Dear Ms Dorries and Mr Howarth,

POWERS CONTAINED IN THE FINANCE BILL

I am writing with further information on the secondary legislation powers in this year’s Finance Bill.

The annex to this letter contains a summary of the powers contained in clauses 10, 13, 14, 15, 19, 28, 29, 46, 50, 52, 56, 58, 72, 74, 75, 77, 78, 81, 82, 83, 84, 86, 87, 88 and 89.

Where available, draft regulations are attached.

I am copying this letter to other members of the Public Bill Committee, and depositing a copy of this letter in the Library of the House.

Yours ever,

RT HON MEL STRIDE MP
Clause 10: Exemption for expenses related to travel

Clause 10 introduces section 289A(2A) into ITEPA 2003. This creates an income tax exemption for amounts which have been paid or reimbursed to an employee for qualifying travel expenses. This exemption is similar to the current exemption in section 289A(2) but only requires employers to check that qualifying travel has occurred in relation to the amounts paid or reimbursed. Qualifying travel is travel which would be allowable as a deduction from the employee’s earnings under Chapter 2 (Deductions for employee’s expenses) or Chapter 5 (Deductions for earnings representing benefits or reimbursed expenses) of Part 5 ITEPA 2003.

The exemption is subject to a number of conditions. In particular, new section 289A(2A)(a) requires that an amount paid or reimbursed in respect of qualifying travel expenses must be calculated and paid or reimbursed in accordance with regulations made by the Commissioners for HMRC. It is intended to use this power to amend the Income Tax (Approved Expenses) Regulations 2015 (S.I. 2015/1948) to specify that this condition is met, from the tax year 2019-20, by amounts that are paid or reimbursed to an employee in accordance with rates for overseas travel expenses published by the Commissioners. This will put the current extra-statutory tax exemption for overseas scale rates on a legislative basis. This power can be used in future, if necessary, to make further amendments to the structure and amounts of overseas scale rates.

Regulations under this section will be made by the Commissioners for HMRC under the negative procedure. Draft regulations to legislate a statutory exemption for overseas scale rates will be published after the Finance Bill receives Royal Assent. A copy of the draft regulations is attached.

Clause 13: Disposals by non-UK residents etc. and Schedule 1: Chargeable gains accruing to non-residents etc.

Clause 13 introduces Schedule 1 to the Finance Bill, which makes provision for broadening the UK’s tax base in respect to the taxation of gains made by non-UK residents on disposals of interests in UK land, including
disposals of assets that predominantly derive their value from UK land. As part of this measure non-resident companies become chargeable to corporation tax on their gains on disposal of UK land instead of capital gains tax.

To simplify the current law relating to taxation of gains on disposals of UK land by non-residents and incorporate the new provisions cohesively with existing rules, the Schedule re-states the existing Part 1 of TCGA 1992 by substitution. Where the existing provisions being re-written contain a power, this is carried through into the new, substituted Part 1.

Paragraphs 121, 123, and 124 of the Schedule provide powers to HM Treasury to make regulations by negative resolution to ensure that the restatement of existing provisions does not affect the continuity or effect of the law. These include the making of transitional and savings provisions where necessary to ensure changes (such as moving companies from capital gains tax to corporation tax) proceed as intended; allow changes to primary or secondary legislation to cover consequential amendments that might have been missed; and ensure that the continuity of the law is undisturbed, and no meanings changed. These powers are normal in the case of a re-write of existing law, and were relied upon during the Tax Law Re-write project in the early 2000s. It is not intended to use these powers unless the need arises.

Schedule 1 to the Finance Bill inserts a new Schedule 5AAA to TCGA 1992, which contains the rules specific to collective investment vehicles in respect of disposals of UK land, and in particular applies mainly to non-UK resident collective investment vehicles.

Paragraph 48 of Schedule 5AAA provides for HM Treasury to make Regulations by negative resolution to make changes to the provisions of TCGA 1992 in respect of collective investment vehicles and their investors where related to disposals of UK land by non-UK residents (which would mainly be within Schedule 5AAA). It is normal to have powers in respect of provisions applying to collective investment vehicles due to the pace of change in the sector, and the need to adapt accordingly. Schedule 5AAA and the wider provisions on non-residents disposals of UK land also create new rules that have a worldwide reach, so it is necessary to allow the
ability to adapt to unknown factors not recognised in the consultation. It is not intended to use these powers unless the need arises.

Part 5 of the new Schedule 5AAA contains powers providing for HM Treasury to make regulations by negative resolution to implement a regime for reporting and payment of tax by collective investment vehicles on behalf of investors in those vehicles. This matter arose in consultation on the main measure, and is seen by respondents as a key component of a successful system. Following further engagement with industry, these powers will allow quick action if a pragmatic solution can be reached. As noted, it is normal to have powers to allow agility in response in respect to taxation of collective investment schemes. If a solution is found, these powers would be exercised within the next two years.

**Clause 14: Disposal of UK land etc: payments on account of capital gains and Schedule 2: Returns for disposals of UK land etc.**

Clause 14 introduces Schedule 2 to the Finance Bill which sets out when returns and payments on account of CGT are required to be made in respect of disposals of UK land.

The Schedule extends from 6 April 2019 existing CGT reporting and payment on account obligations on non-UK residents disposing of UK land to include new interests chargeable to tax (i.e. UK non-residential property and interests in UK property rich entities); and also introduce from 6 April 2020 reporting and payment on account obligations on UK resident persons and UK branches and agencies disposing of UK residential property.

The Schedule contains a provision enabling HM Treasury to make regulations to amend the list at paragraph 1(2) of the Schedule of those disposals of UK land in respect of which a return and a payment on account are not required. There are currently no plans to use the powers but any instrument would be subject to negative procedure.
Clause 15 and Schedule 3: Offshore receipts in respect of intangible property

Clause 15 introduces Schedule 3 to the Finance Bill which inserts new Chapter 2A into ITTOIA 2005. This Chapter will impose a new income tax charge on certain offshore persons whose income is derived from intangible assets or rights to the extent that such income is derived from UK sales.

The primary legislation includes a power which will enable the HM Treasury by regulations to:

(a) amend the definition of intangible property by specifying types of property which will be outside the scope of the regime,

(b) amend existing exemptions within the primary legislation (any narrowing of such exemptions to have prospective effect),

(c) introduce further exemptions as appropriate (this power will, in particular, allow the introduction of rules to deal with double taxation),

(d) make any consequential amendments to the Taxes Acts as necessary following the changes made by this measure, and

(e) amend any part of the new Chapter 2A of ITTOIA 2005

Statutory instruments under:

(a) or (d) would be subject to the negative procedure;

(b) or (c) would be subject to the affirmative procedure (their provisions can have retrospective effect unless they increase or impose taxation);

(e) would be subject to the affirmative procedure (they cannot be made after 31 December 2019).

It is expected that the powers would be used before 31 December 2019.
Clause 19: Hybrid and mismatches: scope of Chapter 8 and “financial instrument”

Clause 19 includes an amendment to the rules in Part 6A of TIOPA 2010 (Hybrid and other mismatches) to deal with the treatment of certain regulatory capital. A regulation making power will be inserted into section 259N of TIOPA 2010 which will enable HM Treasury to specify by regulations certain types of regulatory capital which will be exempt from the hybrid mismatch rules.

This power is required for three reasons:

1. The existing regulations which define the regulatory capital which is so exempt are being revoked with effect from 1 January 2019.

2. New forms of banking regulatory capital will be issued from 1 January 2019 which will not be covered by the current exemption.

3. The EU Anti-Tax Avoidance Directive will impose additional requirements in relation to exemptions for hybrid regulatory capital from 1 January 2020.

It is intended to use this regulatory power in April 2019 to introduce a new definition of exempt regulatory capital which will have relieving retrospective effect from 1 January 2019. We also intend to use the regulatory power to amend the definition of exempt regulatory capital before 1 January 2020, to ensure that the exemption is aligned with the requirements of the Anti-Tax Avoidance Directive. The relevant statutory instruments would be subject to the negative procedure.

Clause 28: Debtor relationships of company where money lent to connected companies and Schedule 11: Eliminating tax mismatch for certain debt

Clause 28 introduces new section 352B Corporation Tax Act 2009 (CTA 2009) which eliminates unintended tax volatility by ensuring that external and intra-group loan relationships are always taxed on the same basis if they have a “qualifying link”. A “qualifying link” arises when funds raised externally by a group are wholly or mainly lent within the group.
The need for linked instruments to be taxed on the same basis was highlighted earlier this year when the Bank of England finalised its approach to setting a minimum requirement for the debt and equity a bank must hold to ensure it can absorb losses in times of financial stress. The debt component is raised externally by a holding company which passes on most or all of the funds to operating companies within the group. The Bank of England requires these intra-group loans to include terms which allow them to be written off or converted into shares at times of severe financial stress. These terms can result in the external and internal loans being treated differently for tax. Section 352B ensures that both loans are taxed on the same basis. Although this is principally an issue for the banking sector, section 352B will also address tax mismatches that occur in other sectors.

The Bank of England’s minimum requirements apply from 1 January 2019 and in order to align regulatory and tax rules section 352B will come into effect on the same date. New paragraph 5 of Schedule 11 allows the Treasury to amend section 352B. As the need for changes emerged only recently there was insufficient time to undertake a public consultation. This power is therefore needed to respond to any unanticipated issues to ensure the section meets the overall policy objective. As we expect any issues to emerge and be addressed quickly the power will only be required until 31 December 2019.

Any regulations will be made using negative procedure. While the power allows the regulations to contain retrospective provision the intention is that it should be exercised overall in a manner that is wholly relieving. There are currently no plans for HM Treasury to make use of this power.

**Clause 29: Construction expenditure on buildings and structures**

Clause 29 introduces a power for HM Treasury to make regulations to amend CAA 2001 to provide an allowance for qualifying expenditure on new structures and buildings. The allowance will be available for qualifying expenditure incurred on or after 29 October 2018 on the construction or renovation of a new structure or building.

Subsections (2) and (3) of the clause sets out what any regulations made under the power *must* include, and subsections (4) to (9) set out what any
regulations may include. The regulations must specify what expenditure qualifies for the relief and that the relief is available at an annual rate of two percent of the expenditure that qualifies. The regulations may restrict the allowances in certain circumstances, including where the structure or building functions as a dwelling, or is used only partly for a qualifying purpose, as well as to prevent tax avoidance. The regulations may also make amendments to legislation other than CAA 2001 where the changes are needed as a consequence of the new structures and buildings allowance.

The power is subject to the affirmative procedure. It is intended to use the power in early 2019 to introduce regulations for the new allowance. A technical note was published on 29 October 2018 outlining how the allowance will work.

**Clause 46: Stamp duty: transfers of listed securities and connected persons; Clause 47: SDRT: listed securities and connected persons**

Clauses 46 and 47 introduce a new Stamp Duty and Stamp Duty Reserve Tax market value rule for listed securities transferred to connected companies to prevent contrived arrangements being used to avoid tax. Subsections (6) of clause 46 and (8) of clause 47 provide that HM Treasury may by regulations made by statutory instrument provide for the new rule not to apply in relation to particular cases. Subsections (7) of clause 46 and (9) of clause 47 provide that a statutory instrument made under the new rule may make provision which has retrospective effect. Subsections (8) of clause 46 and (10) of clause 47 provide that a statutory instrument made under the new rule is to be made under the negative procedure. There are no current plans to use these powers.

**Clause 50: Duty of customers to account for tax on supplies**

Clause 50 introduces a new subsection (9A) to section 55A of VATA 1994. This provides that a statutory instrument made under section 55A by HM Treasury can modify the provisions of subsection (3) of section 55A. Subsection (3) provides that recipients of specified supplies must include the value of those supplies as part of their taxable turnover for VAT registration purposes. Specified supplies are supplies between two VAT registered businesses that are subject to a VAT reverse charge.
Unlike normal VAT rules, under a reverse charge the customer is required to account for the VAT, rather than the supplier. This is designed to prevent missing trader fraud by removing the opportunity for the supplier to abscond with the VAT paid to it by the customer. Subsection (3) was introduced to prevent fraudsters avoiding a reverse charge for mobile telephones and computer chips by supplying to businesses that were not registered for VAT. Subsection (9A) will allow that provision to be disapplied by a statutory instrument in respect of specified reverse charge supplies.

The government intends to lay a statutory instrument under the negative procedure to provide for a reverse charge for supplies of building and construction services with effect from 1 October 2019. A copy of the draft order is attached.

The risk of a reverse charge being avoided with building and construction services is low because fraudsters would need to be able to engage with a large number of legitimate small businesses with contracts for small scale building works that would still keep them below the VAT registration threshold. If the amendment is not made it would create a significant and unnecessary burden for a large number of small building and construction businesses by pushing them over the VAT registration threshold when they would otherwise have no liability to register.

**Clause 52: Groups: eligibility and Schedule 17: VAT groups: eligibility**

Clause 52 introduces Schedule 17 to the Finance Bill, which allows non-corporate entities, subject to certain conditions, to join a VAT group. Paragraph 12 of Schedule 17 amends VATA 1994 so that the power in section 43AA VATA 1994 for HM Treasury, by Order, to alter eligibility for grouping will apply to non-corporate entities. The power will be used to prevent partly exempt purchasers of services setting up joint ventures within their VAT group in order to buy in services without incurring irrecoverable VAT. The statutory instrument is subject to the affirmative procedure. The power will be used once the Finance Bill has received Royal Assent.
Clause 56: Tobacco for heating

Clause 56 amends sections 1(1) and 1(3) of TPDA 1979, as well as Schedule 1 to TPDA 1979 to introduce excise duty on a new category of tobacco product, called tobacco for heating. This is an innovation in the market, where tobacco is heated to produce or flavour vapour, rather than smoked. Introducing this new category will provide clarity and certainty to manufacturers and consumers on the duty treatment of tobacco for heating.

HM Treasury and the Commissioners for HMRC intend to make and lay the regulations required to describe the new category of tobacco for heating as soon as possible after Royal Assent to the Finance Bill and to commence the duty rate from 1 July 2019.

Subsection (3) of clause 56 amends section 1(3) of TPDA 1979 to provide a power to amend the Tobacco Products (Description of Products) Order 2003 to include a description of tobacco for heating. These regulations will be made by HM Treasury under the made affirmative procedure. It is planned to consult on draft regulations later in 2018.

Separate regulations to commence the duty rate will be made by HM Treasury and will have no parliamentary procedure, under subsection (7) of clause 56.

Subsection (5) of clause 56 contains the power to make consequential amendments to other regulations. Depending on the terms of the UK’s exit from the EU, amendment may be required to HMDP 2010 in order that tobacco for heating can be correctly dealt with. However, HMDP 2010 is likely to be otherwise amended in consequence of EU exit and we will need to make the consequential updates accordingly. Any such amendment would be made by the Commissioners for HMRC, using the negative procedure.

Clause 58: Vehicle excise duty: taxis capable of zero emissions

Clause 58 introduces an exemption for purpose-built zero emission capable taxis from the vehicle excise duty supplement for cars with a list price of over £40,000 first registered on or after 1 April 2019. The clause
also provides for eligible taxis first registered from 1 April 2017 to become exempt from the VED supplement when their licence is renewed on or after 1 April 2019.

The clause inserts paragraph 1GG into Part 1AA of Schedule 1 to VERA 1994 which enables the Secretary of State for Transport to make provision about the meaning of a “taxi capable of zero emissions” through regulations. This to be achieved in the following ways: the Secretary of State for Transport may operate a list of eligible taxis or the list of eligible models may refer to an external document, such as the Plug-in Taxi Grant, which sets out the physical requirements of a purpose-built zero emission capable taxi. The regulations are subject to the negative procedure. The power will be used after Royal Assent to the Finance Bill.

Part 3: Carbon Emissions Tax: Clause 72: “Emissions allowance”; Clause 74: Power to make further provision about carbon emissions tax; Clause 75: Consequential provision; Clause 77: Regulations; Clause 78: Commencement and transitional provision

The UK would be excluded from participating in the EU Emissions Trading System (EU ETS) in a ‘no deal’ scenario. This means that current participants in the EU ETS who are UK operators of installations would no longer take part in the system. Part 3 of the Finance Bill provides for the introduction of a new Carbon Emissions Tax which would be introduced in the event that the UK leaves the EU in March 2019 without an agreement. The tax would be based on data sent by permit holders of stationary installations currently in the EU ETS to environmental regulators about their emissions of carbon dioxide (and other greenhouse gases on a carbon equivalent basis) over the previous year.

It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal with the EU will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. If the UK secures an implementation period, it would remain a member of the EU ETS during the implementation period. The government is continuing to develop options for long term carbon pricing, including remaining in the EU ETS; establishing a UK ETS (linked to the EU ETS or standalone) or introducing a carbon tax. However, it is the duty of a
responsible government to prepare for all eventualities, including ‘no deal’, until the outcome of those negotiations is certain.

As well as establishing the new tax and setting basic details such as who pays and the rate, the Finance Bill provides for a statutory instrument or instruments which would be laid in early 2020 (following a consultation in 2019) by the Commissioners for HMRC. The legislation provides for a wide range of issues to be set out in this instrument or instruments. These include provisions:

- Under Clause 72 to set emissions allowances – it would be emissions over these allowances that are taxable.

- Under Clause 74:
  - to specify conditions to be included in existing permits granted by the regulator – stationary installation permit holders would be liable to pay the tax and amendments to the permit may be needed for the purposes of the tax
  - about the performance of a function of a regulator
  - relating to the submission of emissions reports to environmental regulators – these reports would help HMRC to determine the amount of tax due
  - permitting or requiring a regulator to make a determination about an installation’s level of emissions in specified circumstances
  - about the form, manner and content of any notice, application or other communication with a regulator (including provision about communications in electronic form)
  - relating to the payment and tax collection arrangements, including how long businesses would need to pay the bills issued by HMRC
  - relating to decisions on which the taxpayer would be able to seek a review and against which they would be able to appeal.

- Under Clause 75 to make consequential amendments to other enactments, (This could, for example, be used to add functions in
In addition Clause 78 provides for commencement regulations to bring the legislation into force. The measure would be brought into effect only if there were a no deal exit from the EU. In these circumstances these commencement regulations would be made in spring 2019 in advance of a 1 April 2019 commencement date.

Regulations under Clauses 72 and 74 would be subject to the negative procedure. Regulations under Clause 75 would be subject to the negative procedure unless they amended an Act of Parliament, in which case they would be subject to the draft affirmative procedure. Commencement regulations under Clause 78 would not be subject to parliamentary procedure.

**Clause 81: Security deposits: construction industry scheme and corporation tax**

Clause 81 introduces a new section 70A to FA 2004 and a new paragraph 88A to Schedule 18 to FA 1998. These provisions confer powers on the Commissioners for HMRC to make regulations for and in connection with the giving of security for amounts payable in respect of Construction Industry Scheme and corporation tax liabilities.

New subsection 70A(1) provides that regulations may prescribe the persons who may be required to give security for amounts payable under the Construction Industry Scheme, and the circumstances. New subsection 70A(2) specifies that regulations made under this section may only require the giving of security where HMRC considers it necessary for the protection of the revenue.

Under new subsection 70A(3) the regulations must provide for a right of appeal against decisions to require the giving of a security, and the amount, terms and duration of any security required.

New subsections 70A(4) and (5) provide that a person commits an offence if they fail to comply with a requirement to give security imposed by
regulations made under this section, and may be liable to a fine if convicted.

New paragraph 88(A) of Schedule 18 to FA 1998 makes equivalent provisions in respect of the giving of security for payment of corporation tax that a company is or may be liable to pay.

It is intended to use the powers conferred by this clause to make regulations to come into effect from 6 April 2019. The statutory instrument will be subject to the negative procedure.

The draft regulations will be modelled closely on those for existing PAYE securities, and will be published for consultation.

Clause 82: Resolution of double taxation disputes

Clause 82 inserts three new sections in Chapter 2 of Part 2 of TIOPA 2010 which will enable HM Treasury to bring into force the regulations and administrative provisions necessary to comply with Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union. The Directive lays down rules on a mechanism to resolve disputes between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation.

New section 128A allows the HM Treasury to make regulations to give effect to the Directive, any instrument modifying or supplementing it; and any other international agreements or arrangements connected to double taxation disputes. Section 128B applies where the regulations require the Commissioners for HMRC to give effect to an agreement, decision or opinion. Section 128C permits HMRC to disclose information under international agreements to which the regulations apply.

These powers are subject to negative procedure, and will be used by HM Treasury to make regulations necessary to comply with the Directive by 30 June 2019.
Clause 83: International tax enforcement: disclosable arrangements

Clause 83 gives HM Treasury a new power to make regulations to require disclosure of information about certain cross border tax arrangements, by participants in those arrangements to HMRC. The power allows the UK to implement the European Union Directive 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The Directive came into force on 25 June 2018. The power will also allow the UK to implement the Organisation for Economic Co-operation and Development model mandatory disclosure rules if the Government decides to adopt those rules.

Until EU exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Regulations under this power are to be made by HM Treasury by statutory instrument. The power enables regulations to make consequential amendments, including to primary legislation. Where they amend primary legislation regulations under this power must be made using the affirmative procedure. Regulations which do not amend primary legislation are subject to negative procedure. The power will be used, following consultation, to implement the Directive by 31 December 2019.

In Committee of the Whole House the government accepted an amendment to the clause.

No regulations may be made under this power unless the Chancellor of the Exchequer has laid before the House of Commons a report on how the powers are to be exercised in the scenario where the United Kingdom secures a deal on its exit from the European Union and in the scenario where it does not.
**Clause 84: Interest in respect of unlawful ACT**

Clause 84 introduces a non-exclusive interest like remedy for claimants that made common law claims against HMRC and its predecessor in respect of advance corporation tax which was paid and subsequently set-off or repaid before the time of the claim.

Subsection (1) sets out when the section will apply. This includes a condition that a person started proceedings against the Commissioners for HMRC (or their predecessors) in the High Court or Court of Session before 12 December 2012. Subsection (8) gives HM Treasury a power to by regulations substitute a later date.

It is anticipated that this power would only be used if there were further developments in relation to the law of mistake.

Subsection (4) sets out “the appropriate rate” in relation to any day for the purposes of calculating the amount that the person is entitled to where the clause applies. Subsection (4) gives HM Treasury the power to specify a rate other than 0.5% in respect of a period from 30 October 2018 onwards.

It is anticipated that power may be used when there is any change in prevailing interest rates, if there are any outstanding claims to which the remedy might apply at that time.

Subsections (9) and (10) provide that regulations under the section are to be made by statutory instrument and that the negative procedure shall apply.

**Clause 86: Voluntary returns**

Clause 86 introduces amendments to TMA 1970 and Schedule 18 to FA 1998 with retrospective and prospective effect to allow HMRC to treat tax returns made voluntarily by taxpayers on the same statutory basis as other tax returns received under notice to file.

Subsection (5) provides for amendments to tax legislation to be made by regulations in two circumstances. Firstly, consequential amendments of relevant provisions (defined in subsection (6) of this clause) may be made
as appropriate. Secondly, section 12D of TMA 1970 (inserted by subsection 1 of this clause) may be amended as appropriate in connection with the coming into force of the digital reporting and record keeping obligations for income tax etc. contained within section 61 of, and Schedule 14 to, the F (No.2) A 2017.

Regulations under this section will be made by HM Treasury. These regulations will be made using negative procedure.

There are no current plans to use these powers.

Clause 87: Interest under section 178 of FA 1989 and section 101 of FA 2009

Clause 87 amends legislation retrospectively to remove the need for an Appointed Day Order before interest can be charged or paid on tax and other amounts under section 178 FA 1989. It also sets interest rates for certain purposes including retrospectively for Diverted Profits Tax and provides for interest to be charged on certain penalties for PAYE.

Sub-section (5) allows regulations made under section 178(1) of FA 1989 to change the rates of interest set by the clause.

Regulations would be made by the Commissioners for HMRC and are subject to the negative procedure. There are no current plans to use this power.

Clause 88: Regulatory capital and hybrid capital instruments and Schedule 19: Taxation of hybrid capital instruments

Clause 88 introduces Schedule 19 which revokes the Taxation of Regulatory Capital Securities Regulations 2013 (RCS Regulations) and introduces new tax rules for hybrid capital instruments. The RCS Regulations only applied to banks and insurance companies, the new rules apply to all companies.

The aim of Schedule 19 is to ensure that all hybrid capital instruments that are, in essence debt, are treated as debt for tax purposes.
In June 2018 the Bank of England finalised its approach to setting a minimum requirement for the debt and equity that a bank must hold to ensure it can absorb losses in times of financial stress. These requirements take effect from 1 January 2019. The instruments banks are permitted to issue to meet these new requirements include types of hybrid capital instruments that are not covered by the existing rules, the RCS Regulations. This prompted a review of hybrid capital instruments with the resulting new tax rules applying to debt-like instruments issued by companies in any sector.

The Bank of England’s minimum requirements apply from 1 January 2019. While the new rules apply to any company Schedule 19 will come into effect on the same date in order to provide immediate certainty for the banking sector.

Paragraph 19 of Schedule 11 allows HM Treasury to amend the definition of “hybrid capital instruments” at section 475C CTA 2009. As the need for changes emerged recently there was insufficient time to undertake a public consultation. This power is therefore needed to respond to any unanticipated issues to ensure the section meets the overall policy objective. As we expect any issues to emerge and be addressed quickly the power will only be required until 31 December 2019.

Any regulations will be made using negative procedure. While the power allows the regulations to contain retrospective provision the intention is that it should be exercised overall in a manner that is wholly relieving for instruments within these rules.

There are currently no plans for HM Treasury to make use of this power.

Clause 89: Minor amendments in consequence of EU withdrawal

Clause 89 introduces a power to amend relevant tax legislation in order to maintain its effect in the event that the UK leaves the EU without a deal. It allows the government to make minor, technical amendments, for example, replacing references to “EU” with “EU and UK”, making minor amendments consequential on other changes to the law under section 8 of the European Union (Withdrawal) Act 2018 and changing values in “euros” to values in “sterling”.
It also enables the government to amend paragraph 2(4)(a) of Schedule 5 to FA 1997 to remove the reference to EU legislation, in order to ensure HMRC’s consideration of whether, and the extent to which, a taxpayer is unjustly enriched by repayment of Insurance Premium Tax, Landfill Tax or Excise Duty, is based on UK legislation.

It also allows the government to amend section 173 of FA 2006. This will enable the government to preserve the legal gateways for HMRC to exchange information with other public authorities after EU Exit, meaning HMRC can continue to tackle avoidance and evasion effectively and efficiently.

This power will be used in the event of a ‘no deal’ EU exit. If no such deal is reached, the legislation will come into effect on the 29 March 2019, at the point at which the UK ceases to be an EU Member State. This power enables the government to make necessary minor amendments to tax legislation to ensure its continued effect as now, and to maintain stability for taxpayers. This measure is not a policy change.

Secondary legislation relating to this power is to be made by HM Treasury by statutory instrument. This will be subject to the negative procedure. A list of regulations intended to be made under the power is attached.
**Glossary of statutory references and other terms:**

*Statutory references*

- **CAA 2001** Capital Allowances Act 2001
- **CTA 2009** Corporation Tax Act 2009
- **FA, followed by a year** The Finance Act of that year
- **HMDP 2010** Excise Goods (Holding, Movement and Duty Point) Regulations 2010
- **ITTOIA 2005** Income Tax (Trading and Other Income) Act 2005
- **RCS Regulations** Taxation of Regulatory Capital Securities Regulations 2013
- **TCGA 1992** Taxation of Chargeable Gains Act 1992
- **TIOPA 2010** Taxation (International and Other Provisions) Act 2010
- **TMA 1970** Taxes Management Act 1970
- **TPDA 1979** Tobacco Products Duty Act 1979
- **VERA 1994** Vehicle Excise and Registration Act 1994

*Other terms*

- **CGT** Capital gains tax
- **EU** European Union
- **HMRC** Her Majesty’s Revenue and Customs
- **PAYE** Pay As You Earn
- **UK** United Kingdom
- **VAT** Value Added Tax
- **VED** Vehicle Excise Duty