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House of Commons
London
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4 June 2020

Dear Siobhain and Andrew

POWERS CONTAINED IN THE FINANCE BILL

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

The annex to this letter contains a summary of the powers contained in clauses 10, 12, 33, 69, 74, 77, 86, 92, 93, 96, 97, 99 and 103. It also contains details of secondary legislation making powers in Government Amendments 1 and 2 to Clause 15, Government Amendment 3 to Clause 17, and New Clause 1 and New Schedule 1.

Draft regulations for Clause 96 are also attached.

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

RT HON JESSE NORMAN MP

Annex

Finance Bill: Clauses with powers to make secondary legislation

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Glossary of statutory references and other terms

Statutory references

CCA 2008	Climate Change Act 2008
FA, followed by a year	Finance Act of that year
F(No. 2)A, followed by a year	Finance (No. 2) Act of that year
HODA 1979	Hydrocarbon Oil Duties Act 1979
IHTA 1984	Inheritance Tax Act 1984
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
NLA 1968	National Loans Act 1968
TCGA 1992	Taxation of Chargeable Gains Act 1992

Other terms

ARP	Auction Reserve Price
CCM	Cost Containment Mechanism
CT	Corporation Tax
DST	Digital Services Tax
EEA	European Economic Area
ETS	Emissions Trading System
EU	European Union
HMRC	Her Majesty's Revenue and Customs
IHT	Inheritance Tax
NICs	National Insurance contributions
PAYE	Pay As You Earn
UK	United Kingdom
VAT	Value Added Tax

Clause 10: Apprenticeship bursaries paid to persons leaving local authority care

Clause 10 inserts new section 254A into Chapter 4 of Part 4 of ITEPA 2003 (exemptions: education and training). New section 254A provides an income tax exemption for a care leaver's apprenticeship bursary payment. The exemption will have effect after the date of Royal Assent to the Finance Bill. For payments that have already been made to care leavers, HMRC will use its collection and management discretion and will not collect tax and NICs due on any such payments.

Section 254A(2) sets out the meaning of a care leaver's apprenticeship bursary payment as a payment payable out of public revenue, to a care leaver, and made in connection with the person's employment as an apprentice. It also allows the Treasury by regulations to prescribe additional conditions relating to this definition.

Section 254A(3) provides that a care leaver is a person who currently is, or has previously been, a child looked after by a local authority in the UK, by reference to existing definitions in primary legislation. It also allows the Treasury by regulations to prescribe additional conditions relating to this definition.

Section 254A (4) allows the Treasury by regulations to define the word "apprentice" for the purposes of the care leaver's apprenticeship bursary payment.

Section 254A (5) provides that regulations made under section 254A can cross-reference third party schemes or documents. It also provides that such regulations may make different provision for different purposes or areas, and that such regulations may be retrospective.

The Treasury intend to exercise these powers after Royal Assent to prescribe additional conditions relating to the definitions of a care leaver's apprenticeship bursary payment and care leaver, and to define "apprentice". In prescribing additional conditions relating to the definition of a care leaver's apprenticeship bursary payment, the Treasury intend to make reference to the Education and Skills Funding Agency's funding rules guidance document. The regulations are subject to negative procedure.

Clause 12: Power to exempt social security benefits from income tax

Clause 12(1) allows the Treasury by regulations to amend Chapters 4 or 5 of Part 10 of ITEPA 2003 to exempt new social security benefits from income tax. Clause 12(3) inserts a reference to the power into section 655(2) of ITEPA 2003 (structure of Part 10) as a provision about the taxation of social security benefits.

The tax treatment of social security benefits is provided for within income tax legislation. This power will be used where benefits would be taxable under existing legislation, but the Government intends for the benefits to be non-taxable, or absolute certainty is needed that the benefits will not be taxable.

The power will make it easier to exempt any new social security benefits introduced by the UK Government, or by the devolved administrations, from income tax, and to give clarity on the tax treatment of the benefits.

There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 33 and Schedule 6: CT payment plans for tax on certain transactions with EEA residents

Clause 33 and Schedule 6 insert new Schedule 3ZC into TCGA 1992. New Schedule 3ZC provides a deferred payment option for CT that is charged on profits or gains arising from certain transactions with a member of the same group of companies that is resident outside the UK in a EU or EEA state. A company can apply to pay that tax in instalments over a period of up to five years.

Paragraph 5 of Schedule 6 allows the Treasury by regulations to withdraw the facility to enter into CT payment plans in respect of CT that is charged on profits or gains arising from certain transactions with a member of the same group of companies that is resident outside the UK in a EU or EEA state. The Treasury intend to exercise this power only when it can be determined that such plans are not necessary to protect a company's rights to Freedom of Establishment under the Treaty for the Functioning of the European Union. The regulations are subject to negative procedure.

Clause 69 and Schedule 9: Minor and consequential amendments

Part 2 of the Finance Bill introduces the digital services tax. Clause 69 introduces Schedule 9 which contains minor and consequential amendments relating to the digital services tax.

Section 178(1) of FA 1989 allows the Treasury by regulations to set the rate of interest for various events and applicable to the taxes and other charges listed in section 178(2). Paragraph 2 of Schedule 9 amends section 178 of FA 1989, so that it applies to the digital services tax, by inserting references to section 66 (interest on overdue DST) and section 67 (interest on overpaid DST etc) into section 178(2).

The Treasury intend to exercise this power by 14 October 2020 to set the rate of interest applicable on overdue and overpaid digital services tax. The regulations are subject to negative procedure.

Clause 74: Relief for payments to victims of persecution during Second World War era

Clause 74 inserts new paragraph 10 into Part 1 of Schedule 5A to IHTA 1984 to provide relief from IHT for payments made under the Kindertransport Fund. Section 153ZA(8) of IHTA 1984 allows the Treasury by regulations to add payments of a specified kind to the list of qualifying payments to victims of persecution during the Second World War that attract relief from IHT in Part 1 of Schedule 5A to IHTA 1984. Clause 74(2) inserts new subsection (8A) into section 153ZA of IHTA 1984. Subsection (8A) provides that regulations made under section 153ZA(8) may have retrospective effect in relation to deaths that occur before the regulations are made.

There are no immediate plans to use this power, but it may be exercised to exempt payments from future compensation schemes. Any regulations would be subject to negative procedure.

Clause 77: Stamp duty: acquisition of target company's share capital

Section 77 of FA 1986 provides relief from Stamp Duty on instruments transferring shares in one company (the target company) to another company (the acquiring company) where the acquiring company issues shares as consideration for the transfer to all the shareholders of the target company (a share for share exchange). Section 77A of the Finance Act 1986 ensures that no relief under section 77 will be available where arrangements are in existence at the time of the share for share exchange for a change of control of the acquiring company.

Clause 77 amends section 77A of FA 1986 so that relief will be available in a demerger reorganisation provided the person who obtains control of the company after the demerger is a person who has held at least 25% of the target company shares for at least 3 years prior to the share for share exchange.

Clause 77 inserts new subsections (5A) and (5B) into section 77A of FA 1986. The new subsections allow the Treasury by regulations to amend the percentage or the length of the period. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 86: Rebated fuel: private pleasure craft and Schedule 10: Private pleasure craft

Clause 86 provides for the amendment of HODA 1979 as regards the use of rebated fuels by private pleasure craft as outlined in Schedule 10.

Schedule 10 paragraph 8(5) allows the Commissioners for HMRC by regulations to designate any marker which appears to them to be used for the purposes of the law of any place for identifying hydrocarbon oil that is not to be used as fuel for propelling private pleasure craft. The effect of designating a marker, that is then placed in a fuel, is to identify that fuel as taxed at a rebated rate, so that HMRC can identify if this fuel is misused for purposes where fully duty paid fuel is mandated. Any regulations would be subject to negative procedure.

Schedule 10 paragraph 8(7) allows the Treasury by regulations to provide for cases in which a vessel is treated as not being a private pleasure craft for the purposes of HODA 1979. Any regulations would be subject to negative procedure.

Schedule 10 paragraph 13 amends Schedule 4 of HODA 1979 to extend HMRC regulation-making powers under section 24 (control of use of duty-free and rebated oil) of HODA to include "vessels" (a private pleasure craft being a vessel) as well as "vehicles". Any regulations would be subject to negative procedure.

Schedule 10 paragraph 14 amends Schedule 5 of HODA 1979 to extend HMRC regulation-making powers on sampling to cover "vehicle or vessel" (as opposed to "motor vehicles"). Any regulations would be subject to negative procedure.

Schedule 10 paragraph 18 allows the Treasury by regulations to bring paragraphs 1 to 17 of Schedule 10 into force on such day or days as they may appoint. Paragraph 19 allows for different days to be appointed for different purposes or different areas. Paragraph 20 allows the Treasury by regulations to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of any of paragraphs 1 to 17. Any regulations would not be subject to parliamentary procedure, save where Schedule 10 paragraph 21 also applies.

Schedule 10 paragraph 21 allows the Treasury by regulations to make such amendments of any enactment as they consider appropriate in consequence of the coming into force of any of paragraphs 1 to 17. Any regulations would be subject to negative procedure.

The powers in Schedule 10 would only be used if the UK is required to implement paragraphs 1 to 17 of the Schedule in accordance with international obligations and then only to the extent necessary to fulfil those obligations.

Clause 92 and Schedule 11: Carbon emissions tax

Clause 92 and Schedule 11 update the existing legislation relating to Carbon Emissions Tax by amending FA 2019, which established the Carbon Emissions Tax, to ensure that the tax would be ready to be operational from 1 January 2021, if needed.

Paragraph 2 of the Schedule allows for provisions to be made dealing with powers to set an emissions allowance, in order to clarify that these regulations may be made by the Commissioners for HMRC within the same year to which the emissions allowance will relate and can refer to data relating to times before the regulations are made. The power will first be used in advance of the tax being commenced. The regulations are subject to negative procedure.

Paragraph 3 allows the Treasury by regulations to exclude regulated installations of a specified description from the charge to tax. The power will first be used in advance of the tax being commenced. The regulations are subject to negative procedure.

Paragraphs 4, 5 and 6 amend existing regulation making powers in sections 75, 76 and 78 of FA 2019 to provide for the Commissioners for HMRC by regulations to:

- impose civil penalties for failure to comply with a requirement of the regulations;
- review and appeal against a specified decision relating to the tax;
- allow the conferral of functions on government entities;
- allow the charging of fees in respect of those functions;
- and modify domestic and EU regulations relating to the monitoring and regulation of emissions.

The powers will first be used in advance of the tax being commenced. The regulations are generally subject to negative procedure. However, regulations

under section 76 (consequential provisions) of FA 2019 that amend an act of Parliament are subject to affirmative procedure.

Clause 93: Charge for allocating allowances under emissions reduction trading scheme

Clause 93 allows the Treasury to make regulations in connection with any future UK ETS. This could be in an emissions trading system linked to the EU ETS or a standalone UK regime.

Clause 93(1) allows the Treasury by regulations to provide for the allocation of emissions allowances in return for payment under any future UK ETS, as defined in CCA 2008.

The regulations may provide for the potential implementation of market stability mechanisms, which could come into force in a standalone UK ETS. This could include a CCM, to respond to any significant short-term price spikes, and an ARP. If implemented, the ARP would set a minimum price for which allowances can be sold at auction to provide a minimum carbon price signal and to mitigate any associated start-up issues.

The regulations may also provide for auctioning rules to be enforced, which would determine when auctions in a standalone UK ETS would “clear” if not all of the emissions allowances for sale were sold.

The Treasury intend to exercise this power so that regulations would come into force from 1 January 2021, after the end of the Transition Period, when the UK’s membership of the EU ETS will end. The first regulations made under the power are subject to affirmative procedure. Subsequent regulations would be subject to negative procedure.

Further detail on the market stability mechanisms and auctioning rules will be confirmed in the Government and Devolved Administrations’ response to the consultation on the Future of UK Carbon Pricing, which will be published over the coming months.

Clause 96: HMRC debts: regulations

Clause 95 gives HMRC priority in the recovery of VAT and certain other debts owed to HMRC in insolvency proceedings by making HMRC a secondary preferential creditor.

Clause 96(1) allows the Treasury by regulations to set out when an amount is a secondary preferential debt (or, in Scotland, a secondary preferred debt) by reference to such periods as may be specified in the regulations.

Clause 96(3) allows the Treasury by regulations to specify kinds of deductions that may be secondary preferential debts (or, in Scotland, secondary preferred debts).

Clause 96(4) specifies that the regulations may contain transitional and supplementary provisions.

The Treasury intend to exercise the powers and the regulations will come into force on 1 December 2020. The regulations are subject to negative procedure. A copy of the draft regulations is attached.

Clause 97 and Schedule 12: Joint and several liability of company directors

Clause 97 and Schedule 12 introduce a new power for HMRC to make directors, shadow directors and other persons connected to a company, jointly and severally liable for company tax liabilities, by issuing them with a notice. The power only applies if the company has engaged in tax avoidance or evasion, in certain activities facilitating avoidance or evasion, or where a person is connected to a series of companies which begin insolvency proceedings with outstanding tax liabilities.

There are a number of conditions set out in the legislation which must be met before HMRC may issue a notice. Where a person is connected to a series of companies which begin insolvency proceedings, paragraph 3(6)(b) of the Schedule makes one of the conditions for issue that the total amount of tax outstanding from the relevant insolvent companies exceeds £10,000 and 50% of all amounts due to unsecured creditors of those companies. Paragraph 4 of the Schedule allows the Treasury by regulations to vary these thresholds. There are no plans to use this power. If the regulations do no more than increase the £10,000 threshold to reflect changes in the value of money, they would be subject to negative procedure. Otherwise, they would be subject to affirmative procedure.

Clause 99 and Schedule 14: Tax exemption for scheme payments

Clause 99 and Schedule 14 introduce a relief from income tax, capital gains tax and IHT for payments made under, or in connection with, the Windrush Compensation Scheme and under the Troubles Permanent Disablement Payment Scheme.

Paragraph 2(5) of Schedule 14 allows the Treasury by regulations to extend the reliefs to payments made under other compensation schemes by the UK Government; the devolved administrations; the government of any other country or territory, and local or public authorities in the UK or abroad. Such regulations can have retrospective effect. The power will be used in future to allow the Government to act more quickly to give certainty about the tax treatment of payments for qualifying compensation payments.

There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 103: Limits on local loans

There is a statutory limit on the total amount that may be lent to local government through the Public Works Loan Board. This limit is governed by section 4(1) of NLA 1968. Currently, the limit is £85 billion, or such higher amount, not exceeding £95 billion, as the Treasury by order may specify. By the Local Loans (Increase of Limits) Order 2019 the Treasury specified a limit of £95 billion.

Clause 103(1) amends the 1968 Act to reset the limit at £115 billion, or such higher amount, not exceeding £135 billion, as the Treasury may by order specify.

Clause 103(2) revokes the Local Loans (Increase of Limits) Order 2019.

Clause 103(3) allows the Treasury by order to appoint the day on which the section is to come into force. The order is not subject to parliamentary procedure.

APPENDIX A: Amendment of clauses 15 and 17

It is intended to amend clauses 15 and 17 in Public Bill Committee

Clause 15: Election for loan charge to be split over three years

Clause 15 provides the statutory framework to enable individuals subject to the loan charge to elect to split their liability over 3 years: 2018-19 to 2020-21. Elections to split the liability over 3 years will have to be made before 1 October 2020.

Clause 15(3) and clause 15(5)(c) respectively amend Schedule 11 to F(No. 2)A 2017 and Schedule 12 to F(No. 2)A 2017 to allow the Commissioners for HMRC by regulations to specify a date later than 1 October 2020, for a specified class of persons. The power would be exercised if HMRC agree formally that a certain class of taxpayer subject to the loan charge are unable to make an election before 1 October 2020, and consider that the deadline should be extended. The regulations are subject to negative procedure.

Clause 17: Relief from interest on tax payable by a person subject to the loan charge

Clause 17 provides for no interest to be charged on persons subject to the loan charge on tax liabilities due in respect of the tax year 2018-19 and outstanding between 1 February 2020 and 30 September 2020, or in respect of the tax year 2019-20 and outstanding prior to 31 January 2021, subject to certain conditions.

Clause 17(5) allows the Commissioners for HMRC by regulations to specify a date later than 30 September 2020 (and for interest to accrue from a date later than 1 October 2020) for a specified class of persons. This would ensure that if HMRC agree formally that specified Self-Assessment tax returns for the tax year 2018-19 may be filed later than the end of September 2020, interest would be disapplied in a similar manner to those returns submitted by 30 September 2020. The regulations are subject to negative procedure.

APPENDIX B: New clause and new Schedule

It is intended to introduce a new clause and new Schedule in Public Bill Committee.

New clause and new Schedule: Workers' services provided through intermediaries ("the off-payroll working rules")

The new clause introduces the new Schedule. Paragraph 19 of the new Schedule inserts new section 688AA into ITEPA 2003, which allows the Commissioners for HMRC by regulations to make provision for the recovery of a deemed employer PAYE debt from a relevant person. A deemed employer PAYE debt is an amount which a deemed employer is liable to pay in consequence of being treated under section 61N(3) of ITEPA 2003 as having made a deemed direct payment to a worker. A relevant person is a person who is not the deemed employer and is the person who is the highest in the labour supply chain (the client) or the second highest in the labour supply chain (the first agency) (where that agency is resident in the UK).

The regulations will allow for the recovery of unpaid PAYE debts from other persons within the labour supply chain where Chapter 10 of Part 2 of ITEPA 2003 (workers' services provided through intermediaries to public authorities or medium or large clients) applies to an engagement and there is no realistic prospect of recovering the outstanding income tax from the deemed employer within a reasonable period.

HMRC's intention is to first seek to recover any unpaid tax liabilities from the first agency where this agency is UK based. Where HMRC is of the view that there is no realistic prospect of recovering the outstanding income tax from the first agency, HMRC will seek to recover unpaid liabilities from the client. The regulations will require HMRC to issue a recovery notice when seeking to recover a debt from a client or the first agency.

There are two sets of circumstances in which HMRC intend to seek to issue a recovery notice. The first is where HMRC have issued a determination under regulation 80 of the PAYE Regulations to the deemed employer and the outstanding tax remains unpaid. The second is where HMRC would have issued a regulation 80 determination, but are unable to do so because of the liquidation, dissolution or other incapacity of the deemed employer.

The regulations will also provide for appeal rights in relation to a recovery notice. However, clients and first agencies will not be able appeal in relation to the existence of the underlying PAYE debt if that matter has previously been the subject of an appeal that has been determined.

The regulations will also stipulate the contents of a recovery notice to ensure the recipient of the notice is able to identify who the PAYE debt relates to and why it has been issued to them.

The Commissioners intend to exercise the regulation-making power after Royal Assent, but in good time ahead of the commencement date for the reform of the off-payroll working rules in the private and voluntary sectors due to come into force on 6 April 2021. The regulations are subject to negative procedure.