is that the promoter has failed to comply with an information notice issued by HMRC.

59. Paragraph 11 sets out the tenth condition which is that the promoter has required a client to keep details of a tax avoidance scheme confidential from HMRC or to contribute to a fighting fund. Subparagraphs (2) and (3) set out the circumstances in which a person is

regarded as having required a client to keep details of a scheme confidential. Subparagraph (4) sets out what is meant by requiring a client to contribute to a fighting fund and includes requiring a client to take out an insurance policy. Subparagraph (5) provides that the condition is only met in respect of a contribution to a fighting fund if the client is also prevented from settling with HMRC without the promoter's permission. Subparagraphs (6) and (7) contain definitions.

60. Paragraph 12 sets out the eleventh condition which is that the promoter has continued to market or make available a tax avoidance scheme after being given a notice to stop following a judicial ruling. Subparagraph (2) explains which tax avoidance schemes are affected. Subparagraph (3) explains when a stop notice may be given. Subparagraph (4) sets out what a stop notice must contain. Subparagraphs (5) and (6) make provision for the withdrawal of a stop notice. Subparagraph (7) makes provision about when a stop notice takes effect. Subparagraph (8) gives the meaning of terms used.

Schedule 30 Part 2

61. Part 2 describes how a body corporate meets the threshold conditions. Paragraph 13 makes provision about when a person's breach of a threshold condition may be imputed to a body corporate which that person controls.

Schedule 30 Part 3

62. Part 3 includes the power to amend the threshold conditions. Paragraph 14 allows the Treasury to amend any of the conditions or to add new ones. HMRC will be drafting a threshold condition for associated and successor businesses of a monitored promoter. Draft regulations will be issued for comment in due course for this threshold condition and for the relevant offences for paragraphs 8 and 9 (disciplinary action by a professional or regulatory body).

Schedule 31

63. Paragraph 1 explains what is meant by an information duty.

64. Paragraph 2 sets out the maximum penalties for failing to comply with the various obligations in the legislation. Subparagraph (2) makes it clear that for certain of the penalties the maximum can be imposed in respect of each person to whom or about whom information has not been provided. Subparagraph (3) provides for increasing penalties where there is repeated failure to provide HMRC with a promoter's reference number. Subparagraph (4) sets out the considerations to be taken into account by the Tribunal when determining the amount of the penalty and in particular provides for the level of fees or the amount of tax advantage to be taken into account.

65. Paragraph 3 provides for daily penalties where a failure to comply continues after an initial penalty has been imposed. Subparagraph (2) sets out the maximum daily penalties.

66. Paragraph 4 provides for a penalty where inaccurate information or an inaccurate document has been provided. Subparagraph (2) covers the situation where the inaccuracy is

careless or deliberate. Subparagraph (3) explains what is meant by careless. Subparagraphs (4) and (5) set out circumstances in which legal advice cannot be relied upon. Subparagraph (6) covers the situation where HMRC is not informed of an inaccuracy in a document. Subparagraph (7) covers the situation where an inaccuracy is discovered subsequently but HMRC is not informed. Subparagraph (8) sets out the maximum penalties for inaccuracies. Subparagraph (9) makes it clear that there is only a single penalty although there may have been multiple inaccuracies in the same document or information.

67. Paragraph 5 allows the Treasury to adjust the maximum penalties by regulations.

68. Paragraph 6 provides for penalties where a promoter or intermediary destroys or conceals documents that it has a duty to produce under certain of the provisions in the legislation. Subparagraphs (2) and (3) set out circumstances in which a penalty will not apply. Subparagraph (4) provides that the destruction or concealment of a document will count as a failure to produce the document. Subparagraph (5) sets out the priority rules if a document is required under more than one provision.

69. Paragraph 7 provides for penalties where documents are destroyed or concealed after HMRC has given informal notification that the documents will be required.

70. Paragraph 8 provides for cases where HMRC or the Tribunal extend the time limit for complying with an obligation.

71. Paragraph 9 provides that there is no penalty where there is a reasonable excuse. Subparagraph (2) makes provision about what does and does not constitute reasonable excuse. The subparagraph includes the higher standards of reasonable excuse for monitored promoters and their clients.

72. Paragraph 10 brings the assessment of the penalties within the provisions of part 10 of the Taxes Management Act 1970. In particular this has the consequence that all penalties except daily default penalties under paragraph 3(2)(b) are assessed by Tribunal rather than HMRC, and it provides promoters with the ordinary rights of appeal against penalties.

73. Paragraph 11 provides for the penalties to carry interest.

74. Paragraph 12 prevents a penalty being charged where someone has been convicted for the same offence.

75. Paragraph 13 prevents the duplication of penalties where a promoter reference number has been omitted from a tax return.

Schedule 32 – Partnerships Part 1

76. Part 1 describes how partnerships are to be treated as persons.

77. Paragraph 1 provides that where persons are carrying on a business in partnership the partnership is regarded as a person for the purposes of the legislation and imports the meaning of partnership from the Partnership Act 1890.

78. Paragraph 2 provides that a partnership is regarded as the same partnership and same person despite changes in the members of the partnership as long as there is at least one person who was a member of the partnership before and after the change.

79. Paragraph 3 describes the acts and omissions which are treated as acts or omissions of the partnership. Subparagraphs (2) and (3) explain which partners are relevant for the purposes of the paragraph. Subparagraph (4) imports the meaning of firm from the Partnership Act 1890.

80. Paragraph 4 provides that if a controlling partner or a managing partner of a partnership meets a threshold condition in a personal capacity the partnership is treated as having met that threshold condition. Subparagraph (3) explains which threshold conditions are relevant for the purposes of the paragraph.

Schedule 32- Partnerships Part 2

81. This part applies the main clauses to partnerships with relevant modifications.

82. Paragraph 5 permits a conduct notice to impose conditions on both current and future members of the partnership. This paragraph also requires that a conduct notice given to a partnership must state it is a partnership conduct notice; paragraph 6 has the same provision for monitoring notices.

83. Paragraph 7 is the first paragraph dealing with the continuity of conduct notices and monitoring notices when a partner leaves a partnership or a partnership breaks up. It applies where a partnership breaks up and the business is carried on by an ex-partner as a sole trader. In these circumstances the monitoring notice or conduct notice continue to have effect in relation to the sole trader just as they did for the partnership.

84. Paragraph 8 applies where a controlling member of a partnership that is subject to a conduct notice leaves the partnership. Subparagraphs (2) and (3) give an authorised officer the power to give P a conduct notice, or if P is a controlling member of a new partnership, give the new partnership a conduct notice. Subparagraphs (4) and (5) provide for two circumstances where the conduct notice ceases to have effect. The first is where P leaves the new partnership; the second is if the term of the original conduct notice has expired.

85. Paragraph 9 makes similar provision where the controlling member of a partnership that is subject to a monitoring notice leaves the partnership.

86. Paragraph 10 applies where a partner leaves a partnership that is subject to a conduct notice or monitoring notice (the original notice) and takes part of the partnership business ("the transferred part") with them when they depart. Under subparagraphs (3) and (4) an authorised officer may give an equivalent notice (the replacement notice) to the departing partner or to the departing partner's new partnership if that partnership is carrying on the transferred part of the promotion business. The new conduct notice or monitoring notice ceases to have effect on the new partnership if P leaves the partnership or the original notice ceases to have effect.

87. Paragraph 11 provides the definitions of "original conduct notice", "original monitoring notice", "replacement conduct notice" and "replacement monitoring notice". It also provides that the replacement conduct notice will have no effect after the termination date of the original conduct notice. Paragraph 12 provides that a replacement conduct notice cannot survive the termination of the original notice which preceded it.

88. Paragraph 13 provides that a replacement conduct notice or monitoring notice cannot be given to a person if an original notice still has effect in relation to them.

89. Paragraph 14 provides that where a monitored promoter is in partnership the details to be published by HMRC are to relate to the partnership and not the partners. Paragraph 15 provides that where a monitored promoter is a partnership the details to be published by HMRC are to relate to the partnership and not the partners.

Schedule 32 - Partnerships Part 3

90. This part of the Schedule provides for the responsibilities of the partners for meeting the obligations imposed under this Part of the Act. Paragraph 15 provides that all responsible partners are required to comply with notices given under the legislation. Subparagraph (1) gives the meaning of responsible partners. Subparagraph (4) sets out which partners can exercise a right of appeal.

91. Paragraph 16 provides that the responsible partners are jointly and severally liable to penalties and interest on penalties. Subparagraph (2) explains from which partners penalties and interest cannot be recovered. Subparagraph (3) defines relevant time for the purposes of subparagraph (2).

92. Paragraph 17 explains to which partners or partner HMRC may serve a notice. Subparagraph (2) gives the meaning of representative partner for the purposes of the paragraph. Subparagraph (3) explains when a designation (or revocation of a designation) of a representative partner by HMRC has effect.

93. Paragraph 18 allows the partners to nominate a partner (the "nominated partner") to meet the obligations of the responsible partners on their behalf.

Schedule 32 - Partnerships Part 4

94. This part of the Schedule contains the definitions for the Schedule. Paragraph 19 provides the definition of "controlling member" and paragraph 20 the definition of "managing partner". This part also includes in paragraph 21 a power to amend paragraphs 19 and 20.

BACKGROUND NOTE

95. This legislation is designed to tackle the particular behaviours which have been identified amongst certain promoters of tax avoidance schemes (e.g. failure to comply with

DOTAS or respond to HMRC information notices) and in doing so improve the transparency of certain promoters with HMRC with appropriate sanctions if the promoter does not want to comply voluntarily.

96. The "Raising the Stakes on Tax Avoidance" consultation in summer 2013, made proposals to tackle the behaviour of high-risk promoters. This was followed in January 2014 with a responses document and draft legislation. These clauses and Schedules are the outcome of the consultation on the draft legislation. The clauses are supplemented by three Schedules. The first describes the threshold conditions that trigger the issuing of a conduct notice. The second has the penalty provisions for failure to comply with the duties imposed by the clauses on promoters, intermediaries and clients. The third schedule describes how the clauses apply to partnerships.

EXPLANATORY NOTE

CLAUSE 277: DISLCOSURE OF TAX AVOIDANCE SCHEMES: INFORMATION POWERS

SUMMARY

1. This clause gives HM Revenue and Customs (HMRC) further powers to obtain information about avoidance schemes.

DETAILS OF THE CLAUSE

2. Subsection 2 adds section 310A to Finance Act 2004 (section 310A) which provides that where a person has disclosed a proposal or arrangement that provides a main benefit or one of the main benefits a tax advantage, HMRC may require that person to provide documents or more information about the proposal or arrangement.

3. Subsection 2 also adds section 310B to Finance Act (section 310B) which provides that where a person has failed to provide information or documents required under section 310A HMRC may ask the tribunal for an order requiring the information or documents to be provided.

4. Subsection 3 amends section 316 (2) of Finance Act 2004 so that information required under section 310A has to be provided in the form and manner specified by HMRC.

5. Subsection 4 adds a definition of “working day” to section 318(1) of Finance Act 2004 for the purposes of determining when information or documents have to be provided under section 310A or section 310B.

6. Subsections 5-10 amend section 98C of Taxes Management Act 1970 to provide for penalties where a person has failed to provide information or documents required under section 310A.

7. Subsection 11 contains the commencement provisions.

BACKGROUND NOTE

8. The disclosure of tax avoidance schemes legislation in Part 7 of Finance Act 2004 (Part 7) is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work.

9. Part 7 requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.

EXPLANATORY NOTE

CLAUSES 278 - 281: THE CODE OF PRACTICE ON TAXATION FOR BANKS

SUMMARY

1. These clauses require HMRC from 2015 to publish an annual report on the operation of the Code of Practice on Taxation of Banks (the Code).

DETAILS OF THE CLAUSES

CLAUSE 278: HMRC TO PUBLISH REPORTS

2. Subsections (1), (2) and (3) provides that HMRC must publish a report on the operation of the Code and if the Commissioners conclude that a group or entity has breached the Code during a reporting period they may name the group or entity. Subsection (3) deals with the circumstance where the Commissioners determine that there has been a breach of the Code and it is impractical to name the group or entity in the report for the period.

3. Subsections (4), (5) and (6) sets out those groups and entities that will be listed in the annual report. These are those groups and entities that are chargeable to bank levy, would be chargeable if it were not for the £200 million de minimis exemption, or those groups and entities which meet the definition of a bank in section 991 of Income Taxes Act 2007 other than where the entity is a building or friendly society. In the case of a group or entity in which either there is a UK or foreign bank(s) but where the wider group is a non-banking group, subsection (5) ensures that the annual report will only list the UK or foreign banks or UK banking sub-groups and not the wider group.

CLAUSE 279: "PARTICIPATING" GROUPS OR ENTITIES

4. Subsections (1) and (2) define 'participating groups or entities' for the purposes of clause 1.

5. Subsections (3) and (4) set out what participating groups or entities must do if they no longer want to be participating groups or entities, or if they wish to be so again.

6. Subsections (5), (6) and (7) set what happens where a participating group or entity is named in an annual report and what it must do subsequently to become a participating group or entity in a later report.

CLAUSE 280: OPERATION & BREACHES OF THE CODE

7. Subsections (1), (2), and (3) provide that the Commissioners will publish and follow a governance protocol in relation to the Code, and that before they reach a decision to name a bank they must appoint an independent reviewer. The independent reviewer must take into account any representations by the group or entity and provide a copy of the report to the group or entity concerned. The identity of the independent reviewer has yet to be decided but will be a person of suitable stature who is independent of both HMRC and the group or entity such as for example a retired high court judge.

8. Subsections (4) and (5) provide that where the group or entity has received a GAAR advisory panel opinion notice(s) the independent reviewer will only be required to report upon whether the group or entity should be named in a report.

9. Subsections (6), (7) and (8) set out the procedure for and matters that the Commissioners must take into account when deciding to name a group pr entity in an annual report.

10. Subsections (9), (10) and (11) set out the two limited grounds on which the Commissioners may reach a different determination than that of the independent reviewer. That is where they decide that the independent reviewer's determination was unreasonable or where exceptionally there are compelling reasons for reaching a different determination. It also sets out that where the group or entity decides to judicially review the Commissioners determination, the onus will be the Commissioners to show that they acted reasonably in reaching their determination.

11. Subsection (12) sets out the time limit for making a claim to judicial review and provides that unless the Court is satisfied that there are exceptional circumstances which would warrant a public hearing, the judicial review in subsection (11) will be held in private.

12. Subsection (13), (14), (15) and (16) set out what the Commissioners must include in an annual report where they have reached a different determination than the independent reviewer and the timing of that report. Subsections (15) and (16) set out the information that the Commissioners must disclose to the independent reviewer and the basis on which the independent reviewer can use that information.

CLAUSE 281: DOCUMENTS RELATING TO THE CODE

13. This clause sets out that changes to any document published by HMRC in relation to the Code must be consulted upon and HMRC must take account of any consultation responses. This does not apply to the first publication of the governance protocol on 5 December 2014 or any documents published before Royal Assent to Finance Bill 2014.

BACKGROUND NOTE

14. The Code was introduced in 2009. The names of the top 15 banks that had adopted the Code were published in November 2010. The Code is one element of the Government's anti-avoidance strategy and is designed to change the attitudes and behaviour of banks towards avoidance given their unique position as potential users, promoters and funders of tax avoidance.

15. The Code describes the approach expected of banks with regard to governance, tax planning and engagement with HMRC. It aims to encourage banks, building societies and organisations providing banking services operating in the UK to adopt best practice in relation to their tax affairs.

EXPLANATORY NOTE

CLAUSE 282: UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES AND ALTERNATIVE INVESTMENT FUNDS

SUMMARY

1. This clause extends the application of section 363A Taxation (International and Other Provisions) Act 2010 (TIOPA) to Alternative Investment Funds (AIFs).

DETAILS OF THE CLAUSE

2. Subsection 2 substitutes subsections (1) and (2) of section 363A.

3. New subsection (1) removes the requirement for a fund within the scope of section 363A to come within the definition of an offshore fund at section 355 TIOPA, and amends it so that it applies to Undertakings For Collective Investment In Transferable Securities (UCITS) and to AIFs, provided that they are not 'excluded entities'.

4. New subsection (2) no longer requires that a body corporate is treated as resident in a State for the purposes of any tax imposed on income and applies the provisions to entities within the extended scope of section 363A.

5. New subsection (2A) provides a definition of the term 'excluded entity', and lists entity types within that definition.

6. New subsection (2B) provides a power for The Treasury to add to, subtract from or vary the list at subsection (2A).

7. Subsection (3) replaces the reference in subsection (3) of section 363A to "offshore fund" with "UCITS or AIF", and subsection (4) defines those and other terms used in the clause.

8. Subsection 5 makes various consequential amendments to TIOPA.

9. Subsection 6 provides for the changes, which are wholly relieving, to come into force from 5 December 2013. Entities within the extended scope of amended section 363A will therefore be treated as not resident (as provided by that section) from that date.

BACKGROUND NOTE

10. Currently, section 363A treats offshore funds (as defined at section 355 TIOPA) that are authorised under article 5 of the UCITS Directive (Directive 2009/65/EC of the European Parliament and of the Council), as not being resident in the United Kingdom if they are resident in another Member State for the purposes of any tax imposed under the law of that State on income.

11. Section 363A was introduced in Finance Act 2011, with effect from 19 July 2011, to maintain the competitiveness of the UK fund management industry following the introduction of the UCITS IV Directive, which provided a "management company passport". The effect of section 363A is that managing a fund within its scope from the UK will not cause the fund to be treated as resident in the UK as a result of central management and control being deemed to be located here.

12. The amendments made by this clause follow the announcement of the UK's Investment Management Strategy (IMS) at Budget 2013. The IMS included a range of measures to improve the competitive position of the UK investment management industry.

13. A consultation document entitled 'Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010' was published on 22 July 2013 setting out the Government's proposals. A draft clause was published as part of the draft Finance Bill at Autumn Statement 2013. This clause takes account of concerns expressed in response to the draft clause, to clarify its scope.

RESOLUTION 84

FINANCE BILL 2014
CLAUSE 283
SCHEDULE 33

EXPLANATORY NOTE

CLAUSE 283 SCHEDULE 33: COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

SUMMARY

1. This clause and Schedule introduce a relief from capital gains tax and an exemption from income tax relevant to the creation and operation of legal structures in which a trading company is owned by a particular sort of trust for the benefit of employees.

2. Part 1 of the Schedule introduces a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

3. Part 2 of this Schedule introduces an exemption from income tax for up to £3,600 per employment on a qualifying bonus payment in any tax year. The qualifying bonus payment must be one made to its employees (and any qualifying former employees) by a company which is owned directly or indirectly by a trust of the type specified in Part 1 at the time of the payment and which meets the qualifying conditions. A qualifying bonus payment will be an award other than regular salary or wages that is paid to all employees of the company (or the group of which it is a member) on equal terms, although bonus amounts can be set by reference to a percentage of salary or length of service or hours worked.

4. Part 3 of this Schedule makes amendments to inheritance tax provisions to support the creation and operation of the trust. It ensures that transfers to the trust and the trust itself are exempt from inheritance tax charges in cases where the conditions for the existing exemptions which apply to employee benefit trusts are not met.

5. Part 4 of this Schedule makes miscellaneous amendments consequent upon Parts 1-3.

DETAILS OF THE SCHEDULE

Part 1: capital gains tax relief

6. Part 1 of the Schedule makes changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992) to introduce a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the

trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

7. Paragraph 1 inserts new sections 236H to 236S into TCGA 1992.

8. Subsection (1) of new section 236H summarises the circumstances in which the section applies and relief is due. It refers to the relief requirements which are described more fully in subsection (4).

9. Subsections (2) and (3) of new section 236H override the 'market value rule' which would normally apply, and instead require that the consideration received by the person disposing of the shares and given by the trust acquiring the shares be taken to be an amount which results in no gain and no loss arising on the disposal.

10. Subsection (4) of new section 236H introduces five 'relief requirements' all of which must be met in order for the capital gains tax relief to be due. Four of these requirements are described in detail in other new sections of the TCGA.

- The trading requirement must be met by the company whose shares are acquired by the trustees at the time of the disposal and until the end of the tax year in which that disposal is made: see new section 236I, paragraph 13 below.

- The all-employee benefit requirement must be met by the trust or 'settlement' the trustees of which acquire the shares, see new sections 236J, 236K and 236L, paragraphs 17, 24 and 27 below.

- The controlling interest requirement must also be met by that settlement, see new section 236M, paragraph 32 below.

- The limited participation requirement is an anti-avoidance provision, referring to the shareholders and other participators in the company, see new section 236N, paragraph 34 below.

11. Subsections (4)(e) and (5) of new section 236H contain the fifth relief requirement. This is that neither the claimant nor anyone connected with him has received relief under section 236H in an earlier year on a disposal of either shares in the same company or shares in a company which was at that time a member of the same group as the company whose shares are the subject of the present claim.

12. Subsection (6) of new section 236H requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim.

13. New section 236I provides details of the trading requirement which must be met by the company ('C') whose shares are acquired by the trust. If C is not in a group then it must be a trading company. Otherwise C must be the parent company of a trading group.

14. Subsection (2) of new section 236I defines a trading company: C may be a trading company even if it carries on some non-trading activities, providing those activities are not substantial in relation to all its activities taken together.

15. Subsection (3) of new section 236I defines a trading group: at least one member of the group must carry on a trade and the activities of all the members taken together must not include to a substantial extent activities which are either non-trading or unrelated to the trade of another group member.

16. Subsection (5) of new section 236I provides for all the activities of the members of a group to be treated as one business and for businesses carried on by a company in its capacity as a member of a partnership not to be treated as trading activities or related to the trade of another group member. The latter is to ensure that control of the company by the trustees carries with it control of the company's business: if the company is in a partnership it is not generally possible to say that it controls the partnership's business. In this context, 'partnership' takes its meaning from the Partnership Act 1890 and the Limited Partnerships Act 1907. Members of limited liability partnerships may also be treated as partners for the purposes of the TCGA 1992.

17. New section 236J provides details of the all-employee benefit requirement which must be met by the settlement whose trustees acquire the shares in company 'C'. Subsection (1) says that the settlement meets the requirement if the trusts

- only permit the settled property to be used for the benefit of all 'eligible employees' on the same terms (this is the equality requirement - see section 236K)
- do not permit the trustees to create any sub trusts, to transfer property to the trustees of any other settlement (except by means of an 'authorised transfer', defined at subsection (7), which is effectively a transfer to a trust which itself will be an EOT immediately after the transfer)
- do not permit the trustees to make loans to beneficiaries of the trust
- do not permit the trustees or anyone else to amend the trusts so that any of these restrictions are removed.

If a settlement does not satisfy these conditions, it will nonetheless be treated as meeting the all-employee benefit requirement if it, the trusts and the trustees satisfy the alternative conditions at section 236L (see paragraph 27 below).

18. Subsections (3) and (4) of new section 236J define the 'eligible employees' who must be beneficiaries of the trust. Subject to the exceptions described in subsection (5), every employee of C and (where C is the parent company of a group) every employee of every member of the group headed by C is an eligible employee. The parent company of a group is a member of that group. If the trusts permit office-holders as well as employees to be beneficiaries then all the office-holders who may be beneficiaries are treated as eligible employees for the purposes of this section.

19. Subsection (4) of new section 236J provides a special definition of eligible employee in cases where C has ceased to meet the trading requirement (see section 236I) or where the trustees no longer hold any shares in C: in order to permit equitable distribution of the trust's property in these circumstances, 'eligible employees' will include individuals who were eligible employees at any time in the two years immediately preceding either the disposal of C's shares or C ceasing to meet the trading requirement (whichever is the earlier)

20. Subsection (5) of new section 236J lists individuals who are 'excluded participators', and as such cannot be eligible employees for the purposes of subsections (3) and (4). These individuals may therefore not be beneficiaries of the settlement, though they may be eligible to receive qualifying bonus payments (see paragraph 68 below). An individual is an excluded participator if he or she:

- is a participator in C or in any company which is a member of the group of which C is the parent (the parent company of a group is a member of that group),
- is a participator in a close company which has transferred property to the trustees of the settlement and that transfer would have given rise to an inheritance tax charge but for the exemption in section 13 or new section 13A of the Inheritance Tax Act 1984 (see paragraph 99 below),
- has been a participator in any of those companies during the ten years before either the creation of the settlement or 10 December 2013, whichever is the later, or
- is connected with any participator identified under the preceding rules in this subsection. (In this context, 'connected with' takes its meaning from section 286 TCGA 1992, and is extended to include uncles, aunts, nephews and nieces. See section 236S(3), paragraph 54 below.)

For these purposes, 'participator' has a restricted meaning - see subsection (6) at paragraph 21 below.

21. Subsection (6) of new section 236J applies a special definition of 'participator' for the purposes of deciding whether a person is an excluded participator. A person who does not own, or is not entitled to acquire, 5% or more of any class of share in a company and who would not be entitled to 5% or more of the company's assets available for distribution to members on its winding-up is not treated as a participator and therefore cannot be an excluded participator.

22. Subsection (7) of new section 236J defines terms used in this section such as 'authorised transfer', 'relevant group company', 'close company' and 'relevant group company'.

23. Subsection (8) of new section 236J ensures that the restrictions on how the settled property of the trust may be applied refer also to income arising from that property.

24. New section 236K explains the 'equality requirement' which is introduced as an element of the all-employee benefit requirement by section 236J(1). This ensures that, with a few specific exceptions, every eligible employee benefits from the trust's income and property, though they need not benefit by exactly the same amounts.

25. Subsections (1) and (2) of new section 236K list five things the trustees may be permitted or prevented by the trusts from doing, without jeopardising the equality requirement's being met. The trusts may:

- Permit the trustees to apply settled property for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee,
- Permit the trustees to comply with a written request from an individual not to receive the benefit of the settled property
- Permit the trustees to apply settled property for charitable purposes as well as for the benefit of eligible employees
- Prevent the trustees from applying settled property for the benefit of individuals who have not been continuously employed by the company or by the group for a minimum period (not exceeding 12 months) preceding the payment,
- Prevent the trustees from applying settled property for the benefit of individuals who only qualify as eligible employees because they are office-holders in the company

For these purposes, 'eligible employee' has the same meaning as in section 236J and 'settled property' includes the income arising from such property.

26. Subsections (3) (4) (5) and (6) of new section 236K permit differing amounts to be paid to eligible employees on certain specific grounds, notwithstanding the equality requirement, but not so that some employees receive nothing at all. An individual's benefit from the trust may be computed by reference to his or her remuneration, length of service, or hours worked, but entitlement on account of each factor must be computed separately and the total payment must be sum of such relevant components. These specific grounds are separate from and in addition to the freedoms which may be permitted the trustees under subsections (1) and (2).

27. New section 236L provides an alternative mechanism by which some existing settlements created before 10 December 2013 (when the draft legislation was published) may meet the all-employee benefit requirement at section 236J. This alternative mechanism can only apply where the trust cannot meet the all-employee benefit requirement on the terms of section 236J.

28. Subsection (1) of new section 236L states the conditions which must be met for this alternative mechanism to apply and for the settlement to be deemed to meet the all-employee benefit requirement. The principal conditions are that on 10 December 2013

- the trusts of the settlement must be of a description specified in section 86 Inheritance Tax Act 1984 (trusts for the benefit of employees) and
- the trustees held a significant interest in the company which they would later control: see subsection (2) and paragraph 32 below.

In addition, the trustees of the settlement must act throughout the 12 months preceding the disposal of shares to the trustees of that settlement in respect of which CGT relief is claimed under section 236H as though the trusts of their settlement met the terms of the all-employee benefit requirement at section 236J(1)(c) (this is the 'the behaviour requirement').

29. Subsection (2) of new section 236L gives more detail about the 'significant interest' which the trustees must hold at 10 December 2013 in order for section 236L to apply. The definition is based closely on the 'controlling interest requirement' at section 236M - see paragraph 32 below - but requires the trustees to have a shareholding of 10% or more in the company which the trustees directly control. There are special rules at new section 236R (paragraph 49 below) to prevent trustees failing these conditions as a result of certain common commercial provisions.

30. Subsections (3) to (9) of new section 236L support the behaviour requirement by applying relevant definitions from new section 236J (the all-employee benefit requirement) and defining what is and is not compliant behaviour in terms consistent with section 236K (the equality requirement) (see paragraphs 24-26 above).

31. Subsection (4) contains provisions corresponding to those in subsection (1) of section 236K. Subject to the terms of the trusts of the settlement, the trustees may do the following without infringing the behaviour requirement:

- apply settled property for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee,
- comply with a written request from an individual not to receive the benefit of the settled property
- apply settled property for charitable purposes as well as for the benefit of eligible employees
- apply settled property only for the benefit of individuals who have been continuously employed by the company or by the group for a minimum period (not exceeding 12 months) preceding the payment,

- not apply settled property for the benefit of individuals who only qualify as eligible employees because they are office-holders in the company, provided this is because the trustees are prevented by the trusts from doing so

For these purposes, 'eligible employee' has the same meaning as in section 236J and 'settled property' includes the income arising from such property.

32. New section 236M provides details of the controlling interest requirement which must be met by the settlement, trustees of which acquire the shares in company 'C', at the end of the tax year in which the relevant disposal is made. The requirement has three conditions, each of which must be satisfied, plus a fourth general condition which ensures the continuation of the controlling interest. There are special rules at new section 236R (paragraph 49 below) to prevent trustees failing these conditions as a result either of certain common commercial provisions, or provisions which are often found in trust deeds. For the purposes of the controlling interest requirement, Chapter 6 of Part 5 of the Corporation Tax Act 2010 applies to give the meaning of terms such as 'equity holder' (see new section 236R).

33. Subsection (1) of new section 236M requires the trustees:

- to hold a majority of the ordinary share capital of C and that they also have voting powers which represent a majority of votes on questions affecting C as a whole,
- to be entitled to a majority of the profits available for distribution to equity holders of C, and
- to be entitled to a majority of C's assets available for distribution to equity holders in the event of C's winding-up.

Even if the three conditions above are met, subsection (1)(d) provides that the controlling interest requirement will not be met if there are any provisions in any agreement or document affecting C's constitution or management or its shares or securities, for any of the conditions to cease to be met without the consent of the trustees. New section 236R (paragraph 49 below) ensures that trustees do not fail to meet these conditions as a result either of certain common commercial provisions, or provisions which are often found in trust deeds.

34. Subsection (1) of new section 236N explains the limited participation requirement. It will be met if there was no time during the year ending immediately after the disposal when the claimant was a participator in the company C and at that time the 'participator fraction' exceeded 2/5 (see subsection (3)). In this context 'participator' has a special meaning given at subsection (4).

35. Subsection (2) of new section 236N permits a 'grace period' of up to six months during which the participator fraction may exceed 2/5 without the limited participation requirement being failed on that account. In order for this treatment to apply, the fraction must exceed 2/5 as a result of events beyond the reasonable control of the trustees, such as sudden changes in commercial circumstances.

36. Subsection (3) of new section 236N defines the 'participator fraction'. The numerator NP is the total of (i) the number of persons who are both participators in C and either employees of, or office-holders in, C and (ii) the number of persons who are both employees of, or office-holders in C (or, as the case may be, of any member of the group headed by C) and connected with anyone included in (i). The denominator NE is the total number of persons who are employed by C (or as the case may be, the group headed by C) immediately after the disposal. In this context 'participator' has a special meaning given at subsection (3). For these purposes, the meaning of 'connected' is given by section 236S, see paragraph 54 below.

37. Subsections (4) and (5) of new section 236N define 'participator' for the purposes of the limited participation requirement. The meaning is as given by section 454 of the Corporation Tax Act 2010, but it does not include any person who does not hold, or is not entitled to acquire, five percent or more of any class of C's share capital and who is also not entitled to five percent or more of C's assets available for distribution to its members on a winding-up. Where the word is used in connection with a company which is not a close company, 'participator' includes a person who would be a participator in the company if it were a close company.

38. New section 236O makes provisions for gains or losses to accrue to the trustees on the occurrence of a 'disqualifying event'. Disqualifying events largely correspond to the relief requirements in 236H ceasing to be met at a time after a disposal to the trust in respect of which relief has been given on a disposal to the trust.

39. Subsection (2) of new section 236O lists the disqualifying events. These are that:

(a) at any time after the tax year in which the disposal was made

- the company C ceases to meet the trading requirement, or
- the settlement ceases to meet the controlling interest requirement; or

(b) at any time after the acquisition of shares (in circumstances where section 236H applies) by the trustees of the settlement

- the settlement ceases to meet the all-employee benefit requirement,
- the participation fraction exceeds 2/5 (subject to a six month grace period, as for the limited participation requirement in section 236N),
- the trustees act in a way contrary to what is permitted by the all-employee benefit requirement.

40. Subsection (3) of new section 236O directs that when a disqualifying event occurs, the trustees are treated as disposing of the shares they hold in C immediately after that event and reacquiring the same shares for their then market value. This deemed disposal and reacquisition applies only to shares acquired in circumstances where CGT relief was given under section 236H, and to which this section has not applied before. Gains and losses latent

in the shares concerned will accrue and may be taxed or relieved subject to the relevant provisions of the Taxes Acts.

41. Subsection (4) of new section 236O provides special rules for deciding whether a settlement has ceased to meet the all-employee benefit requirement. A settlement which ceases to meet the conditions of section 236K cannot rely on section 236L (i.e. on the behaviour of its trustees and other factors) to ensure that it continues to meet the all-employee benefit requirement. Likewise, a settlement which originally met the requirement by virtue of section 236L but later came to meet it by virtue of meeting the conditions of section 236K cannot revert to relying on section 236L without triggering a disqualifying event.

42. Subsections (5) and (6) of new section 236O ensure that the behaviour requirement at section 236L and the limited participation requirement at section 236N work properly for the purposes of identifying disqualifying events under section 236O.

43. New section 236P contains special provisions which apply when trustees of a settlement (the acquiring settlement) become entitled to shares in a company which is settled property against the trustee of that property in another settlement (the transferring settlement). Section 71 of TCGA 1992 provides for a disposal and reacquisition to be deemed to occur on that event by the trustees of the transferring settlement, and section 236P ensures that the trustee of the transferring settlement may claim relief on the deemed disposal, subject to the same conditions as apply on actual disposals of shares to a trust.

44. Subsections (2) and (3) of new section 236P allow the relief in the same way as section 236H where section 236P applies.

45. Subsection (4) of new section 236P ensures that the provisions of section 236O (concerning the consequences of disqualifying events) apply to the acquiring settlement where section 236P applies, by treating the acquisition as one made in circumstances where section 236H applies.

46. Subsection (5) of new section 236P ensures that the terms of sections 236H to 236O are applicable to the acquiring settlement.

47. Subsection (6) of new section 236P requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim. This requirement corresponds to section 236H(6).

48. New section 236Q applies where trustees hold both shares in respect of which the CGT relief applied on acquisition (known as EOT exempt shares) and other shares which would be treated as of the same class but for section 104(4A) (see paragraph 125 below). In these cases, when they make a disposal, the trustees may determine what proportion of the shares disposed of are EOT exempt shares (subject to their holding sufficient EOT exempt shares prior to the disposal). This prevents the trustees' gain or loss being distorted by the acquisition cost deemed to apply to the EOT exempt shares. However, the trustees may not use this provision to mitigate the effect of a disposal deemed to take place on a disqualifying event under section 236O.

49. New section 236R provides further rules which apply when deciding whether trustees have the necessary interest in a company for the purposes of the controlling interest requirement at section 236M or for the behaviour requirement at section 236L(2).

50. Subsection (2) of new section 236R applies the relevant part of the Corporation Tax Act 2010 for the purposes of identifying equity holders, ordinary shares etc.

51. Subsection (3) of new section 236R says that when ascertaining the trustees' interest they are to be treated as entitled to dividends on shares which they hold even if they are required or permitted to waive the dividends on those shares.

52. Subsections (4) and (5) of new section 236R allow trustees to use their shares in company C as security for borrowing from third parties. Without this provision, the mere possibility that the trustees could involuntarily to lose control of their shares (in the event of a default) could prevent the controlling interest requirement in section 236M or the significant condition in section 236L being met the behaviour requirement from applying. However in the event that the trustees do actually lose control of the shares under such an arrangement, the controlling interest requirement will cease to be met.

53. Subsection (5) defines the terms 'close company' and 'participator' for the purposes of the section. It also gives a special definition of 'third party' which excludes persons who are or have in the preceding 12 months been a participator in the employee-owned company controlled by the trustees, and persons connected with them.

54. New section 236S defines 'company', 'ordinary share capital' and 'trade' as they are used in sections 236H to 236R. It also provides for references to a group, to membership of a group and to the principal company of a group to be read in a manner consistent with their definitions in section 170 TCGA 1992. References to a group are to be construed with any necessary modifications where applied to a company which is not incorporated in the UK. This section also applies section 286 TCGA for the purposes of deciding whether one person in 'connected with' another, subject to the definition of a relative used in that section being extended to include uncle, aunt, nephew and niece.

55. Paragraph 2 of Part 1 of the Schedule provides for the relief to have effect in relation to disposals made in tax year 2014-15 or later years.

56. Paragraph 3 of Part 1 of the Schedule refers to the means by which a settlement may be deemed to meet the all-employee behavioural requirement through new section 236L(1)(c) (paragraph 27 above). It provides for the trustees' actions before 10 December 2013 to be disregarded when deciding whether the all-employee behavioural requirement may be deemed to be met for the purpose of determining whether the CGT relief is available (but not for determining whether the income tax exemption is available as mentioned in Part 2).

Part 2: employment income exemption

57. Paragraph 4 inserts new Chapter 10A to Part 4 of the Income Tax (Earnings and Pensions) Act 2003, which itself provides for the following provisions.

New Section 312A

58. New subsection (1) provides that the income tax exemption applies to qualifying bonus payments made in a tax year to employees or former employees of a company.

59. New subsection (2) sets the maximum amount of the qualifying bonus payment that is exempt from income tax (the "exempt amount") at £3,600.

60. New subsection (3) provides that, where an employee receives a qualifying bonus from more than one employer in a tax year, the exempt amount in subsection (2) applies separately to the total payments made by each employer.

61. New subsection (4) provides an exception to subsection (3). Where an employee or former employee receives a bonus from two or more employers who first make a bonus payment when they are part of the same group, the exempt amount applies to the total amount of the bonuses received from all employers in the group, instead of applying separately in relation to each employer.

62. New subsection (5) provides that where an employee has received a qualifying bonus from a company which was a member of a group of companies at the time it first made a payment for the year, that employer will be treated as remaining a member of the group until the end of that tax year even if it subsequently leaves the group. This is relevant in determining if the aggregate of qualifying bonus payments received in a tax year from the group exceeds the exempt amount (see subsection (4) above).

63. New subsection (6) sets out how the exempt amount should be applied when more than one qualifying bonus is received in the same tax year by an employee. It provides that the exempt amount should be applied to each bonus in the order they were made to determine if and when the exempt amount has been exceeded.

64. New subsection (7) explains how the exempt amount should be applied when two (or more) qualifying bonuses are made on the same day. It provides that the exempt amount (or the unused amount of the exempt amount) should be shared equally between each of the payments received on the same day.

65. New subsection (8) provides that where a qualifying bonus is paid by different employers (who are not members of the same group) ordering rules in subsections (6) and (7) apply separately.

66. New subsection (9) provides an Order-making power enabling the Treasury to increase or reduce the exempt amount. However, where the amount is to be reduced, new subsection (10) specifies that the draft statutory instrument must be laid before and approved by the House of Commons.

67. New subsection (11) defines the term "chargeable amount" as being the amount of the bonus payments that would have been taxable if not for the exemption. This term is referred to in subsection (2).

New Section 312B

68. New subsection (1) introduces all the conditions which must be met for a payment to be a qualifying bonus payment, and, where necessary, cross-references the sections in which detail of how those conditions apply is provided for.

69. New subsection (2) provides that the qualifying period is the 12 months ending with the day on which the payment is made. However, new subsection (3) specifies two situations where the qualifying period may not be the full 12 months. Paragraph (a) provides that the qualifying period does not include any days before the settlement first met the all-employee benefit requirement as defined in section 236J of TCGA 1992. Paragraph (b) provides that the qualifying period does not include any days prior to the date when the settlement first met the controlling interest requirement provided for in section 236M of TCGA 1992.

70. The 'office holder' condition set out in subsection (1)(e) specifies that the condition must be met for "a requisite number of days", which recognises that in some cases, for reasons beyond the employer's control, the condition might not be met. New subsection (4) defines this term as the number of days in the qualifying period less 90 days. Where the qualifying period is shorter than 12 months by virtue of new subsection (3) the requisite number of days is the number of days in the qualifying period, less the corresponding fraction of 90 days.

New Section 312C

71. New subsection (1) provides the detail of the participation and equality requirements which form one of the conditions set out in section 312B(1). For a bonus scheme to meet the participation requirement all persons in relevant employment must be eligible to be awarded a bonus under the scheme. Paragraph (b) provides that to meet the equality requirement every employee who is awarded a bonus under the scheme must do so on the same terms. That does not mean they must necessarily be awarded the same amount.

72. New subsection (2) defines when a person is in "relevant employment". This is when the person is employed by the company paying the bonus or where the company paying the bonus is a member of a group, the person is employed by any company which is a member of the group.

73. New subsection (3) sets out an exception to the participation requirement. It permits employers to exclude employees from the bonus award if those employees have less than a specified minimum period of continuous service at the time of the award which can be no longer than 12 months.

74. New subsection (4) provides for further exceptions to the participation requirement in respect of employees subject to a finding of gross misconduct or summary dismissal. Paragraph (a) provides that where a finding of gross misconduct has been made in the period 12 months immediately before the bonus is determined, the employee can be excluded from participating in the award. Paragraph (b) allows the award of a bonus to be conditional if at the time it is determined the employee is subject to disciplinary proceedings, depending on the outcome. Finally, paragraph (c) provides that if disciplinary proceedings initiated after

determination of the award lead to a finding of gross misconduct before payment is made, or if the employee is summarily dismissed before payment is made, the employee is treated as if they were never eligible to participate.

75. New subsection (5) provides that only those factors set out in subsection (6) can be used to determine the amount of the award. New subsection (6) provides that if these refer to the employee's remuneration, length of service, or hours worked, the equality requirement will not be infringed.

76. New subsection (7) provides that the equality requirement is infringed if some of the participating employees receive nothing.

77. New subsection (8) provides that where the amount of a participating employee's share of an award under the scheme is determined by reference to more than one of the factors mentioned in subsection (6) the equality requirement will not be satisfied unless each of those factors gives rise to a separate bonus amount and the employee's total bonus is the sum of those separate amounts. This means that the entitlements cannot be multiplied together or used in any other kind of mathematical formula.

78. New subsection (9) prevents the equality requirement from being met if any feature of the scheme has or is likely to have the effect of disproportionally rewarding directors or former directors, higher paid employees, employees from specific parts of the business, or employees carrying out specific types of activity. This has to be read in conjunction with subsection (6), but is intended to prevent an employer from paying an extra amount of bonus in addition to whatever is determined through use of the allowable factors.

79. New subsection (10) provides that any references to an employee in subsections 1(b), (5), (6), (7) and (9) include a former employee and similarly references to remuneration and other factors in the case of former employees are to be read as relating to the former employment.

New Section 312D

80. New subsections (1) to (5) provide for the definition of 'trading requirement' and related terms, as referred to in section 312B(1). This requirement must be met throughout the qualifying period (see 312B(1)).

New Section 312E

81. New subsection (1) provides that a company meets the indirect employee ownership requirement referred to in section 312B(1) if, throughout the qualifying period, the settlement meets the controlling interest requirement and the all-employee benefit requirement.

82. New subsection (2) provides the meaning of the controlling interest requirement and all-employee benefit requirement by reference to sections 236M, and 236J - 236K respectively. These are both subject to the modification in subsection (3).

83. New subsection (3) provides that if a settlement does not meet the all-employee benefit requirement throughout the qualifying period, it is treated as meeting that requirement if the behaviour requirement section 236L of TCGA 1992 applies. However, if the settlement has previously met the all-employee benefit requirement at any time since 10 December 2013, the settlement will not meet the behaviour requirement in section 236L. This means that once a settlement has met the all-employee benefit requirement it must continue to do so in order for the income tax exemption for the bonus to apply.

84. New subsection (4) clarifies the context in which sections 236I to 236M TCGA 1992 are to be read for purposes of subsections (2) and (3). This provides that for the purposes of applying section 236L, it does not matter, if, because of another provision (section 312B(3)), the qualifying period is less than 12 months.

New Section 312F

85. New subsection (1) provides that a company meets the office holder requirement referred to in section 312B(1) if the appropriate fraction does not exceed two fifths. New subsection (2) defines the appropriate fraction as the number of persons who are one or both of a director or office holder of the company or an employee of the company connected with a director or office holder, divided by the total number of employees of the company.

New Section 312G

86. One of the conditions of section 312B(1) for the exemption to apply is that the company must not be a service company. New subsection (1) provides definitions of a 'service company' as either being a managed service company within section 61B or a company which meets Conditions A and B.

87. Conditions A and B are provided for in new subsections (2) and (3) respectively. The company will be a service company if most of the business carried on by the company is the provision of the services of its employees and it meets the definition of a person (or persons) described in subsection (4) who is not a member of the same group as the company paying the bonus.

88. New subsection (4) specifies that the persons or companies referred to in subsection (3) are those who have previously had control over the company, have employed all or most of the employees of the company or the company's group in the past, or a subsidiary of a company which has done so previously.

89. New subsection (5) provides that subsection (4) should be applied in a similar way in relation to partnerships.

90. New subsection (6) lists the three legislative provisions that apply for the purposes of interpreting specified terms used within this section.

New Section 312H

91. New subsections (1) and (2) provide that payments will be excluded if they are made in return for the employee (or former employee) giving up an amount of general earnings, specific employment income or other description of employment income.

New Section 312I

92. New subsections (1) and (2) define the words and phrases used in Chapter 10A by cross reference to other tax legislation.

93. New subsection (3) defines when a payment is made.

94. New subsection (4) provides that in the case where an employee has died, his or her personal representatives are still able to benefit from the exemption to the same extent (if at all) as if the employee had not died, as long as the payment is made within 12 months of the death.

95. New subsection (5) provides that the order-making power for Treasury to increase or reduce the exempt amount is not subject to annulment in pursuance of a resolution of the House of Commons.

96. New subsection (6) inserts the updated reference to ‘company (in Chapter 10A of Part 4)’, ‘ordinary share capital (in Chapter 10A of Part 4)’ and ‘trade (in Chapter 10A of Part 4)’ in Part 2 of Schedule 1.

97. New subsection (7) provides the date from which the amendments made to ITEPA apply and the date from which qualifying bonus payments are eligible for the income tax exemption.

Part 3: minor amendments

Inheritance Tax Act 1984

98. Paragraph 8 makes amendments to Inheritance Tax Act 1984 (IHTA).

99. Paragraph 9(1) inserts new section 13A into IHTA which provides for an exemption for transfers (dispositions) of cash or other assets by a close company (“C”) to the trust. This provides for an alternative exemption where the condition in section 13(1) that the trust property must be applied for the benefit of ‘all or most’ employees is not met because of the application of the provisions in section 236K(1) TCGA.

100. New section 13A(1) provides that a transfer to the trust by C is not a transfer of value, and hence is not subject to inheritance tax, if C meets the trading requirement, the trust meets the all-employee benefit requirement, and the trust meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

101. New sections 13A(2) and (3) specify the provisions which apply to determine whether the requirements in section 13A(1) are met and explain the meaning of “close company” and “tax year”.

102. Paragraph 9(2) provides that this amendment takes effect for transfers made on or after 6 April 2014.

103. Paragraph 10(1) inserts new section 28A into IHTA which provides for an exemption for transfers of shares in a company (“C”) by an individual to the trust. This provides for an alternative exemption where the condition in section 28(1)(b) that the trust property must be applied for the benefit of ‘all or most’ employees is not met because of the application of the provisions in section 236K(1) TCGA.

104. New section 28A(1) provides that a transfer by the individual is exempt if C meets the trading requirement, the trust meets the all-employee benefit requirement, and the trust meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

105. New sections 28A(2) and (3) specify the provisions which apply to determine whether the requirements in section 28A(1) are met and explain the meaning of “tax year”.

106. Paragraph 10(2) provides that this amendment has effect for transfers made on or after 6 April 2014.

107. Paragraph 11(1) makes consequential amendments to section 29A(6) to bring the new provisions within the scope of section 29A. Section 29A applies where the estate on death is attributable wholly or in part to an exempt gift, including a transfer of shares to an employee benefit trust exempt under section 28, and the beneficiary of that gift settles a claim against the estate out of their own resources. The transfer is chargeable to the extent that the beneficiary’s estate is less through settling the claim. This paragraph extends the treatment to a transfer of shares which is exempt under new section 28A.

108. Paragraph 11(2) provides that this amendment takes effect for transfers made on or after 6 April 2014.

109. Paragraph 12(1) makes amendments to section 72 of IHTA, which applies where settled property ceases to be subject to trusts to which section 86 applies.

110. Paragraph 12(3) inserts new section 72(3A) which provides for an exemption from the charge under section 72(2)(a) which would otherwise apply when settled property continues to be held on trust, but in such a way that it ceases to be exempt under section 86. This ensures that there is no charge if the trust ceases to be exempt under new section 86(3)(d) because the trading requirement or controlling interest requirement (or both requirements) are no longer met.

111. Paragraph 12(4) provides that this amendment is treated as coming into force on or after 6 April 2014.

112. Paragraph 13(1) inserts new section 75A into IHTA.

113. New section 75A(1) provides an exemption from the charge under section 65 when shares in a company ("C") which are already held in a trust become held in a trust to which section 86(1) applies if certain conditions are met.

114. New section 75A(2) sets out the conditions that have to be met, which are that C meets the trading requirement, the trusts of the settlement meet the all-employee benefit requirement, and the settlement meets the controlling interest requirement at the end of the tax year in which the transfer occurs.

115. New section 75A(3) and (4) specify the provisions which apply to determine whether the requirements in section 75A(2) are met and explain the meaning of "tax year".

116. Paragraph 13(2) provides that this amendment is treated as coming into force on 6 April 2014.

117. Paragraph 14(1) makes amendments to section 86 of IHTA.

118. Paragraph 14(2) inserts new section 86(3)(d) so that the trust qualifies for the same exemption from inheritance tax which applies to employee benefit trusts providing that it holds shares in a company which meets the trading requirement, and the trust meets the controlling interest requirement and the all-employee benefit requirement.

119. Paragraph 14(3) inserts new section 86(3A) which specifies the provisions that apply to determine whether the trading requirement, all-employee benefit requirement and controlling interest requirement are met, and defines ordinary share capital.

120. Paragraph 14(4) provides that these amendments are treated as coming into force on 6 April 2014.

121. Paragraph 15(1) makes consequential amendments to section 144 to include new section 75A.

122. Paragraph 15(2) provides that this amendment is treated as coming into force on 6 April 2014.

Part 4. Miscellaneous amendments

Finance Act 1986

123. Paragraph 16(1) amends the provisions in section 102(5) Finance Act 1986 so that the reservation of benefit provisions does not apply to a gift which is exempt from tax under section 28A.

124. Paragraph 16(2) provides that this amendment has effect for disposals on or after 6 April 2014.

Taxation of Chargeable Gains Act 1992

125. Paragraph 17 amends the share pooling and identification rules so that shares which were most recently acquired on a disposal to which section 236H applied are treated as being of a different class from other shares of the same company held by the trustees (if they would otherwise be treated as being of the same class). This means that EOT exempt shares (see paragraph 46 on new section 236Q TCGA above) are pooled separately from other shares and the other share identification rules which apply on disposals are applied separately to EOT exempt shares. The new rules apply to any disposal on or after 6 April 2014.

Income Tax (Earnings and Pensions) Act 2003

126. Paragraphs 18 to 20 amend rules concerning the type of shares that can be awarded under three of the Government's tax-advantaged employee share schemes: Share Incentive Plan (SIP), Save As You Earn Option Scheme (SAYE) and Company Share Option Plan Scheme (CSOP). They provide that shares in a company that is subject to an employee-ownership trust may be awarded under these schemes, and also provide that a company that is subject to a employee-ownership trust is not a close company for the purposes of certain eligibility conditions in relation to shares. Subject to an employee-ownership trust is defined at sub-paragraph 18(3) with reference to conditions provided elsewhere in this Schedule. These changes apply with effect from 1 October 2014.

127. Following these changes, shares in a company ("C") will be "eligible shares" for the purposes of SIP, SAYE and CSOP where:

- C is subject to an employee-ownership trust; or
- in the case of SIP and SAYE, C is controlled by a listed company which is itself subject to an employee ownership trust.

128. Paragraph 21 amends the independence requirement for the Enterprise Management Incentives (EMI) tax advantaged employee share scheme to accommodate companies that are subject to an employee-ownership trust. The change to EMI will be commenced by order.

Corporation Tax Act 2009 ("CTA2009")

129. Paragraph 22 ensures that a company which would otherwise be entitled to a corporation tax deduction in respect of a qualifying bonus payment is not prevented by section 1290 of the CTA 2009 (Employee benefit contributions) from claiming such deduction by virtue of all or part of such payment being exempt from income tax. It does this by amending section 1292 CTA 2009 (provision of qualifying benefits) so as to provide that if, and to the extent that the qualifying bonus payment is exempt from income tax under new Section 312A of ITEPA, it will be treated as a qualifying benefit.

BACKGROUND NOTE

130. The Government announced in Autumn Statement 2013 that it would provide £70 million annually from 2014-15 to support employee ownership models in order to incentivise growth of the sector. This will be in addition to the existing tax-advantaged share schemes.

131. The support is targeted at legal structures in which a trading company or group is owned by trustees which must act for the benefit of all employees (and any qualifying former employees). Structures of this kind have not until now received as much support as is given to arrangements under which employees own shares in their employer directly.

132. The CGT relief and income tax and inheritance tax exemptions further the Government’s policy of supporting existing employee-owned companies and promoting the creation of new employee-owned companies. The capital gains tax relief and inheritance tax exemption will encourage the creation of new structures through which employees can benefit from the success of their employer’s business. The income tax exemption will allow those businesses to share their successes with employees through tax-advantaged payments.

133. The Government is considering reviewing this exemption in five years time to monitor take up, effectiveness and whether the spend is at the appropriate level.

EXPLANATORY NOTE

CLAUSE 284: TRUSTS WITH VULNERABLE BENEFICIARY: MEANING OF "DISABLED PERSON"

SUMMARY

1. This clause extends from 6 April 2014 the definition of "disabled person" used in relation to trusts with a vulnerable beneficiary to include those in receipt of the mobility component of disability living allowance at the higher rate, or the mobility component of personal independence payment at either the standard or enhanced rate.

DETAILS OF THE CLAUSE

2. Subsection (2)(a) extends that part of the definition of "disabled person" at Schedule 1A to Finance Act 2005 that applies to recipients of disability living allowance to include those in receipt of the mobility component at the higher rate (as well as those in receipt of the care component at the highest or middle rate); and subsection (2)(b) extends that part that applies to recipients of personal independence payment to include those in receipt of the mobility component (as well as those in receipt of the daily living component).

3. Subsections (3) and (4) make consequential amendments to paragraphs 3 and 4 of Schedule 1A to ensure that a person is treated as a disabled person if he or she would be entitled to receive the relevant disability living allowance or personal independence payment were it not for them being resident outside the UK or in a care home, hospital or prison.

4. Subsection (5) provides for commencement.

BACKGROUND NOTE

5. Special tax rules exist for trusts with a disabled beneficiary. The rules:

- reduce the trustees' tax liability on income and chargeable gains to an amount that, broadly, would be chargeable on the beneficiary if the gains had accrued and/or the income had arisen directly to that person;
- extend the annual exempt amount of chargeable gains that applies to trusts to match that available to individuals; and
- ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.

6. Finance Act 2013 introduced a common definition of "disabled person" at Schedule 1A to Finance Act 2005.

7. Disability living allowance consists of a care component and a mobility component. The care component is payable at three rates – highest, middle and lowest. The mobility component is payable at two rates – higher and lower. Following the introduction of the Welfare Reform Act 2012, the allowance is being phased out for those of working age.

8. Personal independence payment consists of a daily living component and a mobility component. Both the daily living component and the mobility component are payable at two rates – standard and enhanced.

EXPLANATORY NOTE

CLAUSE 285: AMOUNTS ALLOWED BY WAY OF DOUBLE TAXATION RELIEF

SUMMARY

1. This clause amends two provisions of Taxation (International and Other Provisions) Act 2010 (TIOPA).

2. Firstly, the clause extends the existing rule that relief for foreign tax is to be reduced if a payment is made by a tax authority by reference to that tax to the claimant or a person connected with the claimant. The new rule will also apply where a payment is made to a person who has made arrangements to receive the payment.

3. Secondly, the clause limits the amount of relief for foreign tax on a non-trading credit from a loan relationship or intangible fixed asset to the amount of UK tax on that net amount of the credit after deducting related debits. It responds to avoidance schemes that seek to exploit mismatches between the amounts of UK and foreign income.

DETAILS OF THE CLAUSE

4. Subsection 2 extends section 34(1)(b) TIOPA so that it applies where a person claims credit for foreign tax and a payment is made by a tax authority to that person, to a connected person or another person who has entered into a scheme to receive the payment, the foreign tax credit must be reduced by the amount of the payment.

5. Subsection 3 inserts a new section 34(4) to define what is meant by “scheme” in section 34(1)(b).

6. Subsection 4 amends section 112(3)(b) TIOPA so that where a deduction has been given to a person for foreign tax and a payment by reference to that tax is made by a tax authority to the person, to a connected person or another person who has entered into a scheme to receive the payment, the amount of the deduction is to be reduced accordingly. It is the equivalent to subsection 2 in the circumstances where there is no claim to relief for foreign tax and instead a deduction for foreign tax is allowed.

7. Subsection 5 inserts a new section 112(8) to define “scheme” in identical terms to new section 34(4).

8. Subsection 6 adds a signpost to section 42(4) to show that in applying the limit on credit for foreign tax in section 42(2), that rule must be read with the new section 49B.

9. Subsection 7 inserts the new section 49B into TIOPA.

10. New section 49B(1) sets out the circumstances where the operative rule in new section 49B(2) applies. These are where a company has a non-trading credit (as defined in new section 49B(4)) relating to an item where credit for foreign tax is allowable against UK tax under either a treaty arrangement or as unilateral relief. A simple example would be where the company receives interest from a foreign source after deduction of withholding tax.

11. New section 49B(2) is the main operative rule. It states that any credit for foreign tax against UK tax in respect of a non-trading credit on an item cannot exceed the amount of corporation tax on the amount of the non-trading credit less an amount of certain non-trading debits ("D") which is given by the formula in new section 49B(3).

12. New section 49B(3) sets out the calculation of "D". The subsection identifies non-trading debits in respect of the same loan relationship, derivative contract or intangible fixed asset that gives rise to the non-trading credit, and for the same accounting period. The total of these debits is reduced by any amounts that have already been deducted under the new rule from other non-trading credits. "D" is then taken as the smaller of this remaining amount and the amount of the non-trading credit to ensure that the calculation in new section 49B(2) does not produce a negative amount.

13. The purpose of new sections 49B(2) and (3) taken together is to identify the amount of 'profit' within the wider non-trading profit that directly relates to the non-trading credit on the loan relationship or other thing giving rise to a claim for relief for foreign tax. The relief is then limited to the amount of corporation tax on that amount. In practice, there will often not be any debits within the scope of new section 49B(3) so this amount will simply be the amount of the non-trading credit in question, but the rule is there to deal with the circumstances where debits do arise.

14. New section 49B(4) defines "non-trading credit" and "non-trading debits". There are two types of non-trading credits. Firstly, non-trading credits for the purposes of the loan relationship rules in Part 5 of the Corporation Tax Act 2009 (CTA09) (which will include all non-trading credits brought into account under Part 5 CTA09 through other provisions such as Part 6 CTA09, and on derivative contracts arising under Part 7 CTA09). Secondly, non-trading credits for the purposes of the intangible fixed assets rules in Part 8 of CTA09. "Non-trading debits" are defined in similar terms.

15. Subsection 8 is the commencement provision for the amendments to section 34. The changes take effect for payments made by a tax authority on or after 5 December 2013.

16. Subsections 9 and 10 are the commencement provisions for new section 49B(2). Subsection 9 says that the new rule applies for accounting periods beginning on or after 5 December 2013, subject to subsection 10, which applies where an accounting period straddles that date. In those circumstances the new rule applies as if the accounting period is split into two separate accounting periods, one relating to the period before 5 December 2013 and one relating to the period on or after that date.

BACKGROUND NOTE

16. The existing legislation in section 34 TIOPA applies where credit for foreign tax is allowed to a person and the foreign tax authority makes a payment by reference to that tax to that person, or to someone connected with that person. The rule requires the relief for foreign tax to be reduced by the amount of that payment.

17. The amendments to sections 34 extend the circumstances where there will be a reduction in credit following payments by the foreign tax authority. The rule will also apply where the payment is made to another person as a consequence of a scheme that has been entered into. This will stop attempts to get around the existing legislation.

18. A non-trading profit arises under the loan relationship rules where the total amount of the non-trading credits brought into account exceed the total amount of non-trading debits. Where the non-trading credit relates to an item such as interest that has suffered foreign tax then relief for some or all of that foreign tax may be available to set against UK tax on the non-trading profit.

19. The clause provides for a limit on the amount of such relief to the amount of corporation tax on the amount of the non-trading credit, after deduction of any related debits, to which the foreign tax relates. This will make clear that schemes that attempt to exploit mismatches between the foreign and UK tax treatment of items of income in order to effectively cross-credit the foreign tax against UK tax on other income are not effective.

EXPLANATORY NOTE

CLAUSES 286 & 287: CONTROLLED FOREIGN COMPANIES: QUALIFYING LOAN RELATIONSHIPS

SUMMARY

1. These clauses introduce two amendments to the Controlled Foreign Companies (CFC) regime at Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA). Both amendments are to Chapter 9 of Part 9A.

2. The first clause prevents a CFC's non-trading finance profits benefiting from the partial or full exemption under Chapter 9 if they are connected with an arrangement that has a main purpose of artificially diverting into a CFC non-trading finance profits that are currently received by a UK resident company.

3. The second clause closes a loophole in an existing rule under Chapter 9 that prevents a creditor relationship of a CFC benefitting from partial or full exemption when third party debt of a non-UK resident group company is repaid and effectively replaced with new UK debt.

4. The amendments will have effect from 5 December 2013.

DETAILS OF THE CLAUSES

5. Clause 286 contains amendments to Part 9A TIOPA.

CLAUSE 287

6. Subsection 1 inserts new subsections 371IH(9A), (9B), (9C), (9D) and (9E) into section 371IH of Chapter 9.

7. New subsection 371IH(9A) applies new subsection 371IH(9B) to a creditor relationship of a CFC if three conditions are met. These are that there must be a loan, made by a connected UK resident company to a connected non-UK resident company; subsequently an arrangement is made directly or indirectly in connection with this loan (the relevant arrangement); and the main purpose, or one of the main purposes, of the relevant arrangement is to achieve a reduction in relevant UK credits or increase in relevant UK debits of a UK connected company in comparison to what credits or debits would have been if the relevant arrangement had not been made.

8. New subsection 371IH(9B) prevents the creditor relationship of a CFC being a qualifying loan relationship under Chapter 9 if it is, or is connected (directly or indirectly) to, a relevant arrangement which falls within new subsection (9A). The result of this is that the

profits from that creditor relationship of a CFC cannot benefit from the partial or full exemption in Chapter 9 of Part 9A TIOPA.

9. New subsection 371IH(9C) applies new subsection 371IH(9D) for the purposes of specifying the assumptions to be made in determining the relevant credits or debits of UK connected companies for the purpose of making the comparison required by new subsection 371IH(9A)(c) (i) and (ii).

10. New subsection 371IH(9D) requires that it is assumed that if the relevant arrangement had not been made then at all times after the relevant time the UK creditor relationship referred to by subsection 371IH(9A)(a) would have continued and had the same terms as it had at the relevant time. The relevant time is defined in new section 371IH(9E).

11. New subsection 371IH(9E) defines the terms used in new subsection 371IH(9A) as follows. A "corporation tax accounting period" is an accounting period for corporation tax purposes. "The relevant time" is the time immediately before the time when a relevant arrangement is made, or if earlier, the time when the UK creditor relationship ends. "Relevant UK credits" and "relevant UK debits" are defined as the credits and debits which a UK connected company has under the rules in Parts 5 or 7 CTA 2009 (loan relationships and derivative contracts), which include credits and debits to which Part 5 applies by virtue of Part 6 CTA 2009. A "UK connected company" is a UK resident company which is either connected with the CFC, or was connected with a company with which the CFC is connected.

12. Example

A UK parent company has lent £100 million to a US subsidiary company. Interest of £5 million is received annually and subject to corporation tax as part of the profits of the UK parent company. The UK parent company enters into an arrangement in order to transfer the loan made to the US subsidiary to a new CFC in exchange for shares in the CFC. The relevant UK credits of the UK parent company are reduced as a result of the arrangement compared to what they would have been if the existing loan had continued on the same terms, and it is established that a main purpose of the arrangement made was to achieve this reduction. The arrangement therefore falls within new section 371(IH)(9A). Accordingly, the creditor relationship of the CFC cannot be a qualifying loan relationship by virtue of new section 371(IH)(9B). The profits of £5 million arising in the CFC in respect of its creditor relationship with the US company fall within Chapter 5 CFC charge gateway for non-trading finance profits, but cannot benefit from the partial or full exemption under Chapter 9. The overall effect is that the interest that was previously subject to corporation tax becomes subject to a CFC charge so that there is no change in the amount of UK tax paid.

13. Subsection 2 provides for the commencement of the new rules, stating that new subsections 371IH(9A), (9B), (9C), (9D) and (9E) apply to relevant arrangements which are made on or after 5 December 2013.

CLAUSE 287

14. Subsection 1 amends subsection 371IH(10)(c) (exclusions from the definition of qualifying loan relationships), replacing the phrase "wholly or mainly used" with "used to any extent (other than a negligible one)". This sub-section provides that a loan cannot be a qualifying loan relationship where it is used to repay third party debt of a non-UK resident group company and that debt is effectively replaced with new UK debt, as part of an arrangement where one of the main purposes is to obtain a tax advantage for any person. The rule is directed at arrangements that give rise to an increase in debt in the UK whether provided by a UK third party or by a non-UK resident person.

15. In modifying the wording to say "…the relevant loan is *used to any extent (other than a negligible one)* to repay wholly or partly another loan…" it will apply in circumstances where there is a larger intra-group loan, so that the element that is applied to repay the external debt of the non-UK resident group company is a minority of the total amount of the loan.

16. Subsections 2 to 5 provide for commencement. Subsection 2 states that the amendments to section 371IH(10)(c) will have effect for accounting periods of CFCs beginning on or after 5 December 2013.

17. Subsection 3 stipulates that the modified section 371IH(10)(c) will also apply to accounting periods of the CFC which begin before 5 December 2013, but end on or after that date. Such an accounting period is termed "the straddling period". Sections 3, 4 and 5 apply the amended section 371IH(10)(c) to such periods, so as to exclude the profits arising after 5 December 2013 from the qualifying loan relationship profits of the CFC.

18. Subsection 4(a) provides that any apportionment for qualifying loan relationship profits of accounting periods which straddle 5 December 2013 should be made in accordance with section 1172 of CTA 2010 (an apportionment on a time basis). Where a time basis apportionment produces a result that is unjust or unreasonable, subsection 4(b) provides for apportionment on a just and reasonable basis.

19. Subsection 5 specifies that the profits from the qualifying loan relationships apportioned to the period falling on or after 5 December 2013 are to be excluded from the CFC's qualifying loan relationship profits.

BACKGROUND NOTE

20. Compared to the UK's previous CFC rules, the CFC rules at Part 9A TIOPA (introduced in Finance Act 2012) better reflect the way that businesses operate in a global economy whilst maintaining protection against artificial diversion of UK profits. This Schedule amends Chapter 9 of Part 9A in order to ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base.

EXPLANATORY NOTE

CLAUSE 288: TAX CONSEQUENCES OF FINANCIAL SECTOR REGULATION

SUMMARY

1. This clause makes changes to an existing Regulation making power to ensure that it allows further Regulations to be made to deal with the tax consequences of future European Union or UK regulatory requirements. In particular it will allow Regulations to prescribe the tax treatment of insurer's Solvency II compliant instruments issued in advance of agreement to Solvency II.

DETAILS OF THE CLAUSE

2. This clause inserts new subsections (1) and (4A) into section 221 of Finance Act 2012. These ensure that the Regulation making power in section 221 applies to regulatory requirements which are likely to be imposed in the future.

BACKGROUND NOTE

3. UK regulatory authorities may, for financial stability reasons, encourage financial service firms to issue regulatory capital with certain features to comply with future European Union or UK regulatory requirements. The power in section 221 Finance Act 2012 allows the Treasury to make Regulations prescribing the tax consequences of regulatory requirements which are in force at the date that the Regulations are made. This change ensures that the power will allow the Treasury to make Regulations in advance of the relevant legislation coming into force.

EXPLANATORY NOTE

CLAUSE 289: SCOTTISH BASIC, HIGHER AND ADDITIONAL RATES OF INCOME TAX

SUMMARY

1. This clause introduces Schedule 34 which amends the structure of the income tax legislation setting out how the Scottish rate of income tax is applied in calculating the overall rates of tax applicable to the non-savings income of Scottish taxpayers and makes other consequential changes.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraph 2 sets out that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 (ITA) will be omitted. This removes the rates of income tax applied to the non-savings income of a Scottish taxpayer that were inserted by the Scotland Act 2012 and inserts a new subsection (2)(za) which signposts the Scottish, basic, higher and additional rates.

3. Paragraph 3 inserts new section 6A(1) setting out the calculation to determine the Scottish basic, higher and additional rates of income tax. The UK basic, higher and additional rates will be reduced by 10 percentage points and the Scottish rate, set by the Scottish Parliament, added across the (reduced) rates. (This is exactly the same calculation method as was inserted by the Scotland Act 2012.) So a Scottish rate of 10 per cent would mean the rates paid by Scottish taxpayers were the same as elsewhere in the UK, a rate of 9 per cent would mean the rates were slightly lower and a rate of 11 per cent would mean they were slightly higher. Section 6A(2) points to Chapter 2 of Part 4A of the Scotland Act 1998, which describes how the Scottish rate is set.

4. Paragraph 4 inserts an entry for new section 11A in section 10 of ITA, which signposts provisions that apply different rates of tax to certain types of income.

5. Paragraph 5 inserts new section 11A into ITA which sets out income liable to the Scottish basic, higher and additional rates of income tax.

6. New section 11A(1)-(3) sets out that the Scottish basic, higher and additional rates apply to "non-savings income" that would otherwise be chargeable at the main basic, higher and additional rates if the individual were not a Scottish taxpayer.

7. New section 11A(4) defines "non-savings income" for the purposes of this section. The effect is that the Scottish basic, higher and additional rates do not apply to savings income as defined in section 18.

8. New section 11A(5) and (6) makes new section 6A subject to section 13 of ITA and other cases where income may be charged at a different rate.

9. Paragraph 6 amends section 13 of ITA, which applies the dividend rates to dividend income. The effect is that dividend income continues to be charged at the dividend ordinary, upper and additional rates rather than the Scottish rates.

10. Paragraph 7 confirms that section 16 of ITA has effect for determining which rate applies to a Scottish taxpayer's non-savings income. Section 16 provides the ordering rules for income tax rates. In essence section 16 determines that income that is not savings or dividends is the first slice of taxable income; savings income is the second slice; dividend income is the third slice. The effect of paragraph 7 is that a Scottish taxpayer's non-savings income will be subject to the Scottish rates first; their savings income will then be subject to the appropriate UK main rate(s) and then their dividend income will be subject to the appropriate UK dividend rate(s).

11. Paragraph 8 amends section 809H of ITA to exclude the Scottish rates of income tax in calculating the charge on non-UK residents for using the remittance basis.

12. Paragraph 9 amends section 828B of ITA. Sections 828A-828D of ITA provide for an income tax exemption for low income employees working in the UK who are resident (but not domiciled) in the UK and meet certain conditions (set out in section 828B). Such individuals will typically be migrant workers employed in seasonal work in the agricultural or service sectors in the UK and in other countries in the same tax year and whose overseas income is subject to tax where it is earned. This amendment ensures that any such individuals who are Scottish taxpayers will continue to benefit from that exemption

13. Paragraphs 10 and 11 amend section 989 of and Schedule 4 to ITA to include the definitions of the Scottish basic, higher and additional rates of income tax as separate entries. This means that, unless otherwise provided for, references to the basic, higher and additional rates mean the UK main rates in section 6 of ITA. The paragraphs also clarify that the definition of a Scottish taxpayer is the one set out in the Scotland Act 1998.

14. Paragraph 12 sets out the commencement of these amended provisions – they will be introduced alongside the rest of the Scottish rate of income tax provisions, which are expected to be implemented in April 2016.

Part 2

15. Paragraph 13 removes the amendment to section 1 of the Provisional Collection of Taxes Act 1968 made by section 26 of the Scotland Act 2012, as this is no longer required under the restructured Scottish rate provisions.

16. Paragraph 14 amends section 7 of the Taxes Management Act 1970 (TMA). This section imposes requirements on individuals to notify HMRC if they are chargeable to income tax in a year. Section 7(6) of TMA includes an exemption from the requirement to notify for individuals whose income has either had (or been treated as having) income tax paid on it or who have received dividend income, and who are not "liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings" for that

year. The amendment made by paragraph 14 ensures Scottish taxpayers will continue to benefit from this exemption.

17. Paragraph 15 amends the Taxation of Chargeable Gains Tax 1992 (TCGA). Section 4 of TCGA sets out the rate of Capital Gains Tax (CGT) that an individual pays – this can be affected by the rate of income tax at which an individual is liable. Sub-paragraphs (2) and (3) therefore make amendments to sections 4 and 4A of TCGA to ensure that Scottish taxpayers continue to pay CGT at the appropriate rate.

18. The amendments made by paragraphs 14 and 15 will have effect at the same time as the rest of the Scottish rate provisions are introduced (expected to be April 2016).

19. Paragraph 16 sets out amendments to the Scotland Act 1998. Sub-paragraph (2) amends the cross reference in section 80C (which determines the rules for making a Scottish rate resolution) so that it refers to sections 6A and 11A of ITA (inserted by this Schedule), rather than the repealed section 6(2B) of ITA. Sub-paragraphs (3)-(7) change the power to make further amendments in section 80G. This is to update the power to reflect the insertion of new section 11A of ITA, ensure that the power works as intended (including addressing the consequences for the operation of the PAYE system if no Scottish rate is passed) and limit the scope of the power to more specific types of amendment. Sub-paragraph (8) amends section 110 to ensure that the power here for the Department for Work and Pensions to make regulations concerning Scottish taxpayers will continue to work as intended (these amendments are to be commenced by order by the Secretary of State). Sub-paragraphs (9)-(11) make other consequential amendments, including providing for (at sub-paragraphs (10)(a) and (11)) the repeal of section 79 (the equivalent of section 80G under the Scottish variable rate provisions). Sub-paragraph (13) gives the Treasury the power to determine the timing of the repeal of section 79 by order

20. Paragraph 17 repeals section 26 of the Scotland Act 2012, which has been replaced by the provisions in the Schedule.

BACKGROUND NOTE

21. The Scotland Act 2012 legislates for the Scottish rate of income tax, which is expected to be introduced in April 2016. The annual basic, higher and additional rates of income tax set by the UK Government will be reduced by 10 pence in the pound for Scottish taxpayers. Annually the Scottish Parliament will levy a new Scottish rate of income tax which will apply equally to all of the reduced main UK income tax rates. The application of the Scottish rate is achieved by amendments to ITA which determines the rate of tax paid by Scottish taxpayers on their non-savings income and dividends.

22. The Scottish rate has implications for particular aspects of the income tax system, for example Gift Aid and pensions tax relief. HMRC consulted external organisations to agree a suitable way forward and published a Technical Note in May 2012 setting out how it intended to manage these issues. The Schedule makes amendments to the Scottish rate provisions in ITA so that the wider consequential changes can be made in a more straightforward manner by secondary legislation.

EXPLANATORY NOTE

CLAUSE 290: REPORT ON ADMINISTRATION OF THE SCOTTISH RATE OF INCOME TAX

SUMMARY

1. This clause amends the Scotland Act 1998 to require the Comptroller and Auditor General (C&AG) to make an annual report direct to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts the requirement to produce the report as new section 80HA in Chapter 2 of Part 4A of the Scotland Act 1998.

3. New section 80HA(2) sets out the scope of the annual report to be laid before the Scottish Parliament. The C&AG will report on the adequacy of the additional rules (which has the same meaning as "regulations" in section 2(1) of the Exchequer and Audit Departments Act 1921) and processes which HMRC have put in place to administer and collect the Scottish rate. The C&AG will also report on HMRC's calculation of the amount of Scottish rate income tax to be paid over to the Scottish Government and on the accuracy and fairness of costs reimbursed to HMRC by the Scottish Government for the administration of the Scottish rate.

4. New section 80HA(3) explains that the "Scottish rate provisions" are those set out in Chapter 2 of the Scotland Act 1998 (or made under powers in that Chapter) and any other provision made elsewhere in the Income Tax Acts relating to the Scottish basic, higher or additional rates of income tax. The Interpretation Act 1978 defines the "Income Tax Acts" as meaning all enactments relating to income tax.

5. New section 80HA(4)-(5) provides that the C&AG has the discretion to include in the report an analysis of whether HMRC is using its resources in administering the Scottish rate in an effective, efficient and economic manner.

6. New section 80HA(6) requires that HMRC provide the C&AG with information necessary to complete the annual report.

7. Subsection (2) of the clause brings the measure into effect for the financial year ending 31/03/15. As a result of new section 80HA(7), the first report will therefore need to be produced before 31 January 2016.

BACKGROUND NOTE

8. The Scotland Act 2012 amended the Scotland Act 1998 to introduce the Scottish rate of income tax, which is expected to commence in April 2016.

9. The Scottish rate will be set each year by the Scottish Parliament and will be operated by HMRC as part of the UK income tax system; HMRC's costs in implementing and administering the Scottish rate will be reimbursed by the Scottish Government.

10. The Command Paper, "Strengthening Scotland's Future", published alongside the Scotland Bill in November 2010 set out that the Comptroller and Auditor General would, as head of the National Audit Office (NAO), be invited to prepare a report to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax as part of the NAO's annual report on HMRC's overall performance.

11. This clause clarifies the legal basis for this by requiring the C&AG to prepare a report covering these matters and lay it before the Scottish Parliament on an annual basis.

EXPLANATORY NOTE

CLAUSE 291: REMOVAL OF EXTENDED TIME LIMIT RESTRICTION FOR EU CASES

SUMMARY

1. This clause removes the direct tax restriction on extended time limits for actions for relief from the consequences of a mistake of law if the tax was charged contrary to European Union (EU) law.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts two new subsections into section 107 of FA 2007 (removal of extended time limits for mistakes of law in taxation matters).

3. New subsection (5A) disapplies the claims restriction in section 107 where tax has been charged contrary to EU law.

4. New subsection (5B) defines tax charged contrary to EU law.

5. Subsection (2) treats the amendment as having always had effect.

BACKGROUND NOTE

6. Section 107 of FA 2007 was introduced to ensure the time limit for direct tax recoverable by reason of a mistake of law was six years from the date of payment for all actions brought before 8th September 2003 which were not subject to a judgment of the House of Lords before December 2006. S.32(1)(c) of the Limitation Act 1980 was disapplied in respect of such actions.

7. The Supreme Court held in *Franked Investment Income Group Litigation v CIR [2012] UKSC 19* that s.107 FA 2007 was incompatible with EU law and cannot apply to actions to recover tax paid contrary to EU law.

8. This provision amends s.107 FA 2007 to reflect the Supreme Court's decision so that the restriction does not apply to actions to recover tax paid contrary to EU law. The amendment is retrospective so that s.107 will be treated as always having been subject to this exception.

EXPLANATORY NOTE

CLAUSE 292: INCREASE IN LIMIT FOR LOCAL LOANS

SUMMARY

1. This clause provides powers to increase the Public Works Loan Board ('PWLB') statutory lending limit (currently set at £70 billion) to £85 billion at an appropriate date in the future, and for that limit to be changed to another (lower or higher) amount not exceeding £95 billion via secondary legislation.

DETAILS OF THE CLAUSE

2. Section 3(1) of the National Loans Act 1968 ('the 1968 Act') enables the Treasury to issue out of the National Loans Fund such sums required by the PWLB in making loans under that Act and any future Act. The power to make local loans under the 1968 Act includes a power to enter into undertakings to make loans (section 3(5) of the 1968 Act).

3. Both powers are subject to the limit for local loans out in section 4(1) of the 1968 Act. That section currently provides that the aggregate of – (a) any commitments of the PWLB to grant local loans, and (b) any amount outstanding in respect of the principal of any local loans – must not exceed £55,000 million or such lower or higher sum not exceeding £70,000 million as the Treasury may from time to time specify by order.

4. This clause replaces the amounts £55,000 million and £70,000 million with the amounts £85 billion and £95 billion respectively. The new limit of £85 billion will come into effect at an appropriate date in the future via commencement order. This limit can be changed to another (lower or higher) amount not exceeding £95billion at a later date via secondary legislation.

BACKGROUND NOTE

5. The PWLB's main function is to make loans to local authorities for the purpose of capital spending and collecting the repayments. The PWLB account for about 75% of local authority borrowing in the UK.

6. This is an administrative measure to update the PWLB's statutory limit which will allow the PWLB to accommodate future applications for local authority loans. The Finance Bill is the legislative vehicle used by the government to increase the PWLB limit in the past.

EXPLANATORY NOTE

CLAUSES 293, 294 & 295: FINAL PROVISIONS

CLAUSE 293

1. This clause will allow any index of defined terms contained in an Act relating to taxation, to be amended by secondary legislation.

CLAUSE 294

2. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "BGDA 1982" as an abbreviation for the Betting and Gaming Duties Act 1981.

CLAUSE 295

3. This clause provides for the Bill to be known as the "Finance Act 2014" upon Royal Assent.

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