HM Treasury

Finance Bill 2015
Explanatory Notes

Clauses 1 to 50

15 July 2015

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EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Finance Bill 2015 as introduced into Parliament on 14 July 2015. They have been prepared jointly by the HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

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

Clause 1: Income tax lock

Summary

1. This clause sets out that that the basic, higher and additional rates of income tax will not increase above 20%, 40% and 45% for the duration of this Parliament.

Details of the clause

2. Subsection 1 sets out that the basic, higher and additional rates of income tax will not increase above 20%, 40% and 45% for the duration of this Parliament. This will apply to non-savings income in England, Wales and Northern Ireland and UK-wide savings income as expressed in Section 6(1) of the Income Tax Act 2007.

Background note

4. This tax lock has been introduced to meet the commitment made by the government that it will not increase the income tax rates for the duration of this Parliament.

5. Income tax is imposed annually by Parliament. The table below sets out the main rates and rate limits for 2015-16.

Income tax bands of taxable income (£ per year)			
Rate	**Tax year 2015-16**	**Tax year 2016-17**	**Tax year 2017-18**
Basic rate	£0 – 31,785	£0 – 32,000	£0 – 32,400
Higher rate	£31,786 – 150,000	£32,001 – 150,000	£32,401 – 150,000
Additional rate	Over £150,000	Over £150,000	Over £150,000

Clause 2: VAT lock

Summary

1. This clause provides that the standard and reduced rates of VAT will not rise for the duration of the VAT lock period. It also locks the relevant provisions to prevent them being used to remove any goods/services from the zero rate of VAT and reduced rate of VAT for the duration of the VAT lock period.

Details of the clause

2. Subsection (1) provides that the standard rate of VAT currently in force under section 2 of the Value Added Tax Act 1994 (VATA) shall not exceed 20% during the VAT lock period.
3. Subsection (2) provides that the reduced rate of VAT currently in force under section 29A of VATA shall not exceed 5% during the VAT lock period.
4. Subsection (3) prevents goods/services specified in Schedule 7A (supplies subject to the reduced rate) from being removed from that schedule through use of the power in section 29A(3) during the VAT lock period.
5. Subsection (4) prevents goods/services specified in Schedule 8 (supplies subject to the zero rate) from being removed from that schedule through use of the power in section 30(4) during the VAT lock period.
6. Subsection (5) defines the VAT lock period. The VAT lock period will begin on the day that this Act receives Royal Assent and will end immediately before the date of the first parliamentary general election after that day.

Background note

7. The clause provides that the rates of VAT will not rise and that the relevant provisions will be locked to prevent them being used to decrease the scope of the zero rate and reduced rate during the VAT lock period. This will be good for consumers.
8. This clause will not prevent a change to scope being made by primary legislation if that is required, for example following a court or tribunal decision or in response to infraction by the EU Commission.

Clauses 3 and 4: Personal allowance and national minimum wage

Summary

1. Clause 3 changes the basis of indexation for the income tax personal allowance from the Consumer Prices Index (CPI) to linking to an annual equivalent of an individual working 30 hours per week at the national minimum wage (NMW) adult rate when the personal allowance reaches £12,500.

2. Clause 4 sets out that until the personal allowance reaches £12,500, before the Chancellor announces any proposal to increase the personal allowance he must consider the financial effect of the increase on an individual working 30 hours per week on the adult rate of NMW and make a statement.

Details of the clauses

Clause 3: Personal allowance and the national minimum wage

3. Subsection (1), (2) and (3) replaces the consumer prices index (CPI) with the national minimum wage (NMW) in section 35(1). It applies in a tax year when the personal allowance is more than £12,500 and sets out that the personal allowance will be linked to the annual equivalent of the NMW at the adult rate for an individual working 30 hours per week. Where this applies, the increased amounts must be set in a Treasury Order before the start of the tax year.

Clause 4: Personal Allowance and the national minimum wage: Chancellor's duties

4. Subsection (1) applies where the personal allowance is less than £12,500.

5. Subsection (2), (3) and (4) sets out that before the Chancellor announces any proposal to increase the personal allowance he must consider the financial effect of the increase in the personal allowance on an individual working 30 hours per week on the adult rate of NMW and make a statement.

6. Subsection (5) sets out that this clause ceases to have effect when the personal allowance is £12,500 or more.

Background note

7. This change reflects the government's objective to support and rewards individuals in work. It also provides additional certainty about the level of personal allowances.

8. Finance Act 2014 changed the basis of indexation for income tax allowances and limits from the retail prices index (RPI) to the consumer prices index (CPI). Income tax personal allowances, the basic rate limit, the starting rate limit for savings and the adjusted net income limit are currently increased each year by the annual percentage increase in the CPI ("indexation").

9. Clause 3 changes the indexation of the personal allowance to increase in line with the annual equivalent of 30 hours a week at the national minimum wage adult rate. This will take place once the personal allowance has reached £12,500.

10. Where this applies, the increased amounts must be set in a Treasury Order before the start of the tax year.

11. Clause 4 sets out that before the start of each tax year where the personal allowance is less than £12,500, before the Chancellor announces any proposal to increase the personal allowance he must consider the impact of the level of personal allowance on an individual working 30 hours per week on the national minimum wage at the adult rate, and make a statement.

12. The Summer Budget 2015 announced that the amount of the personal allowance will be set at £11,000 for the 2016-17 tax year and £11,200 for 2017-18.

Clause 5: Personal allowance from 2016

Summary

1. This clause sets the income tax personal allowance for the 2016-17 and 2017-18 tax years.

Details of the clause

2. Subsection (a) and (b) sets the amount of the personal allowance for 2016-17 at £11,000 and 2017-18 at £11,200.

Background note

3. The government has an objective to raise the personal allowance to £12,500 by the end of this Parliament.

4. Finance Act 2014 provides that from 2015-16 there are two personal allowances available by reference to an individual's date of birth: one for those born after 5 April 1938 and one for those born before 6 April 1938

5. The amount of the personal allowance for those born before 6 April 1938 is fixed at £10,660. Finance Act 2015 increased the personal allowance to £10,800 for 2016-17, so it removed the personal allowance for those born before 6 April 1938. The effect is that from 2016-17 everyone, regardless of their date of birth, is entitled to the same personal allowance.

6. Clause3 changes the indexation of the personal allowance from CPI to increase in line with the annual equivalent of 30 hours a week at the national minimum wage where the adult rate for individuals over the age of 21 will apply. This change will take place once the personal allowance has reached £12,500.

Clause 6: Basic rate limit from 2016

Summary

1. This clause sets the income tax basic rate limit for the 2016-17 and 2017-18 tax years.

Details of the clause

2. Subsections (a) and (b) sets the amount of the basic rate limit for 2016-17 at £32,000 and 2017-18 at £32,400.

Background note

1. Income tax is an annual tax. It is for Parliament to impose income tax for a year.
2. An individual's taxable income is charged to tax at the basic rate of tax up to the basic rate limit.
3. Finance Act 2015 sets the basic rate limit at £31,900 for 2016-17 and £32,300 for 2017-18.
4. Clause 1sets out that that the basic, higher and additional rates of income tax will not increase above 20%, 40% and 45% for the duration of this Parliament.

Clause 7:Rate of corporation tax for financial years 2017-2020

Summary

1. This clause sets the main rate of corporation tax (CT) at 19% for the financial years beginning 1 April 2017, 1 April 2018 and 1 April 2019 and at 18% for the financial year beginning 1 April 2020.

Details of the clause

2. Subsection 1 sets the main rate of CT at 19% for the financial years beginning 1 April 2017, 1 April 2018 and 1 April 2019.

3. Subsection 2 sets the main rate of CT at 18% for the financial year beginning 1 April 2020.

Background note

4. Parliament charges the main rate of CT for each financial year. These clauses set the main rate for the financial years beginning 1 April 2017, 1 April 2018, 1 April 2019, and 1 April 2020.

Clause 8: Annual investment allowance

Summary

1. This clause increases the maximum amount of the Annual Investment Allowance (AIA) from £25,000 to £200,000 with effect for expenditure incurred on or after 1 January 2016.

Details of the clause

2. Subsection (1) amends section 51A(5) of the Capital Allowances Act (CAA) 2001 so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £25,000 to £200,000.

3. Subsection (2) provides that subsection (1) has effect for expenditure incurred on or after 1 January 2016.

4. Subsection (3) provides that for chargeable periods which straddle 1 January 2016, the transitional provisions of paragraphs 4 and 5 of Schedule 2 to Finance Act 2014 apply.

5. Paragraph 4 of Schedule 2 to Finance Act 2014 provides the transitional rules for chargeable periods that straddle 1 January 2016. It treats the actual chargeable period as two separate chargeable periods; one ending on 31 December 2015 and one commencing on 1 January 2016. The maximum allowance for the whole of the actual chargeable period is the sum of the maximum amounts calculated for each of these two separate periods. It provides a further restriction for the second period commencing on 1 January 2016 such that for expenditure from that date no claim can be made for more than the maximum for that second period.

6. So, for example, a company with a chargeable period, from 1 April 2015 to 31 March 2016, would calculate its maximum AIA entitlement for the whole period based on:

   - the proportion of the period from 1 April 2015 to 31 December 2015, that is, 9/12 x £500,000 = £375,000, and,
   - the proportion of the period from 1 January 2016 to 31 March 2016, that is, 3/12 x £200,000 =£50,000.

7. The company's maximum AIA for the whole period would, therefore, be the sum of (a) + (b) = £425,000.

8. If the company incurred no qualifying expenditure in the period 1 April 2015 to 31 December 2015 and then spent, say, £60,000 in the period 1 January 2016 to 31 March 2016, the maximum AIA available to that company for expenditure in that particular part period would be limited to £50,000. Writing-down allowances would then be available for the remaining unrelieved £10,000.

9. Paragraph 5 of Schedule 2 to Finance Act 2014 applies where a single AIA has to be shared between two or more persons. For details, reference should be made to the Explanatory Notes to section 10 Finance Act 2014.

Background note

10. Since April 2008 most businesses, regardless of size, have been able to claim the AIA on their expenditure on plant or machinery, except cars, up to a specified annual amount each year.

11. Section 10 and Schedule 2 to the Finance Act 2014 extended the period of the temporary increase to 31 December 2015 and further increased the maximum amount of the AIA to £500,000 from April 2014.

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

13. Following this temporary increase, the limit was set to fall back to £25,000 from 1 January 2016. However, at March Budget 2015, the government announced its commitment to set the limit at a much more generous rate.

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

15. There are restrictions for grouped companies; groups of companies under common control; related companies under common control; related activities under common control.

16. The rules provide businesses with the freedom to allocate the AIA between different types of expenditure. For example, they may allocate it first against any expenditure on integral features, otherwise qualifying for the lower 8% special rate of WDA.

Clause 9: Increased nil-rate band where home inherited by descendants

Summary

1. This clause introduces a new additional residence nil-rate band for inheritance tax (IHT) when a home is passed on death to direct descendants of the deceased on or after 6 April 2017. The maximum amount of the band will increase in stages up to £175,000 in 2020-21 and any unused band will be transferable to a spouse or civil partner. The clause also provides for a tapered withdrawal of the band for estates valued at more than £2 million.

Details of the clause

2. Subsection (3) amends section 8A(2) of Inheritance Tax Act 1984 (IHTA 1984) to ensure that the appropriate amount of the residence nil-rate band is taken into account in the calculation to work out whether there is any unused existing nil-rate band that can be transferred to a spouse or civil partner.

3. Subsection (4) inserts new Sections 8D to 8L into IHTA 1984.

Section 8D: Extra nil-rate band on death if interest in home goes to descendants etc

4. New section 8D sets out the basic provisions for an additional residence nil-rate band that only applies when someone dies and how the additional amount on which tax will not be payable is calculated.

5. Subsection (2) provides that tax is not payable on an amount of the person's estate up to the value of the residence nil-rate band.

6. Subsection (3) ensures that the amount of the person's estate over and above any residence nil-rate band to which they may be entitled is charged to tax at the normal rates that apply for IHT.

7. Subsection (5) sets out the main parameters to be used in calculating the new residence nil-rate band. It:

    a. states the maximum amounts of the residence nil-rate band (the "residential enhancement") for the years up to 2020-21 and subsequent years;

    b. gives the value of the "taper threshold" above which the residence nil-rate band is to be withdrawn;

    c. ensures that the taper threshold on death is taken into account in the calculations;

    d. sets E as the value of a person's estate (which takes its normal meaning as the value of the assets less liabilities but before any reliefs and exemptions);

e. defines VT as the chargeable value transferred on death (which is the value of the estate less liabilities and after any reliefs and exemptions);

f. provides for the residential enhancement to be combined with the unused residence nil-rate band transferred from a spouse or civil partner (the "brought forward allowance") to give a total residence nil-rate band or "default allowance"; and

g. sets out the formula for calculating the total available residence nil-rate band (or "adjusted allowance") when the net value of an estate is more than the taper threshold. The default allowance is withdrawn by £1 for every £2 that the value of the estate exceeds the taper threshold.

8. Subsections (6), (7) and (8) provide for the maximum amount of the residence nil-rate band and the taper threshold to be increased by the consumer prices index after 2021-22 onwards. The amounts for each tax year are to be specified in regulations.

Section 8E: Residence nil-rate amount: interest in home goes to descendants etc

9. New section 8E sets out more detailed rules for calculating the amount of the residence nil-rate band and the amount that can be transferred to a spouse or civil partner.

10. Subsection (1) ensures that the residence nil-rate band only applies where a person's estate includes a qualifying residence (the qualifying residential interest) and some or all of that property is left to one or more direct descendants, i.e. it is closely inherited. It ensures that the value attributable to the qualifying residential interest is the value after deduction of agricultural property and business property relief.

11. Subsection (2) provides that, for estates at or below the taper threshold, where the value of the residence passed to direct descendants is less than a person's total residence nil-rate band (the default allowance), the amount of the residence nil-rate band is limited to the value of the residence. Any unused excess is available to transfer to a spouse or civil partner.

12. Subsection (3) provides that, for estates at or below the taper threshold, where the value of the residence passed to direct descendants is greater than or equal to the person's default allowance, the amount of the residence nil-rate band is equal to the default allowance. None of the residence nil-rate band is available for transfer to a spouse or civil partner.

13. Subsection (4) provides that, for estate above the taper threshold, where the value of the residence passed to direct descendants is less than the person's adjusted allowance after taper has been applied, the amount of the residence nil-rate band is limited to the value of that residence. Any unused excess is available to transfer to a spouse or civil partner.

14. Subsection (5) provides that, for estates above the taper threshold, where the value of the residence passed to direct descendants is greater than or equal to the person's adjusted allowance, the amount of the residence nil-rate band is equal to the adjusted allowance. None of the residence nil-rate band is available for transfer to a spouse or civil partner.

15. Subsection (7) applies where the value of the residence is greater than the net value of the estate after liabilities have been deducted. The amount of the residence nil-rate band is restricted to the value of the chargeable estate and the unused excess is available to transfer to a spouse or civil partner.

Section 8F: Residence nil-rate amount: no interest in home goes to descendants etc

16. New section 8F sets out the rules where a residence is not passed on to direct descendants.

17. Subsections (1) and (2) ensure that an estate does not qualify for a residence nil-rate band if it does not include a qualifying residence or none of that residence is passed on to direct descendants.

18. Subsection (3) enables the residence nil-rate band that has not been used to be transferred to a spouse or civil partner.

Section 8G: Meaning of "brought-forward allowance"

19. New section 8G sets out more detailed rules for calculating the amount of the residence nil-rate band which can be transferred to a person's ("P") estate from their deceased spouse's or civil partner's estate.

20. Subsection (2) explains that the "related person" from whose estate the residence nil-rate band is transferred has to die before P and that P was their spouse or civil partner when they died.

21. Subsection (3) gives the detailed rules for calculating the amount transferred. The residence nil-rate band available to P is increased by the percentage of the unused residence nil-rate band that was available on the death of the related person, which cannot exceed 100%. No amount is to be transferred unless a claim is made under section 8L.

22. Subsection (4) ensures that where the related person dies before 6 April 2017, P's residence nil-rate band is increased by 100% without regard to whether the related person qualified for the residence nil-rate band when they died.

23. Subsection (5) provides that where the related person died before 6 April 2017 and the net value of their estate (after deducting liabilities but before reliefs and exemptions) was over £2 million, their residence nil-rate band available for transfer is to be reduced by £1 for every £2 that the amount exceeds the £2 million taper threshold.

Section 8H: Meaning of "qualifying residential interest"

24. New section 8H defines the qualifying residence.

25. Subsection (2) explains that the "residential property interest" has to be an interest in a house which has been lived in as the person's residence when they owned it and which would have been part of their estate.

26. Subsection (3) states that where a person's estate includes only one residence which meets the conditions in subsection (1), that residence will be the qualifying residence.

27. Subsection (4) provides that where a person's estate includes more than one residence, and the personal representatives nominate one of them, that residence is to be treated as the qualifying residence.

28. Subsection (5) clarifies that a residence includes land which is occupied and used as its garden or grounds.

29. Subsections (6) and (7) apply if a person lives in job related accommodation and owns a house in which they intend to live in due course. That house is to be treated as a qualifying residence.

Section 8J: Meaning of "inherited"

30. New section 8J explains when property in a deceased person's ("D") estate is inherited by another person ("B") for the purposes of the residence nil-rate band.

31. Subsection (2) provides that B inherits property if it is transferred to B as a result of D's will, the rules of intestacy or some other means applying as a result of D's death.

32. Subsection (3) explains that although in general subsection (2) will not apply if property is settled in a trust, B will be treated as inheriting property if it is settled in certain types of trusts where the settled assets are held or applied for the benefit of B. These include trusts where the beneficiary is treated as if they own the property themselves, and trusts for minors and other persons under the age of 25.

33. Subsection (4) provides that where property has been given to B but is treated as forming part of the deceased's estate under the gift with reservation rules because the deceased continued to benefit from that property, B is the person who is treated as inheriting the property.

Section 8K: Meaning of "closely inherited"

34. New section 8K explains the meaning of "closely inherited".

35. Subsection (1) explains that something is "closely inherited" if it is inherited by a person's child, grandchild and other direct lineal descendant.

36. Subsection (3) states that a person who was another person's step-child at any time is to be treated as a child of that other person.

37. Subsection (4) allows an adopted person to be treated as a child of a natural parent or an adoptive parent.

38. Subsection (5) treats a person who was fostered at any time as a child of the foster parent.

39. Subsections (6) and (7) provide that where a guardian or special guardian has been appointed for a person under the age of 18, that person is to be treated as a child of the guardian.

40. Subsection (8) clarifies that the direct descendants of a step-child, adopted person or fostered person, who is treated as a child of another person, are also to be treated as direct descendants of the that person.

41. Subsection (9) defines an "adopted person".

42. Subsection (10) defines a "foster parent".

Section 8L: Claims for brought-forward allowance

43. New section 8K deals with claims for the transferable residence nil-rate band.

44. Subsection (1) sets out who may make a claim for the transfer. The claim may be made by the deceased's personal representatives within the permitted period, or by any other person liable to the tax on death within a later period allowed by HM Revenue & Customs.

45. Subsection (2) gives the time limits for making the claim. The "permitted period" is within 2 years from the end of the month in which the deceased died or, if later, within 3 months from the date when personal representatives start to act, or within such longer period as HMRC may allow.

46. Subsection (3) provides for a claim to be withdrawn within one month of whichever of those time limits applies.

47. Subsections (4) to (5) deal with situations where there is a series of deaths and a claim was not made on an earlier death of a person ("P") to transfer any unused residence nil-rate band which would have affected the inheritance tax liability on the later death of another person ("A"). The provisions allow a claim to be made to transfer the residence nil-rate band in respect of P's estate by the personal representatives of A within an allowed period.

48. Subsection (6) defines "allowed period" for the purposes of subsection 5(a).

49. Subsection (7) provides for a period within which a claim under subsection (5) can be withdrawn.

Section 8M: Residence nil-rate amount: cases involving conditional exemption

50. New section 8M makes provision for cases where a residence left to direct descendants qualifies for conditional exemption.

51. Subsection (2) provides that to the extent that a residence is conditionally exempt, it is treated as not closely inherited so that the appropriate proportion of the residence nil-rate band is available to carry forward.

52. Subsection (3) provides for the residence nil-band to apply to charges which arise when conditional exemption ceases to apply (that is, if the undertakings to secure the conditional exemption are not kept, the owner dies, or the property is sold, given away or disposed of).

53. Subsection (5) applies where the deceased's ("D") surviving spouse or civil partner ("P") dies before the charge arises and the residence nil-rate band, or part of it, is transferred to P. Where this happens, the residence nil-rate band available against the charge is reduced by the amount transferred to P.

54. Subsections (6) and (7) apply where the charge arises before P's death. Where this happens, the amount of residence nil-rate band available for transfer to P is recalculated to take account of the amount (if any) of the residence nil-rate band that was used by the charge when conditional exemption ceases to apply.

Background note

55. The Summer Budget 2015 announced that the burden of inheritance tax would be reduced for most families by making it easier to pass on the family home to direct descendants without a tax charge. This clause implements the announcement made by the Chancellor of the Exchequer in his statement on 8 July 2015.

56. Legislation will be included in Finance Bill 2016 to extend the benefit of the residence nil-rate band where the deceased downsized to a less valuable residence or ceased to own a residence on or after 8 July 2015.

Clause 10: Rate bands for tax years 2018-19, 2019-20 and 2020-21

Summary

1. This clause extends the freeze in the inheritance tax (IHT) nil-rate band at £325,000 until the end of the tax year 2020-21.

Details of the clause

2. The clause disapplies section 8 of the Inheritance Tax Act 1984 (IHTA 1984) for the tax years 2018-19, 2019-20 and 2020-21. Section 8 applies if the consumer prices index (CPI) for September is higher than it was for the previous September. It provides for an indexed 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 2018-19 to 2020-21 inclusive.

Background note

3. The rates of IHT are set out in the Table in Schedule 1 of IHTA 1984. The IHT nil-rate band is the amount below which no IHT is charged. It is automatically indexed in line with CPI each year under section 8 of IHTA 1984.

4. 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. Paragraph 2 of Schedule 25 to Finance Act 2014 set the limit of the nil-rate band at £325,000 for the years 2015-16 to 2017-18 inclusive.

5. At Summer Budget 2015 the government announced that the current nil-rate band will remain at £325,000 for the years 2018-19 to 2020-21 inclusive.

Clause 11 and Schedule 1: Calculation of rate of inheritance tax on settled property

Summary

1. This clause introduces Schedule 1. The schedule aggregates the value of property in trusts that are not related, for the purpose of determining the rate at which inheritance tax is charged, when the value of property in those trusts is increased on the same day. The Schedule also simplifies some of the rules for calculating the rate of tax for the purposes of the ten year anniversary and exit charges.

2. The part of the measure relating to same day additions will apply to all charges arising on or after the date of Royal Assent in respect of relevant property trusts created on or after the publication of draft legislation on 10 December 2014. To prevent forestalling, it will also apply to relevant property trusts created before 10 December 2014 where there are additions made on or after 10 December 2014 to more than one relevant property trust on the same day. The new rules which ignore non relevant property in the calculation of the rate of charge on a 10 year anniversary will apply to all charges arising on or after the date of Royal Assent regardless of when the trust was created.

Details of the clause and schedule

Clause 11

3. Clause 11introduces Schedule which makes amendments in respect of inheritance tax.

Schedule 1

4. Paragraph 1 provides for the Inheritance Tax Act (IHTA) 1984 to be amended in accordance with Schedule 1

5. Paragraph 2 inserts new sections 62A, 62B and 62C into IHTA 1984. They define “same-day addition”, “same day additions: exceptions” and “protected settlements” for the purposes of Chapter 3 of Part 3 to IHTA 1984.

6. Subsection 62A(1) sets out the conditions under which there is a same day addition in relation to a settlement.

7. Subsection 62A (2) defines the value of a same day addition which is the increase in value in settlement B.

8. Subsection 62A(3) defines the relevant period for the purpose of a same day addition as the period beginning with the commencement of settlement A or B as appropriate and ending immediately after the transfer of value as defined in subsection (1)(a) or (b).

9. Subsection 62A(4) provides that a transfer of value on creation of a settlement can be a same day addition but not if settlements A and B are related settlements (settlements created on the same day).

10. Subsection 62A(5) makes it clear that there can be a same day addition where there is an increase in the value of property comprised in a settlement without an increase in the amount of the property.

11. Subsection 62B(1) provides that there will not be a same day addition if certain conditions are met. Those conditions include:

    - property in either settlement A or B being held for charitable purposes;
    - either or each of settlement A and settlement B being a protected settlement (see paragraph 11 below);
    - the transfer of value being in connection with payment of premiums of life insurance due at regular intervals of one year or less throughout the contract term.

12. Subsections 62B(2) to 62B(4) provide that where the value of an addition is £5000 or less there will not be a same day addition. The provision is restricted to transfers of value of £5000 or less made during the settlor's lifetime. It also contains an anti-fragmentation rule to prevent individuals avoiding the same day addition rules by transferring amounts in excess of £5000 to settlement A in multiples of £5000.

13. Subsections 62C(1) to 62C(4) provide an exclusion from the same day addition rules for settlements created before 10 December 2014 where:

    - no additions have been made by the settlor after that date; or
    - the only addition has been made under a will executed before the 10 December 2014 where the settlor dies before 6 April 2017.

14. Paragraph 3 amends section 66 of IHTA 1984, which provides for the rate of the ten-yearly charge. The amendment provides that the value of the property held on trust that is taken into account when determining the ten-yearly charge is to include:

    - the value of any same day addition; and
    - the initial value of property in other trusts (other than protected settlements and related settlements) that have increased in value on the same day.

15. The amendment also removes the requirement to take into account the value of trust property that has never become relevant property.

16. Paragraph 4 amends section 68 of IHTA 1984, which provides for the rate of tax when property leaves a trust before the first ten-year anniversary. The amendment provides for the inclusion of same day additions and the exclusion of property that has never become relevant property for the purpose of calculating this charge.

17. Paragraph 5 amends section 69 of IHTA 1984, which provides for the rate of tax when property leaves a trust between ten-year anniversaries. The amendment provides for the inclusion of same day additions and the exclusion of property that has never become relevant property for the purpose of calculating this charge.

18. Paragraph 6 amends section 71F of IHTA 1984, which provides for the rate of tax on property leaving 18/25 Trusts under section 71E of IHTA 1984. The amendment provides that only the value of property in a related settlement which was property to which section 71D (Age 18 - 25 trusts) applied when the settlement commenced is aggregated.

19. Paragraph 7 contains commencement provisions and provides that the amendments will take effect in relation to tax charges arising on or after the date on which Royal Assent to Finance (No.2) Bill 2015.

Background note

20. The value of property held in most forms of trust is subject to IHT at 6% every ten years on the amount above the nil rate band (currently £325,000); and a proportionate "exit" charge when the value of the property leaves the trust between ten-year anniversaries.

21. Where more than one trust is created on the same day by the same person, they are "related settlements" and the value settled on that day is aggregated when determining the rate at which tax is charged. The policy will reform the inheritance tax treatment of relevant property trusts and make the tax system fairer by removing the advantage that enables individuals to avoid IHT through the use of multiple trusts.

22. This clause and Schedule is related to three others in this bill which make changes to the relevant property trust legislation. The other clauses are: 12 -Exemption from ten-yearly charge for heritage property, 13- Settlements with initial interest in possession and 14 - Distributions etc from property settled by will.

Clause 12:Exemption from ten-yearly charge for heritage property

Summary

1. This clause amends the inheritance tax (IHT) legislation relating to claims for conditional exemption from IHT for heritage property. It amends the current requirement that a claim must be made and the property designated as heritage property before the approaching ten-year anniversary, and replace it with one which provides that trustees may make a claim for exemption within 2 years of the ten-yearly charge arising. The amendments have effect for those occasions on which the ten yearly charge arises on or after the date of Royal Assent to Finance (No.2) Bill 2015.

Details of the clause

2. Subsection (1) amends section 79 of the Inheritance Tax Act (IHTA) 1984. The effect of this change will be to change when a trustee may make a claim for exemption from the ten yearly charge. A claim may be made within two years of the ten year charge arising or at such later date as the Board allows.

3. Subsection (2) amends subsection 79(3) IHTA 1984 to provide that a claim for exemption from the ten-yearly charge may be made within 2 years of the date of the ten-year anniversary of the settlement. Subsection (2) also provides that HMRC may allow a later date for making the claim.

4. Subsection (3) inserts a new subsection 79(3A) IHTA 1984 which provides the circumstances in which a conditionally exempt transfer of property would become a chargeable event with respect to that property.

5. Subsections (4) to (8) make consequential amendments to sections 79, 207,233, 237 and Schedule 4 IHTA 1984 to reflect the change to the period within which a claim for exemption may be made and to replace references to subsection 79(3) with references to subsection 79(3A).

Background note

6. This amendment resolves an anomaly in IHTA 1984. In order to preserve and protect national heritage the government introduced the Conditional Exemption Tax Incentive Scheme. Buildings, land, works of art and other objects which qualify under the scheme are exempt from Inheritance Tax and Capital Gains Tax, providing that certain conditions are met. While relevant property is subject to a charge to tax under section 64 IHTA on each tenth anniversary of the date of creation of the settlement concerned, national heritage property may be exempted from this charge.

7. The current IHT legislation requires trustees to make a claim and obtain a heritage property designation before the ten-yearly charge arises. This is a departure from the general regime for conditional exemption and can cause difficulties for trustees and parties engaged in designating heritage status. The change will put trustees dealing with a claim for exemption from a ten-yearly charge on the same footing as trustees and individuals subject to other IHT charges.

8. This clause is part of a package of measures that make changes to the relevant property trust legislation. The other clauses are: 11 - Calculation of rate of inheritance tax on settled property, 13- Settlements with Initial interest in possession and 14 - Distributions etc from property settled by will.

Clause 13: Settlements with initial interest in possession

Summary

1. This clause amends the inheritance tax (IHT) legislation relating to settlements created by individuals before March 2006 giving an interest in possession to themselves or to their spouse, widow, civil partner or surviving civil partner.

2. Where "interest in possession" appears in s80 of IHTA, it is replaced with "a qualifying interest in possession" which means that where one party to a couple succeeds to a life interest to which their spouse or civil partner was previously entitled to during the latter's lifetime, section 80 will apply at that time (because neither spouse would then have a qualifying interest in possession). This means that the settled property would then be treated as being comprised in a settlement and as a result subject to the relevant property charges. This measure fixes an unintended effect of the legislation that allowed a (non-qualifying) interest in possession to escape all IHT charges, because the settled property was neither part of the beneficiary's estate, nor was it comprised in a relevant property trust.

Details of the clause

3. Subsection (1) provides for "an interest in possession" to be substituted by "a qualifying interest in possession".

4. Subsection (2) provides for the amendments to come into force on the day after the date of Royal Assent to Finance (No.2) Bill 2015, subject to the saving provisions in subsections (3) to (7).

5. Subsections (3) to (6) set out the conditions for the saving provision to apply. The effect of the saving provisions is that the commencement of the relevant property trust is aligned with the ending of the interest in possession, rather than commencing on the change being made to the legislation.

6. Subsection 7 defines the "relevant period" and confirms that references to spouse or civil partner of a settlor include references to the widow or widower or surviving civil partners of the settlor.

Background note

7. Changes made in 2006 created an unintended effect in the legislation where an individual has a pre-March 06 entitlement to income (interest in possession) which has continued after March 2006 and their spouse then takes an interest in possession, whilst they are still alive, after that date. The amendment will mean that settled property is relevant property once the individual's spouse takes their life interest.

8. This clause is related to three others in this bill which make changes to the relevant property trust legislation. The other clauses are 11- Calculation of rate of inheritance tax on settled property, 12- Exemption from ten-yearly charge for heritage property, and 14- Distributions etc from property settled by will.

Clause 14: Distributions etc from property settled by will

Summary

1. This clause amends the inheritance tax (IHT) legislation relating to property that is settled by will. It provides that where property is left in trust in which no interest in possession subsists and an appointment of that property is made within 3 months of the date of death, that appointment can be read back into the will, The effect of this is that where an appointment is made to the spouse or civil partner of the testator, exemption from IHT can apply. The amendment applies to cases where the testator's death occurs on or after 10 December 2014.

Details of the clause

2. Subsection (1) amends section 144 of the Inheritance Tax Act (IHTA) 1984 to insert a reference to section 65(4) IHTA 1984. The effect of this change will be that where a trust is wound up in whole or part within 3 months of the date of death that appointment of property can be read back into the will. Where the appointment is made in favour of the deceased's spouse or civil partner, exemption from IHT, under section 18 IHTA (transfers between spouses or civil partners), can apply.

3. Subsection (2) provides that the amendment applies to cases where the testator's death occurs on or after 10 December 2014.

Background note

4. This amendment resolves an anomaly in IHTA 1984 and ensures that where an appointment is made within three months of the date of death in favour of the deceased's surviving spouse or civil partner, it can be read back into the will and exemption under section 18 can be given.

5. This clause is related to three others in this bill which make changes to the relevant property trust legislation. The other clauses are 11- Calculation of rate of inheritance tax on settled property, 12 - Exemption from ten-yearly charge for heritage property and 13 - Settlements with initial interest in possession.

Clause 15: Inheritance tax: interest

Summary

1. This clauseamends the legislation relating to late payment interest provisions for inheritance tax (IHT). It extends the regulation making powers to allow the provisions relating to financial institutions and companies to be updated. It also clarifies the period from which interest is charged. These amendments complement other legislative changes which will be made in 2015 and 2016 to support the digitisation of IHT. They will ensure the relevant provisions will apply correctly when the new online service starts to become available later in 2015.

Details of the clause

2. Subsection (1) amends section 107 of the Finance Act 1986 to provide that the power to make regulations is extended to paragraph 7(7) and (8) of Schedule 53 to the Finance Act 2009 (FA 2009). Subsection (2)(a) amends paragraph 7(7) of Schedule 53 FA 2009 to include a reference to a description set out in regulations made under section 107(5) of the Finance Act 1986. Taken together, these changes will enable regulations to be made so that the late payment interest provisions in Schedule 53 FA 2009 relating to inheritance tax instalment payments can be updated.

3. Subsection (2)(b) corrects the period from which late payment interest is charged in paragraph 9 of Schedule 53 FA 2009 by referring to the end of the month in which the testator died. The amendment aligns the date with the current provisions in section 234(4) of the Inheritance Taxes Act 1984.

Background note

4. At Autumn Statement 2013 the government announced that, as part of the government's digital strategy to improve the process for customers and the administration of the tax, an online service will start to be provided in 2015 for the submission of IHT returns. To support the introduction of the new online service, legislative changes by regulations and Appointed Day Orders will be made in 2015 and 2016 to align the treatment of interest and penalties for inheritance tax purposes with other taxes. The amendments made by this clause are part of those changes and will ensure that the relevant provisions relating to late payment interest are updated and apply consistently when the new online service starts to become available later in 2015.

Clause 16and Schedule 2: Bank levy rates for 2016 to 2021

Summary

1. This clause and schedule decrease the rates at which the bank levy is charged from 1 January 2016 onwards.

Details of the Schedule

2. Paragraphs 1 to 6 set the bank levy rate for 2016 to 2021.
3. Sub-paragraph (1) of paragraphs 1 to 6 amends Schedule 19 to Finance Act (FA) 2011 to decrease the bank levy rate from 1 January of the year in question.
4. Sub-paragraph (2) of paragraphs 1 to 6 introduce into the table of rates at paragraph 7(2) of Schedule 19 and the new bank levy rates from the period 1 January of the year in question.
5. Sub-paragraph (3) of paragraphs 1 to 6 provide that the new rate changes made by subparagraphs (1) to (2) are treated as having come into force on 1 January of the year in question.
6. Sub-paragraph 1 (4) to (9) provide transitional provisions for collecting the additional amounts of bank levy that arise from the reduction of the rates from 1 January 2016. Where an instalment payment in respect of a chargeable period ending on or after 1 January 2016 is due before 1 January 2016, the first instalment for the same chargeable period due after 1 January 2016 is decreased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-1 January 2016 instalment and what would have been due if the post 1 January 2015 rates had been applied. There are no transitional provisions if there is no instalment for the same chargeable period due after 1 January 2016. In this case standard corporation tax repayment provisions would apply.
7. Sub-paragraph 1 (10) provides definitions of terms used in this paragraph.

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. The bank levy is treated as if it is corporation tax, and the relevant entity is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy. In the case of a banking group, it is the “the responsible member” (see paragraph 54, Schedule 19 to FA 2011) who has these responsibilities.
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).

11. Banks are now recovering from the financial crisis and this reduction in the bank levy is being introduced alongside a new banking companies surcharge (see clause 17 and Schedule 3) to amend the way that banks contribute to public finances based on their current year profitability levels.

Clause 17 and Schedule 3: Banking companies: surcharge

Summary

1. This clause and Schedule will introduce a surcharge of 8% on the taxable profits of banking companies arising on or after 1 January 2016. Taxable profits will be calculated before the offset of losses that arise before the commencement date or from non-banking companies, and before the surrender of group relief from non-banking companies. An annual surcharge allowance of £25,000,000 will be available to groups and individual banking companies which will reduce the profits liable to the surcharge.

Details of the clause and schedule

Part 1: Main Provisions

2. Paragraph 1 introduces new Chapter 4 to Part 7A of Corporation Tax Act (CTA) 2010.

Chapter 4 - Surcharge on banking companies

3. New section 269D gives an overview of the chapter.

4. New subsection 269DA(1) introduces a surcharge equal to 8% of a banking company's surcharge profits so far as they exceed its surcharge allowance for an accounting period. The surcharge is treated as if it were an amount of corporation tax. A banking company is defined at sections 269B to 269BC of Part 7A of CTA 2010.

5. New subsection 269DA(2) defines surcharge profits for an accounting period as the sum of TTP + NBGR + NBPLR. TTP is the taxable total profits of the banking company. NBGR is the amount of group relief surrendered to the banking company from a surrendering company that is not a banking company. NBPLR is the amount of any non-banking or pre-2016 loss relief that has been deducted in arriving at the taxable total profits.

6. New subsection 269DA(3) defines surcharge allowance by reference to section 269DD where a banking company is a member of a group that has two or more banking companies.

7. New subsection 269DA(4) defines surcharge allowance by reference to section 269DI where a banking company is not in a group (or is not in a group containing other banking companies).

8. New section 269DB defines non-banking group relief as group relief from a surrendering company that is not a banking company or an EEA banking company. The Treasury can make regulations specifying whether a company is an EEA banking company.

9. New subsections 269DC(1) to (13) define non-banking or pre-2016 loss relief as being the aggregate of any amounts that are deducted in determining the taxable total profits in respect of losses arising when a company was not a banking company and losses arising prior to 1 January 2016.

10. The losses referred to in new subsections s269DC(1) to (3) comprise the following carried-forward amounts:

- trading losses
- non-trading deficits
- management expenses
- UK property losses
- overseas property losses
- excess capital allowances on special leasing
- miscellaneous losses
- capital losses
- any used amount in respect of non-trading losses on intangible fixed assets.

11. New subsections 269DC(14) to (20) define a non-banking or pre-2016 non-trading loss on intangible fixed assets and provide for the calculation of the used amount in prescribed circumstances.

12. New subsections 269DD(1) to (5) provide for a £25,000,000 surcharge allowance for groups containing two or more banking companies. Each banking company must specify its surcharge allowance in its company tax return for the period. A banking company can be allocated surcharge allowance up to a limit of £25,000,000, which includes any allowance from a time when it was a member of a group with no other banking companies. The allowance is proportionately reduced where the accounting period is less than 12 months.

13. New subsections 269DD(6) and (7) require the surcharge allowance specified in a banking company's company tax return and the surcharge allowance set against controlled foreign company (CFC) apportioned profits to not exceed the surcharge allowance available to that company. Where it does, the provisions in section 269DJ apply.

14. New section 269DE provides for a group surcharge allowance of £25,000,000 for groups containing two or more banking companies, who will be required to nominate one banking company to deal with the surcharge allowance on behalf of the group. The group surcharge allowance is given by reference to the accounting period of the nominated company, and is proportionately reduced where the nomination applies for only part of the period or if the period is less than 12 months. The nomination must state the date on which it is to take effect (this can be earlier than the date of nomination) and be signed by the appropriate person on behalf of each banking company. The nomination ceases to have effect in prescribed circumstances and the Commissioners may by regulations make further provisions about a nomination.

15. New section 269DF provides for the nominated company to submit a group allowance allocation statement for each accounting period. If the nominated company changes before the statement is submitted then a new nominated company must submit the statement. The statement must be received by HM Revenue & Customs (HMRC) within 12 months of the end of the accounting period of the nominated company or at such later time if an officer of HMRC allows. The statement must comply with the requirements of section 269DH.

16. New section 269DG makes provision for revised statements to be made in prescribed circumstances.

17. New section 269DH sets out the information to be included in the statement and the limits on the amount of allowance that can be allocated to each banking company. It also makes provision for revised statements and time limits. If a company fails to comply an officer of HMRC may amend a statement as he thinks fit and send a copy of the notice to each banking company. The Commissioners for HMRC may by regulations make further provision about a group allowance allocation statement.

18. New subsections 269DI(1) to (4) set the surcharge allowance at £25,000,000 for banking companies that are not in a group (or are not in a group containing other banking companies). The allowance is proportionally reduced where the accounting period is less than 12 months.

19. New subsections 269DI(5) and (6) require the surcharge allowance specified in a banking company's company tax return and the surcharge allowance set against CFC apportioned profits to not exceed £25,000,000. Where it does, the provisions in section 269DJ apply.

20. New section 269DJ requires the company tax return to be amended where an excessive claim to surcharge allowance has been made. Failing that, an officer of HMRC may make an assessment to tax for the amount that ought to have been charged. This is in addition to the power to make a discovery assessment.

21. New subsections 269DK(1) to (4) provide that enactments applying generally to corporation tax shall apply to the surcharge. But this is subject to subsection (5).

22. New subsection 269DK(5) provides that references to corporation tax in the Corporation Tax (Treatment of Unrelieved Surplus Advances Corporation Tax) Regulations 1999 does not include the surcharge and references to profits charged does not include surcharge profits.

23. New subsections 269DK(6) to (9) restrict credits for foreign tax arising to a non-banking company or arising before 1 January 2016 from being set against the surcharge. Any amounts of eligible foreign tax are to be set off firstly against the corporation tax payable and any credit then remaining is to be set off against the surcharge.

24. New subsection 269DK(10) defines the Taxes Acts.

25. New section 269DL requires a banking company or the responsible company under relevant group payment arrangements to inform an officer HMRC, on or before the date of a payment, of amounts of surcharge included in the payment. This requirement is to be treated as an information notice for the purposes of Part 7 of Schedule 36 to Finance Act 2008.

26. New subsections 269DM(1) and (2) define arrangements that seek to avoid or reduce the surcharge. These are:

- the transfer in substance of all or a significant part of the surcharge profits of a banking company to a non-banking company, or
- the transfer of a loss or deductible amount to a banking company from a non-banking company which results in the surcharge profits being reduced or eliminated.

The main purpose or one of the main purposes of the arrangements must be to avoid or reduce the surcharge.

27. New subsection 269DM(3) counteracts the arrangements as if they had not taken place.
28. New subsection 269DM(4) provides definitions for various terms used in the section.
29. New section 269DN defines various terms used in the Chapter.

Part 2: Consequential amendments

30. Paragraph 2 inserts a provision into section 59E of Taxes Management Act (TMA) 1970 so that the surcharge is due and payable as if it were corporation tax.
31. Paragraph 3 inserts provisions into Schedule 18 to Finance Act 1998 so that returns are made of the surcharge as if it were corporation tax.
32. Paragraphs 4 to 6 integrate Chapter 4 with the rest of CTA 2010.
33. Paragraphs 7 to 10 amend Part 9A of Taxation (International and Other Provisions) Act (TIOPA) 2010 by inserting new sections 371BI and 371UBA.
34. New section 371BI increases the appropriate rate at which corporation tax should be charged on a CFC's chargeable profits to include the surcharge rate, and this rate applies after any surcharge allowance which the chargeable company has specified in its company tax return has been taken into account. This section also contains provisions similar to section 269DM CTA 2010 to counter arrangements that seek to avoid or reduce the surcharge.
35. New section 371UBA contains provisions similar to section 269DL CTA 2010, and requires the chargeable company or the responsible company under relevant group payment arrangements to inform an officer of HMRC, on or before the date of a payment, of amounts of surcharge included in the payment.
36. Paragraphs 11 to 13 amend Part 3 of Finance Act 2015 so that the rate specified in relation to diverted profits is increased by the surcharge to 33%. Definitions of adjusted and notional adjusted ring fence profits and effective tax mismatch outcome are amended to include banking surcharge profits.

Part 3: Commencement

37. Subparagraph 14(1) explains that subparagraphs 1 and 4 to 6 have effect for accounting periods beginning on or after the commencement date.

38. Subparagraphs 14(2) to (4) provide that where an accounting period straddles the commencement date, this is to be treated as two separate accounting periods. Profits and losses and any credit for foreign tax are to be allocated to each period based on a time basis or if that method would produce a result that is unjust or unreasonable, a just and reasonable basis. The surcharge is chargeable on the banking company for the separate accounting period beginning with the commencement date.

39. Subparagraphs 14(5) to (10) make provisions in respect of instalment payments. Where the straddling period results in instalment payments becoming due prior to the commencement date, these are to be treated as falling due on the first instalment date falling after the commencement date.

40. Subparagraph 14(11) requires a nominated company to split it's accounting period into two periods of account where it's accounting period straddles 1 January 2016.

41. Subparagraph 14(12) provides for section 269DM CTA 2010 to apply to arrangements entered into before or after this Act is passed.

42. Subparagraph 14(13) defines surcharge for the purposes of this paragraph.

43. Paragraph 15 explains that the amendment to the reporting requirements of Schedule 18 of Finance Act 1998 has effect for accounting periods ending on or after the commencement date.

44. Paragraph 16 applies in relation to CFCs and contains provisions similar to paragraph 14.

45. Paragraph 17 sets out that the amendments to the diverted profits tax apply for accounting periods beginning on or after the commencement date. It also sets out that any straddling period is to be treated as two separate periods with amounts being allocated on a just and reasonable basis.

46. Paragraph 18 provides that the commencement date is 1 January 2016 and sets out further interpretation on instalment payments.

Background note

47. This new chapter was announced for the first time at Summer Budget 2015.

48. The chapter itself and the consequential amendments apply from 1 January 2016.

49. Banks are now recovering from the financial crisis and this new bank corporation tax surcharge is being introduced alongside reductions in the bank levy rates. Together these measures will amend the way that banks contribute to public finances as their contributions will focus to a greater extent on their current year profitability levels.

50. This Chapter will introduce an 8% surcharge on banks' profits. Profits cannot be reduced by non-banking or pre-2016 carried-forward losses, or the surrender of group relief from non-banking companies. Individual banking companies and groups containing banking companies will be entitled to a maximum £25,000,000 annual allowance against surcharge profits which will reduce the profits liable to the surcharge.

Clause18: Banking companies: expenses relating to compensation

Summary

1. This clause denies corporation tax relief for expenses on compensation payments made by banks to customers in respect of certain defined issues. The legislation will have effect for expenses incurred on or after 8 July 2015.

Details of the clause

2. Paragraph 1 inserts new sections 133A-M into Corporation Tax Act (CTA) 2009.

Section 133A

3. New section 133A provides that no deduction may be made by a company in calculating corporation tax profits for expenses which relate to certain types of compensation.

4. Subsection (1) contains the main operative provision, which ensures that there is no deduction available for relevant compensation expenses within the meaning of subsection (3), where the disclosure condition in new section 133C is met.

5. Subsection (2) provides that subsection (1) does not apply to administrative expenses, expenses in respect of the failure of a computer or electronic system, or expenses which arise from loss or damage wholly or mainly attributable to a third party. These expenses are defined in new section 133D.

6. Subsection (3) ensures that a deduction is denied both where the company making or liable to the payment is the company which has relevant conduct, and where a company associated with that company is making or liable to the payment, subject to subsection (4). It does not matter whether the payment is made or to be made directly or indirectly to the customer.

7. Subsection (4) prevents a second disallowance where an associated company incurs expenses but there is an arm's length arrangement, such as a recharge of the expenses, in place. However, expenses incurred by the company with the relevant conduct (that is a party to the arm's length arrangement) will continue to be relevant compensation for the purposes of the provision.

8. Subsection (5) provides that "qualifying company" means a company associated at the time that the expenses in question are recognised for accounting purposes.

9. Subsection (6) provides that "relevant conduct" is any conduct which takes place at a time after 29 April 1988 when the company is a banking company within the meaning of new section 133E.

10. Subsection (7) confirms that the expenses are disallowed whether the compensation is or is to be made by the company or by another person.

11. Subsection (8) sets out further definitions.

Section 133B

12. New section 133B provides that companies with expenses disallowed under section 133A must also take into account a notional receipt in the same period as that in which the expenses are disallowed. This provision ensures that a charge equivalent to the administrative and other costs associated with making the compensation is taken into account in calculating taxable profits.

13. Subsection (1) sets out the application of the section.

14. Subsection (2) confirms that the amount of the receipt to be taken into account is 10% of the expenses disallowed by new section 133A. This amount is to be brought into account as a trade receipt.

15. Subsections (3) and (4) provide further interpretative provisions.

Section 133C

16. New section 133C defines the disclosure condition for the purposes of new section 133A.

17. Subsection (1) explains that the disclosure condition is met where a company has provided for, disclosed, or referred to the compensation expenses in question, or to a class of expenses to which the compensation expenses belong, within a relevant document, subject to certain conditions. These would include compensation expenses relating to issues such as the mis-selling of payment protection insurance.

18. Subsection (2) provides that the indication in subsection (1) need not be explicit, providing that it is relatively clear.

19. Subsection (3) defines "a relevant document", which includes "relevant accounts", defined at subsection (4), "a relevant statutory report", defined at subsection (5), or "a relevant listing disclosure", defined at subsection (6).

20. Subsection (7) explains that the disclosure may have been made in the current or a previous period.

21. Subsection (8) provides further definitions.

Section 133D

22. New section 133D explains which expenses are excluded from being disallowed under new section 133A. These types of expenses are not specific to the banking sector and are intended to be excluded from the scope of the measure.

23. Subsection (1) provides that the expenses which are to be excluded are expenses in respect of administrative errors, failures of computer or electronic systems, or loss or damage caused by a person not connected with the bank and acting independently of the bank.

24. Subsections (2) and (3) explain the meaning of "unconnected third party" for the purposes of new section 133D. The connection between parties is to be determined at the point at which the actions giving rise to the compensation arose.

25. Subsection (4) defines "the relevant actions" for the purposes of new section 133D.

26. Subsection (5) imports the definition of "connected persons" from section 1122 CTA 2010, as modified by subsection (6).

Section 133E

27. New section 133E defines "banking company" for the purposes of new section 133B and new section 133C. The definition applies to all companies wherever located.

28. Subsection (1) provides that certain conditions further specified in this section must be met for a company to be a banking company. Conditions A, C and D are applied to all banks. Condition B is applied by subsection (3) to UK companies and permanent establishments, and by subsection (6) to non-UK companies, which are required to hypothecate their non-UK activities into the UK for this purpose.

29. Subsection (2) provides Condition A, which is that the company in question is not a banking company if it is an excluded company within the meaning of new section 133F.

30. Subsection (3) provides Condition B as it applies to UK companies and permanent establishments, by reference to the UK regulatory framework.

31. Subsection (4) provides Condition C, which is that the company's activities must either include deposit-taking, or must wholly or mainly include one of the other relevant regulated activities set out in new section 133G(1).

32. Subsection (5) provides Condition D, which is that the entity must carry on its relevant regulated activity or activities wholly or mainly in the course of trade.

33. Subsection (6) provides condition B as it applies to non-UK companies. Condition B is deemed to be met for non-UK companies which would meet certain conditions were they carrying on their activities in the UK.

34. Subsections (7) and (8) contain further definitional and interpretative provisions.

Section 133F

35. New section 133F lists the circumstances where a company is to be treated as an "excluded company" for the purpose of new section 133E. This list excludes specific businesses which are not intended to be within the scope of the definition of a bank.

36. Subsection (1) explains the section.

37. Subsection (2) provides a list of companies which are excluded companies, including insurance companies, friendly societies and credit unions.

38. Subsections (3) to (7) set out further definitional and interpretative provisions including for how the definitions are to be interpreted at different times.

Section 133G

39. New section 133G defines "relevant regulated activity" for the purposes of new section 133E and new section 133F.

40. Subsection (1) sets out the scope of the section by reference to specified regulated activities.

41. Subsection (2) explains how to apply the definition to periods before 1 December 2001.

Section 133H

42. New section 133H provides the definition of investment bank for the purposes of new section 133E. This definition covers specific types of entity which are regulated by the Financial Conduct Authority or the Prudential Regulation Authority, or which were previously regulated by the Financial Services Authority.

43. Subsections (2) to (4) modify the definition for different time periods.

44. Subsection (5) explains terms used within subsections (2) to (4), including as they are to be applied at different times.

45. Subsection (6) extends the definition to companies carrying on activities in the UK but with a registered office or head office overseas.

Section 133I

46. New section 133I defines "insurance company" for the purposes of new section 133F.

47. Subsection (1) sets out the general definition by reference to the Financial Services and Markets Act 2000.

48. Subsections (2) and (3) explain how the definition is to be applied at different times.

Section 133J

49. New section 133J defines "customer" for the purposes of determining whether compensation is paid or payable to a customer of a given company.

50. Subsection (1) provides the general definition of a customer as a person who uses, has used or may have contemplated using, or who has relevant rights or interests in relation to, a financial service.

51. Subsection (2) defines "financial service".

52. Subsection (3) provides for situations where a person may have rights or interests in relation to a service. This would include the case of intermediaries.

53. Subsections (4) to (6) contain further definitional and interpretative provisions relating to the definition of customer.

Section 133K

54. New section 133K explains the scope of the meaning of "compensation" and related expressions.

55. Subsection (1) contains the relevant interpretative provisions for compensation paid or payable "in respect of" relevant conduct, for the purposes of new section 133A. This would include voluntary, discretionary or ex gratia payments in lieu or expectation of compensation.

56. Subsection (2) contains the relevant interpretative provisions for "compensation" in new section 133B and new section 133C. These include that interest and other forms of redress are included within the meaning of compensation. Compensation includes any amount relating to expenses incurred by a customer in pursuing a claim.

57. Subsection (3) contains further definitional and interpretative provision.

Section 133L

58. New section 133L explains the meaning of associated companies for the purposes of new section 133A.

59. Subsection (1) provides that a company is associated with another company at a given time if any of five conditions is met.

60. Subsections (2) - (6) set out the conditions.

61. Subsections (7) and (8) set out further definitional provisions for the purposes of new section 133L.

62. Subsection (9) applies sections 466 - 471 CTA 2009 to new section 133L.

63. Subsection (10) imports the meaning of "major interest" from section 473 CTA 2009.

Section 133M

64. New section 133M sets out how the legislation applies to firms which have corporate partners.

65. Subsection (1) provides that the section applies for the purposes of calculating the firm's profits in line with section 1259, where the firm has a corporate partner.

66. Subsection (2) provides that new section 133A disallows the expenses of a firm for these purposes in the same way as it does for a company.

67. Subsection (3) provides that s133A is, for the purposes of the subsection (2), to be read subject to subsections (4) to (6).

68. Subsection (4) disregards new section 133A(3)(b).

69. Subsection (5) provides that firms with a corporate partner have relevant conduct where the corporate partner is a banking company and the firm is not excluded within the meaning of new section 133F.

70. Subsection (6) provides that for firms with a corporate partner, the disclosure condition may be met either in respect of documents of the firm or of the corporate partner.

71. Subsection (7) ensures that the provisions of new section 133B, which give the percentage uplift to reflect administrative and other handling costs of compensation, apply to firms with a corporate partner as they do to companies.

Section 133N

72. New section 133N provides power to make changes to the legislation where these are required as a consequence of changes to the regulatory legislation, guidance or requirements or to make changes to the scope of the provisions.

73. Subsection (1) explains the scope of consequential changes which may be made under this power.

74. Subsection (2) explains the scope of other changes which may be made under this power.

75. Subsection (3) clarifies that regulations under the section may include transitional provision.

76. Subsections (4) and (5) explain the Parliamentary procedures applicable to regulations made under the relevant subsections. Consequential changes and extensions of the scope of excluded expenses in new section 133D are subject to negative procedure, with other changes subject to affirmative procedure.

77. Subsection (6) defines "the FCA Handbook" and "the PRA Handbook".

78. Paragraph 2 provides the commencement provision.

79. Paragraph 3 explains that for companies, the commencement date is 8 July 2015, and for firms with a corporate partner, the commencement date is 15 July 2015.

80. Paragraph 4 provides that paragraph 5 applies to companies with accounting periods straddling the commencement date.

81. Paragraph 5 provides that apportionment is to be made between the pre- and post-commencement periods on a just and reasonable basis.

Background note

82. This measure was announced at Budget 2015. These changes have been introduced to restrict the tax deductibility of banks' compensation expenses in respect of certain conduct issues

Clause 19: Banks established under the Savings Bank (Scotland) Act 1819: loss allowance

Summary

1. This clause makes sure that savings banks established under the Savings Bank (Scotland) Act 1819 are treated in the same way as building societies for the purposes of the restriction applying to certain deductions made by banking companies. The carried-forward loss allowance is therefore extended to savings banks as it currently applies to building societies. The clause has effect for the purpose of calculating the taxable profits of companies for accounting periods beginning on or after 1 April 2015.

Details of the clause

2. Clause 19 expands the definition of 'building society' in section 269CN (definitions), which applies for the purposes of Chapter 3 of Part 7A of CTA 2010 (banking companies) to include a bank established under the Savings Bank (Scotland) Act 1819.

Background note

3. The government believes that savings banks established under the Savings Bank (Scotland) Act 1819 are similar to building societies; the government therefore believes it is right for these savings banks to benefit from the carried-forward loss allowance. Such savings banks are similar to building societies in that they do not have shareholders, cannot issue capital instruments, and are not profit-maximising.

Clause 20: Definitions relating to banks

Summary

1. This clause amends a cross-reference and the definition of banking company used in Schedule 19, Finance Act (FA) 2011 (bank levy) and Part 7A Corporation Taxes Act (CTA) 2010 (banking companies) to maintain alignment with updated definitions used by the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA). The amendments in relation to bank levy have effect from 1 January 2014 to align with updating of the regulatory terms by the PRA and FCA.

Details of the clause

2. Subsection 1 introduces the changes to Schedule 19, FA 2011 (bank levy).
3. Subsections 2 to 7 update various regulatory terms used within paragraphs 12, 70, 72, 73, 78 and 80 of Schedule 19 FA 2011 and correct a cross-reference to a defined term in paragraph 79.
4. Subsection 8 provides that the regulatory terms are updated with effect from 1 January 2014.
5. Subsection 9 introduces the changes to Part 7A CTA 2010 which have effect from the introduction of that legislation.
6. Subsections 10 to 12 update various regulatory terms used within sections 269B, 269BA and 269BC CTA 2010.

Background note

7. These changes ensure that the definition of a bank is updated to reflect the current regulatory terms. This measure is a technical change to the wording of the legislation to provide clarity and certainty. There will be no change to the scope or effect of the legislation and the population of banks that fall within the definition of a bank for Schedule 19, FA 2011 and Part 7A CTA 2010 is unchanged. The amendments in relation to bank levy have effect from 1 January 2014 to align with updating of the regulatory terms by the PRA and FCA.

Clause 21: Pensions: special lump sum death benefits charge

Summary

1. This clause removes the 45% tax charge on certain lump sum death benefits paid from a registered pension scheme directly to an individual. Tax will be payable at the recipient's marginal rate of income tax instead. The change has effect for lump sum death benefits paid on or after 6 April 2016.

Details of the clause

2. Subsection (2) introduces the concept of a non-qualifying person to section 206 of the Finance Act (FA) 2004 so that the existing 45% special lump sum death benefits charge only applies where a taxable lump sum death benefit is paid to a non-qualifying person.

3. Subsection (3) aligns the tax treatment of the defined benefits lump sum death benefit with certain other lump sum death benefits. Where those lump sums are not paid out within two years of the scheme administrator becoming aware that the pension holder has died, they become subject to the 45% tax charge. Before this change the lump sum would have been an unauthorised payment and subject to tax charges of up to 70% of the lump sum.

4. Subsection (4) allows lump sum death benefits to be subject to income tax where they are paid to a trust before being paid to an individual, in line with the provisions of new subsection (8) of section 206.

5. Subsection (5) inserts new subsections (8) to (10) to section 206.

6. New subsection (8) allows a taxable lump sum death benefit initially paid to a trust to be treated as the income of the individual who finally receives it. That individual will be taxed at their marginal rate on the amount that the lump sum death benefit would have been before the deduction of tax. However they will be able to claim the 45% special lump sum death benefits charge paid on the lump sum death benefit as a deduction against their own income tax.

7. New subsection (9) defines a "non-qualifying person" as a person who is not an individual or is an individual in a representative capacity. The exception is someone acting as a bare trustee.

8. New subsection (10) defines "bare trustee" for these purposes.

9. Subsection (6) provides the power to make regulations so that the individual who receives the taxable lump sum death benefit via a trust can receive the information they need to pay the right amount of income tax on the lump sum death benefit.

10. Subsection (7) prevents the defined benefits lump sum death benefit from being an unauthorised payment because it is paid out more than two years after the scheme administrator becomes aware of the pension holder's death.

11. Subsection (8) makes consequential amendments to Schedule 16 to FA 2011 which had amended the defined benefits lump sum death benefits rules in paragraph 13 of Schedule 29 to FA 2004.

Background note

12. This clause makes the tax system fairer by reducing the tax payable on taxable lump sum death benefits when an individual dies age 75 or above with pension savings in a registered pension scheme.

13. If the individual dies under the age of 75 lump sum death benefits are usually exempt from tax. The exception is where the individual dies under age 75 but the scheme administrator does not pay the lump sum within two years of becoming aware of the individual's death. In that case certain types of lump sum death benefit are taxable.

14. Tax is charged at a flat rate 45% and is payable by the scheme administrator, the person responsible for the tax affairs of the registered pension scheme.

15. This clause imposes the 45% tax charge on the taxable lump sum death benefit only if it is paid to a "non-qualifying person".

16. The effect of this change is that where certain taxable lump sum death benefits are paid to an individual who is also the beneficiary, from 6 April 2016 they will not be taxed at a flat rate 45%. Instead, under clause 22 they will be taxed as pension income and will be subject to the individual's marginal rate of income tax.

17. The final amount of tax payable will be the same for an individual who receives the lump sum death benefit through a trust but they will need to claim a deduction against their own income tax for the 45% tax paid on the lump sum before it was paid to the trust.

Clause 22: Pensions: some lump sum death benefits taxed as pension income

Summary

1. This clause subjects certain lump sum death benefits to tax as pension income where they are paid out of a registered pension scheme directly to an individual. Tax is deducted under PAYE. This clause makes similar provision for equivalent payments made out of foreign pension schemes. This change has effect for lump sum death benefits paid on or after 6 April 2016.

Details of the clause

2. Subsection (2) inserts new subsections (4) and (4ZA) in section 636A of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. New subsection (4) provides that taxable lump sum death benefits paid to a non-qualifying person are subject to the 45% special lump sum death benefits charge in section 206 of Finance Act (FA) 2004. This charge is the liability of the scheme administrator. These lump sums are not subject to any other income tax charge.

4. New subsection (4ZA) provides that taxable lump sum death benefits paid to a qualifying person are taxed on the recipient as pension income under section 579A of ITEPA 2003.

5. Subsection (4) inserts new subsection (8) in section 636A of ITEPA 2003.

6. New subsection (8) uses the same definition for 'non-qualifying person' as set out in section 206 of FA 2004 and defines a 'qualifying person' as an individual who receives a lump sum death benefit and is not a non-qualifying person.

7. Subsection (5) inserts new section 636AA of ITEPA 2003.

8. New subsections (2) to (5) set out certain types of taxable lump sum death benefits where:

    a. The pension holder died having reached age 75; or

    b. The pension holder died under age 75 but the lump sum was not paid out within two years of the scheme administrator becoming aware of the death (this part of the rule does not apply to annuity protection lump sum death benefits and pension protection lump sum death benefits).

9. Subsections (6) and (7) amend section 579CA of ITEPA 2003 (both for years of departure from 2013-14 onwards and for earlier years of departure). Section 579CA lists the relevant withdrawals that are taxable if taken when an individual is resident outside the UK but returns within five tax years of becoming non-resident. These subsections add lump sum death benefits taxable as pension income to the list of relevant withdrawals.

10. Subsection (8) makes sure that where payments that are the equivalent of taxable lump sum death benefits or uncrystallised funds pension lump sums are paid from a relevant non-UK scheme, they will not be subject to PAYE processes so tax is not deducted at source by the scheme manager of the non-UK pension scheme.

11. Subsection (9) amends section 168 of FA 2004 to clarify beyond doubt that the definition of lump sum death benefit extends to a lump sum paid on the death of a dependent, nominee or successor.

12. Subsection (10) adds the tax charge on lump sum death benefits paid directly to an individual to the list of UK tax charges in paragraph 1 of Schedule 34 to FA 2004 that apply when a payment is made from a non-UK pension scheme that has received UK tax relief (a relevant non-UK scheme).

13. Subsection (11) makes consequential amendments to Schedule 16 of FA 2011 which had amended the rules on the exemption for lump sum death benefits in section 636A of ITEPA 2003.

Background note

14. This clause, together with clause 21, makes the tax system fairer by taxing as pension income certain lump sum death benefits individual beneficiaries receive where:

    - The pension holder died having reached age 75; or
    - The pension holder died under the age of 75 but the scheme administrator did not pay the lump sum within two years of being aware of the death.

15. This pension income is subject to PAYE if it is paid from a registered pension scheme. If paid from a foreign pension scheme it is taxed as pension income and the PAYE processes do not apply. Taxing these payments as pension income will mean that some people will pay tax at a lower rate on the lump sum death benefit from 6 April 2016. So that taxable lump sum death benefits remain taxable even when paid to a beneficiary who is temporarily not resident in the UK, they have been added to the list of relevant withdrawals from a registered pension scheme that are taxable when an individual returns to the UK within five years of becoming non-resident.

16. Where the lump sum is paid from a relevant non-UK scheme it will be taxable in the UK if the deceased was resident in the UK at their death or had been resident in the UK in the five tax years before death.

Clause 23: Pensions: annual allowance

Summary

1. This clause and Schedule restrict pensions tax relief for high-income individuals by introducing a tapered annual allowance with effect from 6 April 2016. It also amends the period over which pension savings are measured so that from this date pension savings will always be measured over a tax year. It also introduces transitional rules from 9 July 2015 intended to smooth the aligning of pension savings with the tax year.

Details of the clause and Schedule

2. Clause 23 introduces the Schedule.

3. Schedule 4 amends Part 4 of Finance Act (FA) 2004 which sets out the pensions tax legislation.

Part 1: Alignment of pension input periods with tax years

4. Part 1 aligns pension input periods with the tax year from 6 April 2016. Pension input periods are the period over which an individual's pension savings for an arrangement within a registered pension scheme are valued for testing against their annual allowance.

5. Paragraph 2 amends section 238 of FA 2004, so that the current tax rules on when a pension input period runs from, only apply to pension input periods that commenced before 9 July 2015. Section 238 is also made subject to new section 238ZA.

6. Paragraph 3 inserts new sections 238ZA and 238ZB into FA 2004.

7. New section 238ZA aligns all pension input periods for arrangements set up before 9 July 2015 with the tax year. It sets out that any pension input period open on 8 July 2015, ends on 8 July 2015. The next pension input period will be from 9 July 2015 to 5 April 2016. All subsequent pension input periods will be for the tax year, starting with 6 April 2016 to 5 April 2017.

8. New section 238ZB aligns all pension input periods with the tax year for any new arrangements set up on or after 9 July 2015. For these arrangements the first pension input will start on the relevant commencement date, as set out in section 238(2) and end on the next 5 April. Where the relevant commencement date is 5 April, it will end on the same day. All subsequent pension input periods will be for the tax year, starting with the next 6 April.

9. Paragraph 4 omits section 227E of FA 2004 as a consequence of aligning pension input periods with the tax year, as from 9 July 2015 it will no longer be able to have a pension input period ending before the last day of the tax year. Paragraph 4 also makes further consequential amendments to sections 227B to 227D of FA 2004, because of the removal of section 227E.

Part 2: Annual allowance for, and carry-forward from, 2015-16

10. Part 2 provides that every member of a registered pension scheme has an annual allowance of £80,000 for the 2015-16 tax year, but this is subject to an allowance of £40,000 for the period from 9 July 2015 to 5 April 2016. This is in addition to any existing unused annual allowance carried forward from the three previous tax years.

11. Paragraph 6 inserts new section 228C into FA 2004.

12. New section 228C amends the amount of the annual allowance for 2015-16 to prevent any retrospective taxation arising as a consequence of aligning pension input periods with the tax year during 2015-16.

13. New subsection (2) splits the 2015-16 tax year into two parts for the purposes of the annual allowance, the pre-alignment tax year which ends on 8 July 2015 and the post-alignment tax year which starts on 9 July 2015.

14. New subsection (3) ensures that that only one annual allowance charge can arise in 2015-16 which is the sum of any charge arising under the pre-alignment and post-alignment tax years. It also ensures that the rate of any charge arising is, as intended, at the individual's marginal rate for 2015-16, but where their taxable income includes any excess pension savings over the annual allowance.

15. New subsection (4) doubles the normal annual allowance for the pre-alignment tax year to £80,000. For those who have flexibly accessed their pension savings, their money purchase annual allowance for this period is £20,000.

16. New subsection (5) sets out that for members of registered pension schemes in the pre-alignment tax year, the annual allowance and the alternative annual allowance for the post-alignment tax year will be nil. The money purchase annual allowance for this period will be £10,000 less any amount that their money purchase savings for the pre-alignment tax year exceeded £10,000. As carry forward is not available for the money purchase annual allowance, this means that up to £10,000 will be available for the money purchase savings in the post-alignment tax year. If an individual is not a member of a registered pension scheme in the pre-alignment tax year, then this subsection does not apply, and their annual allowance will be £40,000 for the post-alignment tax year.

17. New subsection (6) allows up to £40,000 of unused annual allowance from the pre-alignment tax year to be carried forward and therefore added to the nil annual allowance for the post-alignment tax year. However where an individual exceeded the money purchase annual allowance in the pre-alignment tax year, this carry-forward is limited to £30,000.

18. New subsection (7) amends the carry forward rules for tax years 2016-17 to 2018-19. It ensures that although tax year 2015-16 has been split into two for the purposes of the annual allowance, the period over which unused annual allowance can be carried forward is not reduced as a result, and remains at three full tax years.

19. New subsection (8) sets out the amount of unused annual allowance that can be carried forward to future years from 2015-16. For those not subject to the money purchase annual allowance, the maximum that can be carried forward is the amount of unused annual allowance in the pre-alignment tax year, subject to a maximum of £40,000, less any amount of this used up in the post-alignment tax year. For those subject to the money purchase annual allowance, the maximum that can be carried forward is the amount of unused annual allowance in the pre-alignment tax year, subject to a maximum of £30,000, less any amount of this used up in the post-alignment tax year. Subsection (7) also preserves the order in which unused annual allowance is used up, initially using the annual allowance for the current year and then any unused annual allowance carried forward from the earliest available year first.

20. New subsection (9) ensures that where an individual dies or becomes severely ill in the post-alignment tax year they will not have a pension input amount for any savings for the pre-alignment tax year as well as the post-alignment tax year.

Part 3: Calculation of pension input amounts for periods ending in 2015-16

21. Part 3 alters how pension savings are measured against the annual allowance for defined benefit and cash balance arrangements for 2015-16. It amends the existing rules to make it easier for scheme administrators to calculate pension savings by preventing the need to carry out valuations on 8 July 2015 and certain other dates.

22. Paragraph 8 inserts new subsection (5) into section 229 of FA 2004. This provides that existing subsection (2) is subject to new section 237ZA.

23. Paragraph 9 inserts new section 237ZA into FA 2004. This modifies the rules on how the pension input amount, which is the amount of an individual's pension savings, is calculated for defined benefit and cash balance arrangements for 2015-16. For hybrid arrangements the rules are also modified although how this works will depend on whether the arrangement could provide defined benefit or cash balance benefits or both as set out in section 237 of FA 2004.

24. New subsection (3) sets out that the pension input amount for the pre-alignment tax year and the post-alignment tax year will be a proportionate amount ('the time apportioned percentage') of the pension input amount for 2015-16. This is calculated as if there had been one single pension input period ('the combined period') ending in 2015-16. The combined period includes all the pension input periods ending in either the pre-alignment tax year or the post-alignment tax year.

25. New subsection (4) amends the calculation of the pension input amount for the purposes of the combined period. It provides that the opening value of an individual's pension rights is uprated by 2.5% rather than the CPI figure for September 2014 which was 1.2%. This is intended to be a reasonable adjustment as the combined period could be up to almost two years. Therefore, it would not be appropriate to continue to use the September 2014 CPI figure. Subsection (4) also makes similar amendments to the relevant percentage which is used to determine the maximum amount that a pension can increase for a deferred member during a pension input period, without being tested against the annual allowance.

26. New subsection (5) sets out the time-apportioned percentages which are applied to the pension input amount for the combined period, to determine the pension input amounts for the pre and post-alignment tax years. For the post-alignment tax year this is 272 (the number of days from 9 July 2015 to 5 April 2016 inclusive) divided by the number of days in the combined period multiplied by 100. The time apportioned percentage for the pre-alignment tax year is 100 less the time apportioned percentage for the post-alignment tax year.

27. New subsections (7) to (10) modify new subsections (3) to (5) so that where an individual would have been a deferred member for a pension input period, but for these changes, then they are treated as being a deferred member from the date the last pension input period in which they were an active member ended, and the time-apportioned percentage is adjusted accordingly. This ensures that scheme administrators do not in these circumstances have to carry out a value of pension savings at 5 April 2016.

28. New subsection (11) modifies the calculation of the time-apportioned percentage for new arrangements set up after 8 July, so that the whole of any pension input amount tested in the post-alignment tax year.

29. New subsections (12) to (14) modify new subsections (3) to (5) to ensure that where a member would have had a nil pension input amount for either the pre-alignment or post-alignment tax year had a calculation been carried out for that period, the time-apportioned percentage is 0% for the mini tax year that would have had a nil pension input amount and 100% for the other tax mini tax year. It does not apply if any of subsections (8) to (11) apply.

Part 4: Reduction of annual allowance for high-income individuals

30. Part 4 introduces a taper to the existing £40,000 annual allowance for those with incomes, including the amount of any pension savings, above £150,000. This means that for each £2 of income above £150,000, an individual's annual allowance would reduce by £1. Once an individual's income reaches £210,000 or over, their annual allowance will be £10,000. This has effect from 6 April 2016.

31. Paragraph 10(1) inserts new sections 228ZA and 228ZB into FA 2004.

32. New section 228ZA provides the formula for calculating the reduction in the annual allowance if the individual is a high-income individual for the tax year. Where this applies the individual's annual allowance for that tax year, which for 2016-17 would normally be £40,000, is reduced gradually to £10,000 based on the amount their adjusted income exceeds £150,000. This means that for 2016-17, a high-income individual will have their annual allowance reduced by £1 for every £2 by which their adjusted income exceeds £150,000. Where the adjusted income is £210,000 or above, the individual's annual allowance will be £10,000.

33. New subsection (2) ensures that where the tapered annual allowance applies, an individual's annual allowance for a tax year will always be a whole number of UK pounds.

34. New subsection (3) defines a high-income individual for a tax year as someone with adjusted income of greater than £150,000 and threshold income of greater than £150,000 less the normal annual allowance for the tax year. As the annual allowance for 2016-17 will be £40,000, the individual would need to have threshold income above £110,000 to be affected in 2016-17.

35. New subsection (4) defines adjusted income as the individual's net income plus the value of any pension savings for the tax year, but less the amount of certain lump sum death benefits paid to the individual during the tax year. Adjusted income is worked out by calculating the individual's net income for the tax year as defined by steps 1 and 2 of section 23 of the Income Tax Act (ITA) 2007, but excluding certain pension reliefs. This is all the individual's taxable income for the year, less the reliefs that may be deducted under section 24 ITA 2007, except those in respect of pension contributions. The amount of any deductions for pension contributions under net pay (section 193 of FA 2004) or corresponding relief under paragraph 51 of Schedule 36 to FA 2004, plus the value of any employer contribution are added to the individual's net income to determine an individual's adjusted income for a tax year. Employer contributions are included in this definition to ensure the rules work fairly for both those who are self-employed and those in employment who can receive as part of their remuneration package a valuable employer contribution. Certain lump sum deaths benefits are excluded from the income definition. This applies where prior to 2016-17 the tax charge would have been the liability of the scheme administrator, but under changes made by new section 636A(4ZA) of the Income Tax (Earnings and Pensions) Act 2003 , liability for any tax on a lump sum paid to an individual, will be the liability of the recipient.

36. New subsection (5) defines threshold income. This will normally be the individual's net income for the year, less the amount of any lump sum death benefits paid to the individual during the tax year that can be deducted from the adjusted income. This is however subject to new subsection (6). The threshold income provides an income floor, so that individual's with net income below will not be subject to the tapered annual allowance for that tax year regardless of the value of their pension contributions.

37. New subsections (6) and (7) prevent individuals entering into a salary sacrifice or flexible remuneration arrangement on or after 9 July 2015 in order to reduce their threshold income. Where this applies, the amount of income given up is added back to the individual's threshold income under new subsection (5).

38. New section 228ZB introduces anti-avoidance provisions for the purpose of new section 228ZA. Where conditions A to C are met the amount of any income reduction is ignored under new subsection (5) when calculating the tapered annual allowance.

39. New subsections (2) to (4) set out conditions A to C. These apply where an individual has a higher annual allowance for a tax year, through a reduction to their adjusted or threshold income, but where that reduction is offset by an equivalent increase in their adjusted or threshold income in a different tax year.

40. New subsection (7) sets out that an increase under new subsection (4) includes what would have been an increase in the individual's adjusted or threshold income for 2015-16 had those definitions existed for that year, and how the pension input amount is calculated for this purpose.

Part 5: Other amendments

41. Paragraph 11(2) and (3) amend section 227 and section 227ZA of FA 2004 respectively. The changes mean that where an individual is not liable to the annual allowance charge for the pre-alignment tax year, then they are treated as having a default chargeable amount of nil for that period. This ensures that they are entitled to £40,000 of carry forward from the pre-alignment tax year to the post-alignment tax year.

Background note

42. The pensions tax rules are set out in FA 2004 which came into force on 6 April 2006.

43. Under FA 2004, there are no limits on the amount that an individual can save into a registered pension scheme each year, but there is a limit on the amount of tax relieved pension savings that can be made each year. This is the annual allowance. Where pension savings are made in excess of the annual allowance plus any carry forward available to the individual, a tax charge is applied to the excess to recover the tax relief previously given on the excess savings.

44. In order to restrict the cost of pensions tax relief the annual allowance has been reduced from £255,000 in 2010-11 to its current level of £40,000. The Government announced at the 8 July 2015 Budget that the annual allowance would be reduced from 6 April 2016 by the means of a tapered annual allowance for those with incomes of over £150,000, including the value of any employer contributions. Individuals subject to the tapered annual allowance will continue to be able to carry forward any unused annual allowance from the three previous tax years.

45. Pension savings are measured over pension input periods. These must end in consecutive tax years but they don’t have to be aligned with the tax year or run for a period of 12 months. An individual's pension savings for a tax year are the total amount of pension savings for each arrangement that they are a member of, for the pension input period ending in the tax year. In order to help individuals work out the value of their pension savings for a year, the Government has also announced that pension input periods will be aligned with the tax year from April 2016.

46. By aligning pension input periods with the tax year, this will make it easier for individuals to work out whether their pension savings have exceeded the annual allowance.

Clause 24: Relief for finance costs related to residential property businesses

Summary

1. This clause introduces a restriction on the deduction of finance costs related to let residential properties and instead provides for a tax reduction for such costs by reference to the basic rate of income tax. The restriction and tax reduction will have effect for costs incurred on or after 6 April 2017.

Details of the clause

2. Subsection (1) amends the Income Tax (Trading and Other Income) Act (ITTOIA) 2005.
3. Subsection (2) introduces new sections 272A and 272B of ITTOIA 2005.
4. New sections 272A and 272B restrict the deduction for finance costs related to the residential part of a property business when calculating the profits of that business.
5. New sections 272A(1) to (4) restrict the deduction for finance costs when calculating the profits of each residential property business to:
   - 75% for 2017-18,
   - 50% for 2018-19,
   - 25% for 2019-20, and,
   - 0% for 2020-21 and following years.
6. New section 272A(5) provides that the restrictions in subsections (1) to (4) apply to all property businesses carried on by any person or firm subject to income tax, and do not apply to a property business carried on by a company other than where it is acting in a fiduciary or representative capacity.
7. New section 272B(1) provides that subsections (2) to (5) apply for the purposes of new section 272A.
8. New section 272B(2) defines "dwelling-related loan" as an amount borrowed for the purposes of generating income from residential dwellings. Where an amount is borrowed only partly for the purpose of generating income from residential dwellings then an apportionment on a just and reasonable basis is provided for.
9. New section 272B(3) provides that the construction of a dwelling-house or adaptation of land (including buildings) to create a dwelling-house is for the purpose of generating income from residential dwellings.

10. New section 272B(4) excepts an amount borrowed for the purposes of generating income from the commercial letting of furnished holiday accommodation from being a dwelling-related loan. Where an amount is borrowed only partly for the purpose of generating income from the commercial letting of furnished holiday accommodation then an apportionment on a just and reasonable basis is provided for.
11. New section 272B(5) defines "costs" in relation to a dwelling-related loan as interest, an amount which is economically equivalent to interest or incidental costs of obtaining finance.
12. New section 272B(6) applies sections 58(2) to (4) of ITTOIA 2005 for the meaning of "incidental costs of obtaining finance".
13. New section 272B(7) provides that references to a dwelling-house in this section include the garden or grounds occupied or enjoyed with the house.
14. Subsections (3) and (4) provide that any rules in Part 3 of ITTOIA 2005 do not have priority over the prohibitive rule in new section 272A.
15. Subsection (5) introduces new section 274A of ITTOIA 2005.
16. New section 274A gives a reduction from the calculation of income tax liability for individuals, including individual partners of firms, by reference to the amount of finance costs that have been disallowed under new section 272A.
17. New section 274A(1) provides that subsections (2) to (5) apply where an amount ("A") of costs of a dwelling-related loan would have been deductible in calculating the profits of a property business but for new section 272A and an individual is liable to income tax on a percentage of the profits of the property business.
18. New section 274A(2) provides that the individual is entitled to relief in respect of A by reference to the percentage of the profits of the property business on which the individual is liable to income tax.
19. New section 274A(3) calculates the amount of relief for each property business as BR x L, where BR is the basic rate of income tax and L is the lower of:
    a. The amount of costs of a dwelling-related loan that would have been deductible in calculating the profits of a property business for the tax year but for new section 272A, plus any amount brought forward under subsection (5), and,
    b. The profits of the property business for the year, after deduction of any losses brought forward under section 118 of Income Tax Act (ITA) 2007 ("the adjusted profits"), or the percentage of the adjusted profits of the property business on which the individual is liable to income tax if that is lower.
20. New section 274A(4) restricts the total relief under subsection (3) across all the individual's property businesses (the "gross finance-costs relief") to the individual's adjusted total income of the year, where that is lower. It does this by setting out the calculation that apportions the adjusted total income between the different property businesses, by reference to the proportion of the total relief under subsection (3) that is contributed by each business.

21. New section 274A(5) allows for an amount of relief to be carried forward where the relief given under new section 274A is restricted by the property business profits at subsection (3)(b) or by the individual's adjusted total income at subsection (4). The individual can carry forward the difference between the relief given under new section 274A divided by the basic rate of income tax and the costs that were disallowed under section 272A, including brought forward amounts.

22. New section 274A(6) defines an individual's adjusted total income as their total income, excluding savings income, dividend income and allowances that the individual is entitled to for the tax year under Chapter 2 of Part 3 of the ITA 2007, for example, the personal allowance.

23. New section 274A(6) also defines an individual's gross finance-costs relief as the total relief that the individual is entitled to under new section 274A before any adjustment for adjusted total income under subsection (4) of new section 274A.

24. Subsection (6) makes consequential amendments to section 322 of ITTOIA 2005.

25. Subsection (7) introduces new sections 399A and 399B ITA 2007.

26. New section 399A restricts the deduction an individual can obtain for interest on a loan that they have used to invest in a partnership where that loan has been used by the partnership for the purposes of its residential property business.

27. New section 399A(1) applies to interest on a loan within section 398 of ITA 2007 to invest in a partnership if that partnership generates income from residential dwellings.

28. New section 399A(2) provides that relief under section 383(1) of ITA 2007 will be restricted by subsections (3) to (6) for so much of the interest as is referable on a just and reasonable basis to the part of the business that generates income from residential dwellings.

29. New sections 399A(3) to (6) restrict the interest deduction under section 383(1) to:

- 75% for 2017-18,
- 50% for 2018-19,
- 25% for 2019-20, and,
- 0% for 2020-21 and following years.

30. New section 399A(7) applies section 399(4) of ITA 2007 before the restrictions at subsections (3), (4) or (5).

31. New section 399A(8) provides that the construction of a dwelling-house or adaptation of land (including buildings) to create a dwelling-house is for the purpose of generating income from residential dwellings.

32. New section 399A(9) excepts an amount invested for the purposes of or in connection with a business, or a part of a business, that generates income from the commercial letting of furnished holiday accommodation.

33. New section 399A(10) provides that references to a dwelling-house in new section 399A include the garden or grounds occupied or enjoyed with the house.

34. New section 399B gives a reduction from the calculation of income tax liability for individuals by reference to the amount of interest that has been disallowed under new section 399A.

35. New section 399B(1) provides that subsections (2) to (5) apply where an amount ("the relievable amount") would have been deductible under section 383(1) of ITA 2007 but for new section 399A.

36. New section 399B(2) provides that the individual is entitled to relief in respect of the relievable amount.

37. New section 399B(3) calculates the amount of relief under section 383(1) as BR x L, where BR is the basic rate of income tax and L is the relievable amount.

38. Subsection (8) inserts references to new sections 274A of ITTOIA 2005 and 399B of ITA 2007 to the list at section 26 of ITA 2007 of tax reductions an individual can deduct at Step 6 of the income tax calculation in section 23 of ITA 2007.

Background note

39. Persons subject to income tax are currently able to deduct interest and other finance costs, such as the fees incurred when obtaining or repaying a loan, from the rental income in arriving at the profits of the property business where the costs are incurred wholly and exclusively for the purposes of the property business.

40. Individuals are also able to make a claim to deduct interest on a loan to invest in a partnership when calculating their net income.

41. This clause restricts those deductions for finance costs relating to let residential properties and instead allows for a deduction from an individual's income tax liability.

42. The maximum relief that can be obtained is the basic rate value (currently 20%) of the total finance costs on loans referable to let residential properties.

43. This clause will ensure that landlords with higher incomes no longer receive the most generous tax treatment. To give landlords time to adjust the clause introduces this change gradually from the tax year 2017-18 over 4 years.

Clause 25 and Schedule 5: Enterprise investment scheme

Summary

1. This clause and schedule make amendments to the Enterprise Investment Scheme (EIS) rules, including higher limits to provide special support for knowledge-intensive companies that are likely to particularly struggle to access finance, and smoothing the interaction between the Seed Enterprise Investment Scheme and EIS rules. The changes take effect for investments made on or after Royal Assent except for the changes to the interaction between SEIS and VCT, which take effect from 6 April 2015.

Details of the clause and Schedule

2. Clause _introduces Schedule .
3. Paragraph 1 of the schedule introduces the amendments to the EIS rules in Part 5 of the Income Tax Act (ITA) 2007 that are made by the Schedule. All references are to ITA.
4. Paragraph 2 is a sunset clause which sets the date after which the EIS will cease to apply to new investments, unless the legislation is renewed. The date may be changed by Treasury order. The date set will be no later than 10 years after the date of the European Commission's letter approving the EIS as compatible with state aids rules, following the formal notification of the scheme in June 2015.
5. Paragraph 3 makes provision in section 162 for, and paragraph 4 inserts, new section 164A.
6. Section 164A introduces a requirement for an individual who claims tax relief under EIS to be independent from the company and hold no other shares in the company at the time the individual invests in the company. The only exception is if the existing shares are a risk finance investment or the shares are 'founder shares' and:
    a. the individual holds shares in the company, all of which were issued to the individual when the company was founded; or
    b. the shares were acquired when a pre-formed dormant company was bought 'off the shelf'.
7. Section 164A(2) provides that the same rules apply to shareholdings of the individual in companies that are members of the same group as the issuing company at the time the shares are issued.
8. Section 164A(3) defines a “risk finance investment” as a share or shares subscribed for under the EIS, the Seed Enterprise Investment Scheme (SEIS) or the Social Investment Tax Relief (SITR) rules, for which the company submits a compliance statement to HM Revenue & Customs under section 205, 257ED or 257PB respectively. Note that this definition is more restricted than a “relevant investment” under section 173A, as amended by paragraph 7, which includes loans made under SITR.

9. Paragraph 5 amends section 166 to take account of provisions in new section 252A(12) (see paragraph 17 of the schedule).

10. Paragraph 6 makes a number of minor consequential changes by inserting in section 172 new paragraphs (aaa), (aab) and (ca) and omitting paragraph (ab).

11. Paragraph 7 makes a number of changes to section 173A, which limits the amount of state aids investments (referred to as "relevant investments") a company may receive each year to £5 million.

12. Paragraph 7(2) substitutes new subsection (2) and inserts new subsections (2A) and (2B).

13. New subsection (2) specifies the relevant investments that are to be taken into account for determining if the annual investment limit is breached. As well as taking into account the relevant investments made in the issuing company in the year, the rules bring into account any other relevant investments the company's subsidiaries have received or used in the year. These relevant investments are:

    - Relevant investments in a company before it became a 51% subsidiary of the issuing company. However if the subsidiary left the group before the end of the year, any relevant investments made in it after it left the group are not taken into account.
    - Investments in a relevant transferred trade (defined in new subsection (2B)).

14. New subsection (2A) provides that where only part of a relevant investment is used by a relevant transferred trade - for example, where the money from a relevant investment is shared between two subsidiary companies and the business of one of those companies is transferred to the issuing company - only the money used in the trade that was transferred counts towards the £5 million annual limit.

15. New subsection (2B) defines a relevant transferred trade. Together with subsection (2)(b) it brings into the computation of the annual maximum amount any relevant investments that have been employed in a trade earlier in the year, when the trade was carried on by a different company that was not part of the same group. The purpose of counting relevant investments used for a relevant transferred trades towards the issuing company's relevant investments is to ensure the investment limit is not sidestepped by acquiring a trade without a company shell that has previously benefited from relevant investments.

16. Paragraph 7(3)(a) inserts new paragraph (ba) in section 173A(3) to extend the definition of a "relevant investment" to an investment made under the SITR rules. SITR investments will therefore count towards a company's annual maximum amount.

17. Paragraph 7(3)(b) updates the reference in section 173A(3)(c) to the latest guidelines published in 2014, by the European Commission on the rules on state aids for risk finance investments.

18. Paragraph 7(4) inserts new subsection (5) in section 173A to specify when an SITR investment, that is a relevant investment, is made.

19. Paragraph 7(5) inserts new subsections (6) and (7). Subsection (6) provides that a trade includes part of a trade and subsection (7) defines a trade as including any business or profession, including where the activities are preparatory to carrying out a trade.

20. Paragraph 7(6) updates the heading of section 173A in accordance with the latest risk finance guidelines.

21. Paragraph 8 inserts new sections 173AA and 173AB.

22. Section 173AA imposes a cap of £12 million on the total amount of relevant investments a company and its subsidiaries may receive, unless the company is a knowledge-intensive company (see paragraph 17 of the schedule), in which case the limit is £20 million.

23. Section 173AA operates in a similar way to amended section 173A in determining the relevant investments that are taken into account for the purposes of this condition. The relevant investments an issuing company has received include relevant investments that have been made in a subsidiary of the issuing company and in any other company which used the money for a trade that was subsequently transferred to the issuing company.

24. Section 173AB applies the cap on total relevant investments received by the company and its subsidiaries for three years following the date of issue of the relevant shares. The purpose of these provisions is to stop an investee company exceeding the total investment limit by using EIS money for a company or trade that it acquires after it received the relevant investment. This would happen where the new company or trade has benefited from earlier relevant investments that, together with the relevant company's relevant investments at the investment date, would breach the relevant company's investment limit.

25. For example: the issuing company, A, which is not a knowledge-intensive company, has received an EIS investment of £2 million, bringing its total relevant investments to the limit of £12 million. At a later date, using other funds, company A wants to acquire company B and employ the £2 million in company B. Company B is not a knowledge-intensive company and has already received relevant investments of £12 million. The effect of section 173AB on this scenario would be that company A breaches the limit of £12 million.

26. Section 173AB applies only if the issuing company uses the EIS investment in a new company or trade acquired after the shares were issued.

- If the issuing company acquires one or more companies or trades that have received relevant investments that would take the combined group over the total limit, but the EIS money is not employed in any of those companies or trades, then section 173AB has no effect. However, the relevant company would not be eligible to receive any future relevant investments as the limit in subsection (3A) would be breached.

- If the EIS money is used for one of the companies or trades acquired after the relevant investment was made then all of the relevant investments received by the subsidiaries acquired since the relevant investment are taken into account in determining if the limit is breached.

27. Paragraph 9 repeals section 173B. The effect of this provision is to allow a company to raise funds under EIS without having to have spent 70% of any SEIS funds it has already raised. However the company cannot raise EIS funds on the same day as it raises SEIS funds.

28. Paragraph 10 amends section 174 by making explicit the requirement that, to qualify for state aids, a company must use funds raised under EIS to promote the growth and development of the company or, where the company is a parent company, the group.

29. Paragraph 11 amends section 175 by substituting new subsections (1ZA), (1ZB) (1ZC) and (1A) for the existing subsection (1A). The purpose of these provisions is to ensure that EIS money is used for the growth and development of the issuing company's or its subsidiaries' existing activities, and not for funding a takeover or buyout of an existing trade.

30. Subsection (1ZA) prohibits a company from using money raised from an EIS investment to acquire an existing trade, or part of a trade, either by buying the company carrying on the trade or buying the trade itself, the intangible assets or goodwill of a trade.

31. Subsection (1ZA) does not stop a company using money from a VCT investment to buy plant and machinery to use in its own trade so long as there are no wider acquisitions of the assets of a trade or commission the creation of intangible assets.

32. Subsection (1ZA) also operates to prevent a company from using funds that are not relevant investments to fund the acquisition of an existing company or trade alongside EIS money. For example, a company or its subsidiaries would not be allowed to use EIS money to acquire the plant and machinery of a trade if it used money from a separate source to acquire the goodwill of that trade such that, overall, the trade was acquired.

33. Subsection (1ZB) provides for the Treasury to make regulations to allow money to be used for the acquisition of certain intangible assets. This power could be used if it emerged that section 175(1ZA)(d) prevented a company from acquiring an intangible asset that was not an integral part of a trade. Subsection (1A) restates the provisions of the original subsection (1A) taking into account new subsections (1ZA) and (1ZB) that now precede it.

34. Paragraph 12 inserts new section 175A which specifies the maximum age of a company that is permitted to receive an EIS investment. This provision targets EIS investments to earlier-stage companies, companies that need several rounds of tax-advantaged funding before the market will invest in them and companies whose activities are changing so substantially as to constitute a new business activity.

35. Subsections (1) to (3) provide that a VCT's investment in a company must be made before the end of that company's initial investing period unless:

- Condition A applies, because the company has already received a relevant investment which has been used for the same activities as the new investment is to be used for. This condition provides for companies that need several rounds of funding, or

- Condition B applies, because the amount of the investment (and any other relevant investments received in a 30 day period that includes the date of the VCT's investment in the relevant company) is at least 50% of the annual turnover of the company, averaged over the previous five years. The 30 day period provides some flexibility for a company that is assembling a number of tax-advantaged investments from different investors.

36. Subsection (2) defines the initial investing period as ending a certain number of years after the company's relevant first commercial sale. The number of years is:

- 10 years for knowledge-intensive companies
- 7 years for all other companies.

37. Subsection (5) defines the date of a company's relevant first commercial sale. The definition is designed to identify the earliest commercial activity carried on by the relevant company or its subsidiaries at the time the money is employed. Its purpose is to ensure the age limit cannot be sidestepped by setting up or using a reasonably new company to receive relevant investments to employ in a mature trade that would not itself meet the age limits. The definition uses the earliest date of any commercial sale made by the company or any other person who has carried on any trade which is carried on by the company or its subsidiary, including trades transferred from other owners. The trade may or may not be, or have been, a qualifying business activity and it may or may not have benefited from a relevant investment.

38. Subsection (6) determines the five years over which the turnover of the company is averaged for the purposes of condition B in subsection (4). Generally speaking, these rules allow for a company with consistent 12 month periods of account to determine its average turnover by reference to the last five complete audited accounts prior to the relevant issue.

39. Subsection (6)(a)(i) specifies that, where the end of the most recent accounts filing period falls within the 12 months before the investment was made, the 5 year period ends immediately before that accounts filing period starts.

40. Subsection (6)(a)(ii) specifies that if there is no accounts filing period that ends within 12 months before the date of the investment, perhaps because the company's accounting period is more than 12 months long, the 5 year period ends on the day 12 months before the date the investment was made.

41. Subsection 6(b) provides that if the company is the parent of a group of companies, the whole group's turnover ("total group turnover") is taken into account for the purposes of determining if condition B is met.

42. Subsection (7) defines a number of terms used in section 175A. In particular:

- An undertaking's first commercial sale is defined by reference to the European Commission’s Guidelines on state aids to promote risk finance investments. Paragraph 52(xi) of the Guidelines defines a first commercial sale as “the first sale by an undertaking on a product or service market, excluding limited sales to test the market”
- The total group turnover for the purposes of subsection (6)(b) includes turnovers of a subsidiary company at the date of issue of the relevant holding, including for years when it was not a member of the same group of companies.

43. Paragraph 13 amends section 186A, to specify a higher limit of 500 full time equivalent employees for knowledge-intensive companies.

44. Paragraph 14 repeals section 200, which is replaced by a wider power in new section 251A (see paragraph 16 of the Schedule).

45. Paragraph 15 amends section 224. Its effect is to treat SEIS investors whose shares are purchased or redeemed by the company in the same way as EIS investors: provided any SEIS claimed by the investor is repaid on the redemption, the EIS relief of other investors will not be reduced. This provision applies retrospectively to redemptions of shares made on or after 6 April 2014.

46. Paragraph 16 inserts new section 251A, which allows amendments to be made to Chapters 2 to 4 by regulations under the draft affirmative procedure.

47. Paragraph 17 inserts new section 252A which defines a "knowledge-intensive company". A knowledge-intensive company is eligible for higher total investment limits under section 173AA, a longer initial investing period for the purposes of the permitted maximum age condition under section 175A and a higher number of employees under section 186A (as amended under paragraph 13 of the Schedule).

48. Section 252A(1) requires a knowledge–intensive company to meet one of two operating costs conditions and at least one of the innovation condition or the skilled employee condition.

49. Sections 252A(2) and (3) specify the operating costs conditions. These conditions compare the relevant operating costs relating to research and development or innovation to the relevant operating costs of the company (or group) over a three year period.

50. Section 252A(4) determines the period over which the conditions must be applied, using the same method as applies for the test in new section 175A(4).

51. Sections 252A(5) to (7) specify the conditions a company must meet to satisfy the innovation condition. The condition requires a company to be engaged in the creation of intellectual property which will be used for the future trade of the company (or other companies in the same group) and the activities of which will form the greater part of the company's (or the group's) business within 10 years of the date of issue of the shares. A company can meet the condition in one of three ways:

    - By having created intellectual property within the last three years, or is currently creating intellectual property; or
    - By taking steps in order to create intellectual property; or
    - By demonstrating through a report by an independent expert that it is reasonable to assume the company will create intellectual property in the foreseeable future.

52. The innovation condition is not confined to the creation of a single item of intellectual property. Some companies may develop a range of intellectual property that, together, will form the basis of their future business.

53. Sections 252A(8) and (9) specify the skilled employee condition. If the company relies upon meeting this condition to qualify as a knowledge-intensive company at the date of issue of the shares, it must continue to meet the condition throughout the period ending three years after the date of issue of the shares. The exception to this is where the company is in administration or receivership.

54. Section 252A(10) defines a number of terms used throughout the section.

55. In particular, "relevant operating costs" are defined by reference to the costs included in the company's profit and loss account. Where the issuing company is a member of a group at the date of issue of the shares, the operating costs are calculated by reference to the total operating costs of all companies in the group at the date of issue of the shares, excluding transactions between companies in the same group.

56. Section 252A(11) provides for the amounts of operating costs of a company to be apportioned as is just and reasonable in determining a company's relevant operating costs. This provision may be necessary where subsidiary companies do not share the same accounting date as the parent company.

57. Section 252A(12) excludes the application of section 168 from the definition of a person who is connected with the company when determining if the person is an independent expert for the purpose of subsection (10). It means that the expert may not be connected to the company at any time.

58. Paragraph 18 contains minor and consequential amendments to other Acts that flow from this new legislation.

59. Paragraphs 19 to 21 provide for commencement of the provisions in this Schedule.

60. Paragraph 19 provides that the provisions repealing the requirement for a company to have spent at least 70% of SEIS funds before receiving a VCT investment take effect from 6 April 2015.

61. Paragraph 20 provides that the changes to section 224 on the redemption of SEIS shares take effect from 6 April 2014.

62. All other provisions take effect from the date of Royal Assent. Investments that are made before Royal Assent that would otherwise breach the new limits will continue to be eligible for EIS relief provided all other conditions continue to be met. Investments made before Royal Assent will however be taken into account:

- For determining if investments made on or after Royal Assent breach the investment limits condition in sections 173A, 173AA and 173AB and
- For the purposes of determining if a relevant investment meets the permitted age requirement in section 175A.

Background note

63. The EIS encourages investment in small, higher risk, trading companies by offering tax incentives to individual investors in qualifying companies.

64. This Schedule includes a number of amendments to the EIS rules aimed at ensuring compliance with Articles 107 and 108 of the Treaty on the Functioning of the European Union (EU).

65. Risk finance investments are intended to support smaller companies to access finance to grow and develop where, because of a market failure, the company is unable to obtain funding through the market from independent investors. The reasons for this lack of funding may be because the company lacks a track record or the costs of carrying out due diligence are disproportionately high.

66. The new provisions apply the EU rules to domestic legislation to ensure that tax-advantaged investments are directed to companies likely to experience market failure. They introduce limits on the total amount of state aids a company may benefit from, and the age before which a company may first receive a risk finance investment. The limits are higher for "knowledge-intensive companies" in recognition of the greater market failure that applies to innovative companies that tend to need more state aids, and for a longer time, before they are able to convince independent investors to invest in them.

67. The Schedule legislates rules to ensure that the money is used for the internal (organic) growth of a company, not external growth by acquiring an existing business.

68. The rules are subject to state aids approval which is expected to be received shortly.

69. The Schedule also contains provisions to smooth certain interactions between the SEIS and EIS and amend the state aids cumulation rules to ensure a company cannot gain excessive state aids by receiving more than £5 million relevant investments under the EIS and SITR in the same year.

Clause 26 and Schedule 6: Venture capital trusts

Summary

1. This clause and Schedule make amendments to the Venture Capital Trust (VCT) rules, including higher limits to provide special support for knowledge-intensive companies that are likely to particularly struggle to access finance, and smoothing the interaction between the Seed Enterprise Investment Scheme (SEIS) and VCT rules. The changes take effect for investments made on or after Royal Assent except for the changes to the interaction between SEIS and VCT, which take effect from 6 April 2015.

Details of the clause and Schedule

2. Clause 26 introduces Schedule .

3. Paragraph 1 of the Schedule introduces the amendments to the Venture Capital Trust (VCT) rules in Part 6 of the Income Tax Act (ITA) 2007. All references are to ITA 2007.

4. Paragraph 2 inserts new paragraph (za) in subsection (3) of, and new subsection (5) in, section 261. The effect of these provisions is to set the date after which investments in VCTs will no longer qualify for relief, unless the legislation is renewed. The date may be changed by Treasury order. If a new date is set it will be no later than 10 years after the date of the European Commission's letter approving the VCT rules as compatible with state aids rules, following the formal notification of the scheme in June 2015.

5. Paragraph 3 amends section 274. It introduces two extra conditions a company must meet in order be approved as, and retain its status as, a VCT: "the permitted maximum age condition" and "the no business acquisition condition".

6. Paragraph 4 amends section 280B which supplements the investment limits condition specified in section 274.

7. Paragraph 4(2) inserts in subsection (2) two extra limits an investee company (a relevant company) must meet if a VCT is to make an investment in that company. As well as meeting the total annual investment limit of £5 million, the relevant company must also meet a total (lifetime) investment limit as at the date the VCT invests in it and, in certain circumstances, that limit must not be breached for the following five years.

8. Subsection (2)(b) and (c) provide that the amounts of the new limits are specified in new section 292AA(1) and new section 292B(4) and are £20 million for knowledge-intensive companies and £12 million for other companies. The limits apply to any company a VCT invests in, whether or not the investment counts as a qualifying holding. The effect is to stop a VCT from using its tax-advantaged funds to invest in any company or group that has already received more than the specified amount of state aids.

9. Paragraph 4(3) inserts new subsection (2A) which supplements amended subsection (2). It defines the periods for which the two new limits apply.

10. Paragraph 4(4) substitutes subsection (3) and inserts new subsections (3A) to (3F).

11. New subsection (3) specifies the relevant investments that are to be taken into account for determining if the annual investment limit is breached. As well as taking into account the relevant investments made in the relevant company in the year, the rules bring into account any other relevant investments the company or group has received or used in the year. These relevant investments are:

    - Relevant investments in a company before it became a 51% subsidiary of the relevant company. However if the subsidiary left the group before the end of the year, any relevant investments made in it after it left the group are not taken into account.
    - Relevant imported investments (defined in new subsection (3D)).

12. Subsection (3A) specifies the relevant investments that are to be taken into account for determining if the total investment limit is breached. These are effectively the same relevant investments as are taken into account for determining if the annual limit in subsection (3) has been breached but looking back from the investment date at all the relevant investments received, rather than looking back for just one year.

13. Subsections (3B) and (3C) specify a further limit on the total amount of relevant investments that is applied for the five years following the date when a VCT makes a relevant investment in a company. The purpose of these provisions is to stop an investee company exceeding the total investment limit by using VCT money for a company or trade that it acquires after it received the relevant investment. This would happen where the new company or trade has benefitted from earlier relevant investments that, together with the relevant company's relevant investments at the investment date, would breach the relevant company's investment limit.

14. For example: a relevant company, A, which is not a knowledge-intensive company, has received a loan from a VCT of £2 million, bringing its total relevant investments to the limit of £12 million. At a later date, using other funds, company A wants to acquire company B and employ the £2 million received from the VCT in company B. Company B is not a knowledge-intensive company and has already received relevant investments of £12 million. The combined effect of subsections (3B) and (3C) on this scenario would be that company A breaches the limit of £12 million and the VCT has breached the investment limits condition in section 274.

15. The limits specified in section 292AB(4) apply only if the provisions of subsection (3B) apply and the relevant company uses the VCT's investment in the new company or trade.

    - If the relevant company acquires one or more companies or trades that have received relevant investments that would take the combined group over the total limit, but the VCT's investment is not employed in any of those companies or trades, then subsection (2)(c) does not apply. However, the relevant company would not be eligible to receive any future relevant investments as the limit in subsection (3A) would be breached.

- If the relevant investment is used for one of the companies or trades acquired after the relevant investment was made then all of the relevant investments received by the subsidiaries acquired since the relevant investment are taken into account in determining if the limit is breached.

16. Subsections (3D), (3E) and (3F) define the "relevant imported investments" that are to be taken into account for the three limits in subsections (3)(c), (3A)(c) and (3C)(c). The purpose of counting relevant imported investments towards a relevant company's relevant investments is to ensure the investment limits are not sidestepped by acquiring a trade without a company shell that has benefited from relevant investments. The following paragraphs 17 to 19 explain how these subsections work.

17. The relevant imported investments are relevant investments that have been employed by a company in a trade, where that trade has been transferred at a qualifying time to the relevant company, its 51% subsidiary or a partnership of which the relevant company or its subsidiary is a member. Such a trade is defined as a "relevant transferred trade".

18. The qualifying time varies, depending on which of the investment limits is being considered. For the annual limit, only relevant imported investments made during the year are taken into account. For the other two limits the qualifying period is unlimited and any relevant investments employed in the trade at any time, by any owner of the trade, will be relevant imported investments.

19. However, if the trade has been transferred from one subsidiary to another subsidiary of the relevant company, that will not count as a relevant transferred trade. This is because the relevant investment will already have counted towards the relevant company's relevant investment by virtue of paragraph (b)(ii) of subsections (3), (3A) and (3C).

20. Paragraph 4(5)(a) inserts new paragraph (ba) in subsection (4) to extend the definition of a "relevant investment" to an investment made under the Social Investment Tax Relief (SITR) rules. SITR investments will therefore count towards a company's investment limits.

21. Paragraph 4(5)(a) updates the reference in subsection (4)(c) to the latest guidelines, published in 2014, by the European Commission on the rules on state aids for risk finance investments.

22. Paragraph 4(6) makes a consequential amendment to subsection (5).

23. Paragraph 4(7) inserts new subsections (6) to (9).

24. Subsection (6) specifies when an SITR investment, that is a relevant investment, is made.

25. Subsections (7) to (9) supplement the rules on relevant imported investments and relevant transferred trades defined in subsections (3D) and (3E).

26. Subsection (7) and (8) provide that transfers of part of a trade count as the transfer of a trade but only the money used in that trade or part of trade count towards the amount of the relevant imported investment.

27. For example, company A receives a relevant investment of £2 million and uses it for its trade, and later sells off part of that trade to company B. When calculating company B's relevant investments for the purposes of section 280B(3C), only the part of the £2 million used in the part of the trade that company A transferred (the relevant transferred trade) counts towards the amount of the relevant imported investment. The amount will depend on the particular circumstances of the case.

28. Subsection (9) defines a trade widely, to include any pre-trading activities that have benefited from a relevant investment.

29. Paragraph 5 inserts new sections 280C and 280D.

30. Section 280C specifies the details of the permitted maximum age limit in section 274. It applies to all investments made by a VCT whether or not the holding is a qualifying holding. This provision targets VCT investments to earlier-stage companies, companies that need several rounds of tax-advantaged funding before the market will invest in them and companies whose activities are changing so substantially as to constitute a new business activity.

31. Subsections (2) to (5) provide that a VCT's investment in a company must be made before the end of that company's initial investing period unless:

- Condition A applies, because the company has already received a relevant investment which has been used for the same activities as the new investment is to be used for. This condition provides for companies that need several rounds of funding, or

- Condition B applies, because the amount of the investment (and any other relevant investments received in a 30 day period that includes the date of the VCT's investment in the relevant company) is at least 50% of the annual turnover of the company, averaged over the previous five years. The 30 day period provides some flexibility for a company that is assembling a number of tax-advantaged investments from different investors.

32. Subsection (3) defines the initial investing period as ending a certain number of years after the company's relevant first commercial sale. The number of years is:

- 10 years for knowledge-intensive companies

- 7 years for all other companies.

33. Subsection (6) defines the date of a company's relevant first commercial sale. The definition is designed to identify the earliest commercial activity carried on by the relevant company or its subsidiaries at the time the money is employed. Its purpose is to ensure the age limit cannot be sidestepped by setting up or using a reasonably new company to receive relevant investments to employ in a mature trade that would not itself meet the age limits. The definition uses the earliest date of any commercial sale made by the company or any other person who has carried on any trade which is carried on by the company or its subsidiary, including trades transferred from other owners. The trade may or may not be, or have been, a qualifying business activity and it may or may not have benefited from a relevant investment.

34. Subsection (7) determines the five years over which the turnover of the company is averaged for the purposes of condition B in subsection (5).

35. Where the end of the most recent accounts filing period falls within the 12 months before the investment was made, subsection (7)(a)(i) determines the end of the 5 year period by reference to the beginning of that accounts filing period.

36. If there is no accounts filing period that ends within 12 months before the date of the investment, perhaps because the company's accounting period is more than 12 months long, subsection (7)(a)(ii) specifies that the 5 year period ends on the day 12 months before the date the investment was made.

37. Generally speaking, these rules allow for a company with consistent 12 month periods of account to determine its average turnover by reference to the last five complete audited accounts prior to the relevant issue.

38. Subsection (7)(b) provides that if the company is the parent of a group of companies, the whole group's turnover ("total group turnover") is taken into account for the purposes of determining if condition B is met.

39. Subsection (8) defines a number of terms used in section 280C. In particular:

- An undertaking's first commercial sale is defined by reference to the European Commission's Guidelines on state aids to promote risk finance investments. Paragraph 52(xi) of the Guidelines defines a first commercial sale as "the first sale by an undertaking on a product or service market, excluding limited sales to test the market"

- The total group turnover for the purposes of subsection (7)(b) includes turnovers of a subsidiary company at the date of issue of the relevant holding, including for years when it was not a member of the same group of companies.

40. Section 280D specifies the details of the no business acquisition condition in section 274. It applies to all investments made by a VCT whether or not the holding is a qualifying holding. It prevents a VCT from investing in a company that goes on to use the money to acquire an existing trade, or part of a trade, either by buying the company carrying on the trade, buying the trade itself, intangible assets that have been employed previously in a trade or goodwill of a trade. Section 280D does not stop a company using money from a VCT investment to buy plant and machinery to use in its own trade. However the company would breach the condition if the plant and machinery were acquired as part of wider arrangements to acquire a trade, for example where other funds were used to acquire the goodwill or other intangible assets of a trade. Similarly, a company can use money to commission the creation of intangible assets that will be used in the company's trade, for example to build a website, because that intangible asset has not been previously employed in a trade.

41. Section 280D(3) provides for the Treasury to make regulations to allow money to be used for the acquisition of certain intangible assets. This power could be used if it emerged that section 280D(2)(d) prevented a company from acquiring an intangible asset that was not an integral part of a trade.

42. Paragraph 6 amends section 286.

43. Paragraph 6(2) introduces an explicit requirement that a company must use funds raised under VCT to promote the growth and development of the company or, where the company is a parent company, the group.

44. Paragraph 6(3) makes a number of minor consequential changes.

45. Paragraph 7 makes a number of changes to section 292A which limits the amount of risk finance investments (referred to as "relevant investments") a company may receive each year.

46. Paragraph 7(2) substitutes subsection (2) and inserts new subsections (2A) and (2B) in section 292A.

47. Subsections (2) to (2B) provide that a VCT's holding in a relevant company ceases to be a qualifying holding if the relevant company receives a further relevant investment that breaches the annual investment limit. The provisions for determining which relevant investments count towards the limit are the same as those that apply to section 280B(2)(a) in relation to the annual investment limit.

48. Paragraph 7(3)(a) inserts new paragraph (ba) in section 292A(3) to extend the definition of a "relevant investment" to an investment made under the SITR rules. SITR investments will therefore count towards a company's annual investment limit.

49. Paragraph 7(3)(b) updates the reference in section 292A(3)(c) to the latest guidelines, published in 2014, by the European Commission on the rules on state aids for risk finance investments.

50. Paragraph 7(4) makes a minor consequential change to subsection (4).

51. Paragraph 7(5) inserts new subsection (4A) in section 292A to specify when an SITR investment, that is a relevant investment, is made.

52. Paragraph 7(6) makes a consequential change to subsection (5).

53. Paragraph 7(7) inserts new subsection (7) in section 292A. Subsection (7) supplements subsections (2) to (2B) by applying the same definition of "trade" as in section 280B.

54. Paragraph 7(8) updates the heading of section 292A to refer to the latest European Commission guidelines on the rules on state aids for risk finance investments.

55. Paragraph 8 inserts new sections 292AA and 292AB. These sections provide that a VCT's holding in a relevant company ceases to be a qualifying holding if the relevant company breaches the total investment limit at:

- The investment date, or
- Any time during the 5 year post-investment period.

56. Section 292AA(1) specifies the cap on the total amount of relevant investments a company and its subsidiaries may receive, of £20 million for a knowledge-intensive company and £12 million for other companies. This cap also applies for the purposes of section 280B(2)(b).

57. Section 292AA(2) to (4) determine the relevant investments that count towards the limit; these are the same as specified in section 280B(3A).

58. Section 292AA(5) defines certain terms used in the section.

59. Section 292AA(6) and (7) make provision for a holding ceasing to be a qualifying holding where the relevant company receives an investment under EIS, SEIS or SITR that breaches the total investment limit. In such a case, the holding will remain a qualifying holding until the relevant company submits a compliance statement to HM Revenue & Customs (HMRC) in respect of that new investment.

60. Section 292AB applies in a similar way to breaches of the 5-year post-investment limit by a company in which a VCT has a qualifying holding as section 292AA applies to breaches of the total investment limit. The relevant investments that count towards the limit are the same as those specified in section 280B(3C), if either condition A or condition B applies.

61. Paragraph 9 repeals section 173B. The effect of this provision is to allow a company to raise funds under VCT without having to have spent 70% of any SEIS funds it has already raised. Companies may raise EIS funds the day after raising SEIS funds.

62. Paragraph 10 substitutes new subsections (5ZA) to (5A) for section 293(5A).

63. Section 293 (5ZA) and (5ZB) prohibit a relevant company from using money raised from a VCT to acquire an existing trade, or part of a trade, either by buying the company carrying on the trade or buying the trade itself or the intangible assets or goodwill of a trade.

64. As with section 280D (no business acquisition condition) subsection (5ZA) does not stop a company using money from a VCT investment to buy plant and machinery to use in its own trade so long as there are no wider acquisitions of the assets of a trade or commission the creation of intangible assets.

65. Section 293(5ZB) provides for the Treasury to make regulations to allow money to be used for the acquisition of certain intangible assets. This power could be used if it emerged that section 280D(2)(d) prevented a company from acquiring an intangible asset that was not an integral part of a trade.

66. Section 293(5A) generally repeats the original text of the substituted subsection (5A).

67. Paragraph 11 inserts new section 294A. It applies the same maximum age limits to investments that are qualifying holdings as are applied to all VCT investments under section 280C. If, for some reason, a VCT were to breach the permitted maximum age condition but did not lose it VCT status, section 294A would ensure the investment could not count as a qualifying holding.

68. Paragraph 12 amends section 297A, to specify a higher limit of 500 full time equivalent employees for knowledge-intensive companies.

69. Paragraph 13 inserts new section 297B, which introduces a new requirement for companies that rely upon meeting the skilled employee condition in section 331A in order to qualify as a knowledge-intensive company. If the relevant company did not meet the innovation condition in new section 331A(6) at the time the VCT made its investment in the relevant company then the relevant company must continue to meet the skilled employee condition for at least three years after the relevant holding was issued. The exception to this is where the company is in administration or receivership.

70. Paragraph 14 repeals section 311, which is replaced by a power to amend Chapter 3 or 4 under new section 330B.

71. Paragraph 15 amends section 313(5) to make clear that the usual meaning of a connected person for Part 6 under section 993 does not apply to an independent expert for the purposes of new section 331A(10). Instead, the EIS definition of "connection", at section 167, 170 and 171 applies to an independent expert.

72. Paragraph 16 inserts new section 330B, which allows amendments to be made to Chapter 3 and Chapter 4 of Part 6 by regulations under the draft affirmative procedure.

73. Paragraph 17 inserts new section 331A which introduces the concept of a "knowledge-intensive company". A knowledge-intensive company is eligible for higher total investment limits under sections 280B and 292AA, a longer initial investing period for the purposes of the permitted maximum age condition under sections 280C and 294B and a higher number of employees under section 297A (as amended under paragraph x of the Schedule).

74. Section 331A(1) requires a knowledge–intensive company to meet one of two operating costs conditions and at least one of the innovation condition or the skilled employee condition.

75. Section 331A(2) specifies the times at which a company must meet the rules for a knowledge-intensive rules to benefit from the increased limits available to such companies.

76. Section 331A(3) and (4) specify the operating costs conditions, which compare the relevant operating costs relating to research and development or innovation to the relevant operating costs of the company (or group) over a three year period. Section 331A(5) determines the period over which the conditions must be applied, using the same method as applies for the test in new sections 280C(5) and 294A(4).

77. Sections 331A(6) to (8) specify how a relevant company must meet the innovation condition. The condition requires a company to be engaged in the creation of intellectual property which will be used for the future trade of the company (or other companies in the same group) and the activities of which will form the greater part of the company's (or the group's) business within 12 years of the date of issue of the shares. The condition can be met in one of three ways:

   - By having created intellectual property within the last three years, or creating intellectual property
   - By taking steps in order to create intellectual property
   - By demonstrating through a report by an independent expert that it is reasonable to assume the company will create intellectual property in the foreseeable future.

78. The innovation condition is not confined to the creation of a single item of intellectual property. Some companies may develop a range of intellectual property that, together, will form the basis of their future business.

79. Section 331A(9) specifies the skilled employee condition.

80. Section 331A(10) defines a number of terms used throughout the section.

81. In particular, "operating costs" are defined by reference to the costs included in the company's profit and loss account. Where the issuing company is a member of a group at the date of issue of the shares, the operating costs are calculated by reference to the total operating costs of all companies in the group at the date of issue of the shares, excluding transactions between companies in the same group.

82. Section 331A(11) provides for the amounts of operating costs of a company to be apportioned as is just and reasonable in determining a company's relevant operating costs. This provision may be necessary where subsidiary companies do not share the same accounting date as the parent company.

83. Paragraph 18 repeals the provisions in Schedule 8 to Finance Act 2012 that enabled relevant companies to use money invested by a VCT, that derived directly or indirectly from funds invested in the VCT before 6 April 2012, to acquire shares in a company, in contravention to the general rule in section 293(5A). The effect of this repeal, combined with the amendments to section 274 and 293, and the introduction of section 280D, is to prohibit VCTs investing any funds, whatever their origin, in a company for the purpose of acquiring shares in another company or a trade.

84. Paragraph 19 contains minor and consequential amendments to other Acts that flow from this new legislation.

85. Paragraph 20 provides for commencement of the provisions in this Schedule.

86. The provisions repealing the requirement for a company to have spent at least 70% of SEIS funds before receiving a VCT investment take effect from 6 April 2015.

87. All other provisions take effect from the date of Royal Assent. However investments that are made before Royal Assent that would otherwise breach the new limits will not cause a holding to cease to be a qualifying holding on or after Royal Assent. Investments made before Royal Assent will however be taken into account for determining if investments made on or after Royal Assent breach the investment limits condition in section 280B or whether the new investment is a qualifying holding under the provisions of sections 292A, 292AA or 292AB.

Background note

88. The VCT scheme encourages approved listed companies to invest in small, higher risk trading companies by offering tax incentives to their individual investors.

89. This Schedule includes a number of amendments to the VCT rules aimed at ensuring compliance with Articles 107 and 108 of the Treaty on the Functioning of the European Union.

90. Risk finance investments are intended to support smaller companies to access finance to grow and develop where, because of a market failure, the company is unable to obtain funding through the market from independent investors. The reasons for this lack of funding may be because the company lacks a track record or the costs of carrying out due diligence are disproportionately high.

91. The new provisions apply the EU rules to domestic legislation to ensure that tax-advantaged investments are directed to certain companies likely to experience market failure. They introduce limits on the total amount of state aids a company may benefit from, and the age before which a company may first receive a risk finance investment. The limits are higher for "knowledge-intensive companies" in recognition of the greater market failure that applies to innovative companies that tend to need more state aids, and for a longer time, before they are able to convince independent investors to invest in them.

92. The Schedule legislates rules to ensure that the money is used for the internal ('organic') growth of a company, not external growth by acquiring an existing business.

93. The rules are subject to state aids approval which is expected to be received shortly.

94. The Schedule also contains provisions to smooth certain interactions between the SEIS and VCT and amends the state aids cumulation rules to ensure a company cannot gain excessive state aids by receiving more than £5 million investments under the VCT, EIS and SITR in the same year.

Clause 27: EIS, VCTs and EMI: meaning of “farming”

Summary

1. This clause excludes farming activities carried on outside the UK from being qualifying activities for the purposes of the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT) and Enterprise Management Incentives (EMI)

Details of the clause

2. Subsection 1 repeals subsection (7) of section 996 of the Income Tax Act (ITA) 2007. The effect of the repeal is to stop farming activities carried on outside the UK from qualifying for tax relief under the EIS, VCT and EMI. The change applies also to the Seed Enterprise Investment Scheme (SEIS). This is because excluded activities for the SEIS are defined under section 257DA(9) ITA 2007 as those that are excluded under the EIS.

3. Subsection (2) provides for the repeal to take effect from the date of Royal Assent of the Finance Bill.

Background note

4. This provision ensures farming activities are treated in the same way for the purposes of the EIS, SEIS, VCT and EMI. Farming activities carried on inside the UK are already excluded under the provision of sections 192(h) and 303(h) of ITA 2007 for EIS and VCT respectively and paragraph 16 of Schedule 5 to the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 for EMI, in combination with section 996.

Clause 28: Travel expenses of members of local authorities etc

Summary

1. This clause introduces a new exemption from income tax for qualifying payments made by a local authority in respect of travel expenses incurred by a member on a journey between home and permanent workplace. The exemption only applies if the member's home is in the area of the authority or within 20 miles of the boundary of the area. The exemption will be limited to the Approved Mileage Allowance Payment (AMAP) rates and the approved rates for passenger payments when applied to qualifying payments made to a member who uses their own vehicle for travel. The exemption will come into effect from 6 April 2016.

Details of the clause

2. Subsection 1 amends Part 4 of the Income Tax (Earning and Pensions) Act (ITEPA) 2003 - Employment Income: Exemptions.
3. Subsection 2 updates a reference to the definition of business travel in section 229(2) ITEPA 2003 (mileage allowance payments) to make clear that it includes journeys which are dealt with by new section 235A.
4. Subsection 3 inserts a new section 235A (Journeys made by members of local authorities etc) into Chapter 2, Part 4 of ITEPA 2003 which deals with mileage allowances and passenger payments where an employee uses their own vehicle for business travel.
5. New subsection 235A(1) sets out that, subject to new subsections 235A(2) and (3), a qualifying journey by a member of a relevant authority is to be treated as business travel for the purposes of Chapter 2 if a qualifying payment is made by the authority. Under new subsections 235A(1)(a) and (b) the qualifying payment must be made to the member in respect of expenses related to their use of a vehicle that Chapter 2 applies to, or to another member of the authority for carrying the member as a passenger on the journey.
6. New subsection 235A(2) provides that a qualifying journey is not to be treated as business travel for the purposes of calculating mileage allowance relief.
7. New subsection 235A(3) sets out that where a member is undertaking a qualifying journey and receives a qualifying payment for carrying a passenger, the journey will not be treated as business travel for the passenger for the purposes of section 233 and section 234 ITEPA 2003 (passenger payments and the approved amounts for passenger payments), unless the passenger is also a member of the authority.
8. New subsection 235A(4) defines a qualifying journey by a member of a relevant authority for the purposes of this section. A qualifying journey must be between the member's home and permanent workplace and the home must be either in the area of the authority or within 20 miles of the boundary of the area.

9. <u>New subsection 235A(5)</u> sets out that "permanent workplace" has the same meaning as the existing definition at section 339 ITEPA 2003.

10. <u>New subsection 235A(6)(a)</u> provides a power to use regulations to specify local authorities, or bodies that have similar or related functions or purposes, that are to be relevant authorities for the purposes of this section. <u>New subsections 235A(6)(b) and (c)</u> set out that the power can be used to prescribe the circumstances in which a person is regarded as a member of a relevant authority, and to define a "qualifying payment" for the purposes of this section.

11. <u>New subsection 235A(7)</u> allows these regulations to contain transitional provision and savings.

12. <u>Subsection 4</u> inserts a <u>new subsection (1A)</u> (Travel expenses of members of local authorities etc) into the interpretation of Chapter 2 at section 236 ITEPA 2003, advising that journeys that are treated as business travel for the purposes of certain provisions in Chapter 2 are set out in section 235A.

13. <u>Subsection 5</u> inserts <u>new section 295A</u> into Chapter 8 - Exemptions: Special Kinds of Employees.

14. <u>New subsection 295A(1)</u> provides an exemption from income tax for qualifying payments made to a member of a relevant authority for travel expenses incurred. For the purposes of this clause, "travel expenses" include the costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey.

15. <u>New subsections 295A(1)(a) and (b)</u> apply the exemption to payments of expenses other than those relating to the member's use of their own vehicle and covered by existing exemptions in Chapter 2 or expenses specifically excluded by <u>new subsection 295A(2)</u>.

16. New subsection 295A(2) sets out that the exemption will not apply to expenses incurred on journeys between the member's home and permanent workplace where the member's home is more than 20 miles outside the boundary of the area of the relevant authority.

17. <u>New subsection 295A(3)</u> sets out that "permanent workplace" has the same meaning as the existing definition at section 339 ITEPA 2003.

18. <u>New subsection 295A(4)</u> provides a power to use regulations to specify local authorities, or bodies that have similar or related functions or purposes, that are to be relevant authorities for the purposes of this section. <u>New subsections 235A(6)(b) and (c)</u> set out that the power can be used to prescribe the circumstances in which a person is regarded as a member of a relevant authority, and to define a "qualifying payment" for the purposes of this section.

19. <u>New subsection 295A(5)</u> allows these regulations to contain transitional provision and savings.

20. <u>Subsection 6</u> substitutes "section 235A and 236(1)" for "section 236(1)" in the index of defined expressions in Schedule 1.

21. <u>Subsection 7</u> provides that this section will have effect for the tax year 2016-17 and subsequent tax years.

Background note

22. Travel expenses paid to members of a local authority are generally subject to the current rules that govern the tax treatment of all employees and office-holders. These rules will not be affected by this measure and travel undertaken in the performance of the duties of the employment, or travel for the employee's necessary attendance at a temporary workplace, will generally qualify for tax relief. Tax relief is not usually available for travel between an employee's home and a permanent workplace i.e. ordinary commuting.

23. To ensure that individuals are not discouraged from undertaking a role as a councillor by the tax treatment of their travel expenses, this legislation will provide an exemption from a charge to income tax where a local authority makes a qualifying payment to a member for travel expenses incurred on a journey between home and permanent workplace, or where qualifying payments in respect of a passenger who is also a member of the authority, are made. Regulations to give effect to a corresponding disregard for Class 1 National Insurance contributions (NICs) will also be introduced for the start of the 2016-17 tax year.

24. To ensure that the exemption does not enable members of local authorities to benefit from unlimited tax relief on their travel expenses, where a local authority makes mileage payments to a member for using their own vehicle to undertake a qualifying journey the exemption will be restricted to the Approved Mileage Allowance Payment (AMAP) rates or the approved amount for passenger payments.

25. Where the authority pays less than the AMAP rate, or pays no mileage allowance, Mileage Allowance Relief (MAR) will not be due in respect of qualifying journeys.

Clause 29: London Anniversary Games

Summary

1. This measure will exempt from income tax non-resident competitors participating in the 2015 London Anniversary Games taking place between 24 and 26 July 2015 at the Queen Elizabeth II Olympic Park and stadium, London. The Games are sometimes referred to as the `Anniversary Games` or the `Sainsbury's Anniversary Games`. The exemption will be in place for the duration of the event and includes income from promoting the event as well as competing.

Details of the clause

2. Subsection 29(1) means that a person who is non-resident and an accredited competitor would be exempt from income tax on income received from the games.
3. Subsection 29(3) defines a non-UK resident for the tax-year 2015-16. UK resident, non-UK resident and overseas have the meanings given by the provisions of the Statutory Residence Test in accordance with Schedule 45 to the Finance Act 2013.
4. Subsection 29(4) means that there will be no need to make the deductions normally due under section 966 (duty to deduct income tax at source in the case of sportsmen, sportswomen etc.) of the Income Tax Act 2007 from income covered by this exemption.
5. Subsection 29(5) defines `accredited competitor` as approved in a way that is recognised and endorsed by the event organising body; the `games period` as the period between 22nd and 28th of July 2015; `income` as employment income, specific employment income and the profits of a trade, profession or vocation; and `the Games` as the athletic event held at the Olympic Stadium between 24th and 26th July 2015. Employment income and specific employment income is defined in accordance with section 7 of the Employment Income (Earnings and Pensions) Act 2003 and the profits of a trade, profession or vocation is defined in accordance with sections 5 and 13 of the Income Tax (Trading and Other Income) Act 2005.
6. Subjection 29(6) means that the enactment creating the exemption commences on 8 July 2015.

Background note

7. The government on occasion seeks to exempt non-resident person's etc. from income tax arising on particular sporting activities to promote and support the legacy of the 2012 London Olympic Games. This legislation applies that policy to the 2015 `London Anniversary Games

Clause 30: R&D expenditure credits: ineligible companies

Summary

1. This clause prevents universities and other charities from claiming the Research and Development Expenditure Credit (RDEC). This change has effect for expenditure incurred on or after 1 August 2015.

Details of the clause

2. Subsection (1) introduces the amendment to Corporation Tax Act (CTA) 2009.
3. Subection (2) inserts a new subsection 7A to section 104A CTA 2009. Subsection 7A in turn introduces new section 104WA which contains provision about companies that are ineligible to claim the RDEC.
4. Subection (3) inserts new section 104WA after section 104W CTA 2009.

New Section 104WA

5. New subsection (1) stops ineligible companies from making claims to RDEC in relation to expenditure they incur.
6. Subsection (2) introduces the definition of an ineligible company.
7. Subsection (2)(a) provides that a company that is an institution of higher education (as defined in Section 1142(1)(b) CTA 2009) is an ineligible company.
8. Subsection (2)(b) states that a company that is a charity is an ineligible company.
9. Subsection (2)(c) provides that a company of a description prescribed by HM Treasury regulations is an ineligible company.

Treasury power to define ineligible companies

10. Subsection (4) of clause 30 confers a power on HM Treasury to amend the definition of an ineligible company by regulation. Any such regulation will be subject to the affirmative procedure for secondary legislation under Section 1310 CTA 2009.

Commencement provisions

11. Subection 5 provides that this restriction on claiming the RDEC applies to expenditure incurred on or after 1 August 2015.

Background note

12. The government introduced the RDEC in 2013 to encourage more research and development by large companies. By making the RDEC available to all large companies, including those with no liability to corporation tax, it was intended to make the benefits of R&D tax relief more visible and certain, compared to the previous large company super deduction.

13. The underlying rules for identifying qualifying activity and calculating qualifying expenditure remained unchanged.

14. The RDEC scheme also provides for claims by Small and Medium Enterprises (SMEs), in a similar way that SMEs are able to make claims to the large company super deduction, in circumstances where the more generous SME R&D tax relief is unavailable. This includes SME claims to the RDEC in sub-contracting situations, and where an SME receives a subsidy for its R&D expenditure.

15. The government's intention has always been that the RDEC be available only to commercial companies. HMRC has recently become aware that universities have made claims to the RDEC. Such claims were not an intended outcome of the introduction of the RDEC.

16. In order to put the matter beyond doubt, and to ensure that the RDEC remains a well-targeted incentive to R&D in commercial companies, this clause explicitly excludes universities and other charities.

Clause 31 and Schedule 7: Loan relationships and derivative contracts

Summary

1. This clause introduces Schedule 7, which implements a package of proposals to modernise the corporation tax rules in the Corporation Tax Act (CTA) 2009 governing the taxation of corporate debt ('loan relationships') and derivative contracts. The main areas of change are:

    - clarifying the relationship between tax and accounting;
    - basing taxable loan relationship profits on accounting profit and loss entries;
    - new 'corporate rescue' rules to provide tax relief where loans are released or modified in cases of debtor companies in financial distress; and
    - new regime-wide anti-avoidance rules for both loan relationships and derivative contracts.

2. The changes will generally take effect for accounting periods commencing on or after 1 January 2016. However, the corporate rescue rules will apply on and after the date of Royal Assent to Finance (No2) Bill 2015, and the new anti-avoidance rules will apply in respect of arrangements entered into from the same date.

Details of the Schedule

Part 1: Loan relationships: Amendments of Parts 5 and 6 of CTA 2009

3. Part 1 of the Schedule makes changes to Parts 5 and 6 of CTA 2009, which sets out rules governing the treatment of loan relationships. Paragraph 1 introduces the changes to Part 5.

4. Paragraph 2 makes changes to the overview in section 306 to reflect the amendments now being made.

5. Paragraph 3 inserts new section 306A, which sets out the matters in respect of which amounts are to be brought into account for the purposes of Part 5. These were previously contained in section 307, and are unchanged. The matters are profits, losses, interest and expenses arising to a company on its loan relationships.

6. Paragraph 4 makes various changes to section 307, which sets out general principles about the bringing into account of credits and debits. In particular it removes the requirement that credits and debits brought into account should 'fairly represent' profits and gains arising from loan relationships. It provides a new rule for apportionment of amounts where an accounting period of a company does not coincide with a period of accounts.

7. Paragraph 5 sets out amendments to section 308 concerning amounts recognised in determining a company's profit or loss. It establishes that this is now to be based on amounts recognised in the accounts as items of profit or loss. New subsection (1A) makes clear that this includes amounts that were previously recognised in other comprehensive income and which are subsequently transferred to profit or loss.

8. Paragraph 6 makes consequential amendments section 310 which contains a regulation-making power to allow certain amounts to be excluded from being brought into account.

9. Paragraph 7 makes various amendments to section 313 concerning the bases of accounting in accordance with which amounts may be brought into account for tax purposes. The definition of an amortised cost basis of accounting is aligned with accountancy, and adjustments under a designated fair value hedge are permitted. The definition of 'fair value accounting' is aligned with accounting treatment where an instrument is measured at fair value through profit or loss.

10. Paragraphs 9 to 12 are concerned with situations where a company changes the basis of accounting on which it calculates credits and debits under Part 5. Paragraph 9 makes a series of amendments to section 315. These extend the scope of sections 316 and 318 to apply where a company alters its basis of accounting to comply with tax rules. An example of such a rule is section 349, which requires the application of an amortised cost basis of accounting to connected companies relationships.

11. Paragraph 10 substitutes a new section 316, clarifying rules for determining the credit or debit to be brought into account in cases where there is a change in the tax-adjusted carrying value of a loan relationship, and aligning the rules with equivalent provisions in Part 7 of CTA 2009.

12. Paragraph 11 omits section 317 concerning carrying values. This is now replaced by the new section 465B.

13. Paragraph 12 amends section 318 concerning changes of accounting policy following cessation of a loan relationship, clarifying credits or debits to be brought into account and aligning the rules with equivalent provisions in Part 7 of CTA 2009. Subsection (5) updates the definition of 'the amount outstanding in respect of the loan relationship' to take account of the changes to section 308 introduced by paragraph 5; the definition now includes amounts recognised in other comprehensive income. New subsections (7) and (8) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

14. Paragraph 13 amends section 320, concerning credits and debits in respect of profits and losses from loan relationships that are capitalised in the carrying value of an asset or liability. In particular, this section may apply where borrowing costs are capitalised under Section 25 of Financial Reporting Standard 102 or under International Accounting Standard 23. The changes clarify that the provisions only apply where amounts would not otherwise be brought into account.

15. Paragraph 14 inserts new section 320A, setting out the treatment of amounts recognised in other comprehensive income and not transferred to profit or loss when a loan relationship, or part of a loan relationship, ceases to be recognised in a company's accounts. Together with new subsection 308(1A), inserted by paragraph 5, this ensures that all amounts recognised as items of other comprehensive income will be brought into account at some point. Subsection (4) provides that these amounts are to be brought into account in the same way as amounts recognised in determining the company's profit or loss for the period, making clear that the amounts are subject to all the provisions of Part 5. Subsections (6) and (7) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

16. Paragraph 15 omits section 321 concerning credits and debits recognised in equity. Amounts recognised directly in equity will no longer normally be brought into account under Part 5.

17. Paragraph 16 amends section 322, which exempts credits arising in certain cases where a debt is released. It inserts a new subsection (5B) which exempts credits arising on releases where there is a material risk that within 12 months of the release the company would be unable to pay its debts. That is, where the debtor is in significant financial difficulty. Paragraph 17 amends section 323 to explain what is meant by 'unable to pay its debts'. Broadly, the exemption applies where a debtor company is in significant financial distress.

18. Paragraph 18 inserts new section 323A. This applies where a company's debt is substantially modified or replaced, and there is a material risk that the company will within 12 months be unable to pay its debts. In these circumstances, it is not required to bring credits into account in respect of the modification or replacement. Any subsequent reversal is not brought into account as a debit. Like new subsection 322(5B), the exemption is intended to apply where a debtor company is in significant financial distress.

19. Paragraph 19 inserts new subsection 324(3A) to clarify that credits and debits in respect of valuation changes in respect of hedged assets and liabilities are not excluded.

20. Paragraph 20 makes a series of changes to section 328 concerning exchange gains and losses. It clarifies that amounts arising on the retranslation of a business from its functional currency into a different currency are not profits or losses within Part 5. It extends the power to make regulations concerning the exclusion or inclusion of exchange gains and losses from or in the Part 5 rules.

21. Paragraph 21 omits sections 328A to 328H, which are superseded by the anti-avoidance provisions introduced by paragraph 51.

22. Paragraph 23 inserts new sections 330A, 330B and 330C.

23. New section 330A provides that where a company recognises amounts in its accounts in respect of a loan relationship to which it is not legally a party, it is treated as if it were a party. The section applies where a company has ceased to be, or has yet to become, party to a loan, or where the risks and rewards of a loan have been transferred.

24. New sections 330B and 330C ensure that the rule in section 330A will not lead to, respectively, double relief or double taxation where another company also brings into account debits or credits in respect of the same loan.

25. Paragraph 24 omits sections 331 and 332, concerned with companies ceasing to be a party to loan relationship. These provisions are superseded by new section 330A.

26. Paragraphs 25 and 26 make minor adjustments to sections 340 and 342, concerning transfers of loan relationships within groups, to reflect changes elsewhere.

27. Paragraph 27 omits section 347, which is superseded by the anti-avoidance provisions introduced by paragraph 51.

28. Paragraph 28 amends section 349, concerning the application of amortised cost basis to connected companies relationships. It inserts a new subsection (2A) which provides rules for cases involving certain hedging instruments where the company adopts fair value accounting.

29. Paragraph 29 omits sections 350 (companies beginning to be connected) and 351 (companies ceasing to be connected). These are now obsolete following the changes to section 315.

30. Paragraph 30 amends section 352, which excludes credits and debits from tax where there is a related transaction involving a connected company loan relationship. It ensures that credits and debits are not prevented from being brought into account by the operation of section 352 where those amounts are attributable to interest rate movements on an arm's length borrowing.

31. Paragraph 31 inserts new section 352A, which is concerned with situations where debits brought into account by a company are reduced as a result of section 352. In these circumstances no credit is subsequently brought into account to the extent that it represents a reversal of a loss which gave rise to the reduction of debits.

32. Paragraphs 32 and 33 amend sections 354 (exclusion of debits for impaired or released connected company debts) and 358 (exclusion of credits on release of connected company debts). They provide rules for clawing back amounts previously recognised by the company in respect of a designated fair value hedge in cases where the debt is released.

33. Paragraph 34 makes minor consequential amendments to section 359 (Exclusion of credits on release of connected companies debts during creditor's insolvency).

34. Paragraphs 35 and 38 make amendments to section 361 and 362 concerning releases of impaired debts between connected companies. The amendments arise in consequence of the introduction of new section 361D and new section 362A by paragraphs 37 and 39. In particular they repeal sections 361A and 361B, which provide exemptions from the provisions on deemed releases under section 361.

35. Paragraph 36 omits sections 361A and 361B, which are superseded by new section 361D, inserted by paragraph 37.

36. Paragraph 37 inserts new section 361D. This provides an exemption for the credit that arises on a deemed release imposed on a debtor company by section 361 when an impaired debt is acquired by a creditor company connected to the debtor. The exemption applies where there is a material risk that within 12 months of the connected creditor becoming party to the debt, the debtor company would be unable to pay its debts. That is, where the debtor is in significant financial distress, as with the exemptions provided by new sections 322(5B) and 362A, inserted by paragraphs 16 and 39.

37. Paragraph 39 inserts new section 362A. This provides an exemption for the credit that arises on a deemed release, which is imposed on a debtor company by section 362 where the parties to an impaired debt become connected. It applies where the debtor is in significant financial distress, as with the exemptions provided by new sections 322(5B) and 361D, inserted by paragraphs 16 and 37.

38. Paragraphs 41 to 45 make minor consequential amendments to sections 422 (Transfer of loan relationship at notional carrying value), 424 (Reorganisations involving loan relationships), 433 (Transfer of loan relationship at notional carrying value), 435 (Reorganisations involving loan relationships) and 440 (Overview of Chapter 15 of Part 5).

39. Paragraph 46 amends section 441 concerning loan relationships held for unallowable purposes. It provides clarification on the scope of the debits that a company may not bring into account in cases where a debit is incorporated within a credit.

40. Paragraph 47 amends section 442 concerning the meaning of "unallowable purpose". It ensures that the meaning of ‘related transaction’ includes, for the purposes of this section, anything which in substance equates to a related transaction.

41. Paragraph 48 repeals section 443, which is superseded by the anti-avoidance provisions introduced by paragraph 51.

42. Paragraph 50 omits sections 454 and 455, which are superseded by the anti-avoidance provisions introduced by paragraph 51.

43. Paragraph 51 inserts new sections 455B, 455C and 455D, which counter tax avoidance.

44. New section 455B provides a new anti-avoidance rule to counteract ‘loan-related tax advantages’ arising from ‘relevant avoidance arrangements’, by way of just and reasonable adjustments to credits and debits under Part 5.

45. New section 455C defines ‘relevant avoidance arrangements’. Subsection (4) excludes from that definition arrangements aimed at obtaining tax advantages which can reasonably be assumed to have been intended under the loan relationships legislation. Subsection (6) defines a ‘loan-related tax advantage’ in terms of credits and debits under Part 5.

46. New section 455D gives, in subsection (1), non-exhaustive examples of results which might indicate that the exclusion from the definition of ‘relevant avoidance arrangements’ in section 455C(4) should not apply. Subsection (2) ensures that the examples in subsection (1) are only relevant to the availability of the section 455C(4) exclusion if it is reasonable to assume that the result in question was not the anticipated outcome when any provisions of Part 5 engaged by the arrangements were enacted.

47. Paragraph 52 inserts new section 465B concerning 'tax adjusted carrying value'. This replaces the previous section 317 (now repealed by paragraph 11) and explains the meaning of this term in the context of loan relationships. It is based on the carrying value in the company's accounts, adjusted as a result of particular statutory provisions. The reference in subsection (8) of section 465B to section 308(1A) and section 320A ensures that the carrying value is adjusted for amounts that have previously been recognised as items of other comprehensive income, and which represent amounts that will in the future be brought into account. Subsections (5) and (6) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

48. Paragraph 53 amends section 475 to broaden the circumstances in which regulations may be made concerning the calculation of exchange gains and losses, by removing their restriction to cases where fair value accounting is used. This follows the change made by paragraph 7 to the definition of fair value accounting in section 313.

49. Paragraph 54 inserts new section 475A concerning hedging relationships. This explains the circumstances in which a company has a "hedging relationship".

50. Paragraph 55 amends section 476, to introduce definitions of several terms used in the Schedule.

51. Paragraph 56 introduces amendments to Part 6 of CTA 2009, which sets out rules governing the treatment of matters to be treated as though they were loan relationships.

52. Paragraphs 57 and 58 make consequential adjustments to sections 521F (Shares becoming or ceasing to be shares to which section 521B applies) and 540 (Manufactured interest treated as interest under loan relationship).

Part 2: Derivative contracts: Amendments of Part 7 of CTA 2009

53. Paragraph 59 introduces amendments to Part 7 of CTA 2009, which sets out rules governing the treatment of derivative contracts.

54. Paragraph 60 amends the overview in section 594 to reflect the changes now being made.

55. Paragraph 61 inserts new section 594A, which sets out the matters in respect of which amounts are to be brought into account for the purposes of Part 7. These were previously contained in section 595, and remain unchanged. The matters are the profits, losses, interest and expenses arising to a company on its derivative contracts.

56. Paragraph 62 makes various changes to section 595, which sets out general principles about the bringing into account of credits and debits. In particular it removes the requirement that credits and debits brought into account should 'fairly represent' profits and gains arising from derivative contracts. It provides a new rule for apportionment of amounts where an accounting period of a company does not coincide with a period of accounts.

57. Paragraph 63 sets out amendments to section 597 concerning amounts recognised in determining a company's profit or loss. It establishes that this is now to be based on amounts recognised in the accounts as items of profit or loss. New subsection (1A) makes clear that this includes amounts that were previously recognised in other comprehensive income and which are subsequently transferred to profit or loss.

58. Paragraph 64 makes a consequential change to section 599B to reflect the concept of 'tax adjusted carrying value' in new section 702, introduced by paragraph 96.

59. Paragraph 65 makes various amendments to section 604, concerning credits and debits in respect of profits and losses from derivative contracts that are capitalised in the carrying value of an asset or liability. In particular, this section may apply where amounts in respect of a designated cash flow hedge are recognised in the carrying value of an asset or liability. The changes serve to clarify that the scope of the provisions is restricted to cases where amounts would not otherwise be brought into account.

60. Paragraph 66 inserts new section 604A concerning amounts recognised in other comprehensive income and not transferred to profit or loss. This determines the treatment when a derivative contract, or part of a derivative contract, ceases to be recognised in company accounts. Together with new subsection 597(1A) inserted by paragraph 63, this ensures that all amounts recognised as items of other comprehensive income will be brought into account at some point. Subsection (4) provides that these amounts are to be brought into account in the same way as amounts recognised in determining the company's profit or loss for the period, making clear that the amounts are subject to all the provisions of Part 7. Subsections (6) and (7) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

61. Paragraph 67 omits section 605 concerning credits and debits recognised in equity. Amounts recognised directly in equity will no longer normally be brought into account under Part 7.

62. Paragraph 68 makes a series of changes to section 606 concerning exchange gains and losses. It clarifies that amounts arising on the retranslation of a business from its functional currency into a different currency are not profits or losses within Part 7. It provides a power to make regulations concerning the exclusion or inclusion of exchange gains and losses with respect to the Part 7 rules.

63. Paragraph 69 omits sections 606A to 606H, which are superseded by the anti-avoidance provisions introduced by paragraph 94.

64. Paragraph 71 inserts new sections 607A, 607B and 607C.

65. New section 607A provides that where, in certain circumstances, a company recognises amounts in its accounts in respect of a derivative contract to which it is not legally a party, it is treated as if it were a party. The section applies where a company has ceased to be, or has yet to become, party to a derivative contract, or where the risks and rewards of a derivative contract have been transferred.

66. New sections 607B and 607C ensure that the rule in section 607A will not lead to, respectively, double relief or double taxation where another company also brings into account debits or credits in respect of the same derivative contract.

67. Paragraph 72 omits section 608 concerning companies ceasing to be party to derivative contracts. These provisions are superseded by new section 607A.

68. Paragraph 75 makes a series of amendments to section 613 concerning adjustments on change of accounting policy. These changes extend the scope of sections 614 and 615 to apply where a company's basis of accounting is altered as a result of the application of tax statute.

69. Paragraph 76 substitutes a new section 614, clarifying rules for determining credits or debits to be brought into account in cases where there is a change of accounting practice involving changes in the tax-adjusted carrying value of a derivative contract.

70. Paragraph 77 amends section 615 concerning changes of accounting policy after a company ceases to be party to a derivative contract. It clarifies the credits or debits to be brought into account and aligns the rules with their equivalents in Part 5. Subsection (5) updates the definition of 'the amount outstanding in respect of the derivative contract' to take account of the changes to section 597 introduced by paragraph 63; the definition now includes amounts recognised in other comprehensive income. New subsections (7) and (8) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

71. Paragraphs 78 to 79 and 81 to 88 make a series of consequential amendments to sections 622, 625, 653, 654, 658, 666, 671, 673, 675 and 684. In each case these amendments substitute 'tax-adjusted carrying value' (now defined in section 702) for 'carrying value'.

72. Paragraph 80 omits section 629, which is superseded by the anti-avoidance provisions introduced by paragraph 94.

73. Paragraph 90 amends section 690 concerning derivative contracts held for unallowable purposes. It provides clarification on the scope of the debits that a company may not bring into account in cases where a debit is incorporated within a credit.

74. Paragraph 91 amends section 691 concerning the meaning of 'unallowable purpose'. It ensures that the meaning of 'related transaction' includes, for the purposes of this section, anything which in substance equates to a related transaction.

75. Paragraph 92 makes amendments to section 692, concerning allowance of accumulated net losses, to ensure that debits with an unallowable purpose restricted under section 690 can only be set against credits attributable to the same unallowable purpose.

76. Paragraph 93 omits section 698, which is superseded by the anti-avoidance provisions introduced by paragraph 94.

77. Paragraph 94 inserts new sections 698B, 698C and 698D, which counter tax avoidance.

78. New section 698B provides a new anti-avoidance rule to counteract ‘derivative-related tax advantages’ arising from ‘relevant avoidance arrangements’, by way of just and reasonable adjustments to credits and debits under Part 7.

79. New section 698C defines ‘relevant avoidance arrangements’. Subsection (4) excludes from that definition arrangements aimed at obtaining tax advantages which can reasonably be assumed to have been intended under the derivative contracts legislation. Subsection (5) defines a ‘derivative-related tax advantage’ in terms of credits and debits under Part 7.

80. New section 698D gives, in subsection (1), non-exhaustive examples of results which might indicate that the exclusion from the definition of relevant avoidance arrangements in section 698C(4) should not apply. Subsection (2) ensures that the examples in subsection (1) are only relevant to the availability of the section 698C(4) exclusion if it is reasonable to assume that the result in question was not the anticipated outcome when any provisions of Part 7 engaged by the arrangements were enacted.

81. Paragraph 95 substitutes a new section 702, defining ‘tax-adjusted carrying value’. The definition is based on the carrying value in the company’s accounts, adjusted as a result of particular statutory provisions. The references in subsection (6) to section 597 and section 604A ensure that the carrying value is adjusted for amounts that have previously been recognised as items of other comprehensive income, representing amounts that will be brought into account in the future. Subsections (4) and (5) provide that in determining any such amounts for a particular period it is necessary to assume that relevant accounting policies applied in that period were also applied in the past, which is the approach accounting standards normally take. There is an exception to this - if in drawing up the accounts for the period in question some other assumption regarding accounting policies followed in the past was made, that assumption should be followed for tax purposes. This could arise if a new accounting standard prescribed a particular approach on first adoption, for example.

Part 3: Amendments of TCGA 1992 relating to loan relationships

82. Paragraph 98 introduces minor amendments to section 151E of Taxation of Chargeable Gains Act 1992 (TCGA), which provides for HM Treasury to make regulations concerning exchange gains and losses from loan relationships.

Part 4: Consequential amendments

83. Part 4 makes a number of consequential changes to CTA 2009 and to FA 2009.

Part 5: Repeal of uncommenced repeal provisions

84. Paragraph 101 repeals paragraphs 71 and 99 of Schedule 2 to CTA2009, and makes consequential amendments. Those paragraphs provided for prospective repeals of a number of provisions. The repeals were never brought into force, and are no longer necessary.

Part 6: Commencement and transitional provisions

85. Part 6, introduced by Paragraph 102, contains commencement and transitional provisions.

86. Paragraph 103 sets out the general commencement rule for the amendments made by Parts 1 to 4 of the Schedule.

87. Paragraph 104 excepts the provisions dealt with by paragraphs 106 to 113 from the general rule, and subjects the general commencement rule to the transitional provisions introduced by paragraphs 114 to 128.

88. Paragraph 105 provides that the repeals made by Part 5 to the Schedule have effect on or after the date of Royal Assent to Finance (No.2) Bill 2015.

89. Paragraphs 106 to 113 set out commencement arrangements for a number of specific provisions. These include the corporate rescue provisions introduced by paragraphs 16 to 18, 33(2), and 35 to 40, which apply on or after the date of Royal Assent to Finance (No2) Bill 2015. The substitution of existing anti-avoidance provisions by the new rules introduced by paragraphs 51 and 94, apply to arrangements entered into on or after the same date.

90. Paragraphs 114 to 118 make transitional provisions concerned with the changes made to section 308 by paragraph 5. They ensure that amounts recognised in other comprehensive income and taxed or relieved in a pre-transition period will not be taxed or relieved again in a post-transition period.

91. Paragraph 114 sets out, in subsection (1), the circumstances in which these transitional provisions apply. They apply where amounts were recognised in other comprehensive income and brought into account for tax in a pre-transition period. Those amounts could be brought into account again under the amended rules when subsequently transferred into profit or loss in a post-transition period (see paragraph 5) or under the new section 320A (see paragraph 15). In those circumstances, subsection (2) requires an overall transitional adjustment to be made on a just and reasonable basis.

92. Paragraph 115 requires credits or debits amounting to the overall transitional adjustment to be brought into account for the relevant accounting periods. The relevant accounting periods are the first accounting period commencing on or after 1 January 2016 and each subsequent period falling wholly or partly within the subsequent five years, referred to as the transitional years. Subsections (5) to (7) specify how the overall transitional adjustment is to be allocated between the transitional years.

93. Paragraph 116 excludes from the transitional arrangements any amounts brought into account in accordance with regulations made under section 151E of the Taxation of Chargeable Gains Act 1992 or section 328 CTA 2009, concerned with exchange gains and losses.

94. Paragraph 117 requires any transitional adjustment under paragraphs 114 and 115 to be applied before calculating any credits or debits arising in accordance with section 316 or section 318 CTA 2009.

95. Paragraph 118 provides that, where a company ceases to be within the scope of corporation tax or starts to be wound up during the five transitional years, any remaining transitional amounts are to be brought into account at that time.

96. Paragraphs 119 to 123 apply to derivative contracts and mirror the provisions introduced by paragraphs 114 to 118 for loan relationships.

97. Paragraph 124 requires accounting periods straddling 1 January 2016 to be split for the purposes of new subsection 328(3C), inserted by paragraph 21(4), and new subsection 606(3C), inserted by paragraph 68(4).

98. Paragraph 125 is concerned with a situation where credits or debits were not brought into account in a pre-transition period in compliance with the requirements of subsection 307(3) CTA 2009, now repealed by paragraph 4(4). Subsection 307(3) requires that amounts brought into account should 'fairly represent' the profits, losses, interest and expenses arising from a company's loan relationships. Where the subsection has been applied in the past, no credit or debit is to be brought into account in a post-transition period in the event of a reversal of the excluded amount.

99. Paragraph 126 replicates the rule introduced by paragraph 125 in the case of derivative contracts and amounts excluded under section 595(3), now repealed by paragraph 62(4).

100. Paragraph 127 is concerned with a situation where credits or debits relating to a fixed capital asset or project were brought into account in a pre-transition period in accordance with section 320 CTA 2009. In such a case, the paragraph ensures that credits and debits in respect of that asset or project will continue to be taken into account in future periods by deeming the condition in subsection 320(1)(c) to be met.

101. Paragraph 128 replicates the rule introduced by paragraph 127 in the case of derivative contracts and amounts brought into account under section 604 CTA 2009.

Background note

At Budget 2013, the government announced a review of the corporation tax rules governing corporate debt (or 'loan relationships') and derivative contracts. There was consultation on a wide-ranging package of measures to update and simplify these regimes and to reduce their susceptibility to tax avoidance.

102. The rules for the taxation of loan relationships, now contained in Part 5 of CTA 2009, date from 1996. A similar but standalone regime for derivative contracts, contained in Part 7, was introduced in 2002. Parts 5 and 7 are based on the concept of deriving taxable profits and losses on these instruments from accounting entries. They do however incorporate some highly complex features, particularly around debt held between connected companies and within groups. The government has in the past frequently received adverse comment on the complexity of the current rules. The regimes for both loan relationships and derivative contracts have developed significantly over time, evolving in response to emerging avoidance risks and to changes in commercial and accounting practice.

103. Accountancy standards, on which the tax rules are based, have not remained static. Standard setters for both UK GAAP and International Financial Reporting Standards (IFRS) have made significant changes to the accounting treatment of financial instruments. New UK GAAP and IFRS standards have recently been issued (including IFRS 9 in 2014) which will be adopted over coming years, and which should cement the accounting treatment of financial instruments for some time to come.

104. Historically, the complexity in the loan relationships and derivative contracts regimes has provided repeated opportunities for tax avoidance. Reactive measures to counter this avoidance have contributed to further complexity and to some loss of structural clarity in the regime, tending to leave further potential loopholes. This growing complexity has increased compliance costs for some businesses and has made it difficult in some cases for compliant groups and companies to be certain about tax treatments.

105. The changes now being made address areas which have given difficulty in the past, reduce complexity and provide enhanced protection against tax avoidance, while retaining the fundamental structure and principles of the regimes.

Clause 32: Intangible fixed assets: goodwill etc

Summary

1. This clause acts to disallow corporation tax deductions, such as amortisation and impairment debits, in respect of goodwill and certain other intangible assets linked to customers and customer relationships. It also amends the treatment of any loss arising on the disposal of these assets so that it is deemed to be a non-trading debit. The measure has effect from 8 July 2015.

Details of the clause

2. Subsections (1) to (3) introduce the amendment to Part 8 of the Corporation Tax Act (CTA) 2009 and refer sections 715 and 746 to the excluded assets in the new section 816A.
3. Subsection (4) amends the introduction to Chapter 10 of Part 8 which deals with assets excluded from Part 8 and contains the new section 816A.

The new section 816A

4. Subsection (5) inserts new section 816A into Chapter 10. This section:
   - Defines "relevant assets" for the purposes of the section;
   - Excludes debits in relation to those assets from being a tax deduction under Chapter 3; and
   - Makes any debit arising from the realisation of those assets a non-trading debit.
5. Subsections (6) to (8) make consequential amendments to Part 8 and Finance Act 2015 to withdraw the amendments introduced in that Act that have been superseded by this clause.
6. Subsection (9) contains the commencement provisions. The changes apply from 8 July 2015.
7. Subsection (10) disapplies the changes made by this measure to assets treated as acquired before commencement. This ensures that the rules relating to those assets at the time of acquisition continue to apply after commencement. Assets acquired between 3 December 2014 and 8 July 2015 where s849B applies will therefore continue to be treated as if the provisions of s849 C and s849D had not been withdrawn.
8. Subsections (11) and (12) provide for the apportionment of debits where the accounting period straddles the commencement date.
9. Subsection (13) makes further provision for determining when an asset is treated as acquired for the purposes of subsection (10).

Background note

10. This measure supports the government's objective to have a fair tax system for all.

11. Under Part 8 CTA 2009 companies obtain corporation tax relief when expenditure on goodwill and intangible assets is recognised in the accounts. This relief is therefore available to companies who acquire a business directly by purchasing its trade and assets. It is not available to companies who acquire shares in the vendor company.

12. This clause removes this relief with regard to the purchase of goodwill and other intangible assets closely related to goodwill. It will restrict the ability of companies to reduce their corporation tax profits following a merger or acquisition and removes this artificial incentive to buy assets rather than shares.

13. The measure does not impose any restriction in respect of intangible assets apart from goodwill and the other specified "relevant assets". Investment expenditure on intellectual property and other intangible assets will continue to get relief under Part 8

Clause 33: Election of designated currency by UK resident investment company

Summary

1. This clause makes amendments to Chapter 4 of Part 2 of Corporation Tax Act (CTA) 2010, concerned with the currency to be used in tax calculations. The changes will take effect for accounting periods commencing on or after 1 January 2016.

Details of the clause

2. Subsection (2) introduces amendments to section 9A CTA 2010.

3. Subsection (3) substitutes new subsection 9A(2). This provides that an election for a particular designated currency only takes effect if the company is a UK resident investment company and the relevant conditions are satisfied at the time when the election is to take effect.

4. Subsection (4) omits subsection 9A(3) as a consequential change.

5. Subsection (5) inserts a new subsection 9A(9). This clarifies that the effect of a designated currency election is that profits and losses are calculated as if the designated currency of the company were its functional currency.

6. Subsections (6) to (10) make a number of consequential changes to section 9B.

7. Subsection (11) inserts a new subsection 9B(6A). This provides that ceasing to be a UK resident investment company constitutes a revocation event. The designated currency election will cease to have effect from the date of the revocation event.

8. Subsections (14) to (17) provide that the changes made by the clause have effect for periods of account beginning on or after 1 January 2016. Where a period of account period straddles 1 January 2016, it is to be split, with a new period of account being deemed to commence on that date for the purposes of the clause. Accounts for the two deemed periods are assumed to have been prepared on the same basis as the actual accounts for the straddling period.

Background note

9. At Budget 2013, the Government announced a review of the corporation tax rules in Parts 5 and 7 of Corporation Tax Act (CTA) 2009 which govern corporate debt (or 'loan relationships') and derivative contracts. There was consultation on a wide-ranging package of measures to update and simplify these regimes and to reduce their susceptibility to tax avoidance. The changes made by this clause arise out of that review.

10. The rules in Parts 5 and 7 include provisions for the treatment of exchange gains and losses arising from loan relationships, money debts and derivative contracts. However, these depend on rules in chapter 4 of Part 2 CTA 2010 for determining the currency in which a company's profits are calculated for the purposes of corporation tax. These currency rules are therefore being updated alongside changes to Parts 5 and 7 of CTA 2009.

Clause 34: Group relief

Summary

1. This clause removes the requirements relating to the location of the link company in a consortium claim to group relief. The link company no longer needs to be in the UK or the European Economic Area (EEA), and there are no different requirements between a UK link company and one based in another jurisdiction. The changes will apply to accounting periods commencing on or after 10 December 2014.

Details of the clause

2. Subsection (1) omits the requirements relating to the location of the link company.

3. Subsection (2) makes consequential amendments to reflect the omissions made by subsection (1).

4. Subsection (3) sets out the commencement for the change, allowing claims under the new conditions for accounting periods beginning on or after 10 December 2014.

Background note

5. This measure takes effect for consortium claims to group relief in accounting periods beginning on or after 10 December 2014.

6. For group relief to flow between a company owned by a consortium and a company in the same group as a member of the consortium, the current rules require that the link company be in the UK or the EEA, and where in the EEA but not the UK all intermediate companies between the claimant and surrendering companies must also be in the EEA. This creates a difference of treatment between UK link companies and those in the EEA or in other jurisdictions.

7. This measure seeks to remove that difference in treatment and simplify claims to group relief between a consortium and a group owning a share in that consortium by omitting the additional conditions where the link company is based in a jurisdiction other than the UK.

Clause 35: CFC charge: abolition of relief

Summary

1. This clause introduces an amendment to the Controlled Foreign Companies (CFC) legislation in Part 9A of Taxation (International and other Provisions) Act (TIOPA) 2010. The amendment removes the ability for UK companies to set UK losses and expenses against a CFC charge. The amendment will have effect from 8 July 2015.

Details of the clause

2. Subsection (1) removes section 371UD, Part 9A, TIOPA 2010, which provides the mechanism for UK losses and expenses to be set against a CFC charge.
3. Subsection (2) makes a number of consequential amendments to remove references to the CFC loss relief provisions.
4. Subsection (3) provides for commencement. The change applies for CFC accounting periods which start on or after 8 July 2015.
5. Subsections (4) and (5) deal with CFC accounting periods which start before and finish after 8 July 2015. It provides for a CFC accounting period to be split into two separate periods, so that the CFC profits can be allocated between the two periods either side of the commencement date. The allocation is made on a just and reasonable basis so that, for example, profits which arise after the commencement date are allocated entirely to the later period.

Background note

6. The UK CFC rules (introduced by Finance Act 2012) are designed to reflect the way business operates in a global economy, whilst providing protection against the diversion of UK profits. A CFC charge arises to a UK company in relation to profits which have been diverted from the UK.
7. The amendments in this clause remove the ability of UK companies to reduce or eliminate a CFC charge by offsetting UK losses and surplus expenses against that CFC charge. This change is intended to ensure that the CFC rules operate as intended, and continue to protect the UK's corporation tax base.

Clause 36: CFC charge: tax avoidance involving carried-forward losses

Summary

1. This clause contains amendments to the loss carried-forward rules in Part 14B Corporate Tax Act (CTA) 2010, to ensure that those rules apply to arrangements involving the avoidance or reduction of a Controlled Foreign Company (CFC) charge. The changes in this clause apply for accounting periods which start on or after 8 July 2015.

Details of the clause

2. Subsections (2), (3) and (4) introduce a definition of a relevant CFC charge advantage into carried-forward loss rules in Part 14B CTA 2010. This definition ensures that arrangements which include a deduction in a CFC fall within the scope of these anti-avoidance rules.

3. Section 730G(4) of Part 14B CTA 2010 is amended to include a reference to "a relevant CFC charge advantage".

4. New section 730G(5A) defines a relevant CFC charge advantage as one which involves a deductible amount

5. New section 730G(7)(aa) includes the value of any relevant CFC charge advantage in the calculation of the tax value of the arrangements which fall within the scope of Part 14B.

6. Subsection (6) amends section 730H(1) to include a definition of a "CFC charge advantage", which for the purposes of Part 14B, is the avoidance or reduction of a CFC charge or assessment.

7. Subsection (7) provides for commencement. The changes in this clause apply for accounting periods which start on or after 8 July 2015.

8. Subsection (8) deals with accounting periods which start before and end after 8 July 2015. It provides for the accounting period to be split into two separate periods, so that the profits of the accounting period are be allocated between the two periods either side of the commencement date. The allocation is made on a time basis, unless a time apportionment would produce an unjust or unfair result, in which case the apportionment is on a just and reasonable basis.

Background note

9. The tax avoidance involving loss carried-forward rules in Part 14B CTA 2010 (introduced by Finance Act 2015) are anti-avoidance rules which are designed to prevent groups entering into tax planning arrangements to access losses carried-forward from previous accounting periods.

10. The amendments to the loss carried-forward rules in this clause ensure that arrangements which involve a deduction which reduces or eliminates a CFC charge are within the scope of the loss-carried forward rules. This ensures that Part 14B has the effect that was intended when it was originally introduced.

Clause 37: Changes in trading stock not made in course of trade

Summary

1. This clause amends legislation that applies where trading stock is acquired or disposed of other than by way of trade. It ensures that where transfer pricing rules apply to the acquisition or disposal (whether or not those rules actually give an adjustment) there can also be a further adjustment if necessary to ensure that the acquisition or disposal proceeds are recognised at full market value for tax purposes. It applies to acquisitions or disposals of trading stock made on or after 8 July 2015. Related changes are made by clauses 38 and 39.

Details of the clause

2. Clause 37 amends section 161 of the Corporation Tax Act 2009 (CTA 2009) and section 172F of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005.

3. Subsection (1) inserts new subsections (1A), (1B) and (1C) into section 161 of CTA 2009.

4. New subsection (1A) of section 161 of CTA 2009 ensures that, where the transfer pricing rules of Part 4 of the Taxation (International and Other Provisions) Act (TIOPA) 2010 apply, there can also be an adjustment or further adjustment under section 161. This is to ensure that the minimum amount to be brought into account for the acquisition or disposal of the trading stock in computing profits for corporation tax purposes is the market value. The subsection compares the market value amount that should be recognised for the acquisition or disposal with the amount actually recognised for the acquisition or disposal, having applied the transfer pricing rules. If the market value amount is the higher of the two amounts, subsection (1B) then applies.

5. New subsection (1B) of section 161 of CTA 2009 directs that, if the market value amount is greater than the transfer pricing amount, a further adjustment is made to ensure that the amount recognised for tax purposes in respect of the acquisition or disposal is the market value.

6. New subsection (1C) of section 161 of CTA 2009 defines the two key amounts - the market value amount, and the amount brought into account after the application of Part 4 of TIOPA 2010.

7. Subsection (2) inserts new subsections (1A), (1B) and (1C) into section 172F of ITTOIA 2005, to achieve the same effect for income tax as the new subsections (1A), (1B) and (1C) of section 161 of CTA 2009 have for corporation tax.

8. Subsection (3) sets out the commencement rule. The changes have effect for acquisitions or disposals made on or after 8 July 2015, unless they were made to meet an obligation, under a contract, which was unconditional before 8 July 2015.

9. Subsection (4) defines when a contract is unconditional for the purposes of the commencement rule in subsection (3).

Background note

10. When a business acquires or disposes of trading stock other than through its normal business, specific tax rules apply. The aim of those rules is to ensure that the full value of the stock is brought into account in computing profits for income tax and corporation tax purposes. The starting point for computing taxable profits is the profit shown in the accounts of the business, drawn up in accordance with recognised accounting practice. However, accounting rules do not always bring into account the market value. Tax legislation therefore provides for an adjustment to be made.

11. It is also possible that the transfer pricing rules in Part 4 of TIOPA 2010 could apply. The outcome reached under transfer pricing could be lower than the market value that would be given by the CTA 2009 or ITTOIA 2005 rules. However, because the transfer pricing rules apply, the rules in CTA 2009 and ITTOIA 2005 are prevented from applying. The result is that the full value might not be brought into account for tax because of the way the transaction is treated in the accounts.

12. This change ensures that the amount recognised for tax purposes for the acquisition or disposal is never less than the market value. Similar changes are made by clause 38on the cessation of a trade, and by clause 39in connection with the transfer of intangible fixed assets.

Clause 38: Valuation of trading stock on cessation

Summary

1. This clause amends the legislation that applies where trading stock needs to be valued for tax purposes on the cessation of a trade. It ensures that where the transfer pricing rules apply to the value in connection with the cessation of a trade, there can also be a further adjustment if necessary to ensure that the full value of the stock is brought into account for tax purposes. It will apply to a cessation of a trade occurring on or after 8 July 2015. Related changes are made by clause 37 and clause 39.

Details of the clause

2. Clause 38 amends section 162 of the Corporation Tax Act 2009 (CTA 2009) and section 173 of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005.

3. Subsection (1) inserts new subsections (2A), (2B) and (2C) into section 162 of CTA 2009.

4. New subsection (2A) of section 162 of CTA 2009 ensures that, where the transfer pricing rules of Part 4 of the Taxation (International and Other Provisions Act) (TIOPA) 2010 apply, there can also be an adjustment or further adjustment under section 162 of CTA 2009. This ensures that the value of the trading stock to be used in computing profits for corporation tax purposes is the full value, determined under sections 164 to 167 of CTA 2009. The subsection compares the market value that should be recognised on the cessation with the amount actually recognised, having applied the transfer pricing rules. If the market value is the higher of the two amounts, subsection (2B) then applies.

5. New subsection (2B) of section 162 of CTA 2009 directs that, if the market value is greater than the transfer pricing amount, a further adjustment is made to ensure that the amount recognised for tax purposes is equal to the market value.

6. New subsection (2C) of section 162 of CTA 2009 defines the two key amounts - the market value, and the amount brought into account after the application of Part 4 of TIOPA 2010.

7. Subsection (2) inserts new subsections (2A), (2B) and (2C) into section 173 of ITTOIA 2005, to achieve the same effect for income tax as the new subsections (2A), (2B) and (2C) of section 162 of CTA 2009 have for corporation tax.

8. Subsection (3) sets out the commencement rule. The changes have effect for a cessation of a trade that takes place on or after 8 July 2015.

Background note

9. When a business ceases, it is necessary to bring into account a value for the remaining trading stock in computing the profit or loss of the business. There are different bases for calculating the value depending on what happens to the trading stock. Those rules are contained in sections 163 to 167 of CTA 2009 (for corporation tax), and in sections 173 to 178 of ITTOIA 2005 (for income tax).

10. It is also possible that the transfer pricing rules in Part 4 of TIOPA could apply to the value of the trading stock on cessation. The outcome reached under transfer pricing could be lower than the value that would be given by the CTA 2009 or ITTOIA 2005 rules. However, because the transfer pricing rules apply, the rules in CTA 2009 and ITTOIA 2005 are prevented from applying. The result is that the full value might not be brought into account for tax because of the way the transaction is treated in the accounts.

11. This change ensures that where the transfer pricing rules of TIOPA apply, an adjustment or further adjustment can also be made under section 162 of CTA 2009 or section 173 of ITTOIA 2005 to ensure that not less than the full value of trading stock is brought into account on the cessation of a trade.

12. Similar changes are made by clause 37in connection with trading stock transferred otherwise than at arm's length, and by clause 39in connection with transfers of intangible fixed assets

Clause 39: Transfer of intangible assets not at arm's length

Summary

1. This clause amends the legislation that applies when intangible fixed assets need to be valued for tax purposes when they are transferred between related parties. It ensures that where transfer pricing applies, there can also be a further adjustment if necessary to ensure that the full market value of the asset is brought into account for tax purposes. The change applies to a transfer of intangible assets made on or after 8 July 2015. Related changes are made by clauses 37and 39.

Details of the clause

2. Clause 39 amends section 846 of the Corporation Tax Act (CTA) 2009.

3. Subsection (1) inserts new subsections (1A), (1B) and (1C) into section 846 of CTA 2009.

4. New subsection (1A) of section 846 of CTA 2009 ensures that, where the transfer pricing rules of Part 4 of the Taxation (International and Other Provisions) Act (TIOPA) 2010 apply, there can also be an adjustment or further adjustment under section 846 of CTA 2009. This ensures that an amount equivalent to the full market value of the intangible asset is used in computing profits for corporation tax purposes. The subsection compares the market value that should be recognised on the transfer of the asset with the amount actually recognised, having applied the transfer pricing rules. If the market value is the higher of the two amounts, subsection (1B) then applies.

5. New subsection (1B) of section 846 of CTA 2009 directs that, if the market value amount is greater than the transfer pricing amount, a further adjustment is made to ensure that the amounts recognised for tax purposes in respect of the transfer of the asset are equal to the market value.

6. New subsection (1C) of section 846 of CTA 2009 defines the two key amounts - the market value, and the amount brought into account after the application of Part 4 of TIOPA 2010.

7. Subsection (2) sets out the commencement rule. The changes have effect for transfers of intangible fixed assets to which section 846 applies that are made on or after 8 July 2015, unless they were made to meet an obligation, under a contract, that was unconditional before 8 July 2015.

8. Subsection (3) defines when an obligation is regarded as unconditional for the purposes of the commencement rule in subsection (2).

Background note

9. When a company transfers intangible fixed to a related party, specific tax rules apply (sections 845 and 846 of CTA 2009). The aim of those rules is to ensure that the full value of the assets is brought into account in computing profits for corporation tax purposes.

10. It is also possible that the transfer pricing rules in Part 4 of TIOPA 2010 could apply. The amount recognised after the application of the transfer pricing rules could be lower than the market value, because of the way that the transaction is treated in the accounts. This could have the result that less than the market value is brought into account for tax.

11. This change ensures that where transfer pricing rules apply, an adjustment can be made under section 845 of CTA 2009 to ensure that not less than the market value of the transferred assets is brought into account for corporation tax purposes.

12. Similar changes are made by clause 37on the transfer of trading stock otherwise by way of trade, and by clause38 in connection with the cessation of a trade

Clauses 40and 41: Carried interest and Disguised investment management fees

Summary

1. These clauses change the way that investment fund managers who receive carried interest compute their chargeable gains. When carried interest arises on or after 8 July 2015 the gain will normally be equal to the sum received. Deductions will be allowed only for actual acquisition costs paid in the form of money (and not as money's worth) and for amounts previously taxed as earnings.

Details of the clauses

Clause 40: CGT: carried interest

2. Clause 401, subsection 1 introduces new Chapter 5 into Part 3 of the Taxation of Chargeable Gains Act (TCGA) 1992.

Chapter 5

3. Chapter 5 contains sections 103KA to 103KF which provide new rules for the taxation of carried interest which arises to individuals who provide investment management services.

4. New section 103KA(1) sets out the circumstances in which the section applies. Several terms used have the same meaning as in the Income Tax Act (ITA) 2007 (see subsection (8) and new section 103KF).

5. New section 103KA(2) applies when the carried interest which arises is derived directly or indirectly from a disposal of assets held by a partnership within an investment fund structure. It provides that the chargeable gain accruing on that disposal is of an amount equal to the carried interest arising, less certain specific deductions, and that it accrues when the carried interest arises.

6. New section 103KA(3) applies when carried interest arises in any other circumstances. It provides that a chargeable gain accrues when the carried interest arises, and in an amount equal to the carried interest less similar specific deductions.

7. New section 103KA(4) excludes certain amounts of carried interest from the chargeable gain which accrues. The exclusions are:

   - Amounts brought into account in calculating A's profits from a trade, profession or vocation; and
   - Amounts which constitute repayment of principal or return on a co-investment (see subsection (8)). In this context, a return will by definition be an arm's length return.

8. New section 103KA(5) limits the deductions which are permitted in computing the chargeable gain which accrues. The permitted deductions are just and reasonable apportionments of amounts specified in subsection (6). The meaning of "just and reasonable" is not defined, but in order to be allowed as a deduction, an amount must be closely associated with the acquisition of the right to the carried interest which has arisen, or with the arising of the carried interest itself.

9. New section 103KA(6) specifies the only amounts all or part of which may be permitted deductions in computing the chargeable gains mentioned in subsections (2) and (3). These are:

    - Money (but not money's worth) given to the investment scheme by the individual for being admitted into the arrangements under which the individual provides management services. Money given for co-investments (see subsection (8)) is excluded (under section 103KA(6)(a));

    - Amounts which have been taxed as income on the individual when he or she acquired the right to the carried interest by entering into the arrangements. Amounts treated as earnings in respect of co-investments and "exempt income" within section 7 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 are excluded (under section 103KA(6)(b)); and

    - Other amounts which have been taxed as income on the individual in connection with his or her participation in the arrangements under which the individual provides management services and the carried interest arises, up to the time it arises (under section 103KA(6)(c)).

10. New section 103KA(7) applies when carried interest arises to an individual who acquired the right to it from another individual. In these cases, the person to whom the carried interest ultimately arises may make a claim to HM Revenue & Customs (HMRC) for their gain to be reduced by an amount equal to the money they gave as consideration for the right. No deduction is due automatically: a claim must be made and the normal rules which govern time limits, the method by which the claim is made and the other relevant conditions also apply.

11. New section 103KA(8) defines terms used elsewhere in section 103KA. In order to be a "co-investment" an investment must yield a return which is an arm's length return, and no other. "Arm's length return" is defined in section 809EZB(2) of ITA 2007.

12. New section 103KB applies when an individual disposes of his or her right to carried interest, either by selling it, surrendering it, allowing it to lapse or in any other way apart from the carried interest actually arising. Consideration receivable for the disposal is treated as carried interest in the hands of the recipient arising at the time of the disposal, whatever form that consideration takes and whenever it is actually received. However, this rule does not apply if the consideration is a disguised fee for the purposes of the disguised management fee rules in section 809EZA of ITA 2007.

13. New section 103KB, subsections (3) to (8) provide a special rule for determining the market value of a right to carried interest, where it is necessary to do so for the purposes of the section. This will be the case, where, for instance, section 17 TCGA 1992 applies. Where the right is subject to restrictions in the hands of the person making the disposal, and those restrictions reduce the market value of the right, then the restrictions are disregarded in determining the market value. The relevant restrictions are specified in subsections (5), (6) and (7) and are comparable to the restrictions in section 423 ITEPA 2003.

14. New section 103KC is relevant where the individual to whom the gain arises is taxed on the remittance basis. There will be a foreign chargeable gain if any of the management services performed under the arrangements under which the carried interest arises were performed outside the United Kingdom. In these cases, the chargeable gain which accrues under section 103KA(2) or (3) is apportioned by reference to the services performed outside the UK expressed as a fraction of all the services the individual performed. This applies instead of the normal rule at section 12(4) TCGA 1992, and the remittance basis rules apply to foreign chargeable gains determined under this rule, as they apply to foreign chargeable gains determined under section 12(4) TCGA 1992.

15. New section 103KD is an anti-avoidance rule. It applies where there are arrangements which are intended to ensure that the rules in section 103KA do not apply to an individual or individuals, or to the whole of an amount of carried interest arising to an individual, where they would otherwise apply.

16. New section 103KE is a general rule to ensure that any gain charged as a result of section 103KA is not actually or effectively taxed a second time on the same individual. Where there is such a double charge, and tax other than capital gains tax charged by virtue of section 103KA has actually been paid by the individual to whom the carried interest arose, that individual may make a claim to HMRC to eliminate the double charge. The claim must be for adjustment of the capital gains tax charged, and HMRC will make just and reasonable adjustments which do not exceed the lesser of the capital gains tax charged under section 103KA and the amount of 'other' tax. Other tax charges which arise before the capital gains tax charge will generally be deductible under section 103KA(5): this section applies principally where other tax charges arise after that time.

17. New section 103KF gives the meaning of certain words and phrases used in sections 103KA to 103KF.

18. Subsection (2) specifies that the rules in sections 103KA to 103KF have effect in relation to any carried interest that arises on or after 8 July 2015, unless that carried interest is derived from a disposal of partnership assets which took place before that date.

19. Subsection (3) specifies a special commencement date for the rule at new section 103KB(4) governing how the market value of a right to carried interest is determined. This rule is effective from 15 July 2015.

20. Subsection (4) ensures that for the purposes of the commencement provision in subsection (2), carried interest and other terms have the same meaning as they do in Chapter 5 of Part 3 of TCGA 1992.

Clause 41: Disguised investment management fees

21. Subsection (1) introduces new subsection (2A) into section 809EZB of ITA 2007.

22. Section 809EZB(2A) explains what is meant by the phrase "reasonably comparable" in section 809EZB subsection (2)(b). That subsection requires that the return on an investment made by a fund manager be reasonably comparable to the return in the same kind of investments made by external investors. New section 103KA(8) TCGA 1992 (see above) uses the conditions in section 809EZB(2) ITA to define a "co-investment".

23. Subsection (2) specifies that the new definition in section 809EZB(2A) applies in relation to any management fees arising on or after 8 July 2015.

24. Subsection (3) ensures that, for the purposes of the commencement provision in subsection (2), "arise" (and, by extension, "arising") has the same meaning as in the disguised management fee rules in Chapter 5E of Part 13 of ITA 2007.

Background note

25. These new provisions are effective from the date of their announcement on 8 July as part of the Summer Budget 2015 in order to prevent the forestalling which would otherwise be likely. They have been introduced to support the Government's policy that taxation should be fair and, to that end, should so far as possible reflect the reality of circumstances. It ensures that tax is paid on true economic gains enjoyed by the individuals affected by the new rules.

26. HMRC will monitor the impact of these provisions through disclosures of new avoidance schemes to circumvent the measure, and through communication with affected taxpayers and practitioners.

Clause 42: Vehicle excise duty

Summary

1. This clause introduces new annual vehicle excise duty ("VED") rates for light passenger vehicles by amending the Vehicle Excise and Registration Act 1994 ("VERA"). The new rates only apply to light passenger vehicles ("LPVs") first registered on or after 1 April 2017 (post-March 2017 registered LPVs). It leaves in place existing graduated rates of duty for LPVs registered on or after 1 March 2001 but before 1 April 2017.

2. For post-March 2017 registered LPVs in their first vehicle licence, the standard annual rates are graduated and are determined by reference to the applicable carbon dioxide emissions figures for the vehicle concerned. There are reduced annual rates for vehicles which meet the conditions set out in paragraph 1C of Part 1A of Schedule 1 to VERA ("the reduced rate conditions"). No VED is to be paid on the first vehicle licence for LPVs which have zero carbon dioxide emissions, have carbon dioxide emissions exceeding 0g/km but do not exceed 50g/km and meet the reduced rate conditions.

3. For post-March 2017 LPVs with a price not exceeding £40 000, there is a flat annual rate of £140 (or £130 where the vehicle qualifies for a reduced rate) for any vehicle licence subsequent to the first licence. No VED is charged for LPVs with a price not exceeding £40 000 and have an applicable carbon dioxide emissions figure of 0g/km.

4. For post March 2017 registered LPVs with a list price above £40,000, the applicable annual VED is increased by £310 per year for licences acquired during for the first five years after the first vehicle licence. These LPVs will incur the higher annual standard rate of £450 or a reduced annual rate of £440, and if the applicable carbon dioxide emissions figure is 0 g/km the annual rate will be £310.

Details of the clause and Schedule

Schedule 1: Part 1AA: Light Passenger Vehicles Registered On or After 1 April 2017

5. Section 1 amends Part 1A of Schedule 1 to VERA 1994 to introduce Part 1AA which applies to light passenger vehicles first registered on or after 1 April 2017.

6. Paragraph 1GA of Part 1AA defines the vehicles to which this part applies.

7. Paragraph 1GB of Part 1AA provides an exemption from payment of VED on the first vehicle licence in specified circumstances for post-March 2017 registered light passenger vehicles.

8. Paragraph 1GC of Part 1AA sets out a table providing the annual rates payable on a first vehicle licence. The table provides for graduated standard and reduced annual rates of VED which are determined by the vehicle's carbon dioxide emissions figure. A reduced rate of VED applies where a vehicle uses certain alternative fuels or meets other conditions set out in VERA.

9. Paragraph 1GD of Part 1AA sets out the rates of duty payable on any other vehicle licence as £130 if the vehicle qualifies for the reduced rate, or £140 for the standard rate but this is subject to other clause provisions.

10. Paragraph 1GE of Part 1AA sets out the higher rates of duty to be paid for licences acquired subsequent to the first licence, in respect of light passenger vehicles with a price exceeding £40,000 and registered on or after 1st April 2017. This paragraph provides for a higher annual standard rate of £450 if the vehicle was first registered less than six years before the date of the licence. If the vehicle qualifies for the reduced rate this is £440. Subparagraphs 3 and 4 set out the rate of duty paid for subsequent licences by vehicles with a price in excess of £40,000 that also have carbon dioxide emissions figure of 0 grams per kilometre. The rate of duty for these zero emission vehicles is £310 if the vehicle was first registered less than six years before the date of the licence and it is not a first vehicle licence.

11. Paragraph 1GF of Part 1AA defines "price of a vehicle" for the purposes of this clause.

Schedule 2: exempt vehicles

12. Section 1(3) of the clause amends Schedule 2 to VERA which provides for electrically propelled vehicles and vehicles with specified carbon dioxide emissions to be exempt. The exemptions do not apply to the vehicles to which Part 1AA of schedule 1 apply and which have a price exceeding £40,000.

Background note

13. The changes made by this clause to the first year licence rates are intended to incentivise manufactures to produce and motorist to purchase greener LPVs. The new flat annual rate for subsequent licences with a higher rate for a limited period in relation to certain LPVs, is intended to provide a fair system of VED for motorists whilst sustaining VED revenue in the long term.

Clause 43: Insurance premium tax: standard rate

Summary

1. This clause increases the standard rate of insurance premium tax (IPT) from 6 per cent to 9.5 per cent with effect from 1 November 2015.

Details of the clause

2. Subsection 2 applies the new rate to insurance premiums received on or after 1 November 2015.
3. Subsection 3 provides an exception to subsection 1. Where an insurer uses the special accounting scheme and receives premiums in respect of an insurance contract entered into before 1 November 2015, the new rate will only apply to those premiums received on or after 1 March 2016.
4. Subsection 4 provides an exception to subsection 3 to protect receipts. Premiums that would otherwise fall within subsection 3 but are paid in respect of new risks not already covered in the insurance contract as it stood prior to 1 November 2015 will be subject to the new rate of tax from that date.
5. Subsection 5 designates dates for the purposes of operating the anti-avoidance provisions, already contained in IPT legislation. These prevent the forestalling of the rate rise by advancing the timing of premium receipts.

Background note

6. IPT, either at the standard rate or higher rate, is accounted for on general insurance premiums. Most premiums are subject to the standard rate. This clause increases the standard rate and ensures that existing anti-forestalling provisions and the exception provided for in subsection 3 operate effectively in relation to the rate rise. The aim of this clause is to increase the revenue raised by IPT.

Clause 44: Aggregates levy: restoration of exemptions

Summary

1. This clause repeals the legislation that suspended certain exemptions from aggregates levy in April 2014, with effect from 1 August 2015. It also repeals the legislation that provided for the suspended exemptions to be restored by secondary legislation, with effect from Royal Assent. The clause also removes the exemption that had been in place for shale prior to the suspension, and introduces a new exempt process for non-aggregate shale, both with effect from 1 April 2014.

Details of the clause

2. Sub-sections (1) provides that, in effect, the changes included in section 94 of the Finance Act (FA) 2014 (which suspended certain exemptions from the levy from 1 April 2014) are to be treated as never having had effect.

3. Subsection (2) repeals sections 94 and 95 of FA 2014 (the latter provided for the reinstatement of exemptions to be set out in secondary legislation).

4. Subsection (3) provides for the clause to make the amendments to the aggregates levy primary legislation set out in sub-sections (4) and (5).

5. Sub-section (4) removes the exemption that had been in place for shale prior to the suspension of exemptions, making it taxable aggregate.

6. Sub-section (5) introduces a new exempt process for shale which is not used as aggregate for construction purposes. This will entitle a person who has commercially exploited and who has accounted for the levy chargeable on such shale to claim a tax credit for it, when it is used in this new exempt process, under the Aggregates Levy (General) Regulations 2002 (S.I. 2002/761).

7. Sub-section (6), in conjunction with sub-section (1), sets out the commencement provisions. The repeal of sections 94 and 95 FA 2014 come into force on 1 August 2015 and Royal Assent to the Bill respectively. The changes made by sub-sections (3) to (5) are treated as coming into force on 1 April 2014.

Background note

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

9. In response to action taken by the British Aggregates Association, in 2012 the European General Court annulled the European Commission's 2002 State aid approval for a number of exemptions from the levy. These exemptions were therefore suspended from 1 April 2014 while the Commission undertook an investigation. The previous government made a commitment to reinstate all exemptions found to be lawful.

10. The Commission completed its investigation and published its decision on 27 March 2015. The Commission was broadly content that the exemptions and the exemptions under investigation were lawful, with the exception of part of the shale exemption.

11. The effect of the commencement provisions is that, once the legislation comes into force, businesses will be able to claim a refund of any levy paid since 1 April 2014 (with interest) on materials for which the exemption was found by the Commission to be lawful. HM Revenue and Customs (HMRC) will publish a Revenue & Customs Brief in July 2015 to provide more information on the repayment process.

Clause 45: CCL: removal of exemption for electricity from renewable sources

Summary

1. This clause removes the climate change levy ('CCL') exemption for renewable source electricity generated on or after 1 August 2015.

Details of the clause

2. The clause amends paragraph 19 of Schedule 6 to Finance Act 2000 so that the exemption from CCL for electricity supplied under a renewable source contract applies only in respect of renewable source electricity generated before 1 August 2015.

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 in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Electricity generated from renewable sources has been exempt from CCL when supplied under a renewable source contract. The original purpose of removing tax from these supplies was to mitigate the additional cost of renewable source electricity and in so doing increase demand from non-domestic consumers.

5. Energy policy has subsequently moved on, with far greater incentives available, targeted at renewable generation as opposed to supply. As the quantity of renewable source electricity available has increased, the CCL exemption has ceased to provide value for money. The exemption is therefore being withdrawn for electricity generated on or after 1 August 2015.

6. To enable suppliers to retain the benefit of renewable source electricity already acquired they will, for the time being, be able to continue to exempt supplies of electricity where this was generated from renewable sources before 1 August 2015.

7. During the summer and autumn the government will consult on how long suppliers should be given to use up accumulated renewable source electricity and on any other appropriate transitional arrangements. The government intends to legislate for these arrangements where necessary in Finance Bill 2016.

Clause 46: International agreements to improve compliance: client notification

Summary

1. This clause introduces a power under which financial intermediaries and tax advisers will be required to notify their customers about the Common Reporting Standard, the penalties for tax evasion and the opportunities to disclose offshore evasion to HM Revenue & Customs (HMRC).

Details of the clause

2. Subsection (1) amends section 222 of the Finance Act 2013.

3. Subsections (2) and (3) extend section 222 so that client notification obligations can be imposed on financial intermediaries and tax advisers.

4. New subsection (2A) defines "client notification obligation" as an obligation for financial intermediaries and tax advisers to give clients specified information.

5. New subsection (2B) allows regulations to prescribe how and when the specified information has to be provided. It also allows them to require persons under the control of financial intermediaries and tax advisers to give specified information.

6. Subsection (4) of section 222 is extended so as to provide definitions of the terms "client", "control" and "relevant person".

Background note

7. This clause has been introduced to support the government's wider offshore evasion strategy. The clause will increase the effectiveness of HM Revenue & Customs (HMRC) compliance activity as well as increasing the deterrent effect for those who attempt to evade UK tax by holding financial assets outside of the UK.

8. The UK will begin to receive information on offshore accounts and financial assets under the Common Reporting Standard from 2017 and at the same time will begin to share information with other tax authorities on accounts held in the UK.

9. Financial intermediaries and tax advisers will be required to notify their customers about matters specified in regulations, which are likely to include the Common Reporting Standard, the penalties for evasion and the opportunities to disclose previous evasion to HMRC. This will encourage individuals to make sure that they pay the right amount of tax on money held abroad.

Clause 47 and Schedule 8: Enforcement by deduction from accounts

Summary

1. Clause 47 and Schedule 8 introduce a new power to allow HM Revenue & Customs (HMRC) to recover debts due to it (including tax and tax credit debts) directly from the bank and building society accounts (including Individual Savings Accounts) of debtors. This is also known as the Direct Recovery of Debts ("DRD").

2. This power can only be used to recover debts of more than £1,000, and is subject to a number of statutory safeguards. Only debtors who have received a face-to-face visit, have not been identified as vulnerable, have sufficient money in their accounts and have still refused to settle their debts will be considered for debt recovery through DRD. Debtors affected by this policy will have 30 days to object before any money is transferred to HMRC and HMRC must always leave a minimum of £5,000 across a debtor's accounts above the amount that has been held. If debtors do not agree with HMRC's decision, they will be able to appeal against this to a County Court on specified grounds, including hardship and third party rights.

Details of the Clause and Schedule

3. The clause introduces the schedule, and also sets out HM Treasury's powers to make consequential, incidental or supplementary amendments, including to primary legislation. These powers can be used to amend primary or secondary legislation, following the affirmative and negative procedures respectively. The power is limited to making amendments which relate to the provisions in the schedule. For the avoidance of doubt, the repeal of any safeguard (such as the right of appeal) would not be deemed consequential, incidental or supplementary to the provisions in the Schedule and therefore would be outside the scope of these powers.

Part 1: Scheme for Enforcement by Deduction from Accounts

4. Paragraph 2 defines the debts which are subject to DRD, using the concept of "relevant sum". Three conditions must be satisfied in order for DRD to apply. Condition A is that the sum is at least £1,000. Condition B is that the sum is either an "established debt" or one due under the accelerated payments legislation in Finance Act 2014. Condition C is that HMRC is satisfied that the debtor is aware that they owe the debt to HMRC. The government has committed to ensuring every debtor receives a face-to-face meeting from one of HMRC's officers before their debts are considered for recovery through DRD, to fulfil this objective. This will ensure that HMRC is satisfied that the debtor knows that they owe a debt, and will allow HMRC to assess whether or not the debtor is vulnerable, and remove them from the DRD process.

5. Paragraph 2(5) provides that an established debt is one against which there is no right of appeal or (where there is a right of appeal) the appeal period has either expired or the appeal has been settled or withdrawn.

6. Paragraph 3 provides a definition of an "information notice" and when it may be issued to a deposit-taker. If HMRC believes that a person has failed to pay a relevant sum, they may issue an information notice to a deposit taker, where it appears the person holds one or more accounts with that deposit-taker. The information notice requires the deposit taker to provide HMRC with "prescribed information" within 10 working days about accounts held with them by the person. The information deposit-takers have to provide will be prescribed in secondary legislation.

7. Paragraph 4(1) and (2) give HMRC the power to issue a "hold notice". A hold notice can only be issued to a deposit-taker by HMRC where it appears that a person has failed to pay a relevant sum and they hold one or more accounts with the deposit-taker. The hold notice must set out in particular:

   - enough information for the deposit-taker to be able to identify the account holder and any account(s) to which the hold notice will apply;
   - the amount of the relevant sum in respect of which the notice will have effect ("the specified amount");
   - the "safeguarded amount" (the amount which must always be left available to the debtor across their accounts – defined in sub-paragraph (6));
   - the order of priority of accounts subject to the notice; and
   - any descriptions of account which (in whole or part) are to be disregarded for the purposes of the hold notice.

8. Paragraph 4(4) provides for rules which have the effect that where hold notices are issued for the same debt to more than one deposit-taker, the total amount which might be held under those notices cannot exceed the total debt due to HMRC. This is to ensure HMRC can never use DRD to collect more than is due to it.

9. Paragraph 4(6) provides a definition of "the safeguarded amount", which must be specified in the hold notice. This is a minimum of £5,000 which will continue to be available to the debtor whilst the hold is in place. HMRC will have the discretion to set the safeguarded amount at a higher amount in cases where it is reasonable to do so (for example, where a business may need to pay salaries to its employers whilst the hold notice is in effect). However the hold notice does not need to specify a safeguarded amount if the deposit taker has already safeguarded £5,000 under a previously issued hold notice in respect of the same debt, within the last 30 days.

10. Paragraph 5(1) and (2) sets out the requirement for the deposit-taker to give effect to a hold notice as soon as reasonably practicable after that notice is issued, and in any case within 5 working days from that date. It also requires the deposit-taker to ensure that until the hold notice ceases to have effect they must not allow the credit balance in each account subject to the hold notice to fall below the held amount. (This concept is defined in paragraph 6).

11. Paragraph 5(3) sets out the types of arrangements deposit-takers may employ to comply with a hold notice. This means either ensuring the debtor's account does not drop below a particular balance or transferring an amount of funds into a separate 'suspense account'.

12. Paragraph 6(1) explains that where only one account is affected by a hold notice the held amount is calculated as follows. The deposit-taker must first deduct the safeguarded amount (the amount specified in the notice that must continue to be available to the debtor) from the total amount available in the affected account. If there is less than the safeguarded amount available in the affected account, the held amount is nil, so no hold is placed on that account. If there is money left, a hold will be placed on the remaining credit balance up to the amount of the relevant sum– the amount of that hold is the held amount.

13. Paragraph 6(2) explains that where there is more than one account subject to the same hold notice the held amount is calculated as follows. The deposit-taker must first determine the total amount available across all the accounts affected by the hold notice. Only if that total exceeds the safeguarded amount can any hold be placed on the accounts. If there is more than the safeguarded amount across the accounts, the deposit-taker proceeds to apply that safeguarded amount to those accounts. They must apply it first to the account which has the lowest priority (i.e. 'reverse priority order' – paragraph 6(5) defines "priority order"). So, it will be applied in the first instance to joint accounts (to best protect the rights of third parties), and then to sole accounts in opposite priority order to that which may be specified in the hold notice. For example, the order in the hold notice may say DRD applies to savings accounts first, then current accounts – so the safeguarded amount is matched first against current accounts, then savings accounts.

14. Once the safeguarded amount has been fully matched against the available amounts across the accounts, the remainder of those accounts may be subject to a hold. The amount which is to be held is identified by applying the "specified debt" (the amount of debt specified in the hold notice) to the remainder in the available accounts, in the order of priority provided for under paragraph 6(5). So, it will be applied in the first instance to sole accounts in such priority order as may be specified in the hold notice, and then to any joint accounts.

15. Paragraph 6(3) and (4) define the concepts of 'available amount' and 'appropriate fraction'. The latter concept is relevant to determining what proportion of a joint account a debtor is deemed to own. A pro-rata approach is adopted – the debtor is deemed to own half if it is a joint account held with one other person; a third if it is held with two other people, and so forth. A joint account holder can make an objection to the hold notice under paragraph 9 (3) (d) HMRC can adjust the hold notice should the objection be upheld.

16. Paragraph 6(5) defines the priority order in which the hold should be applied to the relevant accounts. Under paragraph 6(5)(a) joint accounts will always have a lower priority than other accounts – to protect third party rights. Under paragraph 6(5)(b) and paragraph 4(2)(d) HMRC can specify the order in which the hold should be applied to other types of accounts.

17. This worked example explains the operation of Paragraphs 5 and 6 of the schedule:

- P owes HMRC a debt of £3,000 which has met all the legal and policy requirements for DRD. P holds three accounts with the deposit-taker– a joint account with his wife of £10,000, a savings account in his name only with £3,000 and a current account in his name only with £3,000.

- If HMRC issues the deposit-taker with a hold notice in respect of this debt, it may provide in the hold notice that the safeguarded amount is £5,000 (the minimum safeguarded amount).
- Under paragraph 5(7), P is deemed to own £5,000 of the joint account held with his wife.
- Under paragraph 5(8)(a) all 'sole accounts' have higher priority than joint accounts. So, when applying the safeguard of £5,000 in 'reverse priority order' the deposit-taker would first match it against the £5,000 which P is deemed to hold in the joint-account – exhausting that safeguard in this case.
- The deposit-taker then looks to place a hold on the remaining £6,000 (the total amount available in the two other accounts P holds). To determine how to apply this hold the deposit-taker will look to the terms of the hold notice – if HMRC has provided that the hold is to be applied to savings accounts ahead of current accounts, then the deposit-taker would hold the £3,000 in the savings account, leaving P's current account untouched.

18. Paragraph 7 describes the duty of the deposit-taker to notify HMRC that they have applied a hold notice to one or more accounts, and the consequent obligation on HMRC to notify affected parties. The deposit-taker is also provided with a discretion to notify anyone affected by the hold, but they are only entitled to do this once they have imposed the hold.
19. Under paragraph 7(3) the deposit-taker must provide HMRC with prescribed information within 5 working days of the day it places a hold on the account. Secondary legislation will specify what this prescribed information comprises. On receipt of this notification from the deposit-taker, HMRC must provide a copy of the hold notice to the debtor within 5 working days and provide joint-account holders and interested third parties with details of how the account they have an interest in is affected, and of their rights to bring objections and an appeal.
20. Paragraph 7(7)(b) provides a further safeguard to allow P to object to an unintended error whereby a payment could have been made to HMRC during the period between the hold notice being applied and HMRC notifying P of this action, but the payment is yet to reach HMRC. This paragraph therefore makes sure that, in writing to P, HMRC sets out clearly which debts the notice applies to, so that P can object if a payment has already been made.
21. Paragraph 8 makes provision for HMRC of its own accord to cancel or reduce the specified amount in the hold notice it has issued, and places requirements on the deposit-taker to implement any notice making such changes which it receives.
22. Paragraph 9 explains that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can raise an objection to the hold notice to HMRC. The grounds for doing so are set out in paragraph 9(3) as follows:

    - That the relevant sum to which the hold notice has effect has already been paid

- That at the time of the hold notice being issued, P did not have an account with the deposit-taker, or does not have a right to some or all of the money in the joint account
- That the hold notice will cause exceptional hardship to P or an interested third party (such as other joint account holders)
- That an additional interested third party should be considered.

23. Paragraph 9(4) provides that objections must be brought within 30 days from the date the hold notice is given, or for a third-party who was not given such notice, within 30 days from the date the debtor is given notice.

24. Paragraph 10 provides how HMRC will deal with any objections which are brought. When HMRC receives objections (for example which suggest that HMRC has made a mistake or that the effect of the hold notice will cause undue hardship), it will promptly carry out an internal review of the case, and in no longer than 30 days. If there is clear evidence that DRD action will cause undue hardship, or that HMRC has made a mistake, it will instruct the deposit-taker to release an appropriate amount to the debtor.

25. Paragraph 10(2) gives examples of the amendments to a hold notice that may be made by HMRC after considering an objection. HMRC may amend the amount of the relevant sum, amend the amount specified as safeguarded (e.g. to allow additional funds to be made available to the debtor, in excess of the £5,000 minimum), exclude accounts from the notice, or exclude a specified credit balance in an account from the notice.

26. Paragraph 10(3) and (4) require HMRC to notify their decision to each person who objected to the hold notice and to notify the deposit holder where the hold notice is cancelled or amended. HMRC is also required to notify all other third parties who it is aware of who may be affected by an amended hold notice.

27. Paragraph 11 provides that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can appeal to the county court. An appeal can only be made where an objection has been determined in accordance with paragraph 10.

28. Paragraphs 11(5) sets out that the grounds for making an appeal are the same as for making an objection, e.g. that the hold notice is causing undue hardship. These vary depending on whether an appeal is brought against the decision not to cancel the hold notice, or just on the basis of quantum. As set out in paragraph 2, this measure will only be applied to established debts where debtors will have already had the option to appeal against the underlying liability. Appeals brought at this stage are therefore confined to issues relating to HMRC's decision to use DRD rather than another enforcement tool, or the way in which it has used DRD in a particular case.

29. An appeal under paragraph 11 must be made within 30 days from the day on which the debtor, joint-account holder or interested third party was given notice by HMRC of the outcome of the objection under paragraph 10.

30. Paragraph 11(7) sets out the powers of the county court on an appeal under this paragraph. The court's power to amend the hold notice is the same as HMRC's power to make amendments under paragraph 10(2) in determining an objection. However, paragraph 11(9) permits the court to suspend the effect of all or part of a hold notice where adequate security is provided by the debtor or another.

31. Paragraph 12(1) – (2) sets out HMRC's power to give a deduction notice to a deposit-taker. A deduction notice can only be issued where a hold notice is in force in respect of which money is being held by the deposit-taker under that notice, and there is no longer any possibility of objections or appeals continuing or being made in respect of that hold notice. Paragraph 12(7) is to ensure that the amounts to be deducted cannot exceed what is owed to HMRC. Paragraph 12(11)(b) provides that deposit-taker must keep a hold in place on the relevant account until all the necessary payments have been made to HMRC, at which point the deduction notice automatically ceases to have force.

32. Paragraph 13 provides for penalties to be chargeable where a deposit-taker fails to comply with the terms of an information notice, a hold notice or a deduction notice, or fails to adjust hold arrangements when required to do so. Also, liability for a penalty will arise under paragraph 13(1)(g) if after receipt of an information notice or hold notice the deposit-taker makes a disclosure which has the effect of 'tipping-off' the debtor. These penalties comprise a fixed penalty of £300 and a daily-default penalty of £60.

33. Paragraph 13(5) provides that HMRC may extend the time limit for a deposit-taker to comply with a notice, and that no penalty will be chargeable during the extended period. Paragraph 13(6) and (7) provide the deposit-taker with a reasonable excuse defence.

34. Paragraph 14 sets out the time limits for making an assessment of a penalty under paragraph 13

35. Paragraph 15 provides deposit-takers with a right to appeal against an assessment of a penalty, or against the quantum of a penalty assessment. An appeal must be in writing and given within 30 days of the issue of the penalty assessment. Appeals against a penalty assessment are made to the First-tier Tribunal and are subject to the standard tax appeal provisions contained at Part 5 of TMA 1970.

36. Paragraph 16 requires a penalty to be paid within 30 days of the issue of the penalty notice or within 30 days from the date an appeal against the penalty is finally determined, whichever is later.

37. Paragraph 17 protects deposit-takers from claims to damages in respect of anything they do in good faith when complying with a hold notice or a deduction notice.

38. Paragraph 18 provides HMRC Commissioners with the power to vary specified time limits and sums included in the Schedule.

39. Paragraph 19 provides HMRC Commissioners with powers to make secondary legislation in relation to the administration of the DRD regime. Paragraph 20 then contains further provision relating to how such powers are to be exercised.

40. Paragraphs 21 and 22 contain provisions relating to interpretation.

41. Paragraph 23 provides that DRD only extends to England, Wales and Northern Ireland.

Part 2: Miscellaneous Amendments

42. Paragraphs 24 – 41 contain miscellaneous amendments to other Acts of Parliament. Notably, a number of amendments are made to the Insolvency Act (IA) 1986. These have the effect of restricting HMRC's ability to use DRD in specified insolvency situations. Their intention is to mirror a number of the restrictions which apply under IA 1986 to HMRC's ability to use its existing powers to enforce against goods, or seek attachment of money held in accounts. These amendments will only have effect in respect of England and Wales (as that is the extent of IA 1986). The government will separately investigate having equivalent amendments made under the devolved Northern Irish legislation which relates to insolvency.

Background note

43. The vast majority of people pay their taxes in full and on time. In 2013-14, £506 billion in revenue was paid by around 35 million taxpayers. Around 90% was paid on time but around £50 billion was not, and became a debt.

44. Some people require an additional prompt or reminder to pay what they owe, and a significant number of people pay once HMRC begins to pursue the money owed. In 2013-14, HMRC made around 16 million contacts with debtors by letter, phone, text message or other means, including face-to-face visits.

45. HMRC encourages people to get in touch as soon as possible if they require additional assistance with their taxes, or believe they will have difficulty paying.

46. However, a very small minority of taxpayers still refuse to pay what they owe, despite having the money to do so. DRD is intended to help to level the playing field. It is a targeted measure that will affect a small number of individuals and businesses who are making an active decision to not pay, or delay paying, the money they owe – even though they have sufficient funds in their accounts.

47. This measure was announced at Budget 2014. A consultation document was published on 6 May 2014. The formal consultation was open until 29 July 2014 and the government published its response on 21 November 2014. This response announced additional safeguards for debtors, in response to issues raised during the consultation. Budget 2015 confirmed that this measure would be legislated for in the Summer Finance Bill 2015. The safeguards include:

- only taking action against those who have established debts, have passed the timetable for appeals, and have repeatedly ignored our attempts to make contact. Anyone who disputes the amount owed has the automatic right to appeal.
- guaranteeing that every debtor will receive a face-to-face visit from HMRC agents before their debts are considered for recovery through DRD. This meeting will provide a further opportunity for HMRC to:
    - personally identify the taxpayer and confirm it is their debt
    - explain to debtors what they owe, why they are being pursued for payment, and discuss payment of the debt

  - discuss options to resolve the debt, including offering a Time to Pay arrangement to the debtor, where appropriate
  - identify debtors who are in a vulnerable position and offer them the support they need to settle their debts

- only debtors who have received this face-to-face visit, have not been identified as vulnerable, have sufficient money in the bank and have still refused to settle their debts will be considered for debt recovery through DRD.
- only considering the use of DRD on those with tax and tax credits debts of more than £1,000
- always leaving a minimum of £5,000 in the debtor's accounts, so that we do not put a hold on money needed to pay wages, mortgages or essential business or household expenses
- providing a 30 day window for debtors to object to HMRC, once debt recovery through DRD has been initiated. Money will be held in the account, but no funds will be transferred to us until this period has passed. HMRC will make a decision on objections within 30 days.
- introducing an option for debtors to appeal against our decision to a county court on specified grounds, including hardship and third party rights
- strengthening HMRC's governance procedures for DRD, including oversight by the Commissioners of HMRC
- committing to enhanced transparency on this power and publishing statistics on the number of times this power is used and appeals that are raised
- reviewing DRD fully after the policy has been operational for two years, and laying this report before Parliament
- a dedicated telephone line for appeals and for people to make other arrangements to pay their debts
- a commitment to work with voluntary organisations and professional bodies on its communications to debtors who are affected by DRD, to ensure they are well tailored and provide helpful advice on how to seek further assistance
- applying DRD to a smaller number of cases during the first year of its operation in 2015 to 2016, to start the process on a small, targeted basis and gain experience and feedback

48. HMRC has powers in England, Wales and Northern Ireland to take control of certain types of goods to cover a debt, without the need to apply to court. However this power does not apply to bank accounts and property.

49. Section 61 of the Taxes Management Act 1970 (TMA) granted HMRC the power to seize and sell goods in order to settle tax debts. This is called distraint, and applied to England, Wales and NI. It still applies to NI, but has been superseded for England and Wales by the Tribunal, Courts and Enforcement Act 2007 (TCEA).

50. TCEA updated the basis of HMRC's powers in England and Wales, alongside wider reforms to the powers granted to other enforcement agents (HMRC, police, or court-appointed bailiffs).

51. HMRC does not have direct seizure powers in Scotland. However, section 128 of the Finance Act 2008 allows HMRC to seek Summary Warrants from the Sheriff, which allow a Sheriff's Officer to carry out diligence on our behalf. This means that they can seize goods or cash (including from bank accounts) in order to settle tax debts

Clause 48: Rate of interest applicable to judgment debts etc in taxation matters

Summary

1. This clause provides that where HM Revenue & Customs (HMRC) is party to a tax-related judgment debt, the rates of interest are those referred to in tax legislation, whether the debt follows from court action or not. The clause sets the rates of interest on tax-related judgment debts owed by or to HMRC to appropriate levels given prevailing interest rates. It also introduces a special repayment rate of interest on tax-related judgment debts owed by HMRC. The new special repayment rate of interest will apply prospectively from 8 July 2015 and apply to existing as well as new judgment debts.

Details of the clause

2. Subsections (1) & (2) set out that the provision relates only to sums payable by or to HMRC under an order or judgment of the High Court or County Court, and in respect of interest only.
3. Subsection (3) provides that the late payment rate of interest in accordance with section 103(1) Finance Act 2009 applies to tax-related judgment debts where HMRC is the creditor, and a new special repayment rate of interest applies to tax-related judgment debts where HMRC is the debtor.
4. Subsection (4) sets out that subsection (3) does not affect a court's power to award interest at a rate lower than the late repayment rate or the special repayment rate. It also provides that a lower rate set out in such an award cannot be capable of exceeding at a later date the late repayment rate or the special repayment rate.
5. Subsection (5) provides that where a judgment debt is not in sterling, and judgment interest is awarded under the Administration of Justice Act 1970 or corresponding County Courts Act 1984 provisions, the rate of any interest awarded cannot be higher, and cannot be capable of ever being higher, than the late payment rate (where HMRC is the creditor) or the special repayment rate (where HMRC is the debtor).
6. Subsection (6) provides the formula by which the special repayment rate of interest is calculated: Bank of England Base Rate plus 2%
7. Subsection (7) provides for the day on which the special repayment rate changes following a meeting of the Bank of England Monetary Policy Committee.
8. Subsection (8) provides that HM Treasury may, by regulation, repeal subsections (6) & (7) in favour of setting out the special repayment rate and operative date in regulations.
9. Subsection (9) sets out the scope of the regulations made under subsection (8).
10. Subsection (10) provides that a Statutory Instrument made under subsection (8) is subject to annulment by resolution of the House of Commons.

11. Subsection (11) provides that where a tax-related judgment debt is awarded to or against HMRC under the Crown Proceedings Act 1947, the rate of interest awarded is that specified in subsection (3), that is, either late payment interest or special repayment interest.

12. Subsection (12) provides that the new rates of interest apply from 8 July 2015 on existing as well as new judgments, and whether or not judgment interest has already accrued prior to 8 July 2015.

13. Subsections (13) & (14) provide for a situation where a payment of judgment interest, at a rate higher than the special repayment rate, is made by HMRC prior to Royal Assent of the Finance Bill 2015 relating to a period commencing on or after 8 July 2015. The subsections provide for the awarding court to order repayment of the difference between the interest paid and that due under the special repayment rate.

14. Subsection (15) defines Commissioners as being the Commissioners for Her Majesty's Revenue & Customs, taxation matter being anything (other than National Insurance contributions) which are the responsibility of HMRC (or previously the Inland Revenue or HM Customs & Excise), and working day by reference to the Bills of Exchange Act 1882.

15. Subsection (16) clarifies that the section applies only to England and Wales.

Background note

16. The government wishes to ensure that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation, whether the debt follows from court action or not. It is appropriate for interest rates on judgment debts relating to tax matters to be determined in tax legislation rather than the Judgments Act 1838 or County Courts Act 1984, which are the responsibility of other government departments such as the Ministry of Justice.

17. This change in rates applies to cases both where HMRC receives judgment interest where it has won a case, and where it pays judgment interest where it has lost a case.

18. The government is making this change for two reasons. First, to ensure that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation, whether the debt follows from court action or not. This will provide consistency in how the law applies. Second, to ensure that the rates of interest on such debts are set at an appropriate level.

Clauses 49 and 50: Final

Clause 49: Interpretation

1. This section provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of “CAA 2001” as an abbreviation for the Capital Allowances Act 2001.

Clause 50: Short title

2. This section provides for the bill to be known as the “Finance (No. 2) Act 2015” upon Royal Assent.

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