FINANCE (No. 2) BILL

EXPLANATORY NOTES

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Explanatory notes

Introduction

1. These explanatory notes relate to the Finance Bill as introduced into Parliament on 2 November 2021. They have been prepared jointly by 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.

Part 1: Income Tax, Corporation Tax and Capital Gains Tax

Clause 1: Income tax charge for tax year 2022-23

Summary

1. This clause imposes a charge to income tax for the year 2022-23.

Details of the clause

2. Clause 1 imposes a charge to income tax for the tax year 2022-23.

Background note

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

Clause 2: Main rates of income tax for tax year 2022-23

Summary

1. This clause sets the main rates of income tax for the tax year 2022-23.

Details of the clause

2. Clause 2 sets the basic, higher, and additional rates of income tax for 2022-23.
3. This clause provides that the main rates of income tax for 2022-23 are: the 20% basic rate, the 40% higher rate, and the 45% additional rate.

Background note

4. Income tax is an annual tax. It is for Parliament to impose income tax for a tax year.
5. This clause sets the main rates, which will apply to non-savings, non-dividend income of taxpayers in England and Northern Ireland. Income tax rates on

non-savings, non-dividend income for Welsh taxpayers are set by the Welsh Parliament. The UK main rates of income tax are reduced for Welsh taxpayers by ten pence in the pound on this income, and the Welsh Parliament sets the Welsh rates of Income Tax, which are added to the reduced UK rates. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 3: Default and savings rates of income tax for tax year 2022-23

Summary

1. This clause sets the default rates and savings rates of income tax for the tax year 2022-23.

Details of the clause

2. Subsection 1 provides the default rates of income tax 2022-23: the 20% default basic rate, the 40% default higher rate, and the 45% default additional rate.
3. Subsection 2 provides the savings rates of income tax for 2022-23: the 20% savings basic rate, the 40% savings higher rate, and the 45% savings additional rate.

Background note

4. Income tax is an annual tax. It is for Parliament to impose income tax for a year.
5. This clause sets the default rates which

will apply to non-savings, non-dividend income of taxpayers who are not subject to the main rates of income tax, Welsh rates of income tax, or Scottish income tax. It also sets the savings rates which will apply to savings income of all UK taxpayers.

6. Income tax rates on non-savings, non-dividend income for Welsh taxpayers are set by the Welsh Parliament.

7. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 4: Increase in rates of tax on dividend income

Summary

1. This clause increases the income tax rates charged on dividend income. This has effect for the tax year 2022 to 2023 and subsequent tax years.

Details of the clause

2. Subsection 1 provides that the dividend ordinary rate, the dividend upper rate and the dividend additional rate, in section 8 Income Tax Act 2007, will be amended as follows:

    - the dividend ordinary rate of 7.5% will be substituted with 8.75%
    - the dividend upper rate of 32.5% will be substituted with 33.75%, and
    - the dividend additional rate of 38.1% will be substituted with 39.35%.

3. Subsection 2 substitutes the dividend trust rate of 38.1%, in section 9(2) ITA 2007, with 39.35%.

4. Subsection 3 provides that the amendments made by this section will take effect for the tax year 2022 to 2023 and subsequent tax years.

Background note

5. On 7 September 2021, the government announced that the income tax rates applicable to dividend income would increase by 1.25%.

6. The effect of this clause is to increase the dividend ordinary rate, dividend higher rate and dividend additional rate by 1.25% each to 8.75% 33.75% and 39.35% respectively, from April 2022. The dividend trust rate of income tax is currently 38.1%. This will also be increased by 1.25% to 39.35% from April 2022 to remain in line with the dividend additional rate.

7. This clause will also have the effect of raising the rate of income tax paid by personal representatives on dividends paid into estates of deceased persons under section 14, Income Tax Act 2007.
8. This clause will further have the effect of raising the rate of tax charged under section 455, Corporation Tax Act 2010 on loans to participators.

Clause 5: Freezing starting rate limit for savings for tax year 2022-23

Summary

1. This clause sets the starting rate limit for savings for 2022-23 tax year.

Details of the clause

2. Clause 5 provides that for the tax year 2022-23 section 21 of the Income Tax Act 2007 (indexation) does not apply to the starting rate limit for savings set out in section 12(3) of the Income Tax Act 2007. The starting rate limit for savings for the tax year 2022-23 therefore remains at £5,000.

Background note

3. The starting rate for savings can apply to an individual's taxable savings income (such as interest on bank or building society deposits). The extent to which an individual's savings income is liable to tax

at the starting rate for savings, rather than the basic rate of income tax, depends upon the total of their 'non-savings' income (including income from employment, profits from self-employment and pensions income). If an individual's non-savings income is more than their personal allowance and exceeds the starting rate limit for savings, the starting rate is not available for that tax year. Where an individual's non-savings income in a tax year is less than the starting rate limit their savings income is taxable at the starting rate up to that limit.

4. Income tax is charged at the 0% starting rate for savings, rather than the basic rate of income tax, on that element of an individual's income up to the starting rate limit which is savings income.

5. This clause sets the starting rate limit for savings for 2022-23 at £5,000. This clause does not override section 21 of the Income

Tax Act 2007 in relation to the starting rate limit for savings for 2023-24 and subsequently.

6. The starting rate of income tax and the starting rate limit are not devolved matters.

Clause 6: Rate of surcharge and surcharge allowance

Summary

1. This clause amends Chapter 4 of Part 7A of Corporation Tax Act 2010 to make changes to the surcharge on banking companies. From 1 April 2023, the surcharge will be charged at a rate of 3%, and the surcharge allowance, above which the surcharge is charged, will be increased from £25 million to £100 million.

Details of the clause

2. Subsection (1) amends the rate of the surcharge in section 269DA of Corporation Tax Act (CTA) 2010, from 8% to 3%.

3. Subsection (2) amends the amount of the surcharge allowance in sections 269DE, 269DF and 269DJ of CTA 2010.

4. Subsection (3) provides that these amendments have effect for accounting

periods beginning on or after the commencement date, 1 April 2023.

5. Subsection (4) provides that subsections 5 and 6 apply to an accounting period that commences before the commencement date and ends on or after that date.

6. Subsection (5) provides that where a company has an accounting period that straddles the commencement date, this is to be treated as two separate accounting periods for the purposes of the surcharge and the Controlled Foreign Companies charge in relation to banking companies.

7. Subsection (6) explains that any apportionment between the two separate accounting periods is to be made on a time basis.

Background note

8. Since 2010, banks have been subject to sector-specific taxes. As a result, they have made additional contributions to public

finances, reflecting the risks that they pose to the UK financial system and wider economy, and recognising the costs arising from the financial crisis.

9. The surcharge on banking companies was introduced by Finance (No. 2) Act 2015. It applies an additional tax of 8% on the taxable profits of banking companies above an annual surcharge allowance of £25 million per group.

10. Since 1 April 2017, the combined rate of Corporation Tax and surcharge on banks' profits above the surcharge allowance has been 27%. As a result of this rate change and the increase in the rate of Corporation Tax from 19% to 25%, banks will be taxed at a combined rate of 28% from 1 April 2023.

Clause 7 and Schedule 1: Abolition of basis periods

Summary

1. This clause and Schedule abolish basis periods for trades (including professions and vocations) for the tax year 2024-25 and subsequent years, and provide transitional rules for the tax year 2023-24.

Details of the clause

2. Clause 7 introduces Schedule 1.

Details of the Schedule

Part 1: Main amendments of ITTOIA 2005

3. Part 1 provides for the main amendments of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 required to abolish basis periods.

4. Paragraph 2 amends section 7 of ITTOIA 2005, which specifies the income charged to tax by Chapter 2 Part 2 of ITTOIA 2005,

to remove the reference to profits of the basis period being the profits of the tax year.

5. Paragraph 3 introduces new sections 7A to 7D.

6. New section 7A provides for the apportionment of profits or losses of periods of account to tax years, where the period of account does not coincide with the tax year. Apportionment is to be done by reference to the number of days in each period, however the length of each period can be measured by a different method if it is both reasonable and used consistently.

7. New section 7B provides that, for a trade which commences after 31 March in a tax year and does not cease in that tax year, the profits arising in that tax year are treated as nil for that tax year and are instead treated as arising in the following tax year.

8. New section 7C provides that, for a trade

which started either before the tax year or before 1 April in that year, which does not cease in that tax year, and which has an accounting date between 31 March and 4 April inclusive in that tax year, the profits arising after the accounting date are treated as nil for that tax year and are instead treated as arising in the following tax year.

9. New section 7D provides that an election can be made to disapply sections 7B and 7C for a period of five tax years or, if sooner, until the tax year before the trade ceases.

10. Paragraphs 4 to 7 amend sections 31A to 31C and 31E to remove references to basis periods for trades which use the cash basis to calculate their profits, so that these sections now refer to tax years.

11. Subparagraph 7(3) introduces new subsection 31E(4) which modifies the application of new section 7A for trades

which use the cash basis, and provides for the calculation of profits for periods of account following the removal of basis periods.

12. Paragraph 8 removes Chapter 15 which provides the rules for calculating basis periods and overlap profits and relief.

Part 2: Other amendments of ITTOIA 2005

13. Part 2 amends ITTOIA 2005 to remove references to basis periods, and where necessary replace these with references to tax years. It also removes references to deductions of overlap profit, and removes "accounting date", "overlap period" and "overlap profit" from Schedule 4 to the Act.

14. This Part also removes sections relating to notional trades and notional businesses of partners in a firm, as these are concepts that are unique to basis periods and are no longer required.

Part 3: Amendments of other Acts

15. Part 3 amends the Taxes Management Act 1970, the Capital Allowances Act 2001, the Income Tax Act (ITA) 2007 and the Taxation (International and Other Provisions) Act (TIOPA) 2010 to replace references to basis periods with references to tax years, and make other consequential amendments.

Part 4: Commencement

16. Subparagraph 61(1) provides that amendments made by Parts 1 to 3 apply for the tax year 2024-25 and subsequent tax years.

17. Subparagraph 61(2) provides that the amendments made by paragraph 43 to section 70 of ITA 2007, which relates to the restriction of loss relief for farming or market gardening trades, only apply for determining whether a loss is made for the tax year 2024-25 or later.

18. Subparagraph 61(3) provides that new

sections 7B to 7D ITTOIA also apply for the tax year 2023-24 to a person starting to trade in that year, who does not also cease to trade in that year.

Part 5: Transitional provision: new trades etc

19. Part 5 provides that, where a trade starts in the tax year 2023-24 and does not cease in that year, the basis period for the tax year 2023-24 ends on 5 April 2024, without exception.

Part 6: Transitional provision: continuing trades etc

20. Paragraph 64 introduces paragraphs 65 to 76, which provide the method for determining the profits of a trade for the tax year 2023-24 that does not start or cease in that year.

21. Paragraph 65 provides for the basis period for the tax year 2023-24 to begin immediately after the basis period for the

tax year 2022-23 and end on 5 April 2024, without exception. In addition, a change of accounting date does not result in a deduction for overlap profit. It defines the standard part of the basis period as the first 12 months of the basis period. Where this ends before 31 March 2024, this is followed by a transition part of the basis period, which ends on the accounting date, if this is between 31 March and 4 April inclusive, or 5 April 2024 otherwise (but see the election under paragraph 67).

22. Paragraph 66 provides for the amounts relating to the relevant maximum for the cash basis to be proportionately increased where the basis period for the tax year 2023-24 is longer than 12 months.

23. Paragraph 67 applies where the standard part or the transition part of the basis period ends with a late accounting date. A late accounting date is a date

between 31 March and 4 April 2024 inclusive. The profits of the period following the late accounting date to 5 April 2024 are treated as nil for the tax year 2023-24, and are instead treated as arising in the tax year 2024-25. This treatment can be disapplied by election, in which case there is a transition part which follows the standard part and ends on 5 April 2024.

24. Paragraph 68 provides that deductions allowed for overlap profit in this Part of the Schedule include a deduction that would be allowed on cessation if the trade ceased on 5 April 2024, or a deduction that was allowed, but not made, in an earlier tax year when there was a change of accounting date.

25. Paragraph 69 provides that, where there is no transition part of the basis period, a deduction is to be made for overlap profit when calculating the profits

of the tax year 2023-24.

26. Paragraph 70 introduces the steps required to calculate the profits of the tax year 2023-24 where there is a transition part of the basis period.

a. Step 1 requires the profits attributable to the standard part of the basis period to be determined, as if it were a basis period.

b. Step 2 requires the profits attributable to the transition part of the basis period to be determined, as if it were a basis period.

c. Step 3 deducts any overlap profit from the result of Step 2.

d. Step 4 sums the results of Steps 1 and 3. If the result of Step 3 or Step 4 is nil or less than nil, the profits of the tax year 2023-24 are the result of Step 4.

e. Step 5, where the results of Step 3 and Step 4 were both more than nil,

defines the lesser of the amounts given by Step 3 and Step 4 as the "transition profits".

f. Step 6 provides that the profits of the tax year 2023-24 are the amount of the transition profits treated as arising in the tax year 2023-24, plus the result of Step 1 if it was more than nil. The amount of the transition profits treated as arising in the tax year 2023-24 is determined by paragraphs 72 and 73.

27. Paragraph 71 provides for the terminal trade loss relief rules to apply in relation to a loss, or the increase in a loss, made because of a deduction for overlap profit, as if the trade ceased on 5 April 2024.

28. Paragraph 72 provides for the spreading of the transition profits over five tax years. 20% of the transition profits is treated as arising and charged to tax in

each tax year for four years, starting with the tax year 2023-24, with the balance treated as arising and charged to tax in the fifth tax year. If the trade ceases before all of the transition profits have been charged to tax, the balance is to be treated as arising and charged to tax in the tax year of cessation.

29. Paragraph 73 provides that an election can be made to accelerate the taxation of any amount of the transition profits. Any additional amounts treated as arising as a result of an election reduce the amount of transition profits to be charged to tax in subsequent tax years.

30. Paragraph 74 provides that any transition profits are to be ignored when averaging the profits of farmers and creative artists.

31. Paragraph 75 determines the liability to income tax on the transition profits chargeable to income tax in a tax year,

with reference to the Steps in the calculation in section 23 of ITA 2007. The amount of the transition profits chargeable, reduced by any reliefs set against them at Step 2, is left out of the calculation at Step 2. The difference between the tax liability calculated at Step 5, and the tax liability that would have been calculated at Step 5 if the amount left out at Step 2 had not been left out, is then added at Step 7.

32. Paragraph 76 provides for deductions of overlap profit under Part 6 to be treated as deductions allowed under section 205 or 220 ITTOIA 2005 for the purposes of section 24A ITA 2007 and section 24 TIOPA 2010.

Part 7: Transitional provision: notional businesses

33. Paragraph 77 introduces paragraphs 78 to 80, which provide the method for determining the profits of a notional

business for the tax year 2023-24 that does not commence or cease in that year. A notional business relates to a partner in a trading partnership with untaxed non-trading income (see section 854 ITTOIA 2005).

34. Paragraph 78 confirms that the basis period for the partner's notional business for the tax year 2023-24 is the same as that determined by paragraph 65 for their notional trade.

35. Paragraph 79 provides that a change of accounting date does not result in a deduction for overlap profit, but a deduction is to be made for overlap profit that would be allowed on cessation if the notional business ceased on 5 April 2024, or that was allowed, but not made, in an earlier tax year when there was a change of accounting date.

36. Paragraph 80 provides that, where any deduction for overlap profit is to be

made which exceeds the profits of the notional business, the excess is to be deducted from the partner's income.

Background note

37. The clause and Schedule change the basis of taxation for trades, professions and vocations from the current year basis to the tax year basis, for the tax year 2024-25 onwards, with a transition year in 2023-24 to tax profits which would otherwise escape taxation and to give relief for profits taxed twice (overlap profit).

38. This has been introduced to simplify traders' reporting responsibilities and remove complex rules relating to basis periods and overlap profit. It also promotes fairness by taxing traders closer to the point at which their profits are generated, removing distortions created by a trader's choice of accounting date,

and abolishing double taxation caused by overlap periods.

Clause 8: Profits of property businesses: late accounting date rules

Summary

1. This clause allows those with property businesses who draw up accounts to dates between 31 March and 4 April to treat the profits between the end of their accounts and the end of the tax year as falling in the following tax year. It also allows those with property businesses commencing after 31 March to treat the profits up to the end of the tax year as falling in the following tax year. This means they will no longer have to apportion small proportions of their profits between tax years for income tax purposes.

Details of the clause

2. This clause amends the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 and introduces new sections 275A to

275C.

3. New section 275A provides that, for a continuing property business which commences after 31 March in a tax year and does not cease in that tax year, the profits arising in that tax year are treated as nil for that tax year and are instead treated as arising in the following tax year.
4. New section 275B provides that, for a continuing property business which started either before the tax year or before 1 April in that year, which does not cease in that tax year, and which has an accounting date between 31 March and 4 April inclusive in that tax year, the profits arising after the accounting date are treated as nil for that tax year and are instead treated as arising in the following tax year.
5. New section 275C provides that an election can be made to disapply sections 275A and 275B for a period of five tax

years or, if sooner, until the tax year before the property business ceases.

Background note

6. The clause allows property businesses to treat profits of a year to a date near to the end of the tax year (usually 31 March) as being equivalent to the profits of the tax year, and applies for the tax year 2023-24 onwards.
7. This has been introduced to reduce the administrative burden for those with property businesses who draw up accounts to 31 March, and to simplify reporting responsibilities.

Clause 9: Liability of scheme administrator for annual allowance charge

Summary

1. This clause amends the period within which an individual can give notice to their pension scheme administrator to pay their annual allowance charge for previous tax years, using a system known as mandatory Scheme Pays. This clause also amends the period within which a scheme administrator must provide information about, and account for, an amount of annual allowance charge.

Details of the clause

2. Subsection 1 provides that the clause amends Part 4 of the Finance Act 2004.

3. Subsection 2 amends section 237B(5)(a) so that the time limit in new section 237BA applies in place of the current 31 July deadline.

4. Subsection 3 inserts new section 237BA which provides the time limit for notices under section 237B.
5. New section 237BA(1) provides that this section sets out the time limit for individuals to notify their pension scheme administrator of a requirement to pay an amount of their annual allowance charge for a tax year.
6. New section 237BA(2) sets out that the current deadline of 31 July in the year following the year in which the tax year in question ends, which is almost 16 months after the end of the tax year in question, applies except in cases where the time limits in subsection (5) apply.
7. New section 237BA(3) provides the circumstances in which the time limits in subsection (5) apply.
8. New section 237BA(4) defines the term "relevant time" used in subsection (3) as a time on or after 2 May in the year

following the year in which the tax year in question ends, extending the current period when requests for mandatory Scheme Pays may be made. This must be before six years after the end of the tax year in question.

9. New section 237BA(5) sets out the time limit that applies where the circumstances set out in subsection (3) exist, instead of the time limit in subsection (2) and is the earlier of that set out in subsections (5)(a) and (5)(b).

10. New section 237BA(5)(a) provides a time limit of three months beginning with the day the scheme administrator provides the individual with the information set out in subsection (3)(a).

11. New section 237BA(5)(b) provides a time limit of six years after the end of the tax year in question.

12. New section 237BA(6) sets out that the term "pension scheme input amount"

used in new section 237BA has the meaning given in section 237B(2), which is the aggregate of the pension input amounts for the tax year relating to the individual under the pension scheme.

13. Subsection 4 amends section 254 to amend the time limit for the Accounting for Tax return, which is used by scheme administrators to pay taxes in relation to the pension scheme, and inserts new section 254(7AA). It provides for the time limit to be the later of the period ending with 31 December in the year following that in which that tax year ended, and the period following the period in which the scheme administrator receives the notice which gives rise to the liability.

14. New section 254(7AA) provides that the scheme administrator may elect for the tax due, to be treated as being due in an earlier period.

Background note

15. Mandatory Scheme Pays is the process that helps an individual pay their annual allowance charge liabilities for a current tax-year, where the conditions are met. The individual elects for their pension scheme administrator to be jointly liable for their annual allowance tax charge, in return for an actuarial reduction in the value of their pension pot.

16. The annual allowance is the maximum amount of tax relieved pension savings that an individual can build up during a tax-year.

17. Where an individual exceeds the maximum amount of tax relieved pension savings, they will be liable to a tax charge on the excess amount. This tax charge recoups the excess tax relief the individual has already received on their pension savings.

18. For mandatory Scheme Pays, the

annual allowance charge must exceed £2,000 and the individual's pension input amount for that pension scheme must exceed the £40,000 annual allowance.

19. Individuals with an increase in pension savings for a previous tax-year were unable to use mandatory Scheme Pays and had to pay the tax charge themselves.

20. This clause will enable more individuals, who meet the conditions, to benefit from the mandatory Scheme Pays facility. This is because this measure applies to all individuals that receive a retrospective amendment to their pension input amount for a previous tax-year.

Clause 10: Increase of normal minimum pension age

Summary

1. This clause introduces an increase in the normal minimum pension age to 57 from 6 April 2028. It protects members of registered pension schemes who before 4 November 2021 have a right to take their entitlement to benefit under those schemes at or before the existing normal minimum pension age. It exempts members of certain uniformed service pension schemes from the increase. It also introduces new block and individual transfer rules specific to the new protection framework to reduce the restrictions on retaining a protected pension age following a transfer.

Details of the clause

2. Subsection (1) provides that Part 4 of

Finance Act 2004 (pension schemes etc) is amended in accordance with subsections (2) to (6).

3. Subsection (2) amends the definition of normal minimum pension age set out in section 279 (other definitions). The different minimum pensions ages are set out here including the increase to age 57 on or after 6 April 2028.

4. Subsection (3) inserts provisions which define what is meant by 'uniformed services pensions scheme'. Members of a uniformed services pension scheme are excluded from the increase in the normal minimum pension age in 2028. It also includes provision for the Treasury to amend by regulation the definition of uniformed services pensions schemes.

5. Subsection (4) includes references to new paragraph 23ZB.

6. Subsection (5) introduces new paragraph 23ZB as well as new paragraph 23ZC.

New paragraph 23ZB

7. Subparagraph (1) sets out the conditions under which paragraph 23ZB applies.
8. Subparagraph (2) defines what a relevant scheme is.
9. Subparagraph (3) sets out the circumstances under which the entitlement condition is met. It includes individuals who become members of a scheme after 11 February 2021 and before 4th November 2021. The entitlement is to safeguard an actual or prospective right under the pension scheme to any benefit from an age of less than 57, but not less than age 55 (see subparagraph (7)), where such a right was conferred within the scheme rules on or before 11 February 2021, and the right was then conferred on the member or would have been had the member been a member of the scheme.
10. Subparagraph (4) provides for those who were in the process of a transfer

before 4 November 2021 to a scheme, that would give them a right to take their entitlement to benefit under that scheme before normal minimum pension age, to be treated as having that right.

11. Subparagraph (5) introduces a new block transfer condition specific to members who meet the entitlement condition in 23ZB (3) where the member has transferred into the scheme.

12. Subparagraph (6) defines a block transfer for the purposes of 23ZB (5).

13. Subparagraph (7) explains what the member's protected pension age is.

14. Subparagraph (8) ensures the protected pension age is not more than 55 at any time before 6 April 2028.

New paragraph 23ZC

15. New paragraph 23ZC introduces new provisions for individual transfers.

16. Subparagraph (1) makes provision in

relation to members and schemes that do not qualify under paras 22, 23 or 23ZB where a relevant transfer has been made to the scheme.

17. Subparagraph (2) sets out what sums or assets relate to a member.

18. Subparagraph (3) defines what a relevant transfer is. A relevant transfer is a transfer of all of the member's accrued rights at arrangement level under the pension scheme from which the transfer is made and the member will retain their protected pension age in the receiving scheme. The transfer must be a recognised transfer. The protected pension age will also apply on subsequent relevant transfers.

19. Subparagraph (4) confirms that the protected pension age does not apply to other sums or assets held already in the receiving scheme or that are subsequently put into the scheme either by contribution

or transfer.

20. Subparagraph (5) defines what a relevant scheme is.

21. Subsection (6) adds a heading to make clear that paragraph 22 within Schedule 36 applies to protected pension ages where scheme rights existed before 6 April 2006 and adds clarification to the wording of 23ZA(2).

22. Subsection (7) ensures that within section 308C (9) of Income Tax (Earnings and Pensions) Act (ITEPA) 2003 where the employee has more than one protected pension age, for the purposes of relevant pension age it is the lowest age that applies.

Background note

23. With increasing life expectancy this measure supports the government's agenda around fuller working lives. A higher normal minimum pension age

could encourage individuals to save longer for their retirement and increase the chance that individuals will have financial security in later life.

24. The normal minimum pension age was introduced in April 2006. Under Finance Act 2004, a registered pension scheme must not normally pay any benefits to members until they reach normal minimum pension age, unless they are retiring due to ill-health. Tax legislation currently provides that on or after 6 April 2010 normal minimum pension age is 55 (before 6 April 2010 it was age 50).

25. In 2014, following the consultation on 'Freedom and Choice in Pensions', the government announced it would increase the normal minimum pension age to 57 in 2028. A consultation on the implementation of the increase and a proposed framework of protections for

pension savers who already have a right to take their pension at a pre-existing pension age was completed on 22 April 2021.

26. A member of a pension scheme with a previously protected pension age of less than 50 or 55, will see no change in respect of their current protected pension ages. Members of certain uniformed public service pension schemes will be exempt from the increase in 2028.

27. This clause introduces an increase in the normal minimum pension age to 57 from 6 April 2028. It protects members of registered pension schemes, who before 4 November 2021 already have, or were in the process of a transfer which will give them, a right to take their entitlement to benefit under those schemes before they reach normal minimum pension age. Protected members should not lose their protection as a result of a block transfer,

and there is no membership condition or a requirement for all the members rights to come into payment at the same time. For individual transfers, the member should not lose their protected pension age following a transfer, where there is no protected pension age already in the receiving scheme, although the protected pension age would not apply to other sums or assets held already in the receiving scheme.

28. There may be some transitional issues. For example, an individual who does not have a protected pension age and at 5 April 2028 will have reached age 55 and has started but not completed the process of taking pension savings before the change in normal minimum pension age. The government will provide further advice on the proposed transitional arrangements and provisions in due course.

Clause 11: Public service pension schemes: rectification of unlawful discrimination

Summary

1. This clause provides the Treasury with the power to make regulations to address the tax impacts that arise in consequence or in connection with the rectification of unlawful discrimination set out in Part 1 of the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022. The changes will have effect on or after 6 April 2022 and are capable of having retrospective effect.

Details of the clause

2. Subsections 1 and 2 provide that the Treasury may make regulations that modify the application of a "relevant tax enactment" (subsection (3) lists the legislation that falls within that definition)

as it applies in relation to a "relevant person" in connection with the "discrimination rectification provisions". Those terms are defined in subsections (3) and (6) respectively.

3. Subsection 3 sets out the three categories of persons who fall within the category of "relevant person" under subsection (2) as someone who:

    - has remediable service (which is defined in the PSPJOA 2022 broadly as pensionable service during the period 1 April 2015 to 31 March 2022 under a public service pension scheme, subject to certain conditions) in an employment or office;
    - has any rights or obligations under or in relation to a public service scheme in relation to someone else's remediable service in an employment or office (for example a

scheme administrator of such a pension scheme or a dependant of a member); or

- owes an amount, for example contributions, or is owed an amount, for example compensation, under Part 1 of the PSPJOA 2022 and those amounts provide the rectification of the unlawful discrimination that arose from the public service pension reforms in 2014 and 2015.

4. Subsection 4 provides that regulations made under this section may apply retrospectively, that they may make different provision for different cases so that it is possible for regulations to apply in a limited way and they may make other related provision.

5. Subsection 5 provides that regulations may be annulled in pursuance of a resolution of the House of Commons.

6. Subsections 6 and 7 define other terms used in this clause. In particular, subsection 6 defines "the discrimination rectification provisions" as the Chapters and Parts of PSPJOA 2022 that provide the remedy to the discrimination arising out of the public service pension reforms from 2014 onwards and provisions made in related regulations.

Background note

7. When reformed public service pension schemes were introduced in 2014/2015 the government agreed, following discussions with trade unions, to allow active members of pre-existing public service pension schemes who were close to retirement to remain in those schemes, rather than requiring them to start to accrue pension benefits in a new scheme. This was called transitional protection.

8. In December 2018, the Court of Appeal found in *Lord Chancellor v McCloud,*

Secretary of State for the Home Department v Sargeant [2018] EWCA Civ 2844 (the *McCloud* judgment) that the transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes (and also gave rise to indirect sex and race discrimination).

9. On 15 July 2019, the Chief Secretary to the Treasury made a written ministerial statement (https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725) setting out that the government considered that the Court of Appeal's judgment had implications for all of the public service pension schemes and planned to come forward with proposals to remedy the discrimination across the schemes.

10. On 19 July 2021 the government introduced the Public Service Pensions

and Judicial Offices Bill. The provisions of Part 1 of the PSPJOA 2022 apply retrospectively to provide for the remedy for this discrimination. The rectification affects individuals who were members of public service pension schemes on or before 31 March 2012 and at any time between 1 April 2015 and 31 March 2022 and so had pensionable service during that time.

11. Under Chapter 1 of Part 1 of PSPJOA 2022, individuals who were moved to a new scheme will be retrospectively returned to their previous scheme for the period of remediable service (that is broadly pensionable service in the period 1 April 2015 to 31 March 2022 that is subject to the remedy). Any member with remediable service will be able to choose to receive pension benefits based on the rules of either the legacy scheme or the new scheme.

12. Although for most individuals there will be no significant change to their tax position, this legislation will provide Treasury with the power to make regulations that make the necessary changes to tax legislation so that, as far as possible, individuals can be put in the position they would have been in absent the discrimination.

13. Examples of provisions that may be made under this measure are:

- providing an exemption to a tax charge on the compensation an individual may receive if, following the remedy, they are owed money;
- allowing an individual to protect the higher of the two pension choices available to them from lifetime allowance charges calculated on 5 April 2016;
- additional annual allowance to be available so that an individual will

not pay more annual allowance charge than they would have done if they had accrued their chosen benefits in the relevant tax years;

- where a scheme has paid lifetime allowance or annual allowance charges on behalf of the individual, but that accrual is now under a different scheme, for the payment to be deemed to have been paid by the latter scheme; and
- ensuring that payments of pensions and lump sums that would have been authorised payments had they been made at the relevant time, are treated as meeting the conditions to be authorised.

14. The regulations will be able to be applied to a tax year or period of time before they take effect.

Clause 12: Extension of temporary increase in annual investment allowance

Summary

1. This clause extends the temporary increase to £1,000,000 of the maximum amount of annual investment allowance ("AIA") to 31 March 2023. It has effect for qualifying expenditure incurred on or after 1 January 2022.

Details of the clause

2. Subsection 1 amends section 32(1) of the Finance Act 2019 (FA 2019) to extend the period in which the £1,000,000 maximum amount of AIA is available until 31 March 2023.

3. Subsection 2 amends provisions about chargeable periods that straddle the end of the period in which the £1,000,000 maximum amount of AIA is available ("second straddling period") to reflect the extension until 31 March 2023.

4. Paragraph (a) amends the date specified in section 32(2) FA 2019 for the second straddling period to 1 April 2023.
5. Paragraph (b) amends references to the date specified in paragraph 2 of Schedule 13 to FA 2019 for the second straddling period to 1 April 2023.
6. Paragraph (c) amends the reference to the period in which the £1,000,000 maximum amount of AIA is available in paragraph 3(3)(b) of Schedule 13 FA 2019 to that beginning 1 January 2019 and ending 31 March 2023.

Background note

7. The AIA is a 100 percent capital allowance available for the costs of most plant and machinery incurred by most businesses up to a specified annual amount. It was introduced for expenditure incurred from April 2008, and from 1 January 2016 that annual amount was permanently set at £200,000.

8. At Budget 2018, it was announced that the annual amount would be temporarily increased to £1,000,000 from 1 January 2019 for a two-year period, to incentivize businesses to increase or bring forward their investment in plant and machinery.
9. At Legislation Day in November 2020, a one-year extension to this temporary increase was announced to support businesses during the pandemic and provide them with the confidence to invest during 2021. It was legislated for in Finance Act 2021.
10. A further extension until 31 March 2023 to this temporary increase is being made to support business investment, particularly for firms and investments that are not eligible for the super-deduction, which will also cease to be available for investment after that date.
11. Businesses can claim AIA for their expenditure on most plant and machinery, the most notable exception being

expenditure on cars. AIA can be claimed for plant and machinery which would be categorized as 'special rate expenditure' and otherwise only eligible for writing down allowances at the special rate (6%).

12. AIA is only available to those persons carrying on a qualifying activity who are individuals, companies or partnerships where all the partners are individuals. Qualifying activities mainly include trades, professions, vocations, property businesses, and employments or offices.

13. Companies are also limited to being eligible to a single AIA in the following circumstances:

a. where a company carries on more than one qualifying activity;

b. between companies in a group; or

c. between two or more groups or companies controlled by the same person, where the qualifying activities share the same premises or are similar

in nature.

14. Unincorporated businesses are also limited to being eligible to a single AIA across all qualifying activities carried on and controlled by the same person(s), where those activities share the same premises or are similar in nature.

Clause 13: Structures and buildings allowances: allowance statements

Summary

1. This clause introduces a new requirement for Structures and Buildings Allowances (SBAs) allowance statements to include the date qualifying expenditure is incurred, or treated as incurred, where that is later than the date on which the building or structure was first brought into non-residential use. This clause has effect for qualifying expenditure incurred, or treated as incurred, on or after the date of Royal Assent.

Details of the clause

2. Subsection 1 introduces new paragraph 270IA(4)(d) into the Capital Allowances Act 2001 (CAA 2001) so that an allowance statement is required to include the date qualifying expenditure on the construction or acquisition of the building or structure

is incurred, or treated as incurred, where that is later than the date on which it was first brought into non-residential use. It also amends paragraph 270IA(4)(b) CAA 2001 to substitute the word "purchase" for the word "acquisition".

3. Subsection 2 provides that the clause has effect from the date of Royal Assent in relation to cases where qualifying expenditure is either:
   a. incurred on or after the date of Royal Assent; or
   b. treated under the provisions of subsection 270BB(3) CAA 2001 as incurred on or after the date of Royal Assent.

Background note

4. SBAs are a capital allowance available for the cost of constructing, renovating, converting or acquiring non-residential structures and buildings. When SBAs were first introduced from 29 October

2018, the allowances were given at 2% per annum of qualifying expenditure on a straight-line basis. This rate was increased to 3% per annum with effect from April 2020. The period over which SBAs are available to be claimed is known as the allowance period.

5. A business must hold an allowance statement to claim SBAs, which includes certain details such as the date the asset is first brought into non-residential use. This is normally the date the SBAs allowance period of 33 and 1/3 years commences. However, where qualifying expenditure is incurred (or treated as incurred under the simplification rules contained within subsection 270BB(3) CAA 2001) after the asset is brought into non-residential use, the allowance period starts on that later date. New paragraph 270IA(4)(d) adds an additional requirement to record this later date on the allowance statement where relevant to ensure that the correct amount

of SBAs may be claimed over the allowance period. The minor amendment to paragraph 270IA(4)(b) ensures consistency with the new paragraph.

Clause 14 and Schedule 2: Qualifying asset holding companies

Summary

1. This clause and Schedule 2 introduce a regime for the taxation of qualifying asset holding companies (QAHCs). The aim is to recognise circumstances where intermediate holding companies are used only to facilitate the flow of capital, income and gains between investors and underlying investments, to tax investors broadly as if they had invested in the underlying assets, and to enable the intermediate holding companies to pay tax that is proportionate to the activities they perform.

Details of the clause

2. Clause 14 introduces Schedule 2 that makes provision about the taxation of certain asset holding companies.

Details of the Schedule

Part 1: Introductions and conditions for being a QAHC

3. Part 1 of Schedule 2 sets out the provisions governing the eligibility criteria for a company to be a qualifying asset holding company (QAHC).

4. Paragraph 1 introduces the Schedule.

5. Paragraph 2 sets out the conditions which a company must meet if it is to be a QAHC. The ownership condition, activity condition and investment strategy condition are further explained in paragraphs 3 to 13.

6. Paragraph 3 contains the core features of the ownership condition. It requires that the aggregate percentage relevant interests (calculated in accordance with paragraphs 3 to 7) of all investors that are not category A investors (as defined in paragraph 8) in the company, or a class of profits or assets of the company, must not exceed 30%.

7. The rules determining percentage relevant interests are closely modelled on those set

out in Chapter 5 Corporation Tax Act 2010 (CTA 2010) and used in the context of group/consortium relief. Accordingly, they look to identify voting rights, and also economic interest deriving from the holding of equity and debt with equity-like features (in the form of entitlement to distributable profits and to assets on a winding up). They do not, however, look to the nominal value of issued share capital. They require each test to be applied to each person with a 'relevant interest', and where the different tests deliver different answers, each relevant investor is treated as holding the highest percentage delivered by any of the tests. Paragraph 4 specifies what interests are relevant interests for these purposes. The total percentage treated as owned by non-category A investors therefore reflects these maximum results. Paragraphs 3(1)(a) and 3(2) contain the basic rule.

8. Paragraphs 3(1)(b) and 3(3) introduce an additional concept that is not present in the

group/consortium relief rules. These provisions require that the relevant interest percentages also be tested by reference to sub-categories of profits or assets of the company where securities are in issue which give greater entitlements to that class of profits or assets than to other profits or assets. This will generally be relevant where the capital structure of the company does not consist simply of ordinary share capital, with all shares ranking pro rata with one another. The rule is necessary to prevent 'side pocket' type arrangements. A company with a large total asset base might permit a non-category A investor to take equity in return for a contribution of assets, with the equity rights tracking those assets to the exclusion of the company's other shareholders. Instead, with this provision in place, in the above example the non-category A investor would be treated as having a 100% entitlement to the assets it contributed and so the company would not

meet the ownership criteria.

9. Paragraph 3(5) clarifies that, due to the rules requiring the highest outcome of a number of tests to be adopted as a person's percentage relevant interest, the total of the percentage relevant interests held by all persons may exceed 100%, and that this does not necessitate a re-computation of any percentage amounts. The tests are simply looking to aggregate the percentage relevant interests (computed for each relevant person on a worst-case basis) of non-category A investors.

10. Paragraph 4 specifies which direct and indirect interests can be relevant interests. The starting point is that only direct interests are considered. This ensures that (other than in relation to the anti-fragmentation rule at paragraph 4(1)(b) and paragraph 4(3)) it is not necessary to look to the owners of category A investors. Paragraph 4(1)(c) requires consideration of

interests held solely through one or more QAHCs. This is necessary to aggregate non-category A investors' interests in a stack of QAHCs.

11. Paragraph 4(1)(b) contains an anti-fragmentation rule which operates to aggregate the different interests of a direct investor in the QAHC who also has a stake in any other investor. For example, if an individual owns 20% of a QAHC directly but also owns another 5% via a qualifying transparent fund which owns the other 80% of the QAHC, that individual is to be regarded as having a relevant interest in the QAHC of 25%. The inclusion of connected companies within Paragraph 4(1)(b)(i) is to prevent the rule being circumvented if the individual sets up a special purpose company to hold their stake in the QAHC. Paragraph 4(3) further augments the rule so that the individual's relevant interest will also include that of their connected parties. This ensures interests are aggregated if, in

the example above, the individual's spouse owns an interest in the transparent qualifying fund.

12. Paragraphs 4(2) and 4(3)(c) include no double counting provisions, which prevent aggregation in cases where account is already being taken of a connected party's interest for the purposes of the computation of relevant interests. Paragraph 4(3)(a) refines the anti-fragmentation rule's test of connected persons. It provides that aggregation with a party's interests should only occur where the other connected party is not a category A investor.

13. Paragraph 5 identifies the profits or assets which each person with a relevant interest is treated as beneficially entitled to.

14. Paragraphs 5(2) and 5(3) limit the operation of the profits and assets test to profits and assets of the potential QAHC's ring fence business (that is, that part of its activities which attracts the tax benefits of

QAHC status).

15. Paragraph 5(4) imports key provisions from the group/consortium relief rules on determining beneficial entitlement proportion, with necessary modifications. In particular, where the ownership test is being applied to a limited class of profits or assets under paragraph 3(1)(b), the tests must be applied to those profits or assets in isolation. If, for example, there are no profits of the class in question in a year, the assumption in section 165(2)(b) CTA 2010 that profits are £100 must be applied on the basis that profits of the class in question are £100. This is the case even if the potential QAHC is profitable overall.

16. Paragraph 5(5) deals with investment management profit-sharing arrangements (which are defined in paragraph 5(6) and intended to cover profit sharing arrangements commonly referred to as 'carried interest' or 'carry' within the

investment management industry). Where these are in place, the assumption should be made at all times that the arrangements are delivering the maximum percentage entitlement to share in profits or assets that is possible over the life of the arrangement. Where 'catch up carry' arrangements are in place, so that it is possible for carried interest holders to be entitled to a very high percentage of returns for a limited period in order to move them, for example, from a 0% to 20% share overall, the effect of this provision is to assume those carried interest holders have a 20% interest at all times.

17. Paragraph 6 contains additional rules applicable in cases where the investors in a potential QAHC are tax transparent.

18. Paragraph 6(1) sets out the general rule that transparent entities (defined in paragraph 6(7)) are not treated as having in their own right relevant interests in a potential QAHC. Paragraph 6(2) overrides

that general rule in certain circumstances. Where a person has a beneficial entitlement to profits or assets of a company as a result of participation in qualifying fund that is transparent (defined in paragraph 6(7)), that beneficial entitlement is normally to be treated as a beneficial entitlement of the qualifying fund. However, where paragraph 4(1)(b) is in point, such an interest is to be treated as an interest of that person which is held through the qualifying fund rather than directly. This is necessary since it is the fund whose status as a category A investor or otherwise must be tested, not its members. A different rule is needed in applying paragraph 4(1)(b), since that provision may require the attribution of beneficial entitlements to the members of a fund rather than the fund itself.

19. Paragraph 6(3) clarifies that any voting rights attributable to shares held by a transparent qualifying fund should be treated as accruing to the fund as a whole,

rather than to any members of the fund. This is necessary as it is the transparent qualifying fund which is being treated by the legislation as an investor.

20. Paragraphs 6(4) and 6(5) are relevant where an investor in a potential QAHC is a tax transparent entity (for these purposes a partnership, an LLP or a bare trust) that is not a transparent qualifying fund, so that the rules look through to the entitlements of the persons holding interests in the transparent entity in order to test category A status. They provide that a partner's priority profit share, or a trustee's fee, to the extent it meets specified conditions, shall be disregarded in the determination of any person's relevant interest in the potential QAHC.

21. Paragraph 6(6) is also relevant where an investor in a potential QAHC is a tax transparent entity that is not a transparent qualifying fund. It provides that the voting rights attaching to securities held by the

entity shall be deemed for the purposes of the QAHC eligibility tests to be held by the members of the entity pro rata to their entitlement to profits arising from those voting securities.

22. Paragraph 7 provides that where voting power is being tested, it should be tested by reference to voting power in relation to a standard resolution put to a meeting of members. This provision ensures that the voting rights attaching to any class of share solely in relation to resolutions affecting the rights attaching to that class can be disregarded. Similarly, where a class of shares carries enhanced voting rights in relation to limited matters – for example, the appointment of directors – those additional rights can be disregarded.

23. Paragraph 8 lists those entities which qualify as category A investors.

24. Paragraph 9 defines a 'qualifying fund' for the purposes of the category A investor

definition in paragraph 8. Qualifying funds must be collective investment schemes or alternative investment funds, and they must be diversely held. Any fund may qualify if it is non-close (broadly adopting the rules set out in Chapter 2 of Part 10 CTA 2010 as modified by Schedule 5AAA Taxation of Chargeable Gains Act 1992 (TCGA 1992). Additionally, funds which are collective investment schemes may qualify if they comply with the genuine diversity of ownership rules in the Offshore Funds (Tax) Regulations 2009 as modified by paragraphs 9(4) and (5). The effect of these rules is that funds structured as closed-ended corporates (which cannot be collective investment schemes) must meet the non-close test, whereas all other funds which potentially qualify can do so via the genuine diversity of ownership rules.

25. Paragraph 10 defines "relevant qualifying investor" for the purposes of the category A investor definition in paragraph 8. Pension

schemes and charities are generally included, but subject to carve outs to address the risk that the charities or pension schemes are too closely associated with particular individuals.

26. Paragraph 11 defines an "intermediate company", which may be a category A investor within the definition in paragraph 8. In order to be an intermediate company, such a company must be wholly or almost wholly owned by category A investors which are not QAHCs.

27. Paragraph 12 requires that a QAHC must take reasonable steps to monitor whether the ownership condition is met by it. This requirement is relevant to the rules in paragraph 27 of the Schedule dealing with the consequences of breaches. If the requirements to take reasonable steps is not met, the QAHC will lose the ability to cure inadvertent breaches of the ownership criteria (see paragraph 27(3)(c)). Steps are

likely to be considered reasonable where they are proportionate to the risk presented by those with interests in the QAHC that the ownership condition may not be met at any point during its life.

28. Paragraph 13(1) sets out the activity condition. Paragraph 13(1)(b) restricts trading activity to a non-substantial level of activity ancillary to the QAHC's investment business. It is only intended to enable, for example, the provision of intra-group management services to related companies for modest fees.

29. Paragraph 13(2) sets out the investment strategy condition. This requires that the QAHC's investment strategy must not involve the acquisition of listed or traded securities or other interests deriving their value from such securities. There is an exception in that the strategy may involve the acquisition of listed or traded securities for the purposes of facilitating a change of

control of the issuer of the securities which will result in its securities no longer being listed or traded.

Part 2: Becoming a QAHC

30. Paragraph 14 deals with the requirement for a company to make an entry notification to HM Revenue & Customs (HMRC) in order to become a QAHC and the required contents of that notice. Unless such a notification has been made and is in force the company cannot be a QAHC (see paragraph 2). The earliest date on which the company may become a QAHC is the day specified in the notification, which can be no earlier than the day after the day on which the entry notification is made by it or, if later, 1 April 2022. A company may make an entry notification if it will have met all the required conditions of paragraph 2 including the ownership condition on the specified date, or if it will have met all those

conditions except the ownership condition by that date and a valid declaration in relation to paragraph 16(4) is made. An entry notification will remain in force until an exit notification comes into force (see paragraph 25).

31. Paragraph 15 provides that a company becomes a QAHC at the beginning of the first day on which all of the relevant conditions for being a QAHC, as detailed in paragraph 15(2), are met.

32. Paragraph 16 deals with the situation where a company wishes to be a QAHC but it does not meet the ownership condition at paragraph 3, but reasonably expects that it will meet the condition within two years. The effect of the provision is to permit the company a period of grace to meet the condition, during which it can be a QAHC as long as there remains a reasonable expectation that the ownership condition will be met in time. Where a company

notifies HMRC of its intention to enter the regime at a time when it does not meet the ownership condition, it must state that this is the case in its entry notification. Similarly, if a company becomes a QAHC at a point when it meets all the conditions but later ceases to meet the ownership condition, it must notify HMRC of this and that it reasonably expects to cure the breach of the ownership condition within two years of the date of entry.

33. Paragraph 17 details the corporation tax consequences of a company becoming a QAHC.

34. Paragraph 17(1) states that when a company becomes a QAHC, there will be the end of one accounting period and the beginning of another.

35. Paragraph 17(2) details certain assets which, if held by a company that becomes a QAHC, must be treated for corporation tax purpose as sold immediately prior to

becoming a QAHC and re-acquired immediately after becoming a QAHC at their market value. The sale is treated as occurring in the accounting period ending prior to joining the regime and the re-acquisition is treated as occurring in the accounting period that begins at point of entry into the regime.

36. Paragraph 17(4) allows the substantial shareholding exemptions (SSE) in Schedule 7AC to TCGA 1992 to apply in some circumstances in relation to a deemed disposal pursuant to paragraph 17(2), even if the QAHC had not held the shares in question for a year at the time it became a QAHC. This treatment is available if a disposal of the shares at the date when the qualifying holding period of a year is reached would have qualified for the SSE.

37. Paragraph 19 prevents, where conditions are met, the same economic gain being taxed when multiple chargeable gains accrue in

relation to “qualifying shares” (see paragraph 53(2)). This could otherwise occur where paragraph 17(2) applies to more than one company. Paragraph 19 operates by reducing any gain (the “relevant gain”) on the deemed disposal and reacquisition of the shares by a just and reasonable amount reflecting any gain arising on an underlying asset (the “underlying gain”). This reduction also occurs in cases within paragraph 18, where paragraph 17(2) is disapplied. For the relief to be available, paragraph 19 requires that the underlying gain is realised on or before the day on which the relevant gain arose. The relevant gain cannot be reduced below nil.

38. Paragraph 20 defines the “QAHC ring fence business”.

39. Paragraph 20(1) sets out that business activities are within the QAHC ring fence business where they are in relation to overseas land (excluding any overseas

property business that is not exempt by virtue of paragraph 52), qualifying shares (defined under paragraph 53), creditor relationships except to the extent that they relate to trading or a UK property business, and certain derivative contracts.

40. Paragraph 20(2) and (3) provide that for corporation tax purposes, activities within the QAHC ring fence business should be treated as separate and distinct from all other QAHC activities, including those both before and after the company is a QAHC. However, under paragraph 20(5), the company will only submit one Company Tax return for each accounting period.

41. Paragraph 20(4) provides that no non-ring fence losses of a QAHC can be set against ring fence profits, and that no ring fence losses can be set against any non-ring fence profits of the QAHC, including losses which arise before the company became a QAHC, and profits which arise before the company

became or after it ceases to be a QAHC.

42. Paragraph 20(6) provides that any amount of assets, receipts, credits, losses or gains which relate to both the ring fence business and non-ring fence activities of the QAHC should be apportioned between those two parts of the QAHC on a just and reasonable basis.

43. Paragraph 20(7) provides that references to losses include deficits, expenses, charges and allowances.

44. Paragraph 20(8)(a) provides that, for the purposes of group relief surrenders under Part 5 and Part 5A of CTA 2010, amounts which arise within a QAHC ring fence business can only be set off against profits which arise within the QAHC ring fence business of a claimant company.

45. Paragraph 20(8)(b) provides that, for the purposes of group relief surrenders under Part 5 and Part 5A of CTA 10, amounts which arise outside the ring fence business

of a QAHC cannot be set against QAHC ring fence profits of a claimant company.

46. Paragraph 20(9) provides that where a chargeable gain or allowable loss is transferred to a QAHC under section 171A(4) TCGA 1992, that gain or loss arises outside the QAHC's ring fence business.

47. Paragraph 20(10) provides that any distribution received by a QAHC which is treated as the profits of a UK property business by virtue of the Real Estate Investment Trust rules in Chapter 6 of Part 12 CTA 2010 arises outside the QAHC's ring fence business.

48. Paragraph 20(11) applies the Corporation Tax Act 2009 (CTA 2009) definition of "creditor relationship".

49. Paragraph 21 provides that the loss restriction rules in Part 7ZA of CTA 2010 are disregarded when determining the profits of a QAHC ring fence business.

50. Paragraph 22 details the corporation tax consequences where certain assets which are held by a QAHC either enter or leave the ring fence business. If an asset enters the QAHC ring fence business then it will be treated for corporation tax purposes as sold by the QAHC immediately before it enters the ringfence business and reacquired immediately after entering. If an asset leaves the QAHC ring fence business then it will be treated for corporation tax purposes as sold by the QAHC immediately before it leaves the ringfence business and reacquired immediately after leaving. The deemed sale and reacquisition is treated as made for a consideration equal to market value.

51. Paragraphs 22(1) to (3) deal with assets entering the QAHC ring fence business, and provide that any chargeable gain or allowable loss arising from the deemed sale arises outside the QAHC ring fence business.

52. Paragraphs 22(4) to (6) deal with assets leaving the QAHC ring fence business, and provide that any chargeable gain or allowable loss arising from the deemed sale arises within the QAHC ring fence business.

53. Paragraph 22(8) has the effect that that the holding period of shares for the purpose of the substantial shareholding exemptions (SSE) is not treated as broken by the deemed disposal and reacquisition of those shares on a company becoming a QAHC.

54. Paragraph 23 provides for the adjustment of certain chargeable gains in relation to assets crossing the ring fence. Where a chargeable gain (the “relevant gain”) arises under paragraph 22(2) - an asset moving into the QAHC ring fence – and that gain reflects the proceeds of another disposal on which a chargeable gain has previously arisen (the “taxed gain”), the relevant gain is reduced on a just and reasonable basis to reflect the amount of the taxed gain. The

relevant gain cannot be reduced below nil.

55. Paragraph 24 specifies that a company must send a notice containing specified information to HMRC at the end of each accounting period. The notice must be made by no later than the filing date for the company tax return for the accounting period that the notice relates to. If the notice is not returned in this timeframe then a £300 penalty may be applicable.

Part 3: Ceasing to be a QAHC

56. Paragraph 25 sets out that if a company wishes to voluntarily cease to be a QAHC, it must make an exit notification and details the required contents of that notification. The earliest date in which a company can cease to be a QAHC is the day after the date in which an exit notification is made.

57. Paragraph 26 requires that a company must notify HMRC if they have breached any of the eligibility requirements of

paragraph 2, except where this is the result of an exit notification.

58. Paragraph 27 contains rules which apply where a QAHC breaches certain parts of the eligibility criteria. Broadly, these distinguish between deliberate breaches (which will give rise to immediate departure from the regime) and unintentional breaches, where the legislation allows for the possibility that a breach may be cured such that it is treated as never having occurred.

59. Paragraph 27(1) deals with breaches of the activity condition that are not deliberate, which in practice is likely to involve a QAHC having engaged in trading activity which is substantial or which is not ancillary to its investment business. It allows the breach to be ignored if it has either already ceased at the time of discovery, or if it ceases as soon as reasonably practicable thereafter. The breach is only ignored for the purposes of Part 3 of the Schedule, so, for example,

any liability of a QAHC to pay corporation tax on profits of a trade carried on in breach of the activity condition will remain.

60. Paragraph 27(3) deals with breaches of the ownership condition that are not deliberate. In order to be eligible for the possibility of cure, even where inadvertent, such breaches must not involve non-Category A investors' relevant interests exceeding 50%.

61. Paragraph 27(4) provides that if a cure period applies to a breach of the ownership condition and that condition is again met before the end of the cure period then for the purposes of Part 3 of the Schedule the breach is treated as if it had not occurred.

62. Paragraph 27(5) provides that the cure period for a breach of the ownership condition is 90 days from the date of discovery of the breach, or such longer time as HMRC may agree to.

63. Paragraphs 27(6) and (7) specify what is meant by a deliberate breach. Paragraph

27(6) requires the breach of a condition to have occurred as a result of an action by any of the persons specified in paragraph 27(7). It also requires that person to have known that the consequences of the action would be a breach of that condition. A breach will be deliberate only if it would have been reasonable for that person to avoid it. The third limb is designed to ensure that where a breach is effectively forced by commercial circumstances (for example, because a non-category A lender is enforcing security over shares in a QAHC), it is not treated as deliberate.

64. Paragraph 28 provides for a two-year wind down period following certain breaches of the ownership condition when the company intends to wind down its ring fence business. The QAHC must notify HMRC of its intention to rely on this paragraph. The wind-down period will end if the QAHC raises new capital or acquires new assets, unless reasonably necessary to

enable the cessation of its ring fence business or to prevent the insolvency of the QAHC or a person in which the QAHC has an interest.

65. Paragraph 29 details the events which will result in a company ceasing to be a QAHC.

66. Paragraph 29(1) states that a company will cease to be a QAHC if it ceases to meet any of the conditions set out in paragraph 2. The remainder of paragraph 29 sets out the dates on which a QAHC will be deemed to have exited the regime in certain breach scenarios.

67. Paragraph 30 contains a provision which operates to delay the date on which relevant interests in QAHC securities will be treated as having been transferred. This provision recognises that where a QAHC is sold, beneficial ownership of the interests in it may well pass prior to completion of the sale. Were this to take place, for example, in a case where the QAHC was relying on accruing deductions for results dependent

loans which would be repaid on completion, unintended difficulties would arise. The provision therefore provides that the transfer is not treated as taking place until the parties' obligations necessary to effect the transfer have been met (or, if sooner, to prevent "resting on contract" planning, when any of the consideration has been paid).

68. Paragraph 30(3) contains an additional anti-avoidance rule intended to cover cases where the parties artificially defer the point of completion in order to obtain tax advantages resulting from continued QAHC status through the operation of paragraph 30(1). Where this is the case, paragraph 30(1) is disapplied and the normal rules for determining the time of transfer will apply.

69. Paragraph 31 details the corporation tax consequences of a company ceasing to be a QAHC.

70. Paragraph 31(1) states that when a

company ceases to be a QAHC there will be the end of one accounting period and the beginning of another. The new accounting period will begin on the day after the day on which the company ceases to be a QAHC.

71. Paragraph 31(2) details those assets which, if held by a company that ceases to be a QAHC, must be treated for corporation tax purpose as sold immediately prior to ceasing to be a QAHC and acquired immediately after ceasing to be a QAHC. The sale will therefore be treated as occurring in the accounting period ending on the day the company leaves the regime and the re-acquisition occurs in the accounting period that commences the day after exit from the regime.

72. Paragraph 31(3) specifies that the sale and re-acquisition of assets, as described in paragraph 31(2) is treated as made for a consideration equal to market value.

73. Paragraph 31(4) has the effect that the

deemed disposal and reacquisition of shares which occurs on a company ceasing to be a QAHC does not break the holding period of those shares for the purposes of the substantial shareholding exemptions (SSE).

74. Paragraph 32 contains a relieving provision in relation to the withholding tax exemption in paragraph 50. Where QAHCs are sold, it will be common for debt to be in place at the point of sale which is repaid as part of the completion process, immediately after completion of the sale. Paragraph 32 permits any such payment of interest to be treated as made by a QAHC, so as to be able to fall within the withholding tax exemption, as long as payment is made on the same day as completion of the sale.

Part 4: Groups

75. Paragraph 33 provides for the acquisition and disposal of assets into and out of the QAHC ring fence business, from or to other

group companies.

76. Paragraph 33(1) provides that paragraph 33 applies to disposals from a group company to a QAHC where the relevant asset will then fall within the ring fence business of the QAHC. Disposals from a QAHC ring fence business of another group company are disregarded for the purposes of this paragraph.

77. Paragraph 33(2) provides that paragraph 33 also applies to disposals by a QAHC to another group company of any assets within its QAHC ring fence business, except where the assets will fall within the QAHC ring fence business of the acquiring group company.

78. Paragraph 33(3) provides that, in relation to disposals to which paragraph 33 applies, the following group transfer provisions will not apply: section 171 of TCGA 1992; section 336 of CTA 2009; section 625 of CTA 2009 and section 775 of CTA 2009.

79. Paragraph 34 provides amendments to the substantial shareholding exemptions (SSE) rules when a substantial shareholding is transferred to a QAHC from a group company.

80. Paragraph 34(2) provides adjustments to Schedule 7AC of TCGA 1992 to maintain access to the SSE in the circumstances set out in paragraph 34(1).

81. Paragraph 35 specifies that references to a company being a group in paragraph 33 and paragraph 34 are to be read in accordance with section 170 of TCGA 1992.

82. Paragraph 36 deals with the application of section 179 of TCGA 1992 (company ceasing to be a member of a group) in circumstances where a QAHC has disposed of a non-exempt asset within its group and the QAHC gains exemption is available in relation to a subsequent disposal of shares by the QAHC that triggers the operation of section 179.

83. Paragraph 36(1) specifies the circumstances in which the paragraph will apply.

84. Paragraph 36(2) provides that where a chargeable gain would have accrued to the acquiring company by virtue of section 179(3) of TCGA 1992 but for section 179(3A) TCGA 1992, a chargeable gain of the same amount is treated as accruing to the QAHC outside of its ring fence business.

85. Paragraph 36(3) provides that where an allowable loss would have accrued to the acquiring company by virtue of section 179(3) of TCGA 1992 but for section 179(3A) TCGA 1992, an allowable loss of the same amount is treated as accruing to the QAHC outside its ring fence business.

86. Paragraph 36(4) defines an exempt asset as one where any gain would not be a chargeable gain due to the application of paragraph 53.

Part 5: Close Companies, Exchange Gains and Basis of Accounting

87. Paragraph 37 provides that the "loans to participators" rules apply to all QAHCs, whether or not they are close.

88. Paragraph 38 amends The Loan Relationships and Derivative Contracts (Exchange Gains and Losses using Fair Value Accounting) Regulations 2005 (S.I. 2005/3422) to ensure they work as intended in the context of a QAHC.

89. Paragraph 38(3) introduces new paragraphs (4) and (5) to regulation 5 of S.I. 2005/3422. This allows the exchange gain or loss of an asset or liability to be calculated by reference to other currencies which are relevant to the value of that asset or liability. This will typically be the case where a QAHC borrows in one currency and then uses this money to make a number of investments which are denominated in

different currencies.

90. Paragraph 39 provides that the "application of amortised cost basis to connected companies relationships" rules at section 349 CTA 2009 do not apply to connected companies debtor relationships of a QAHC to the extent the money is used to fund certain creditor relationships.

91. Paragraph 39(2) defines those creditor relationships.

Part 6: Transfer pricing and corporate interest restriction rules

92. Paragraph 40 extends the participation condition at section 148 Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) such that the transfer pricing rules may apply in relation to provisions between a QAHC and (i) investors in the QAHC – those with a relevant interest in the QAHC or in an enhanced class of the QAHC; and (ii) any

persons for whom the participation condition is met in relation to their relationship with those investors. This paragraph does not disapply other forms of participation provided for in Part 4 of TIOPA 2010, which may still apply to catch provisions between a QAHC and other persons including those in which it holds an investment interest.

93. Paragraph 41 disapplies the exemption in the transfer pricing rules for small and medium enterprises at section 66(1) TIOPA 2010 so that a QAHC or the other affected person to the provision cannot escape the obligation to apply section 147 TIOPA 2010 by virtue of being a small or medium enterprise.

94. Paragraphs 42 and 43 change the definition of the "worldwide group" for the purposes of the Corporate Interest Restriction legislation at Part 10 TIOPA 2010 in certain circumstances.

95. Paragraph 42 applies where a QAHC holds a subsidiary ("S") as a market value investment. Provided the management of S and its subsidiaries is not coordinated with any other person or entity, S and its subsidiaries will form their own worldwide group separate to the group of which the QAHC is a member.

96. Paragraph 43 applies where there is a stack of QAHCs which would otherwise not all be in the same worldwide group. Where certain conditions are met, this paragraph ensures that each QAHC in the stack is included in the same worldwide group as the rest of the stack.

Part 7: Treatment of certain amounts payable by a QAHC

97. Paragraph 44 provides that a "relevant distribution" made in respect of a security, which the QAHC is party to for the purpose of its ring fence business, is not to be treated

as a distribution. A "relevant distribution" means any amount payable under a security which either:

- meets condition B, C or D of section 1015 CTA 2010 ("special securities") but not condition A or E of that section, or
- is a non-commercial security within the meaning of section 1005 CTA 2010.

The paragraph provides an apportionment for mixed purpose securities.

98. Paragraph 45 disapplies certain provisions of Chapter 3 Part 6A TIOPA 2010. It ensures that deductions will continue to be available in relation to relevant distributions within paragraph 44 even where another jurisdiction treats the receipt of those payments as dividends. paragraph 45(4) also makes clear that a receipt by a QAHC will be treated as ordinary income for the purposes of the hybrids rules even if it gives rise to a matching obligation to make a

payment of a relevant distribution, with associated tax relief.

99. Paragraph 46 provides that distributions paid by the QAHC that derive from foreign sources will be treated as relevant foreign income or foreign chargeable gain if they are paid to an individual who is taxable on the remittance basis in the tax year and the individual has provided investment management services in relation to a QAHC.

100. Paragraph 46(1) sets out the conditions required for paragraph 46 to apply.

101. Paragraph 46(2) and (3) provides that the foreign proportion of the amount of income or gain that arises to an individual providing investment management services in relation to a QAHC will be treated as relevant foreign income or foreign chargeable gains, respectively.

102. Paragraph 46(4) provides that the "foreign proportion" of income or a gain is to be calculated on a just and reasonable basis, in

accordance with sub-paragraph (6). This apportionment is to be based on the profits of the QAHC that are derived from foreign sources in the relevant period.

103. Paragraph 46(5) provides the definition of the "relevant period" by reference to which the apportionment of the profits to treated as foreign source is to be made.

104. Paragraph 46(6) provides that when determining the proportion of profits that were derived from foreign sources in the relevant period, the unrealised gains of the QAHC are to be included by treating the QAHC as having disposed of all its assets at market value immediately before the end of the period. The profits of the QAHC are to be determined by reference to the ultimate underlying income or assets to which the profits relate.

105. Paragraph 46(7) provides the definition of "profits" and "qualified distribution".

106. Paragraph 47 provides that any premium

paid by a QAHC when it buys back its own shares is treated as capital rather than a distribution in the hands of a UK investor. Where a premium is not a distribution for the purposes of Part 23 CTA 2010, section 383 Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) is not engaged to tax the premium on income account rather than on capital account. However, this treatment is not granted in relation to "qualifying employment-related securities". This exclusion ensures that individuals involved in the management of investee companies of QAHCs cannot avail themselves of this important benefit of QAHC status. Where funds are paid to such individuals, the QAHC is not performing the function of facilitating the efficient flow of funds between a fund and its investors. Absent the exclusion, such individuals would be accidental beneficiaries of the regime.

107. Paragraph 48 denies the capital treatment provided for by paragraph 47 where the

investor is a non-category A investor who has acquired relevant interests in circumstances that bring the total relevant interests held by non-category A investors above the 30% threshold. This ensures that a non-category A investor who has acquired interests in such circumstances cannot obtain this tax benefit. It also ensures that other investors are not penalised, assuming that the breach of ownership criteria was in due course cured.

108. Paragraph 49 largely disapplies the transactions in securities rules in relation to holdings in QAHCs. It is not considered appropriate for those rules to apply in full where the law provides for capital treatment on share buybacks, as this would lead to a high level of uncertainty and a burdensome need for clearances pursuant to section 701 Income Tax Act 2007 (ITA 2007). The rules continue to apply in full to qualifying employment-related securities, reflecting the non-availability of capital treatment on

buybacks of such securities.

109. Paragraph 50 provides that the late paid interest rules at section 373 CTA 2009 do not apply to “qualifying debits” that arise on debtor relationships of the QAHC. The QAHC must be party to the relationship for the purpose of its QAHC ring fence business and the paragraph provides an apportionment for mixed purpose loans.

110. Paragraph 51 provides that the “close companies’ deeply discounted securities” rules at section 409 CTA 2009 do not apply to a “qualifying debit”.

111. Paragraph 51(2) defines a “qualifying debit” as a discount arising on a deeply discounted security which the QAHC is party to for the purposes of its QAHC ring fence business. The discount must also be referable to an accounting period during which the QAHC is a QAHC. An apportionment must be made for a mixed purpose security.

Part 8: Overseas property income

112. Paragraph 52 sets out the taxation of overseas property income of a QAHC. It provides that the overseas property profits of a QAHC will be exempt from corporation tax under Part 4 of CTA 2009 to the extent that those profits are taxable in a foreign jurisdiction. To the extent that those profits are not taxable in the foreign territory they will be chargeable to tax in the UK.

113. Paragraph 52(4) provides for an exemption from corporation tax in respect of the profits of a QAHC that arise from loan relationships and derivative contracts that a QAHC is party to for the purposes of its overseas property business, to the extent the profits of that business are exempt from tax.

114. Paragraph 52(5) provides for an apportionment on a just and reasonable basis where a QAHC is party to a loan

relationship or a derivative contract for more than one purpose. Only the proportion of profits arising from that relationship or contract which are attributable to the overseas property business purpose will be exempt from corporation tax in accordance with paragraph 52(4).

Part 9: Disposals of overseas land and certain shares

115. Paragraph 53 provides an exemption for gains accruing to a QAHC on a disposal of overseas land or qualifying shares. The definitions of "overseas land" and "land" are set out in paragraph 58. The definition of "qualifying shares" set out in paragraph 53(2) to (4) is wide but does not include UK property rich assets.

Part 10: Stamp Duty and Stamp Duty Reserve Tax

116. Paragraph 54 provides an exemption from

all stamp duties for repurchases of own shares and loan capital by a QAHC provided the conditions are met.

117. Paragraph 54(1) sets out the conditions for the exemption. These are that the repurchase does not form part of a disqualifying arrangement or take place at a time when there is an arrangement for a substantial sale of the QAHC. In the case of own shares, the QAHC must also make a return to the registrar of companies (as required by section 707 Companies Act 2006).

118. Paragraph 54(3) specifies the time at which it is determined whether a company is a QAHC for the purposes of the exemption. This is the date of the unconditional agreement to transfer the QAHC's own shares or own loan capital to the QAHC (effectively replicating when the relevant date for stamp duty reserve tax (SDRT) purposes in respect of the transfer would be).

119. Paragraph 54(5) sets out when a repurchase of own shares or loan capital is a disqualifying arrangement. This is where it is reasonable to assume that:

- the repurchase of own shares from an existing holder is connected with the issuing of new shares or loan capital to an acquirer (a person other than the existing holder), and
- the main purpose or one of the main purposes of the repurchase and new issuing is to secure an outcome which is substantially economically equivalent to a transfer of the QAHC's own shares or loan capital from the existing holder to the acquirer.

This provision ensures that stamp duty or SDRT will be paid where transactions which are substantially economically equivalent to transfers of shares or loan capital are affected by way of a subscription for new

securities and an associated repurchase.

120. Paragraph 54(6) defines when arrangements for a substantial sale of the QAHC exist. The exemption is denied in such cases. Arrangements for a substantial sale of the QAHC exist when there are arrangements for the disposal of shares and/or loan capital representing at least 90% of relevant interests in the QAHC. Relevant interests are determined by reference to paragraphs 3 to 6. The arrangements must also include the acquisition of shares or loan capital representing relevant interests by a person. This means, for example, that a repurchase of shares that was not linked to a subscription of new securities and which led to a 90% change in ownership within the same investor base would not constitute a substantial sale. This sub-paragraph prevents exemption where there is a substantial sale of the QAHC but the condition in paragraph 54(5)(b) might not be met owing to a material change in the capital

structure of the QAHC (which may involve new classes of security, perhaps held by more than one entity).

Part 11: Exemption from section 874 of ITA 2007 (Withholding tax)

121. Paragraph 55 introduces a new section 888DA to ITA 2007. This provides a full exemption from the obligation to deduct tax from payments of interest by a QAHC.

Part 12: Supplementary

122. Paragraph 56 mainly sets out the minor and consequential amendments that are required in respect of Part 2 of this Schedule.

123. Paragraph 56(1) adds shares in QAHCs to the categories of assets which are subject to special rules under section 212 TCGA 1992. These rules require insurance companies holding assets within those rules for the purposes of their long-term businesses to treat those assets as disposed of and reacquired for market value at the end of each accounting period in which they are

held.

124. Paragraph 57 sets out that, in a published notice, HMRC may specify the way in which the required notifications in relation to the QAHC regime are made.

125. Paragraph 58 provides certain definitions that are relevant to this Schedule.

Background note

126. At Budget 2020, the government announced that it would carry out a review of the UK funds regime, covering tax and relevant areas of regulation. The review started with a consultation on the tax treatment of asset holding companies in alternative fund structures, also published at Budget 2020.

127. The government responded to that consultation in December 2020, launching a second-stage consultation on the detailed design features of a new regime for asset holding companies. The government's

response to that consultation was published on 20 July 2021.

128. This clause and Schedule introduce the new regime. The purpose of the legislation is to deliver an effective, proportionate, and internationally competitive tax regime for QAHCs that will remove barriers to the establishment of these companies in the UK. The new regime will include the following key features: robust eligibility criteria to limit access to the intended users; tax rules to limit the QAHC's tax liability to an amount that is commensurate with its role; and rules for UK investors to ensure that they are taxed so far as possible as if they had invested in the underlying assets directly.

129. The eligibility criteria will ensure that QAHCs may only be used as part of investment structures where funds are managed for the benefit of a broad pool of investors or beneficiaries. A QAHC cannot

carry out other activities, including trading, to any substantial extent. The tax benefits arising from QAHC status apply only in relation to qualifying investment activity. The tax treatment of any limited trading activity or any non-qualifying investment activity that is carried on by a QAHC will not be affected by that company’s status as a QAHC.

Clause 15 and Schedule 3: Real Estate Investment Trusts

Summary

1. This clause and Schedule make amendments to the Real Estate Investment Trust (REIT) rules. The changes remove certain constraints and administrative burdens which are no longer necessary. They include removal of the requirement for REIT shares to be admitted to trading in certain cases, amendment of the definition of an overseas equivalent of a United Kingdom (UK) REIT, amendment of the 'holder of excessive rights' charge to corporation tax, and changes to the rules which ensure a REIT's business is primarily focused on its property rental business. The changes take effect from 1 April 2022.

Details of the clause

2. Clause 15 introduces Schedule 3

Details of the Schedule

3. Paragraph 1 provides that Schedule 3 amends Part 12 of the Corporation Tax Act 2010 (real estate investment trusts).
4. Paragraph 2 amends section 527 (being a UK REIT in relation to an accounting period) and section 528 (conditions for a company to be a UK REIT) as follows –
5. Subparagraph 2(1) removes the condition relating to shares at section 528A where condition C is met as a result of subsection 528(3)(b).
6. Subparagraph 2(2) removes the requirement that the shares forming the company's ordinary share capital are admitted to trading on a recognised stock exchange, where at least 70% of its ordinary shares are owned by one or more institutional investors. It also provides

that, where at least 70% of the ordinary share capital of a company was owned by one or more institutional investors but ceases to be so owned, condition C in subsection 528(3) is nonetheless deemed to be met for a period of 12 months. The subparagraph also amends the definition of a foreign equivalent of a UK REIT in subsection 528(4A)(j). It removes the requirement for a foreign company to be resident in a jurisdiction that has a law equivalent to the UK's tax regime for UK REITs, and instead requires that a foreign company is itself equivalent to a UK REIT.

7. Subparagraph 2(3) inserts new section 528ZA which modifies the rule introduced in subparagraph 2(2) so that ordinary share capital is treated as owned by a person where the ownership is either direct or indirect. The subparagraph also inserts new section 528ZB which modifies the rule so that, where the institutional investor concerned is a person acting on

behalf of a limited partnership which is a collective investment scheme, the scheme must meet a condition concerning its marketing and ownership. The subparagraph sets out how each partner's interest in a partnership is to be assessed for the purpose of the condition.

8. Paragraph 3 amends section 531 (conditions as to balance of business) and section 533 (financial statements: supplementary). Commonly referred to as the 'balance of business test', the conditions in section 531 broadly require that at least 75% of a UK REIT's profits and assets relate to its property rental business. The changes modify rules that require provision of financial statements to demonstrate that a REIT has met the balance of business test. They provide for simplified requirements for group REITs which, if met, remove the need to perform certain calculations and provide full financial statements for each group

member.

9. Paragraph 4 inserts new subsection 531(4)(d) to provide that profits of residual business resulting from compliance with planning obligations under section 106 of the Town and Country Planning Act 1990 are disregarded when performing the balance of business test. This paragraph also provides for the items specified in subsections 531(4)(b) to (d) to be excluded from the balance of business test and inserts a new subsection 531(7A) to provide that assets held in connection with these items are also to be excluded from the balance of business test. In consequence of these amendments, this paragraph also repeals regulation 7 of the Real Estate Investment Trusts (Financial Statements of Group Real Estate Investment Trusts) Regulations 2006 (S.I. 2006/2865).

10. Paragraph 5 amends section 553,

which sets out the meaning of 'holders of excessive rights'. The 'holders of excessive rights' rule in section 551 protects the UK Exchequer from loss of tax on property income distributions (PIDs) paid to non-resident corporate entities. The rules are amended so that investors in UK REITs who are entitled to payment of PIDs without tax being deducted, such as UK companies, will not be treated as holders of excessive rights and consequently no charge will arise on the UK REIT under section 551.

11. Paragraph 6 sets out the commencement provisions.

Background note

12. A Real Estate Investment Trust (REIT) is a company through which investors can invest in real estate indirectly. Specific tax rules for UK REITs were introduced in Finance Act 2006. The regime has proved popular and the number of UK REITs has

steadily increased to 92 as of June 2021.

13. Subject to meeting the relevant conditions, a company may notify HMRC that it is to be treated as a UK REIT. Its property rental profits and gains are then, in broad terms, treated as exempt from corporation tax, subject to ongoing conditions such as a requirement to distribute 90% of its exempt profits as property income distributions, which are in turn treated as property rental income in investors' hands.

14. At Budget 2020, HM Treasury launched a consultation on the tax treatment of asset holding companies (AHCs) which included questions about investments in real estate. Responses to that consultation in respect of REITs led to proposals for changes to the REIT regime being included in a second consultation on AHCs launched in December 2020. This Schedule introduces those changes, which

are intended to remove restrictions and administrative burdens where they are no longer necessary.

Clause 16: Film tax relief: films produced to be television programmes

Summary

1. This clause allows films to remain eligible for film tax relief even if they are no longer intended for theatrical release, providing they are intended for broadcast and meet the four conditions required for high-end television tax relief. This clause has effect for accounting periods ending on or after 1 April 2022.

Details of the clause

2. Subsection (1) introduces the amendment to Part 15 of the Corporation Tax Act 2009 (CTA 2009).

3. Subsection (2) amends section 1195 so that new section 1196A allows companies to claim film tax relief only when the film is intended for theatrical release or broadcast. It also prevents companies

from claiming film tax relief if television tax relief is available on the same expenditure.

4. Subsections (3) and (4) replace section 1196 with new section 1196A.
5. Subsection (1) of new section 1196A allows a company to claim film tax relief on a film that is not intended for theatrical release, so long as it meets the conditions in (b). This applies when the film is a television programme that is intended for broadcast and meets the four conditions set out in section 1216AB for high-end television tax relief.
6. Subsection (2) of new section 1196A clarifies what is meant by "theatrical release" and "television programme."
7. Subsections (3) to (6) of new section 1196A set out when a film must meet this requirement in order to be eligible for film tax relief. A film must be intended for theatrical release or broadcast at the end of

an accounting period to be eligible for the entirety of that accounting period. If a film does not meet this requirement at the end of an accounting period, it will not be eligible for that period or any subsequent period.

8. Subsections (5) and (6) provide that this clause applies to accounting periods ending on or after 1 April 2022. This is so long as principal photography is not completed by that date, or that the film has not been ineligible in a prior accounting period due to not intending a theatrical release.

Background note

9. Film tax relief was introduced by Finance Act 2006 and applied only to films intended to receive a theatrical release. This intention must be met at the end of every accounting period.

10. High-end television tax relief was introduced by Finance Act 2013. It allows companies to claim relief on television programmes so long as they meet certain conditions. The intention to broadcast must be met at the outset of production activities and is then treated as being met for the remainder of production activities, regardless of the intention for the programme.

11. This raises the possibility that a film that was initially intended for theatrical release may miss out on either relief if the intention changes part-way through production, and it is instead planned to have a television release. This is even the case where such a film would have been eligible for television tax relief if the decision had been made at the very start of production activities.

12. This change ensures that where a film would have been eligible for high-end

television tax relief if not for the date that the broadcast intention was decided upon, it will not miss out on relief but will be eligible to claim film tax relief.

Clause 17: Temporary increase in theatre tax credit

Summary

1. This clause temporarily increases the rate of theatre tax relief for theatrical productions that commence production on or after 27 October 2021. From 27 October 2021 to 31 March 2023, companies will benefit from relief at a rate of 50 or 45% (touring/non-touring productions). From 1 April 2024, the rates of relief will return to their existing levels of 25/20%.

Details of the clause

2. Subsection (1) introduces the new clause that brings into effect the temporary rate increases. These only apply to productions where the production stage begins on or after 27 October 2021.

3. Subsection (2) has effect in relation to the period from 27 October 2021 to 31 March

2023. During this period, the amount of tax credit a company is entitled to claim as set out in section 1217K(4) of Corporation Tax Act (CTA) 2009 is set at 50 and 45%, for touring and non-touring productions respectively.

4. Subsection (3) has effect in relation to the period from 1 April 2023 to 31 March 2024. During this period, the amount of tax credit a company is entitled to claim as set out in section 1217K(4) of CTA 2009 is set at 35 and 30%, for touring and non-touring productions respectively.

5. Subsection (4) specifies how companies should treat accounting periods that straddle any of the dates upon which the rates change (27 October 2021, 1 April 2023, 1 April 2024). Companies must treat any such straddling accounting period as two separate periods, and apportion their income/expenditure between the two periods on a just and reasonable basis.

Background note

6. Companies qualifying for theatre tax relief can surrender losses in exchange for a payable tax credit. The amount of loss able to be surrendered in a period is dependent on several factors, but ultimately depends on the amount of core production expenditure that has been incurred in the UK and European Economic Area.

7. A higher rate of relief is available to theatrical productions that take place at more than one premises and are considered "touring" as per section 1217K(6) of CTA 2009.

8. This temporary rate rise is also being introduced to museums and galleries exhibition tax relief (clause 21) and orchestra tax relief (clause 19). It allows companies to claim a larger tax credit and is to support the industries as they recover from the adverse economic impact of the Covid-19 pandemic.

Clause 18: Theatrical productions tax relief

Summary

1. This clause amends Part 15C of the Corporation Tax Act (CTA) 2009 to clarify several areas of legislative ambiguity within theatre tax relief. These amendments have effect in relation to theatrical productions where the production phase begins on or after 1 April 2022.

Details of the clause

2. Subsection (1) introduces the amendments to Part 15C of CTA 2009.
3. Subsection (2) requires the intended audience to number at least five people for a production to be considered a dramatic production. It also stipulates that for a dramatic piece to qualify as a dramatic production, it must tell a story or a number of related or unrelated stories.

4. Subsection (3) adds productions that are produced for training purposes to the list of productions that are not regarded as theatrical and that do not qualify for relief.
5. Subsection (4) amends the commercial purpose condition in section 1217GA so that a performance will not meet the condition unless it is separately ticketed and such ticketing is expected to make up a significant proportion of the performance's earnings. A ticket may cover things beside admission to the performance, so long as such things are incidental to the performance and it is possible to apportion the ticket price between the performance and anything else included in the price.
6. Subsection (4) also clarifies that for a performance to meet the commercial purpose condition by being educational, it must be provided mainly to educate the audience.

7. Subsection (5) specifies that teaching or training costs incurred by an educational establishment do not constitute expenditure on an activity involved on producing the production (unless specifically incurred as part of a rehearsal), and so cannot be core expenditure.

Background note

8. Theatre tax relief was introduced by Finance Act 2014. Since then, several areas of ambiguity have arisen within the legislation. This clause, alongside clause 20 and 22, seeks to make the legislation clearer and reinforce the original policy intent.

Clause 19: Temporary increase in orchestra tax credit

Summary

1. This clause temporarily increases the rate of orchestra tax relief for concerts or concert series that commence production on or after 27 October 2021. From 27 October 2021 to 31 March 2023, companies will benefit from relief at a rate of 50%. From 1 April 2023 to 31 March 2024, the rate of relief will be set at 35%. From 1 April 2024, the rate of relief will return to its existing level of 25%.

Details of the clause

2. Subsection (1) introduces the new clause that brings into effect the temporary rate increases. These only apply to concerts where the production process begins on or after 27 October 2021.

3. Subsection (2) has effect in relation to the

period from 27 October 2021 to 31 March 2023. During this period, the amount of tax credit a company is entitled to claim as set out in section 1217RG(4) of Corporation Tax Act (CTA) 2009 is set at 50%.

4. Subsection (3) has effect in relation to the period from 1 April 2023 to 31 March 2024. During this period, the amount of tax credit a company is entitled to claim as set out in section 1217RG(4) of CTA 2009 is set at 35%.

5. Subsection (4) specifies how companies should treat accounting periods that straddle any of the dates upon which the rates change (27 October 2021, 1 April 2023, 1 April 2024). Companies must treat any such straddling accounting period as two separate periods, and apportion their income/expenditure between the two periods on a just and reasonable basis.

Background note

6. Companies qualifying for orchestra tax relief can surrender losses in exchange for a payable tax credit. The amount of loss able to be surrendered in a period is dependent on several factors, but ultimately depends on the amount of core production expenditure that has been incurred in the UK and European Economic Area.

7. This temporary rate rise is also being introduced to theatre tax relief (clause 17) and museums and galleries exhibition tax relief (clause 21). It allows companies to claim a larger tax credit and is to support the industries as they recover from the adverse economic impact of the Covid-19 pandemic.

Clause 20: Orchestra tax relief

Summary

1. This clause amends Part 15D of the Corporation Tax Act (CTA) 2009 to clarify several areas of legislative ambiguity within orchestra tax relief. These amendments have effect in relation to concerts (or concert series) where the production process begins on or after 1 April 2022.

Details of the clause

2. Subsection (1) introduces the amendments to Part 15D of CTA 2009.

3. Subsection (2) adds concerts that are produced for training purposes to the list of concerts that are not regarded as orchestral and that do not qualify for relief.

4. Subsection (3) amends section 1217RA(2) so that a concert will not meet the

condition unless it is separately ticketed and such ticketing is expected to make up a significant proportion of the performance's earnings. A ticket may cover things beside admission to the performance, so long as such things are incidental to the performance and it is possible to apportion the ticket price between the performance and anything else included in the price.

5. Subsection (3) also clarifies that for a concert to meet the commercial purpose condition by being educational, it must be provided mainly to educate the audience.

6. Subsection (4) specifies that teaching or training costs incurred by an educational establishment do not constitute expenditure on an activity involved on producing the concert (unless incurred specifically as part of a rehearsal), and so cannot be core expenditure.

Background note

7. Orchestra tax relief was introduced by Finance Act 2016. Since then, several areas of ambiguity have arisen within the legislation. This clause, alongside clause 18 and clause 22, seeks to make the legislation clearer and reinforce the original policy intent.

Clause 21: Temporary increase in museums and galleries exhibition tax credit

Summary

1. This clause temporarily increases the rate of museums and galleries exhibition tax relief (MGETR) for exhibitions that commence production on or after 27 October 2021. From 27 October 2021 to 31 March 2023, companies will benefit from relief at a rate of 50 or 45% (touring/non-touring exhibitions). From 1 April 2023 to 31 March 2024, the rates of relief will be set at 35 and 30%. From 1 April 2024, the rates of relief will return to their existing levels of 25/20%.

Details of the clause

2. Subsection (1) introduces the new section that brings into effect the temporary rate increases. These only apply to exhibitions

where the production stage begins on or after 27 October 2021.

3. Subsection (2) has effect in relation to the period from 27 October 2021 to 31 March 2023. During this period, the amount of tax credit a company is entitled to claim as set out in section 1218ZCH(4) of Corporation Tax Act (CTA) 2009 is set at 50 and 45%, for touring and non-touring exhibitions respectively.

4. Subsection (3) has effect in relation to the period from 1 April 2023 to 31 March 2024. During this period, the amount of tax credit a company is entitled to claim as set out in section 1218ZCH(4) of CTA 2009 is set at 35 and 30%, for touring and non-touring exhibitions respectively.

5. Subsection (4) specifies how companies should treat accounting periods that straddle any of the dates upon which the rates change (27 October 2021, 1 April 2023, 1 April 2024). Companies must treat

any such straddling accounting period as two separate periods, and apportion their income/expenditure between the two periods on a just and reasonable basis.

Background note

6. Companies qualifying for MGETR can surrender losses in exchange for a payable tax credit. The amount of loss able to be surrendered in a period is dependent on several factors, but ultimately depends on the amount of core production expenditure that has been incurred in the UK and European Economic Area.
7. A higher rate of relief is available to exhibitions that take place at more than one venue and are considered "touring" as per section 1218ZAB CTA 2009.
8. This temporary rate increase is also being introduced to theatre tax relief (clause 17) and orchestra tax relief (clause 19). It allows companies to claim a larger tax

credit and is to support the industries as they recover from the adverse economic impact of the Covid-19 pandemic.

9. MGETR was introduced with a sunset clause and was originally due to expire on 1 April 2022. The relief has been extended by two years by clause 22 and will now expire on 1 April 2024.

10. This clause does not impact the maximum amount of tax credit payable in respect of an exhibition as per section 1218ZCK CTA 2009.

Clause 22: Museums and galleries exhibition tax relief

Summary

1. This clause extends museums and galleries exhibition tax relief (MGETR) for a further two years, until 31 March 2024. It also amends Part 15E of the Corporation Tax Act (CTA) 2009 to clarify several areas of legislative ambiguity within MGETR and to amend the criteria for a primary production company. These amendments have effect in relation to exhibitions where the production stage begins on or after 1 April 2022.

Details of the clause

2. Subsection (1) introduces the amendments to Part 15E of CTA 2009.

3. Subsection (2) amends the definition of an exhibition in section 1218ZAA so that a

public display of an object is not an exhibition if it is subordinate to the use of that object for another purpose. For example, if a historic passenger train offers rides between two towns, while the train may have historic or cultural significance, its main purpose is to provide passenger transport. This does not preclude the possibility of there being an exhibition on board the train.

4. Subsection (3) amends the definition of a primary production company where if an exhibition takes place at more than one venue, the primary production company must be responsible for the exhibition at (at least) one venue. The primary production company does not need to be responsible at the first venue specifically. This makes it easier for a company to be the primary production company and for an exhibition to be classed as "touring."

5. Subsection (4) clarifies that for a person to

be considered to maintain a museum or gallery, it is not sufficient to be responsible for an exhibition at a venue. It would be expected for the person to have a connection to a site outside of the exhibition itself.

6. Subsection (5) extends the relief for two years, until 31 March 2024.

Background note

7. MGETR was introduced by Finance Act (No. 2) 2017. Since then, several areas of ambiguity have arisen within the legislation. This clause seeks to make the legislation clearer and reinforce the original policy intent.

8. MGETR was introduced with a sunset clause and was due to expire from 1 April 2022. This clause extends the relief for a further two years. Any expenditure incurred from 1 April 2024 will not qualify for relief (unless there is a further

extension).

Clause 23: Returns for disposal of UK land etc

Summary

1. This clause extends the Payment on Property Disposal time limit from 30 days to 60 days, as well as clarifying the rules for mixed use properties. This will affect disposals that have a completion date on or after 27 October 2021.

Details of the clause

2. Subsection (1) introduces amendments to Schedule 2 to Finance Act (FA) 2019.
3. Subsection (2) replaces 30th with 60th in paragraph 3(1)(b) of Schedule 2 FA 2019, extending the time in which a person must deliver a return to HMRC of a disposal of UK land.
4. Subsection (3) inserts sub-paragraph (3A) after sub-paragraph 3 of paragraph 7 of Schedule 2 FA 2019. This explains the

proportion of chargeable gain to ignore when calculating the capital gains tax notionally chargeable when it is not a residential property gain.

5. Subsection (4) provides that the amendments in subsections (2) and (3) have effect for all disposals that complete on or after 27 October 2021.

Background note

6. A reporting and payment period for selling or otherwise disposing of an interest in UK land was initially introduced to help reduce error and increase compliance.

7. This measure increases the time available for taxpayers to report their disposals. This increase is intended to allow more time for taxpayers to produce and provide accurate figures, which will be helpful particularly in more complex cases, as well as ensuring sufficient time to engage

with advisers.

8. The amendment also clarifies the rules for calculating the capital gains tax notionally chargeable for mixed use properties.

Clause 24 and Schedule 4: Cross-border group relief

Summary

1. This clause and Schedule repeal legislation which allows group relief for losses incurred outside of the UK, and amends legislation which allows group relief for losses incurred in a UK permanent establishment (PE) of an Economic European Area (EEA) resident company.

Details of the clause

2. Subsection 1 introduces amendments to Corporation Tax Act (CTA) 2010.

3. Subsection 2 removes subsections of section 107 CTA 2010 which deal specifically with losses of UK PEs of EEA-resident companies, and makes consequential amendments as a result of this.

4. Subsection 3 repeals Chapter 3 of Part 5

CTA 2010, which allows EEA-resident companies to surrender losses as UK group relief in specific circumstances.

5. Subsection 4 removes subsections of section 188BI CTA 2010 which deal specifically with losses of UK PEs of EEA-resident companies, and makes consequential amendments as a result of this.

6. Subsection 5 introduces Schedule 4 which makes consequential amendments to CTA 2010 and sets out the commencement provisions for the changes made by this clause and that Schedule.

Details of the Schedule

Part 1: Consequential Amendments in Connection with Section J001

7. Paragraph 1 contains minor and consequential amendments to CTA 2010 that flow from the amendments to the legislation set out in clause 24, including

removing references to EEA definitions and subsections which have been repealed.

8. Paragraph 2 removes section 30 of the Finance Act 2013, which made amendments to section 107 CTA 2010 which are now being repealed.

9. Paragraph 3 removes regulations 17(2), (3) and (4) of the Taxes (Amendments) (EU Exit) Regulations 2019, which made amendments to sections 107, 112 and 188BI CTA 2010 relating to the definition of an EEA and relevant territory, following the UK's exit from the European Union (EU).

Part 2: Commencement

10. Paragraph 4 sets out the commencement provisions in relation to the repeal of Chapter 3 of Part 5 CTA 2010 and the consequential amendments in Part 1 of Schedule 4.

11. Sub-paragraph 1 provides that the

amendments apply to accounting periods of claimant companies and loss periods of non-UK resident surrendering companies beginning on or after 27 October 2021 (the commencement date).

12. Sub-paragraphs 2 to 5 provide transitional arrangements for accounting and loss periods of claimant and surrendering companies respectively which straddle the commencement date. They set out that the relevant period is treated as two separate accounting periods in applying these amendments, ending before and beginning on the commencement date, with profits and losses apportioned accordingly.

13. Sub-paragraph 6 provides that apportionments to profits and losses are made on a time basis or a just and reasonable basis.

14. Paragraph 5 sets out the commencement provisions in relation to

the amendments to section 107 CTA 2010, section 30 FA 2013 and regulation 17(2) Taxes (Amendments) (EU Exit) Regulations 2019, which apply to accounting periods beginning on or after the commencement date. Transitional arrangements for accounting periods of surrendering companies which straddle the commencement date treat the period as two separate accounting periods in applying the amendments, ending before and beginning on the commencement date.

15. Sub-paragraph 3 provides that apportionments to these separate periods are made on a time basis or a just and reasonable basis.

16. Paragraph 6 sets out the commencement provisions in relation to the amendments to section 188BI CTA 2010 and regulation 17(4) Taxes (Amendments) (EU Exit) Regulations

2019, which apply to accounting periods beginning on or after the commencement date. Transitional arrangements for accounting periods of surrendering companies which straddle the commencement date treat the period as two separate accounting periods in applying the amendments, ending before and beginning on the commencement date.

17. Sub-paragraph 3 provides that the surrendering company can decide how much (if any) of the losses carried forward to the straddling period are to be surrendered for each of these separate periods.

18. Paragraph 7 defines various terms in this Part.

Background note

19. Following the UK's exit from the EU, the government is bringing the group relief rules relating to EEA-resident companies into line with those for non-UK companies resident elsewhere in the world.

20. Claims involving companies established in the EEA currently are subject to more favourable rules in the UK relating to relief for non-UK losses and losses incurred by a UK PE of a foreign company. These rules were introduced to give effect to the UK's obligations as a Member State of the EU.

21. Having now left the EU, the UK is no longer required to maintain these rules. It would be inconsistent to treat groups with EEA-resident companies more favourably than those with companies resident elsewhere in the world. Therefore, this measure removes this inequality by

aligning the group relief rules for all non-UK companies.

22. The changes to legislation made by this measure broadly restore the group relief rules to what they were before separate rules were introduced for EEA-resident companies in line with EU law.

Clause 25: Tonnage tax

Summary

1. This clause makes amendments to the tonnage tax regime. Tonnage tax is a special elective corporation tax regime open to operators of qualifying ships who fulfil certain conditions. The amendments will have effect from 1 April 2022.

Details of the clause

2. Subsection (1) introduces the amendments to the tonnage tax legislation contained in Schedule 22 to the Finance Act (FA) 2000.

3. Subsection (2) inserts new sub-paragraphs (3A) and (3B) into paragraph 10 of Schedule 22. These provisions introduce greater flexibility into the procedure for electing into the tonnage tax regime. They permit an election to be made after the usual period allowed, provided an officer of HM Revenue & Customs (HMRC) gives

consent, which depends on there being a reasonable excuse for the delayed election and any further delay.

4. Subsection (3) introduces further flexibility into the tonnage tax regime by amending paragraph 13 of Schedule 22, reducing the period for which an election made on or after 1 April 2022 lasts (unless renewed) from ten years to eight years.

5. Subsections (4) and (5) increase the flexibility of the election renewal process by amending paragraph 15 of Schedule 22 and inserting new paragraph 15ZA. These amendments introduce the concept of a bridging renewal election which is available when the previous election has expired, rather than ceasing to be in force for other reasons, and permits officers of HMRC to give consent to renewing expired elections where nothing has happened in the interim that would have brought a continuing election to an end.

Consent may be given when it was sought without delay after expiry and the conduct of company or group concerned has not at any time involved a tax avoidance as its main purpose (or one of its main purposes). The previous election is then treated as remaining in force.

6. Subsections (6) and (7) remove the complex "flagging" or ship registration rules at paragraphs 22A to 22F of Schedule 22 as a requirement to be in the tonnage tax regime. Vessel owners will be able to choose freely where to flag their ships. Vessels will remain subject to the condition that their operators must be strategically and commercially managed in the United Kingdom (UK).

7. Subsection (8) amends paragraph 43A of Schedule 22, which deals with the requirement on the part of companies or groups within the tonnage tax regime to prove compliance with safety,

environmental and working conditions on qualifying ships. The Secretary of State of the Department for Transport is empowered to make regulations for that purpose, and the amendment will provide that they may be made in relation to any ships not registered in the UK.

8. Subsection (9) amends paragraph 49 of Schedule 22, which deals with the inclusion of dividends and other distributions comprising overseas shipping income within relevant income for the purpose of the tonnage tax regime. Paragraph 49(2)(b) is amended so that more than 50% of the voting power of the overseas companies paying dividends and other distributions is held by a company resident in the UK, or by two or more companies each of which is resident in the UK.

9. Subsection (10) makes consequential amendments

10. Subsections (11) and (12) are commencement provisions.

Background note

11. At Autumn Budget 2021, the government announced that it will be introducing a package of measures to reform the UK's tonnage tax regime from April 2022, aimed at ensuring that the British shipping industry remains highly competitive in the global market. As part of this package, these amendments support the government's aim of simplifying the operation of the tonnage tax legislation and making it more flexible following the UK's departure from the European Union.

12. The legislation in this clause gives effect to some of these measures by amending the tonnage tax legislation contained in Schedule 22 to the Finance Act (FA) 2000.

Clause 26: Amendment of section 259GB of TIOPA 2010

Summary

1. This clause amends the corporation tax rules for hybrid and other mismatches and follows changes made to the rules in Finance Act 2021. The main purpose of the clause is to put a new category of "relevant transparent entities" on the same footing as partnerships when they are payees and so when Chapter 7 of Part 6A Taxation (International and Other Provisions) Act 2010 (TIOPA) may be in point. The clause also makes amendments to the existing rules relating to partnerships to make sure they work as intended.

Details of the clause

2. Subsection 1 provides for amendments to be made to Section 259GB TIOPA. The

existing Section 259GB(3) TIOPA contains a rule which has the effect that in many cases where a hybrid payee deduction/non-inclusion mismatch arises, that mismatch is deemed to arise from the hybridity of one or more payees even if that might not otherwise be the case. In consequence, some mismatches are brought within the counteraction provisions of Section 259GB which would not otherwise happen.

3. In 2018 Section 259GB was amended by the introduction of Section 259GB(4A) and (4B). This amendment ensured, if the conditions in those new subsections were met, that the impact of Section 259GB(3) was mitigated in cases where a payee for the purposes of the rules was a partnership. This change was introduced with retrospective effect, applying as if it had been in place since the introduction of the hybrids rules in 2017.

4. The amendments introduced by this clause are designed to place "relevant transparent entities" on the same footing as partnerships in relation to the operation of Section 259GB(3). Accordingly, the amendments are to have retrospective effect in the same way as did those introduced in 2018.
5. Subsection 2 provides for amendments to be made to existing section 259GB(4A) so that section applies to relevant transparent entities in the same way that it applies to partnerships.
6. Subsection 3 introduces new Sections 259GB(4AA) and 4(AB). These provisions contain rules to ensure that the changes being made do not prevent the existing rules working as intended in relation to cases where a hybrid entity is established in a zero-tax jurisdiction or where the structure including the hybrid payee involves more than one tier of hybrid

entities.

7. New Section 259GB(4AA) identifies the hybrid entities on the payee side of the structure. It requires that each hybrid entity involved in a structure be considered. If there is any territory in which such an entity would recognize amounts of ordinary income as a result of the circumstances giving rise to the relevant deduction if it was regarded as a person in that territory, then new Section 259GB(4AB) applies to that entity. This test is deliberately broad, as it is intended to identify every hybrid entity which is part of the payee or payees' structure and whose status is in any way relevant to the existence of a mismatch

8. New Subsection 259GB(4AB)(a) then provides that if any entity identified by new Section 259GB(4AA) is not a partnership or a relevant transparent entity, Section 259GB(4A) will not apply.

This preserves the treatment under existing rules of cases where a hybrid payee is based in a zero-tax jurisdiction.

9. New Subsection 259GB(4AB)(b) goes on to provide that, if section 259GB(4AB)(a) has not disapplied Section 259GB(4A), existing Section 259GB(1)(b) must be applied as if all the entities identified by Section 259GB(4AA) were payees. This impacts cases, for example, where a payee which is a relevant transparent entity is owned by another relevant transparent entity which is in turn owned by investors some of which see the relevant transparent entities as opaque and some of which see them as transparent. In such cases, if the parent relevant transparent entity is not a payee (which it may well not be on general principles),under the existing legislation it may not be the case that any mismatch arises by reason of one or more payees being hybrid entities such that it will fall within Section 259GB(1)(b). The new

provisions will effectively treat the parent relevant transparent entity as a payee for the purposes of Section 259GB(1)(b) alone, so in the example above it will then be the case that the mismatch caused by the investors' differing views of the entities will arise by reason of one or more payees being hybrid entities. This is necessary as it is likely that in such cases the operation of Section 259GB(3) and (4), as adjusted by Section 259GB(4A), will not deem any additional amount to arise by reason of the hybridity of payees over and above that identified by Section 259GB(1)(b). Absent the rule in Section 259GB(4AB)(b), there would therefore be no counteraction in many such cases, contrary to the policy intention

10. Subsection (4) provides for a consequential amendment to be made to existing Section 259GB(4B)

11. Subsection (5) introduces new Sections

259GB(4C) and 259GB(4D). New Section 259GB(4C) defines "relevant transparent entity" which is, broadly, an entity which is not a partnership and which is constituted in a jurisdiction other than the UK which is not a zero-tax jurisdiction and which sees the entity as transparent. Examples would include many US Limited Liability Companies (LLCs) and S Corporations which have not been "checked closed" for US tax purposes

12. The reference in New Subsection 259GB(4C)(c) to profits of the entity being treated as profits of its members should be read in the generic sense. In other words, if the overseas tax system does not treat the entity as a person for tax purposes, instead looking to tax its members, it is not necessary that its members actually be taxed in the relevant jurisdiction. The test can therefore be satisfied if the entity has members resident in jurisdictions other than its own, or if it has members which

its own jurisdiction also sees as transparent. Similarly, the reference in new Subsection 259GB(4C)(d) to members' profits not being taxed at a nil rate should also be read generically. The test can therefore still be satisfied if the actual members have specific characteristics which cause them to be untaxed (for instance, that they are also transparent, or they are tax-exempts).

13. New Section 259GB(4D) identifies members for the purposes of new Subsection 259GB(4C)(c). It is deliberately widely drawn with the intention that it will bring all categories of equity holder in all kinds of entity into the definition of "member" such that the test of how profits are treated for local tax purposes in new Subsection 259GB(4C)(c) can then be applied in all cases.

14. Subsections (6), (7) and (8) deal with the commencement of the new rules.

Their effect is that the full range of provisions introduced by this clause apply with retrospective effect in cases where a payee is a relevant transparent entity. However, the rules in new Sections 259GB(4AA) and (4AB) only apply prospectively in cases where the payee is a partnership. This reflects the fact they could lead to increased counteractions in cases to which Section 259GB(4A) applies, so it would not be correct to impose them retrospectively in those cases.

15. Subsections (9) and (10) provide that taxpayers may adjust their returns to reflect the retrospective changes being introduced even if they are past the point where they can be amended under normal rules but must do so by 31 December 2022.

Background note

16. Following an extensive consultation in 2020, the government announced a number of proposed changes to the rules

for hybrid and other mismatches. One change announced was to amend Section 259GB(4A) to treat US LLCs seen as transparent by all their remembers in the same manner as partnerships. Whereas the rest of the changes announced were then provided for in the Finance Act 2021, the particular change for LLCs was not.

17. After announcing the intention to make the change for LLCs, engagement with stakeholders led the government to publish a change to the definition of a hybrid entity in Finance Bill 2021. This change was intended to provide for the same policy result, but it would have also ensured other entities, as well as LLCs, that were seen as transparent by their members, would have been afforded the same treatment.

18. Following publication of Finance Bill 2021 and subsequent engagement with stakeholders, the government tabled an

amendment to remove the change to the definition of a hybrid entity from the Bill. This was to allow further consultation with stakeholders to ensure the change did not produce any unintended consequences.

19. In July 2021 the Government published draft legislation that provides for specific entities to be treated as partnerships in the relevant part of chapter 7 of Part 6A of TIOPA 2010. Following publication of this legislation in July, additional subsections have been added to ensure existing legislation continues to provide a proportionate counteraction.

Clause 27: Application of section 124 TIOPA 2010 in relation to diverted profits tax

Summary

1. This clause provides for the application of section 124 Taxation (International and Other Provisions) Act (TIOPA) 2010 (giving effect to solutions to cases and mutual agreements resolving cases) in relation to diverted profits tax.

Details of the clause

2. This clause sets out that section 124 TIOPA 2010 can be used to give effect to a mutual agreement in respect of diverted profits tax
3. Subsection 1 updates section 124 TIOPA 2010 by reference to s114A Part 3 FA 2015 of the diverted profits tax legislation

Background note

4. Diverted Profits Tax (DPT) is not covered

by UK law that gives effect to tax treaties.

5. Some companies with DPT charges have applied for access to a treaty's Mutual Agreement Procedure (MAP) and been accepted by the other (non-UK) jurisdiction. Some of these treaties include mandatory binding arbitration.
6. This clause allows relief against diverted profits tax to be given where necessary to give effect to a decision reached under the Mutual Agreement Procedure.

Clause 28: Diverted profits tax: closure notices etc

Summary

1. This clause provides for the proper functioning of the provisions to give relief from diverted profits tax where a company makes an amendment to its company tax return pursuant to s101A or s101B of Part 3 of Finance Act 2015. This clause also provides for the proper functioning of the diverted profits tax legislation in respect of the interaction between the diverted profits tax and corporation tax closure notices.

Details of the clause

2. Subsection 1 states that Part 3 of Finance Act 2015 is amended as follows.
3. Subsection 2(a) extends the time period under which an amendment to a corporation tax return can be made under

s101A of Part 3 Finance of Act 2015.

4. Subsection 2(b) sets out that Paragraph 31(3) of Schedule 18 to the Finance Act 1998 does not apply in respect of an amendment made under s101A(2) of Part 3 of Finance Act 2015.

5. Subsection 3(a) extends the time period under which an amendment to a corporation tax return can be made under s101B of Part 3 of Finance Act 2015.

6. Subsection 3(b) sets out that Paragraph 31(3) of Schedule 18 to the Finance Act 1998 does not apply in respect of an amendment made under s101B(2) of Part 3 of Finance Act 2015.

7. Subsection 4 inserts new section 101C into Part 3 of Finance Act 2015.

8. New subsection 101C(1) states that s101C will apply when a charging notice has been issued to a company for an accounting period and the Diverted

Profits Tax review period for that charging notice remains open.

9. New subsection 101C(2)(a) states that a final closure notice may not be issued under paragraph 32 of Schedule 18 to the Finance Act 1998 in relation to an enquiry into the accounting period mentioned in subsection 101C(1)(a). Subsection 101C(2)(b) states that a partial closure notice may not be issued in relation to an enquiry into the accounting period mentioned in subsection 101C(1)(a) in relation to any matter which is or could be relevant to the charging notice mentioned in subsection 101C(1)(a).

10. New subsection 101C(3) states that a relevant tribunal direct has no effect until the review period has ended.

11. New subsection 101C(4) defines a relevant tribunal direction.

12. Subsection 5 states that this clause comes into force on 27 October 2021 and

that new section 101C of Finance Act 2015 has effect in relation to applications for a relevant tribunal direction made on or after 27 September 2021.

Background note

13. This clause allows taxpayers to continue to make use of the relieving provisions in s101A and s101B of Finance Act 2015 to amend their company tax returns and bring taxable diverted profits into charge to corporation tax during the diverted profits tax review period.

14. This clause ensures the functioning of the interaction of the diverted profits tax review period and the closure of a corporation tax enquiry.

Clause 29 and Schedule 5: Insurance contracts: changes in accounting standards

Summary

1. This clause is an enabling power that will allow the government to make provisions in secondary legislation in connection with International Financial Reporting Standard 17 (insurance contracts) (IFRS 17) and to revoke the requirement for all life insurance companies to spread acquisition costs over seven years for tax purposes.

Details of the clause

2. Clause 29 introduces Schedule 5, which makes provision in connection with IFRS 17 (insurance contracts) issued by the International Accounting Standards Board.

Details of the Schedule

Part 1: Power to make provision in connection with IFRS 17

3. Paragraph 1 explains that Part 1 of Schedule 5 gives the government the power to make corporation tax provisions in secondary legislation in response to the introduction of IFRS 17 and specifies the types of provision that can be made using this power.

Part 2: Amendments in connection with IFRS 17

4. Paragraph 2 explains that Part 2 of Schedule 5 revokes section 79 Finance Act 2012 (FA12) which requires life companies to spread acquisition expenses over seven years for tax purposes. This revocation applies to all life insurers.

5. Paragraph 3 details the consequential amendments required to FA12 and s1297 Corporation Tax Act 2009 as a result of Paragraph 2.

6. Paragraph 4 explains that Part 2 comes into force from the date specified by secondary legislation.
7. Paragraphs 5 and 6 specify the types of provision that can be made by secondary legislation.

Background note

8. The Corporation Tax liabilities of insurers are based on their accounting profit. Many insurers prepare their accounts under International Accounting Standards (IAS). The new international accounting standard for insurance contracts, IFRS 17, is expected to become mandatory for periods of account beginning on or after 1 January 2023, subject to its endorsement by the UK Endorsement Board.
9. IFRS 17 will affect the timing of recognition of insurers' profits and losses

and adoption will create transitional accounting profits or losses, which may have large regulatory consequences. A power needs to be taken now to allow the government to deal with the tax implications of IFRS 17.

10. The removal of the requirement for all life insurance companies to spread their acquisition costs over seven years for tax purposes is a simplification that has been allowed by IFRS 17.

Clause 30: Deductions allowance in connection with onerous or impaired leases

Summary

1. This clause amends sections 269ZX and 269ZY in Part 7ZA of the Corporation Tax Act 2010 (CTA 2010) to ensure that the legislation continues to work as intended by continuing to provide an exemption from the loss reform rules for companies in connection with onerous or impaired leases in specific circumstances. This enables them to obtain full relief for carried-forward losses that offset profits arising from lease renegotiations where they adopt International Financial Reporting Standard (IFRS) 16. The relieving changes will have retrospective effect for accounting periods beginning on or after 1 January 2019.

Details of the clause

2. Subsection (1) introduces the amendments to Part 7ZA CTA 2010.
3. Subsections (2) to (13) amend sections 269ZX and 269ZY of Part 7ZA CTA 2010. The amendments ensure that a 'relevant reversal credit' incorporates reversals of right of use asset impairments, remeasurement credits and variable lease payments that lease modifications under IFRS 16 require in addition to reversals of onerous lease provisions.
4. Subsection (14) inserts new section 269ZYZA which covers situations where the accounting under IFRS16 requires the recognition of a remeasurement amount or negative variable lease payments. The latter will occur where the affected company had opted for the specific COVID-19 easement to IFRS 16 that applies to rent concessions occurring as a direct consequence of the pandemic.

5. Subsections (15) and (16) make minor consequential amendments that flow from the amendments to sections 269ZX and 269ZY.
6. Subsection (17) provides that the changes have retrospective effect for accounting periods beginning on or after 1 January 2019.
7. Subsections (18) and (19) provide for the amendment of company tax returns in consequence of the amendments made by this clause where the time limits for doing so had expired before, or would expire before 1 January 2023.

Background note

8. Loss reform was introduced in section 18 and Schedule 4 of Finance (No 2) Act 2017 with effect from 1 April 2017.
9. The reform made two main changes. It

increased the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Additionally, it limited the amount of profit against which carried-forward losses can be set. Each group (or a company that is not part of a group) has an annual deductions allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. Losses in excess of that amount are restricted to a maximum of 50% of the company's total profits for the period.

10. The restriction to carried-forward losses was extended to include corporate capital losses with effect from 1 April 2020.

11. Sections 269ZX and 269ZY increase the amount of the deductions allowance in certain circumstances where there has been a reversal of an onerous lease

provision that has been required for accountancy purposes due to an arm's length arrangement under which the tenant company's obligations under the lease are varied or cancelled.

12. This amendment has been made to ensure the legislation continues to work as intended by ensuring that companies accounting under pre-existing accounting standards and IFRS16 continue to benefit from the same treatment.

Clause 31 and Schedule 6: Provision in connection with the Dormant Assets Act 2022

Summary

1. This clause and Schedule ensure that a disposal for capital gains tax purposes does not immediately arise when the cash value of assets, that have been identified as being dormant, are transferred into the Dormant Assets Scheme.

Details of the clause

2. Clause 31 introduces Schedule 6, which makes amendments about dormant assets.

Details of the Schedule

3. Paragraph 1(1) substitutes a new section 26A into the Taxation of Chargeable Gains Act 1992 (TCGA).

4. New Section 26A explains what happens, for capital gains tax (CGT) purposes,

where:

- an asset is identified by an institution participating in the Dormant Assets Scheme, such as a bank, insurer or investment firm, as being dormant for the purposes of the Dormant Bank and Building Society Accounts Act 2008 and the Dormant Assets Act 2022 (the dormant asset acts),
- a monetary amount derived from that asset has been transferred into an authorised reclaim fund and,
- at a later date, a person "P" makes a successful repayment claim to the institution for that monetary amount to be refunded to P.

5. An authorised reclaim fund is responsible for receiving dormant assets funds from participants, managing the reserves to meet customer reclaims, and making surplus funds available via The National

Lottery Community Fund to be spent on social or environmental purposes. When a person makes a successful repayment claim to an institution, the institution will then seek reimbursement from the authorised reclaim fund.

6. New subsections 26A(1) and (2) define what the transfer of a dormant asset is.
7. New subsections 26A(3) explains that the transfer of an amount into an authorised reclaim fund is not treated as the acquisition or disposal of an asset. A disposal only occurs when a person exercises their right (as provided for by the two dormant assets' acts) against an institution for repayment of that amount and, when they do, that right is treated as though it applied to the original asset that was transferred into the scheme.
8. For example, if a share was identified as being dormant and its monetary value transferred into a reclaim fund that

transfer is not treated as a disposal or acquisition of the asset. If, at a later date, a person successfully exercises their right for that money to be repaid to them that right would be treated as though it applied to the share, with the disposal occurring at the time the reclaim is made.

9. New subsection 26A(4) defines certain terms used in the new section 26A.

10. Paragraph 2 makes various amendments to section 39, Finance Act 2008 to ensure that it reflects the introduction of the Dormant Assets Act 2022.

11. Paragraph 3 makes various amendments to The Income Tax (Deposit Takers and Building Societies)(Interest Payments) Regulations 2008 to reflect the introduction of the Dormant Assets Act 2022. Those regulations make provision for when deposit-takers and building societies are required to deduct amounts

representing income tax from certain payments of interest.

12. Paragraph 4 applies to individual investment plans such as ISAs. It exempts from income tax and capital gains tax amounts paid out of an authorised reclaim fund where that amount was an amount to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (exemption for income from individual investment plans) apply.

13. Paragraph 5 provides that the Treasury may by regulation make further changes to the TCGA and the Income Tax Acts in respect of the Dormant Assets Scheme. This power must be exercised before 1 January 2024.

14. Paragraph 6 provides that this Schedule comes into force on the making of a Treasury order; it is anticipated that it will come into effect at the same time as the Dormant Asset Act 2022.

Background note

15. The existing Dormant Assets Scheme enables banks and building societies, to channel funds from dormant bank and building society accounts towards good causes. Dormant accounts are accounts that have been unused for 15 years and the owner cannot be contacted.

16. In 2020 the government published a consultation paper on a proposed expansion of the scheme to include a wider range of dormant assets, such as pensions, investment products and securities. In January 2021 the government published its response to that consultation and announced its intention to expand the scheme to those additional assets making changes to tax legislation where required. That legislation is currently proceeding through Parliament.

17. The expanded scheme applies to a wider range of assets, some of which have

the potential to increase or decrease in value. If no changes were made to the tax legislation, then when the monetary value of those assets is transferred into the Dormant Assets Scheme there may be a disposal for capital gains tax purposes. As the asset owner cannot be located and does not know that the transfer to the scheme has occurred, it is not appropriate or feasible for tax to be paid by the individual at the point of transfer to the scheme, or for a claim to a loss to be made. These changes:

(a) ensure that where assets are transferred into the scheme the individual's rights in those assets remain unchanged for CGT purposes.

(b) that where a capital gains tax charge does arise, it will only accrue at the point when a dormant asset's proceeds are reclaimed and received by an individual, and that where a loss is made the

individual is not out of time to make a claim for a loss.

These changes broadly ensure that individuals remain in the same position for tax purposes as they would have been in had the assets not been transferred into the Dormant Assets Scheme.

Part 2: Residential Property Developer Tax

Clause 32: Introduction

Summary

1. This clause introduces a new tax, to be known as the residential property developer tax (RPDT) to be charged on the profits of companies carrying out residential property development. The tax applies to profits arising in accounting periods ending on or after 1 April 2022, with profits from periods straddling that date being apportioned (see clause 51).

Details of the clause

2. Clause 32 introduces the residential property developer tax and confirms that it will be charged on profits from the development of residential property by a residential property developer company for an accounting period.

Background note

3. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
4. This clause provides an introduction to the residential property developer tax.

Clause 33: Charge to RPDT

Summary

1. This clause sets the rate of the residential property developer tax (RPDT) at 4%, applied to so much of an RP developer's RPD profits that exceed its allowance for the period. The tax so computed is charged as if it were an amount of corporation tax chargeable on the developer.

Details of the clause

2. Subsection 1 sets the rate of the tax at 4%, applied to so much of an RP developer's RPD profits that exceed its allowance for the period. The tax so computed is charged as if it were an amount of corporation tax chargeable on the developer.

3. Subsection 2 sets out that amount of an RP developer's allowance for the year is to be determined in accordance with clause 43.

4. Subsection 3 states that the general provisions applying to corporation tax also apply to RPDT, as further provided for in clause 45.

Background note

5. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

6. This clause sets the rate of the residential property developer tax, and that it is charged as if it were an amount of corporation tax.

Clause 34: Meaning of "residential property developer"

Summary

1. This clause sets the basic conditions to be satisfied for a company to be a residential property developer (RP developer) and potentially within the charge to the residential property developer tax (RPDT).

Details of the clause

2. Subsection 1 defines an 'RP developer' as either a company that undertakes residential property development activities ('RPD activities') or one that holds a substantial interest in a relevant joint venture company. The company's interest in such a joint venture is aggregated with those of other members of the same group to determine whether that is a substantial interest.

3. Subsection 2 points to the definitions of "relevant joint venture company" and "substantial interest".

4. Subsection 3 provides an exemption from RPDT for non-profit housing companies by excluding them from the definition of an RP developer.

5. Subsection 4 defines non-profit housing companies by reference to social housing legislation in various parts of the United Kingdom. Wholly owned subsidiary companies of a non-profit housing company are also excluded from being treated as RP developers for the purpose of the tax.

6. Subsection 5 allows the Treasury to amend the definition of a non-profit housing company by regulation, and make any consequential changes to this Part of the legislation. This allows the definition to be updated in line with any changes to the regulatory frameworks for registered social housing providers.

Background note

7. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
8. This clause sets out the conditions that make a company fall within the charge to the residential property developer tax as an RP developer.

Clause 35: Meaning of "residential property development activities"

Summary

1. This clause defines activities that are residential property development activities (RPD activities) for the purposes of the tax. It also sets the territorial scope of the tax to include profits from activities on or in connection with land in the United Kingdom. It is profits from all the RPD activities of an RP developer company that form the base for the tax.

Details of the clause

2. Subsection 1 provides a wide definition of RPD activities, to include anything that is done by the RP developer on or in connection with land in the United Kingdom for the purposes of the development of residential property. A developer must have an interest in the

land at some point for activity there to be RPD activities for the purposes of the tax. Land in this respect is taken to include buildings or structures on a piece of land. The requirement for an interest in land means that profits from similar activities undertaken by companies acting purely as third-party contractors who are not an RP developer do not come within the charge to the tax.

3. Subsection 2 provides a non-exhaustive list of activities that are typically carried out during residential property development, confirming that profits from these are all included within the RP developer's base for the tax. It is however necessary that these activities are undertaken in connection with residential property development. So, for example, profits arising from management activity in relation to a residential property that a company has or had an interest in will only be in scope of the tax if that

management is connected to the development of the property.

4. Subsection 3 sets out the conditions that determine whether a previous interest in the land being developed is taken into account for the purposes of subsection (1). A developer will be regarded as carrying out activities within the scope of the tax where it carries out development activities of design, seeking planning permission or construction in connection with land that they no longer hold an interest in, if those activities were planned or anticipated at the time when it ceased to hold an interest in the land. An exception to this rule applies if those activities are limited to areas that are not residential property.

Background note

5. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
6. This clause sets out the activities that are within the scope of the residential property developer tax.

Clause 36: Residential property development activities: "interest in land"

Summary

1. This clause sets out when an RP Developer is regarded as holding an interest in land for the purposes of the RPDT. That 'interest in land' is attributed to the developer and any company related to the developer company. This ensures that where a developer company is treated as having an interest in land, the base for the tax includes RPD profits from any related company involved in the development of the land.

Details of the clause

2. Subsection 1 provides a widely drawn definition of what amounts to an interest in land for the purposes of the tax. This includes all those circumstances where a developer has a beneficial interest in the

land, and that interest is held as stock for its trade. A company is deemed to hold an interest in land if an interest in it is held by any related company.

3. Subsection 2 explains that companies are related to the RP developer if they are members of the same group or are connected by virtue of common interests in a joint venture (JV) company. JV companies are taken into account where the RP developer, together with any other members of the same group as the RP developer, holds a substantial interest in the JV company. The definition of a group for these purposes is set out in clause 48.

4. Subsection 3 excludes certain interests in land from those that are considered relevant for the purposes of the tax. A mortgagor, or a person who merely holds a license to occupy or use the land are excluded and are not treated as holding an interest in land.

5. Subsection 4 defines trading stock to include an estate, interest, right or power in or over land which will be disposed of in the ordinary course of the trade.
6. Subsection 5 applies the definition of a disposal used for capital gains tax purposes. This will include part disposals and the granting of leases or other interest in the land out of an interest held by the developer.
7. Subsection 6 ensures that where a relevant JV company is related to an RP developer and is a member of a group, it is treated as having any asset that is held by other group members and as having undertaken any actions taken in respect of that asset by the group members.

Background note

8. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property

developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

9. This clause defines what is meant by having an interest in land for the purposes of the residential property developer tax.

Clause 37: Residential property development activities: “residential property”

Summary

1. This clause sets out the types of property that will or will not be regarded as residential property for the purposes of the RPDT. It provides a general definition of residential property then provides some specific exclusions for specialised institutions or accommodation that are restricted in how and by whom they will be occupied.

Details of the clause

2. Subsection 1 provides a wide-ranging definition of residential property for the purposes of the tax. The definition covers buildings designed or adapted for use as a dwelling and is extended to include land that is intended for development where

planning permission is being sought or has been granted for residential property development, and land where residential properties are in the course of construction. Where buildings have multiple uses, only some of which are residential, then the legislation applies to only that part which is residential property. Any land that is intended to be provided along with a residential property, or general amenity land developed alongside the residential property, falls within the definition of residential property for the purposes of the tax. The main relevance here is to ensure that all relevant costs that are incurred by the developer in a residential property development are accounted for when calculating the profits subject to the tax.

3. Subsection 2 excludes certain types of buildings from the definition of residential property, so that any profits or losses from

their development are not taken into account when computing profits that are subject to the tax. These are typically either specialised institutions that provide temporary or longer-term accommodation for a specific class of residents, and buildings that are occupied purely under licence to occupants that do not hold any lasting rights over the property.

4. Subsection 3 sets out the qualifying criteria to be met in relation to buildings that are excluded under subsection 2(j) as student accommodation.

Background note

5. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair

contribution to help fund the government's cladding remediation costs.

6. This clause provides the definition of residential property for the purposes of the residential property developer tax.

Clause 38: Meaning of "residential property developer profits or losses"

Summary

1. This clause sets out the formula used to calculate the RPD profits or losses of an RP developer that form the base for the purposes of the residential property developer tax (RPDT) for an accounting period. Clauses 39 to 42 give further details of the elements included in the formula. The amount on which tax will be charged is also subject to an allowance to be calculated in accordance with clause 43.

Details of the clause

2. Clause 38 provides a formula to calculate the RPD profits or losses of an RP developer for an accounting period. The starting point is the company's adjusted trading profits or losses of the accounting period, determined in accordance with

clause 39. This amount is then updated for any RPD profits or losses from joint ventures that are attributable to the company in accordance with clause 40. Certain losses and other reliefs can then be deducted, calculated in accordance with Schedule 7 Parts 1, 2 and 3 where available to give the RPD profits or RPD losses for the accounting period.

Background note

3. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
4. This clause defines profits or losses for the purposes of the residential property developer tax.

Clause 39: Adjusted trading profits and losses

Summary

1. The clause sets out how a company's corporation tax trading profits and losses are to be adjusted to arrive at the amounts that are the adjusted trading profits or losses for clause 38.

Details of the clause

2. Subsection 1 provides that the amounts of a company's adjusted trading profits or losses to be taken into account for RPDT purposes under clause 38 are its trading profits or losses for corporation tax purposes but ignoring the amounts set out in subsection 2.

3. Subsection 2 sets out the amounts that are to be ignored in determining adjusted profits or losses. These are those profits, losses and any allowances or charges

under the Capital Allowances Act 2001 that do not relate to residential property development activity; corporation tax loss relief and group relief; and any amounts that are taken into account in calculating trading income by the operation of the loan relationship and derivative contracts rules. Also, any trading profits from residential property development activities that are carried out by a charitable company and applied for the purposes for the purposes of the charitable company are ignored.

4. Subsection 3 provides that where the corporation tax profits, losses, or capital allowances and charges relate to both a company's residential property development activity and any other of its activities, those amounts may be apportioned between the RPD and other activities on a just and reasonable basis.

Background note

5. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
6. This clause provides for the calculation of adjusted profits or losses for the purposes of the residential property developer tax.

Clause 40: Attributable joint venture profits and losses

Summary

1. This clause sets out how an amount of joint venture (JV) profits or losses attributable to a developer is determined for the purposes of calculating RPD profits or losses under clause 38 for the purposes of the residential property developer tax (RPDT). The clause confirms the criteria for a relevant JV company to fall within the charge to RPDT.

Details of the clause

2. Subsection 1 introduces the clause which determines the amount of JV profits or losses attributable to a developer. It defines JV profits as the RPD profits of a JV company that fall below the JV company's £25m annual allowance. This is where an RP developer has benefited from

profits not being taxed in a JV due to the JV having its own allowance that is calculated in accordance with clause 43. The subsection also defines JV losses as the RPD losses that accrue in the JV company. The purpose of this is to make clear that the JV losses only relate to losses arising from residential property development activity and no other losses in that JV.

3. Subsection 2 sets out the circumstances in which a company, referred to as "C", is to be treated as a relevant JV company. Those are where C, or a company in the same group, is an RP developer, where C is not a 75% subsidiary of another company, and there are, at most, five persons who between them own at least a 75% shareholding in C. Where a JV company does not have ordinary share capital then the assessment is instead based on entitlement to the profits available for distribution from the JV

company. Where a JV company is a member of a group that undertakes RPD activities then the JV is to be treated as an RP developer, if that would otherwise not be the case.

4. Subsection 3 confirms that for the purposes of determining whether there are five or fewer persons who between them own at least a 75% shareholding, the holdings of members of a group are to be aggregated and treated as one holding.
5. Subsection 4 confirms that the profits of a JV are to be attributed to an RP developer where the developer holds an interest in the JV company, including where relevant, the holdings of other companies in the RP developer's group.
6. Subsection 5 additionally requires that for JV losses to be attributable to an RP developer, the RP developer and JV company must notify HMRC within 2 years of the RP developer's accounting period end date for which those losses are

to be attributed. This notification is required because any losses used by the RP developer will no longer be available to the JV company to carry forward against its future profits. If there are arrangements by which an RP developer makes a payment to the JV for the use of JV losses, this payment is ignored for the purpose of computing the adjusted trading profits or losses of either company.

7. Subsection 6 sets out that the amount of RPD profits or losses attributable to a developer is an amount equal to the percentage of the JV company's profits that would be available for distribution to the developer.

8. Subsection 7 confirms that where the accounting periods of the JV company and developer have a different end date the profits, losses and allowance are to be apportioned on a time basis according to the accounting period of the developer.

9. Subsection 8 ensures that where the JV company is the head of a group undertaking RPD activities, references to the RPD profits or losses in this clause are treated as references to the net amount of RPD profits of losses of the members of the group.

10. Subsection 9 provides a time apportionment rule to allocate profits or losses of a member of the JV company's group where its accounting period does not coincide with that of the JV company for the purposes of subsection (8).

11. Subsection 10 sets out when the following subsection 11 will apply. This is where losses in a JV company are attributed to a developer.

12. Subsection 11 confirms that the amount of a loss in the JV company or any member of its group that can be carried forward to future accounting periods or surrendered as RPD group relief under

Schedule 7 is reduced by the amount that is attributed to the JV member.

13. Subsection 12 defines a "substantial interest in a joint venture company". This can be held where one or more company or companies either hold at least 10% of the ordinary share capital of the JV company, or, where it does not have ordinary share capital, are entitled to at least 10% of the profits that are available for distribution to the JV company's equity holders.

Background note

14. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

15. This clause sets out how profits and losses arising to a joint venture should be dealt with for the purposes of determining RPD profits.

Clause 41 and Schedule 7: RPDT reliefs

Summary

1. This clause introduces Schedule 7, which makes provision for loss relief and group relief for the purposes of the residential property developer tax (RPDT).

Details of the clause

2. Clause 41 introduces Schedule 7 Parts 1 to 4, which make provision for loss relief and group relief for the purposes of RPDT

Details of the Schedule

Part 1: RPDT Loss Relief

3. Part 1 of Schedule 7 sets out the provisions applying relief for carried forward losses for the purposes of RPDT.
4. Paragraph 1 introduces the Schedule.
5. Paragraph 2 explains that an unrelieved

RPDT loss is to be carried forward against RPDT profits in the next accounting period but its use is subject to the restriction to setting off against 50% of the profits of any future accounting periods as provided for in clause 42.

6. Paragraph 3 provides that a loss that is not made use of in accordance with paragraph 2 is to be carried forward to a later accounting period.

Part 2: RPDT Group Relief

7. Part 2 of Schedule 7 sets out the provisions applying group relief for the purposes of RPDT. The provisions largely replicate the rules for corporation tax group relief but apply solely for the purposes of RPDT.

8. Paragraph 4 provides for the surrender of an unrelieved RPDT loss from one company in a group to another.

9. Paragraph 5 sets out the terms used to define surrender periods and surrenderable amounts for the purposes of

the Part.

10. Paragraph 6 provides for a body corporate to be treated as a company for the purposes of the Part.

11. Paragraph 7 provides that where a company has an amount of RPDT loss for a period that has not otherwise been relieved, it may surrender that loss to another company in the same group. It also provides for the rules for corporation tax group relief to apply to the surrender of RPDT group relief.

12. Paragraph 8 provides for claiming RPDT group relief that has been surrendered, mirroring the corporation tax rules.

13. Paragraph 9 provides for the giving of RPDT group relief, again mirroring the corporation tax rules.

14. Paragraph 10 provides a limit on the amount of RPDT group relief that may be given, again mirroring the corporation tax

rules.

15. Paragraph 11 applies, for RPDT group relief purposes, the corporation tax group relief rules, which restrict relief in circumstances where there are arrangements for the transfer of a company to another group.

Part 3: RPDT Group Relief for Carried-forward Losses

16. Part 3 of Schedule 7 sets out the provisions applying group relief for carried forward losses for the purposes of RPDT. The provisions largely replicate the rules for corporation tax group relief but apply solely for the purposes of RPDT.

17. Paragraph 12 provides for the surrender of an unrelieved carried forward RPDT loss from one company in a group to another.

18. Paragraph 13 sets out the terms used to define time periods and amounts for the purposes of the Part.

19. Paragraph 14 provides for a body corporate to be treated as a company.

20. Paragraph 15 provides that where a company has an amount of RPDT loss that has been carried forward to a period and that has not otherwise been relieved, it may surrender that loss to another company in the same group. It also provides for the rules for corporation tax group relief to apply to the surrender of RPDT group relief.

21. Paragraph 16 provides for claiming RPDT group relief for carried forward losses that has been surrendered, mirroring the corporation tax rules.

22. Paragraph 17 provides for the giving of RPDT group relief for carried forward losses, again mirroring the corporation tax rules.

23. Paragraph 18 provides a limit on the amount of RPDT group relief for carried forward losses that may be given, again mirroring the corporation tax rules.

Part 4: Supplementary Provision

24. Part 4 of Schedule 7 sets out supplementary rules for the purpose of RPDT group relief and RPDT group relief for carried forward losses.

25. Paragraph 19 provides that payments made for the giving of relief are not to be taken into account in calculating RPDT profits and losses so long as they do not exceed the amount of the loss surrendered.

26. Paragraph 20 applies the corporation tax rules that restrict the use of losses for group relief purposes where there are arrangements for the transfer of a company to another group.

27. Paragraphs 21 and 22 respectively set out the meaning of a ‘relief group’ and ‘adjusted trading loss’ for the purposes of the Schedule.

Background note

28. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

29. This clause introduces Schedule 7 that makes provision for loss relief and group relief for the purposes of the residential property developer tax.

Clause 42: Restrictions on RPDT reliefs

Summary

1. This clause provides a restriction on the amount of a carried forward loss that can be set against profits of a later period for the purposes of the residential property developer tax (RPDT). This ensures that carried forward losses do not reduce profits above the annual allowance that are chargeable to RPDT by more than 50%. This corresponds to the treatment of carried forward losses for the purposes of corporation tax on trading profits.

Details of the clause

2. Subsection 1 provides that there is a limit on the amount of RPD losses that are carried forward from an earlier accounting period that can be deducted in calculating RPD profits or losses of a later period in

accordance with formula provided in clause 38.

3. Subsections 2 and 3 set out the maximum amount of a carried forward loss that can be relieved.

4. Subsection 2 provides that where a company's RPD profits are below its available annual allowance the maximum is the amount that will reduce the profits to nil.

5. Subsection 3 provides that where a company's RPD profits exceed its available annual allowance, the maximum is the amount that will reduce the profits that are chargeable to RPDT by 50%. This is achieved through the operation of the formula set out in the subsection.

6. Subsections 4 and 5 together provide that where subsection 3 has applied to limit an amount of relief for losses that would otherwise reduce profits chargeable to RPDT then the losses remaining to carry further forward are reduced by the sum of

the relief that has been given (after the reduction) and the annual allowance available to the company for the period.

Background note

7. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
8. This clause imposes a restriction on the use of carried forward losses for the purposes of the residential property developer tax.

Clause 43: Allowance

Summary

1. This clause provides for the operation of the allowance that is deducted from profits chargeable to the residential property developer tax (RPDT). RPDT is charged on the profits that exceed a company's allowance as provided for by clause 39.

Details of the clause

2. Subsection 1 defines an allocating member of a group as a company within the charge to corporation tax has been nominated as the allocating member and provides that the allocating member can receive an allocation if it is itself an RP developer.

3. Subsection 2 explains that the amount available for allocation for an accounting period is £25,000,000. This allowance is

reduced on a pro rata basis where an accounting period is less than one year. The allocating member's accounting period is referred to as "period A".

4. Subsection 3 provides that the allocating member can allocate allowance to a group member provided that other company's accounting period, referred to as "period B", ends at the same time as, or during, period A.
5. Subsection 4 provides for an amount of allowance to be available to an RP developer that is a member of a group which has no allocating member for that accounting period in accordance with subsection 5.
6. Subsection 5 provides that the allowance available to an RP developer in a group that has no allocating member is £25,000,000 divided by the total number of companies that are members of the group within the charge to corporation tax at the end of the accounting period of the

ultimate parent of the group. The meaning of ultimate parent is provided for in clause 48. The allowance is reduced on a pro rata basis where that accounting period is less than one year.

7. Subsection 6 provides that an RP developer that is not a member of a group has an annual allowance of £25,000,000 in respect of its accounting period. This allowance is reduced on a pro rata basis where an accounting period is less than one year.

8. Subsection 7 provides that a member of a group is only entitled to an allowance where an allowance allocation statement has been made in accordance with the relevant regulations.

9. Subsection 8 provides HMRC Commissioners a power to make regulations providing for and about the nomination of a company to be the allocating member in a group, changing the allocating member of a group, and the

submission of an allowance allocation statement.

10. Subsection 9 sets out the matters that may be included in the relevant regulations.

11. Subsection 10 notes that the operation of the section is to be adapted in relation to joint venture companies, in accordance with clause 44.

Background note

12. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

13. This clause provides for the operation of the annual allowance for the purposes of the residential property developer tax.

Clause 44: Allowance: joint venture companies

Summary

1. This clause provides for the calculation of the annual allowance for the residential property developer tax (RPDT) where the profits of a member of a joint venture (JV) company are not chargeable to corporation tax. It provides for the allowance of a JV company to be reduced and for the exempt member to instead have an annual allowance that can be allocated to its JV interests.

Details of the clause

2. Subsection 1 applies the provisions which follow where a "excluded body" (a JV member) has a substantial interest in the JV. The meaning of "substantial interest" is provided in clause 40. A body (B) may not be liable to RPDT if it is, for example

an institutional investor, a sovereign immune entity that is outside the scope of corporation tax or an offshore entity which the UK cannot tax in the absence of a permanent establishment) or are UK tax exempt (e.g. pension funds).

3. Subsection 2 confirms that where subsection 1 applies, the JV company's allowance is reduced by the relevant percentage. The body (B), that is defined under subsection 1, will be able to allocate their notional annual allowance to increase their JV company allowance up to the amount of the reduction.

4. Subsection 3 defines how the relevant percentage is determined, based on the JV member's shareholding or profit entitlement in the JV company. It also sets out the amount of an exempt member's notional allowance, which will be reduced by reference to the number of days in the accounting period that do not fall into the financial year.

5. Subsection 4 sets out that a JV company's allowance may be calculated as set out in subsection 2(b) only if 'B' has submitted a notional allowance statement that includes an appropriate calculation that allocates no more than the appropriate amount to the relevant JV company.

6. Subsection 5 provides that the details of how the notional allowance statement would operate may be provided for by the regulations. This includes details about the allocation of a company's notional allowance where it has interests in several JV companies. The regulations may also state the circumstances in which such a statement is not required from a JV member.

7. Subsection 6 confirms the details of what will be included in the allocation statement that will be introduced via regulations. This included what the statement will contain, the timings of its submission to HMRC including any

amendments made by the taxpayer to it, how HMRC can amend this statement and their timelines to do so as well as details on how to amend the corporate tax return due to this statement.

8. Subsection 7 provides that where the JV member mentioned in this section is a member of group, certain references to be should be read as references to the ultimate parent of the JV member's group. The effect of this is that the group to which the JV member belongs has a single notional allowance that can be allocated by the ultimate parent, or another member of the group nominated by the parent. It is the ultimate parent or their nominee that is responsible for submitting a notional allowance statement. The meaning of "ultimate parent" is provided in clause 48.

9. Subsection 8 ensures that regulations about the notional allowance statement can apply to the ultimate parent as they do

to the JV member where that JV member is part of a group.

10. Subsection 9 defines an "excluded body" as a company that is not liable to RPDT but does not include a non-profit housing company.

Background note

11. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

12. This clause provides for the operation of the annual allowance where a member of a joint venture company is exempt from corporation tax.

Clause 45 and Schedule 8: Application of corporation tax provisions and management of RPDT

Summary

1. This clause applies general corporation tax principles to residential property developer tax (RPDT) and provides for RPDT to be treated for administrative purposes as an amount of corporation tax. This clause and Schedule 8 outline the framework within which RPDT will operate and makes necessary amendments to existing administrative legislation to accommodate RPDT.

Details of the clause

2. Subsection 1 ensures that all legislative provisions which apply generally to corporation tax will equally apply to RPDT.

3. Subsection 2 explains that subsection 1 is subject to the provisions of the Corporation Tax Acts with any necessary modifications, and to the provision in subsection 5 concerning unrelieved surplus advance corporation tax.
4. Subsection 3 specifies some of the areas where the provisions of the Corporation Tax Acts are to be applied for the administration of RPDT. These include obligations, powers and rights in relation to returns, assessment, collection and payment of tax, appeals, general administration, penalties interest on unpaid tax, and the impact of insolvency on the collection of tax.
5. Subsection 4 ensures that provisions of the Taxes Management Act treat RPDT in the same way as corporation tax.
6. Subsection 5 exclude RPDT from being treated in the same way as corporation tax under regulations concerning unrelieved surplus advance corporation tax.

7. Subsection 6 introduces Schedule 8, which makes further provision about the management, administration and payment of RPDT.

Details of the Schedule

8. Paragraph 1 makes amendments to the Taxes Management Act 1970, so that RPDT is included within the provisions for quarterly instalment payments and group payment arrangements.

9. Paragraph 2(1) makes amendments to Schedule 18 to the Finance Act 1998, so that returns are made of RPDT amounts on the basis that it is an amount of corporation tax.

10. Paragraph 2(2) includes RPDT within the meaning of 'tax' as defined by paragraph 1 of Schedule 18 to the Finance Act 1998.

11. Paragraph 2(3) inserts new paragraph 7A of Schedule 18 to the Finance Act 1998, which sets out the information a residential property developer must include on its company tax return in respect of RPDT. This requirement does not apply where, in the circumstances, it is reasonable to assume that the residential property developer will not have an RPDT liability, in the absence of any loss relief, group relief or carried forward group relief.

12. Paragraph 2(4) inserts a reference to RPDT in paragraph 8(1) of Schedule 18 to the Finance Act 1998, ensuring that RPDT is included within the calculation of the amount of tax payable by a company.

Background note

13. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property

developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

14. This clause applies the general rules of the Corporation Tax Acts for the purposes of RPDT and introduces Schedule 8 which provides for the collection, management and payment of the residential property developer tax.

Clause 46: Requirement to provide information about payments

Summary

1. This clause introduces a requirement for companies making a payment of residential property developer tax (RPDT) to provide information about that payment to HMRC, so that receipts from the tax can be monitored.

Details of the clause

2. Subsection 1 provides that the requirement applies where an RP developer, which has an RPDT liability under clause 33, makes a payment, or has a payment made on their behalf that is wholly or partly in respect of that liability.
3. Subsection 2 requires that a 'responsible company' must notify an officer of HMRC in writing, on or before the date the

payment is made, of the amount of the payment that is RPDT.

4. Subsection 3 defines a 'responsible company' for the purposes of subsection 2 as being either the company making payment on behalf of the RP developer under relevant group payment arrangements or, in any other case, the RP developer itself.

5. Subsection 4 defines 'relevant group payment arrangements' for the purposes of subsection 3 as being arrangements under section 59F(1) of the Taxes Management Act 1970.

6. Subsection 5 ensures that the penalty regime for HMRC's information and inspection powers applies to a failure to comply with subsection (2).

7. Subsection 6 provides that this requirement to notify is subject to any provision to the contrary in the regulations under section 59E of the Taxes Management Act 1970, which sets out

rules for when Corporation Tax is due and payable.

Background note

8. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
9. This clause provides for the provision of information about payments for the purposes of the residential property developer tax.

Clause 47: Non-profit housing companies: exit charge

Summary

1. The clause provides for an "exit charge" where a non-profit housing company ceases to meet the conditions to be exempt from the residential property developer tax (RPDT). The conditions for the exemption are provided for in clause 34. The charge may also apply where a non-profit housing company ceases to be owned by another such company and is acquired by another company under the same control as that other company. This clause is aimed at preventing for-profit entities from benefitting from the exemption.

Details of the clause

2. Subsection 1 provides for the exit charge to apply where a company ceases to be a

non-profit housing company, other than where it ceases to be so by virtue of no longer being a wholly owned subsidiary of a non-profit housing company, without having distributed all of its assets to another non-profit housing company.

3. Subsection 2 provides that the distribution of assets mentioned in subsection is to be made by the first anniversary of the accounting period in which the company ceased to be a non-profit company or by such later time as an officer of HMRC may allow.

4. Subsection 3 also provides for the exit charge where a non-profit housing company ceases to be wholly owned by another but remains controlled by a company that is under the same control as its former parent company.

5. Subsection 4 sets out the operation of the exit charge. The company will not be treated as a non-profit company for the accounting period in which the charge

applies. In that period its RPDT profits will be the profits attributable to its residential property development activity, together with those of its wholly owned subsidiaries, during the four-year period ending on the day it either ceases to be a non-profit company or the day that it ceases to be a wholly owned subsidiary of such a company in the circumstances provided for in subsection 3. No allowance may be set against those profits.

6. Subsection 5 allows for an adjustment of the exit charge to the extent that the profits of a wholly owned subsidiary have been subject to such a charge within the four-year period mentioned in subsection 4.

7. Subsections 6 to 8 provide for an apportionment of profits where the four-year period mentioned in subsection 4 begins during the accounting period of an affected company.

Background note

8. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
9. This clause provides for an additional charge to apply where a non-profit housing company that has previously benefitted from an exemption from the tax ceases to qualify as a non-profit housing company for the purposes of the residential property developer tax.

Clause 48: Groups

Summary

1. This clause provides the definition of a group of companies for most purposes of the residential property developer tax (RPDT) including the allocation of the allowance under clause 43. The meaning of a group for the purposes of RPDT group relief and RPDT group relief for carried forward losses is separately provided for in Schedule 7.

Details of the clause

2. Subsection 1 confirms that for the purposes of RPDT other than for the rules for group relief in Schedule 7 a group means two or more companies which together meet the condition in subsection 2.

3. Subsection 2 provides that the condition is that one of the companies is the ultimate parent of each of the other companies and is not the ultimate parent of any other company.
4. Subsection 3 explains that a company is the ultimate parent of another if it its parent and no other company is the parent of both of them.
5. Subsection 4 explains that a company is the parent of another, if the other company is its 75% subsidiary, or it is entitled to at least 75% of the other company’s distributable profits or would be entitled to 75% of its assets in a winding up. For these purposes the rules relating to corporation tax group relief are used, for example, to define equity holders and how beneficial entitlement rules are applied to groups.

Background note

6. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
7. This clause provides for the definition of a group of companies for the purposes of the residential property developer tax.

Clause 49 and Schedule 9: Miscellaneous provision

Summary

1. This clause introduces Schedule 9 which makes miscellaneous provisions in relation to the residential property developer tax (RPDT).

Details of the clause

2. Clause 49 introduces Schedule 9.

Details of Schedule

3. Paragraph 1 introduces a rule preventing a company that is liable to pay the RPDT obtaining any deduction for the tax when calculating any profits or losses for income tax or corporation tax purposes.

4. Paragraph 2 ignores any payments for RPD losses of a joint venture company or

RPD group relief when calculating corporation tax profits or losses, and any such payment will not be treated as a distribution.

5. Paragraph 3 applies the arm's length principle included in the transfer pricing rules in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) to an RP developer's RPD activities and its other activities. The provisions in TIOPA are to be interpreted as if these activities were carried on by separate persons under common control.

6. Paragraph 4 applies the arm's length principle included in the transfer pricing rules in Part 4 of TIOPA to transactions or provisions between companies under common control where the provision or transaction would be taken into account in computing the RPD profits or losses of only one of those companies.

Background note

7. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
8. This clause provides for miscellaneous provisions in relation to the tax in Schedule 9. These include preventing a deduction for the tax when calculating profits or losses for other tax purposes and the application of transfer pricing principles for the purposes of the residential property developer tax.

Clause 50: Interpretation etc

Summary

1. This clause sets out where the meaning of various terms used in the residential property developer tax (RPDT) legislation can be found.

Details of the clause

2. Subsection 1 defines various terms that are used in the RPDT legislation or indicates where their meanings can be found.

3. Subsection 2 applies the rules in Chapter 6 of Part 5 of the Corporation Tax Act 2010 to matters concerning the entitlement to profits or assets of a company available for distribution for RPDT purposes.

4. Subsections 3 and 4 ensure that the Corporation Tax Act 2010 rules mentioned in subsection 2 apply to companies

without share capital and similar situations

5. Subsections 5 and 6 apply the Corporation Tax Act 2010 definition of a subsidiary for RPDT purposes, modifying it in the case of registered societies and where shares are held as trading stock.

Background note

6. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

7. This clause provides definitions for the purposes of the residential property developer tax.

Clause 51: Commencement

Summary

1. This clause provides commencement provisions for the residential property developer tax (RPDT) which applies to profits arising from 1 April 2022 and provides an amendment to the usual rules for payment of tax by quarterly instalments where these would otherwise apply to payments before that date.

Details of the clause

2. Subsection 1 provides for RPDT to apply to accounting periods starting on or after 1 April 2022. This is subject to the subsection 2.

3. Subsection 2 provides a rule for accounting periods that straddle 1 April 2022, treating them as separate periods, such that profits of the period treated as

starting on that date will be subject to the RPDT provisions.

4. Subsection 3 confirms that profits of a straddling period are to be apportioned on a time basis in accordance with the rules that apply for corporation tax generally.

5. Subsections 4 and 5 provide a transitional rule in relation to tax that is payable on a quarterly basis under the Instalment Payment Regulations. These ensure that no amount of RPDT needs to be accounted for under the instalments that are payable before 1 April 2022 for an accounting period that straddles the commencement date.

6. Subsections 6 to 8 provide the authority for the regulations governing the payment of corporation tax by instalments and section 59D of the Taxes Management Act 1970 to read as including relevant references to subsections 4 and 5.

Background note

7. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.
8. This clause sets out commencement and transitional provisions regarding the charging and payment of RPDT.

Clause 52: Anti-forestalling: accelerated profits

Summary

1. This clause is an anti-avoidance provision which prevents taxpayers from adjusting their profits arising in an accounting period in order to obtain a tax advantage for the purposes of the residential property developer tax (RPDT).

Details of the clause

2. Subsection 1 sets out the criteria for the clause to apply as being where trading profits derived from RPD activities arise in accounting period ending before the commencement of RPDT, which only arose because of arrangements made on or after 29 April 2021.
3. Subsection 2 confirms the effect of the clause is to treat the profits as arising in

the accounting period after the RPDT has commenced. Therefore, bringing those profits now into scope of the charge.

4. Subsection 3 defines the terms 'arrangements' and 'tax advantage' for the purposes of the clause. A simple change in the accounting date of an RP developer is excluded from the definition of 'arrangements'.

Background note

5. RPDT will apply from 1 April 2022. As announced at Spring Budget 2021 the tax will apply to residential property developers. The government has introduced the charge to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs.

6. This clause provides for anti-avoidance provisions for the purposes of the residential property developer tax.

Part 3: Economic Crime (Anti-Money Laundering) Levy

Clause 53: Economic Crime (Anti-Money Laundering) Levy

Summary

1. This clause establishes a new tax called the economic crime (anti-money laundering) levy ("levy") and establishes that the Commissioners for Her Majesty's Revenue and Customs ("HMRC"), the Financial Conduct Authority ("FCA"), and the Gambling Commission will be responsible for the collection and management of this tax.

Details of the clause

2. Subsection 1 establishes a new tax called the economic crime (anti-money laundering) levy.
3. Subsection 2 defines the role of an appropriate collection authority.
4. Subsection 3 sets out that the three

appropriate collection authorities for the levy will be HMRC, the FCA, and the Gambling Commission. It establishes that: the FCA will collect the levy from any persons it supervises at the time of collection under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (or 'Money Laundering Regulations'); the Gambling Commission will collect the levy from any persons it supervises at the time of collection under the Money Laundering Regulations; and HMRC will collect the levy from all other persons that undertake regulated business under the Money Laundering Regulations. HMRC will therefore be responsible for collection of the levy from persons it supervises under the Money Laundering Regulations as well as from persons supervised by the Professional Body Supervisors listed in Schedule 1 of the Money Laundering Regulations. Where a person is liable to pay the levy but is no longer supervised by the FCA or Gambling

Commission, HMRC will become the appropriate collection agency.

Background note

5. The economic crime (anti-money laundering) levy was announced at Budget 2020. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue: small (<£10.2m), medium (£10.2m-£36m); large (£36m-£1bn); very large (>£1bn). Entities will pay higher fees the larger their size, except small persons which are exempt.
6. Medium firms will pay £10,000; large firms £36,000 and very large firms £250,000.
7. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.
8. This levy is intended to raise approximately £100 million per annum from the anti-money laundering

(AML) regulated sector to help fund AML reforms and deliver reforms in the Economic Crime Plan.

9. The FCA, HMRC, and the Gambling Commission will collect the levy from their own AML-supervised populations, with HMRC also taking on collection responsibilities for in-scope entities supervised by the 22 legal and accountancy Professional Body Supervisors.

10. The government will undertake a review of the levy by the end of 2027. This would seek to take place after around three years of operation, and may consider matters such as whether the levy: is meeting its original policy objectives; should continue; should remain based on just the AML-regulated sector; and, is still being calculated and collected appropriately.

Clause 54: Charge to the levy

Summary

1. This clause establishes who is liable to pay the levy and the amount of levy that will be charged.

Details of the clause

2. Subsection 1 establishes the circumstances for the levy to be charged in a financial year. The levy is only charged to those in the anti-money laundering (AML) regulated sector, (i.e., those who are already subject to section 8 (1) of the Money Laundering Regulations and to those whose UK revenue is medium, large or very large.
3. Subsection 2 establishes the levy amounts that will be charged to persons whose UK revenue for the financial year is medium, large, or very large.
4. Subsection 3 allows for persons' levy

amounts to be proportionally adjusted should an entity only carry out regulated business for part of the financial year. This means that if a business ceases to carry on regulated business (or starts to) during the financial year it will not pay the full amount of the levy for that year.

5. Subsection 4 sets out that no levy payment should be taken into account in calculating profits or losses for the purposes of income tax or corporation tax.

Background note

6. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

7. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee

based on the ‘size’ band they belong to, determined by their UK revenue.

8. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 55: UK revenue: amount

Summary

1. This clause establishes the amounts of UK revenue that form the banding limits for medium, large and very large classifications.

Details of the clause

2. Subsection 1 establishes the amounts of UK revenue that form the banding limits for medium, large and very large classifications.
3. Subsection 3 allows for the sums in subsection 1 be proportionally adjusted if the accounting period of the entity is other than 12 months.

Background note

4. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100

million per annum to help fund anti-money laundering and economic crime reforms.

5. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the ‘size’ band they belong to, determined by their UK revenue.
6. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 56: Relevant accounting period

Summary

1. This clause defines the relevant accounting period, as outlined in clause 55, by reference to which a person's UK revenue size is determine.

Details of the clause

2. Subsections 2-3 set out what is meant by a 'relevant accounting period'.
3. Subsection 4 establishes the application of the legislation where there is more than one accounting period of an entity ending in a financial year.
4. Subsection 5 establishes the application of the legislation where there is no accounting period of an entity ending in a financial year.
5. Subsection 6 establishes the application of the legislation if an entity is incapable of

determining a relevant accounting period with regards to this section.

Background note

6. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.
7. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.
8. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 57: UK revenue: determination

Summary

1. This clause sets out how a person's UK revenue is determined in a relevant accounting period.

Details of the clause

2. Subsection 2 sets out how a UK resident person would determine its **UK** revenue.
3. Subsection 3 sets out how a non-UK resident person would determine its **UK** revenue.
4. Subsections 4- 5 establish that when calculating their UK revenue, non-UK resident casinos should also include any revenue generated by activity that is within scope of remote gaming duty, even if that activity is not attributable to any permanent establishment of the entity in the UK.
5. Subsection 6 explains how references to a

"permanent establishment" should be interpreted for the purposes of this section.

6. Subsections 7-8 define "revenue".

7. Subsection 9 sets out specific determinations of revenue to be ignored when calculating UK revenue for the purposes of the levy. This subsection also notes that other descriptions of revenue can be excluded by way of regulations made by the Treasury.

Background note

8. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

9. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee

based on the 'size' band they belong to, determined by their UK revenue.

10. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 58: Assessment, payment, collection and recovery

Summary

1. This clause makes provisions for details on assessment, payment, collection and recovery to be specified in regulations. It establishes that the levy is recoverable as a debt due to the Crown.

Details of the clause

2. Subsection 2 establishes that the Treasury may – by regulations – make provisions about the assessment, payment, and collection of the levy, and make further provisions about the recovery of the levy.

3. Subsection 3 sets out the scope of the possible regulations noted in Subsection 2.

4. Subsections 4 to 5 set out the scope of provisions under Subsection 3(b) and 3(i) - that is in relation to notification of liability and the form of any such notification

5. Subsection 6 provides for regulations to be made that confer responsibility to HMRC in relation to the enforcement of the levy from HMRC populations and, in cases where another appropriate collection authority is otherwise responsible for the collection of the levy, to that appropriate collection authority.

6. Subsection 7 provides that regulations made under Subsection 6 may confer on HMRC responsibility for the enforcement of the levy and the collection and management of the levy where another collection authority is otherwise responsible.

Background note

7. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

8. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the ‘size’ band they belong to, determined by their UK revenue.
9. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 59: Payments into Consolidated Fund

Summary

1. This clause establishes the requirements on the appropriate collection authorities in remitting levy monies collected.

Details of the clause

2. Subsection 1 states that levy monies collected through their respective populations by the FCA and the Gambling Commission must be paid into the Consolidated Fund, subject to Subsection 2.

3. Subsection 2 states that the aforementioned organisations may deduct their reasonable administrative costs incurred before making payments under subsection 1.

4. Subsection 3 signals that details of the obligations of the HMRC Commissioners

to pay into the Consolidated Fund can be found in section 44 of the Commissioners of Revenue and Customs Act 2005.

Background note

5. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.
6. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.
7. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 60: Application to partnerships

Summary

1. This clause sets out how the levy applies to partnerships.

Details of the clause

2. Subsection 2 confirms that where a partnership has a separate legal personality, then the entity liable to pay the levy will be the partnership and not the individual partners.
3. Subsection 3 sets out that where the partnership does not have a separate legal personality, the responsible partners are jointly and severally liable to pay the levy. This provision allows such partnerships to register and pay their levy as if those partnerships were separate legal persons.
4. Subsection 4 clarifies that 'the responsible partners' mentioned in subsection 3 refers to all persons who were members of the

partnership at any point during the financial year.

5. Subsection 5 sets out how a partnership (for the purposes of this Part) will be regarded in the case of any changes in membership within the partnership.

Background note

6. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

7. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.

8. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported

in periods of account ending in 2022/23.

Clause 61: Collection of information

Summary

1. This clause amends the Finance Act 2008 to extend HMRC's existing powers under Schedule 36 of that Act to the levy.

Details of the clause

2. Subsection 1 inserts "economic crime (anti-money laundering) levy" to Schedule 36 of FA 2008 (powers to obtain information etc), in paragraph 63(1) (meaning of "tax"), so that the powers to obtain information in that Act can be exercised in relation to the economic crime (anti-money laundering) levy.

Background note

3. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime

reforms.

4. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the ‘size’ band they belong to, determined by their UK revenue.
5. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 62: Disclosure of information

Summary

1. This clause sets out how information may be disclosed by relevant parties in the functioning of the levy.

Details of the clause

2. Subsection 1 allows for an appropriate collection authority (i.e., HMRC, the FCA, or the Gambling Commission) to disclose information they either obtain or hold through their functions under the levy, with the parties listed in the legislation.

3. Subsection 2 prevents the further disclosure of information by a collection authority under subsection 1 without permission of that initial collection authority.

4. Subsection 3 allows for a supervisory authority which is not an appropriate collection authority (e.g., a Professional

Body Supervisor of an entity in scope of the levy) to disclose information obtained or held by them to the appropriate collection authority (i.e., HMRC, the FCA or the Gambling Commission), or to an authorised officer of said appropriate collection authority.

5. Subsection 4 notes that information may only be disclosed under this section if it helps in the carrying out of functions related to the levy.

6. Subsection 5 establishes the criminal liability for wrongful disclosure of certain types of information in contravention of subsection 2.

7. Subsection 6 confirms that no charge may be made for disclosure under this section.

8. Subsections 7-8 clarify the limits of scope of any disclosure.

9. Subsection 9 clarifies what is meant by an "authorised officer" in this section.

10. Subsection 10 establishes that any HMRC officer is to be deemed to be an "authorised officer" for the purposes of subsection 9.

11. Subsection 11 clarifies there will be no change to organisations' pre-existing powers of disclosure.

12. Subsection 12 clarifies that "data protection legislation" in this section has the same meaning as the Data Protection Act 2018.

Background note

13. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

14. The levy will apply to the anti-money laundering (AML) regulated sector, with

persons paying the levy as a fixed fee based on the ‘size’ band they belong to, determined by their UK revenue.

15. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 63: Power to make consequential provision

Summary

1. This clause outlines the Treasury's ability to make consequential provisions on this Part through regulations.

Details of the clause

2. Subsection 1 explains that the Treasury will be able to make consequential provisions on this Part through regulations.

3. Subsection 2 sets out the extent of provisions that can be made on this Part through regulations under this section.

Background note

4. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime

reforms.

5. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.
6. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 64: Regulations

Summary

1. This clause sets out how any regulations made under the regulation-making powers of this Part may be made.

Details of the clause

2. Subsections 1-2 explain how regulations may be made and referenced to under this Part. 1(c) notes that regulations made under subsection 1(a) and 1(b) may take effect during the financial year in which they are made.

3. Subsection 3 notes that the power of the Treasury to make regulations under this part may instead be exercised by HMRC.

4. Subsections 4-5 necessitate that the Treasury consults with each appropriate collection authority before making any regulations under this Part, and that HMRC (if acting under subsection 3) also

consult with the Treasury and the other collection authorities before making any regulations.

5. Subsections 6-7 clarify that any regulations under this Part must be made by Statutory Instrument, subject to negative procedure.

6. Subsection 8 sets out that regulations in relation to those listed below, must be made by Statutory Instrument subject to affirmative procedure:

   a) where changes fall under section 58(3)(k)- that is, a provision about the enforcement of the levy (including provision for the imposition of civil penalties or other sanctions for a failure to comply with a requirement imposed by or under this Part).

   b) where consequential amendments to primary legislation are made pursuant to section 11;

Background note

7. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

8. The levy will apply to the anti-money laundering (AML) regulated sector, with persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.

9. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 65: Interpretation

Summary

1. This clause defines the terms used under this Part.

Details of the clause

2. Subsection 1 details the meaning of terms used in this Part.
3. Subsection 2 confirms how the territorial residency of a company or partnership is determined or treated under this Part.

Background note

4. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.
5. The levy will apply to the anti-money laundering (AML) regulated sector, with

persons paying the levy as a fixed fee based on the 'size' band they belong to, determined by their UK revenue.

6. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Clause 66: Commencement

Summary

1. This clause contains the commencement provisions for the levy.

Details of the clause

2. This clause sets out that the periods of calculation for the levy will start from April 2022 - that is, sums would be first due under the levy in the subsequent financial year.

Background note

3. The economic crime (anti-money laundering) levy, announced at Budget 2020, aims to raise approximately £100 million per annum to help fund anti-money laundering and economic crime reforms.

4. The levy will apply to the anti-money laundering (AML) regulated sector, with

persons paying the levy as a fixed fee based on the ‘size’ band they belong to, determined by their UK revenue.

5. The levy will first be collected in 2023/24 (Apr23-Mar24), with liable persons paying based on their size/UK revenue reported in periods of account ending in 2022/23.

Part 4: Other Taxes

Clause 67: Securitisation companies and qualifying transformer vehicles

Summary

1. This clause introduces a power enabling HM Treasury to make Stamp Duty and Stamp Duty Reserve Tax (SDRT) changes in relation to securitisation and insurance-linked securities (ILS) arrangements by secondary legislation. The clause will have effect from Royal Assent to this Bill.

Details of the clause

2. Subsection 1 provides that HM Treasury may make regulations to provide that no Stamp Duty or SDRT charge will arise in relation to:

   - Transfers of relevant securities issued or raised by a securitisation company or a qualifying transformer vehicle;
   - Transfers of relevant securities to or

by a securitisation company.

3. Subsection 2 defines "relevant securities" for the purposes of this section.
4. Subsections 3 and 4 provides examples of provisions which can be made under the regulations.
5. Subsections 5 and 6 specify that the regulations are made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
6. Subsection 7 provides further definitions for the purposes of this section.
7. Subsection 8 puts beyond doubt that "chargeable securities" for the purposes of this section includes securities which would otherwise cease to be "chargeable securities" because the power has been exercised to make their transfer "exempt from all stamp duties". This allows further amendments in relation to those

securities to be made under the power if required.

Background note

8. Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or Stamp Duty Reserve Tax (SDRT) on agreements to transfer where the transfer will take place electronically. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.
9. Securitisation is a widely used method of raising debt finance on the capital markets through the issue of asset-backed securities. It can also aid capital, liquidity and risk management. Typically, income-producing assets (for example loans) are used as collateral backing for the issue of

securities by a bankruptcy-remote special purpose company, the note-issuing company. As part of the process the assets are usually transferred directly or indirectly by the originator of the assets to the note-issuing company which uses the proceeds of the issue of securities to purchase the assets.

10. ILS are an alternative form of risk mitigation for insurance and reinsurance companies. They offer a means of transferring insurance risk to capital market investors. Arrangements will typically involve an insurer or reinsurer transferring specific risks to an insurance special purpose vehicle known as a qualifying transformer vehicle. The qualifying transformer vehicle will then issue notes to investors to raise sufficient capital to cover the transferred insurance risk.

11. This clause allows HM Treasury to

make regulations to provide that no Stamp Duty or SDRT charge will arise on certain transfers in relation to securitisation and insurance-linked securities arrangements.

12. In March 2021 the government published a consultation which considered the impact of Stamp Duty and SDRT on securitisation and insurance-linked securities arrangements. This clause will increase the flexibility of the government to make technical changes to allow UK securitisation and insurance-linked securities arrangements to operate more efficiently.

Clause 68: Interim operation of margin schemes for used cars etc: Northern Ireland

Summary

1. This clause introduces an interim scheme that permits second-hand motor dealers in Northern Ireland to sell certain motor vehicles sourced in Great Britain or Isle of Man (and removed to Northern Ireland) under the VAT second-hand margin schemes. This change will come into force on such day as the Treasury may appoint.

Details of the clause

2. Subsection 1 provides that subsection 2 applies to a supply of a used vehicle where:

    a. the vehicle was first registered for road use prior to the Implementation Period completion day (11pm 31 December 2020)

b. the vehicle was sourced in Great Britain or the Isle of Man,

c. the vehicle was moved to Northern Ireland, and

d. use of the margin scheme for the sale in Northern Ireland is prevented solely by legislation introduced following the Northern Ireland Protocol.

3. Subsection 2 makes provision to allow for VAT on the supply described in subsection 1 to be declared on the profit margin in accordance with the terms of the VAT second-hand margin schemes subject to regulations and directions as defined in subsections 3 and 4.

4. Subsection 3 provides the Treasury with the power to make regulations to end the interim scheme for vehicles moved to Northern Ireland after a specific date (the end date). The scheme remains available for vehicles moved prior to the end date

which are unsold on that date.

5. Subsection 4 provides that the Commissioners for HMRC may specify a date after which this interim scheme ceases to be available for vehicles removed prior to the end date.
6. Subsection 5 makes provision for the Treasury and the Commissioners for HMRC to set different end dates for different cases.
7. Subsection 6 provides that (in relation to any case) the date specified by the Commissioners for HMRC under subsection 4 cannot be before the date specified by the Treasury under subsection 3 for that same case.
8. Subsection 7 provides that a statutory instrument made under subsection 3 will be subject to the Negative procedure in the House of Commons.
9. Subsection 8 defines various terms used in

the Order.

10. Subsection 9 provides for the date the scheme comes into force to be introduced by a commencement order made by the Treasury.

11. Subsection 10 provides that different starting dates can be set for different cases and that the scheme can be retrospectively introduced from IP completion day.

12. Subsection 11 provides that the Treasury may make transitional, transitory and savings provisions if required.

Background note

13. This scheme is an interim measure to allow motor dealers operating in Northern Ireland to continue to sell vehicles which meet certain criteria under the second-hand margin schemes that were sourced in Great Britain or the Isle of Man. The Treasury will determine when the scheme

will come into force. The legislation provides that this scheme can be retrospectively applied from the end of the Implementation Period (transition period) (11pm on 31 December 2020). This will permit motor dealers to continue to use the margin schemes they operated prior to the end of the transition period without interruption.

14. A more permanent scheme will be introduced at which time this scheme will come to an end.

Clause 69: Margin schemes and removal or export of goods: VAT-related payments

Summary

1. This clause amends the Value Added Tax Act 1994 to provide that the Treasury may by order introduce legislation that entitles a person, on making a claim, to a VAT-related payment in relation to specified supplies. The VAT-related payment could be claimed on goods exported from Great Britain in circumstances where, if the goods had remained in Great Britain, the supply to them would have been subject to the VAT second-hand margin scheme. It provides for conditions to be introduced relating to eligibility and how the scheme would operate.

Details of the clause

2. This clause inserts new section 50B (Margin schemes and export or removal of

goods) into the Value Added Tax Act 1994.

3. New Section 50B makes provision for a VAT-related payment scheme in respect of the removal or export of second-hand goods from Great Britain and the Isle of Man.

4. New subsection 1 makes provision that the Treasury may by order provide that, on making a claim, a person is entitled to a VAT-related payment in relation to specified supplies.

5. New subsection 2 provides that the scheme applies to a person in business who:

   a. sourced goods in Great Britain or the Isle of Man for their business,

   b. moved the goods to Northern Ireland or exported them,

   c. at the time of removal or export intended to resell the goods through

their business,

d. would have been entitled to sell the goods in Great Britain under a second-hand margin scheme, had they not been removed or exported. Subject to the conditions set out in subsection 3.

6. New subsection 3 provides for assumed alterations to be used in testing whether the subsection 2(d) condition is met. These are that the:

   a. person would be a taxable person

   b. goods would be supplied to him under the same conditions as they were in fact supplied

   c. goods would have been resold in Great Britain under the margin scheme.

7. New subsection 4 provides that the VAT-related payment under the scheme will be equivalent to the VAT that would have been charged if the consideration paid for

the goods were a VAT inclusive amount.

8. New subsection 5 provides that the Treasury's order-making power under this section includes setting out circumstances where the payment is to be less than that determined under subsection 4.

9. New subsection 6 provides for other matters that an order may address and permits for an order to specify the scheme rules, including conditions and making of claims.

10. New subsections 7 and 8 provide for the scope of provisions under an order, including

- that provision can be made by the Commissioners for HMRC in a direction or notice,
- different provision can be made for different purposes and in relation to removal or export of goods to different places and

- for the making of consequential, etc. provisions including provision amending an enactment or subordinate legislation

11. New subsection 9 provides that the person carrying on the business referred to in new section 50B can be doing so in the UK or elsewhere.

Background note

12. An interim measure has been introduced by clause 68 to this Bill to allow second-hand motor dealers operating in Northern Ireland to continue to sell vehicles that were sourced in Great Britain or the Isle of Man and which would have met the conditions for the second-hand margin scheme before the end of the Implementation Period (transition period) (11pm 31 December 2020). The Treasury will determine when that scheme will come into force.

13. This measure provides for the Treasury to make an order to introduce a VAT-related payment scheme. As the second-hand margin scheme no longer applies to goods that have been removed to Northern Ireland from Great Britain or the Isle of Man, this arrangement will ensure that traders will remain in a comparable position to those that use the margin scheme in the rest of the UK. The measure also provides for the Treasury to include exports in the scheme.

Clause 70: Margin schemes and removal or export of goods: zero-rating

Summary

1. The Value Added Tax Act 1994 (VATA) makes provision for the VAT zero-rate for goods exported from Great Britain and for goods removed from Great Britain to Northern Ireland. This clause amends VATA and disapplies the zero-rate, if the supplier has opted to sell the goods under a second-hand margin scheme. These changes will come into force on such day or days as the Treasury may appoint.

Details of the clause

2. This clause amends VATA by disapplying zero-rating for exports of goods from Great Britain and for a supply of goods that involves the removal of goods from Great Britain to Northern Ireland that are sold under a second-hand margin scheme.

3. Subsection 2 introduces new subsection (6A) into section 30 VATA which provides that the zero-rate for exports does not apply if the supplier has opted to sell the goods under a second-hand margin scheme.
4. Subsection 3 introduces new subparagraph (1A) into paragraph 3 of Schedule 9ZB to VATA which provides that the zero-rate for a supply of goods involving a removal of goods from Great Britain to Northern Ireland does not apply if the supplier has opted to sell the goods under a second-hand margin scheme.
5. Subsections 4 and 5 provide that the changes in subsections 1 to 3 come into effect on a day or days specified by the Treasury in regulations.
6. Subsection 6 makes provision for the Treasury to make transitional, transitory or saving provision by regulations.

Background note

7. Currently removals from Great Britain to Northern Ireland and exports are zero-rated. Clause 68 to this Bill allows motor dealers operating in Northern Ireland to continue to sell certain vehicles that were sourced in Great Britain or the Isle of Man under the second-hand margin schemes.

8. In the longer term, the government plans to introduce a second-hand export refund scheme (clause 69) that will ensure that traders will remain in a comparable position to those that use the margin scheme in the rest of the UK

9. In both those circumstances, continued application of the zero-rate for the export of motor vehicles would put businesses in a more advantageous position than they have been to date. The removal of the zero-rate in these circumstances will regularise the situation and put them in the same position as they were prior to the

end of the
Implementation Period (transition period) (11pm 31 December 2020). The Treasury will determine when this provision will come into effect.

10. Other zero-rates available for exports are unaffected.

Clause 71: Relief on the importation of dental prostheses

Summary

1. This clause amends the Value Added Tax (Imported Goods) Relief Order 1984 (S.I. 1984/746) to provide that imports of dental prostheses by or on behalf of a registered dentist or other registered dental care professional are relieved of VAT.

Details of the clause

2. Subsection 1 introduces new Item 11 into Group 5 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984.
3. New Item 11 provides relief for dental prostheses imported by or on behalf of a registered dentist or registered dental care professional.
4. Subsection 2 provides that the amendment made by the clause:
   a. has effect in relation to imports made

on or after IP completion day (11pm 31 December 2020), and

b. is treated as made under section 37(1) of the Value Added Tax Act 1994 and may be amended or revoked under that power.

Background note

5. This clause has been introduced to ensure equal VAT treatment of dental prostheses supplied within or imported into the UK, including between Great Britain (GB) and Northern Ireland (NI).

6. The terms of the Northern Ireland Protocol mean that European Union VAT rules continue to apply in NI in relation to goods and movements of goods between GB and NI are treated as imports.

7. Supplies of dental prostheses by registered dentists and other registered dental care professionals are exempt from VAT. The exemption does not extend to imports,

including the movement of goods between GB and NI, meaning that apart from this measure dental prostheses supplied between GB and NI would be subject to VAT.

8. This clause effectively extends the VAT exemption for supplies of dental prostheses by registered dentists and other registered dental care professionals to imports of dental prostheses by or on behalf of those persons from IP completion day.

Clause 72: Identifying where the risk is situated

Summary

1. This clause relocates the criteria for determining a location of risk for Insurance Premium Tax (IPT) to IPT legislation. The criteria were previously located in regulations made under the Financial Services and Markets Act 2000. This clause relocates criteria to the same effect into the IPT legislation to ensure clarity and continuity of treatment. It does not substantively amend the location of risk criteria.

Details of the clause

2. Subsection (1) specifies that this clause will amend Schedule 7A to the Finance Act (FA) 1994 (insurance premium tax: contracts that are not taxable), paragraph 8 (Contracts relating to risks outside the

United Kingdom).

3. Subsection (2) amends paragraph 8(2) to provide that the question of whether a risk is situated in the United Kingdom is to be determined in accordance with the new table in paragraph 8(3) rather than the previous reference to regulations made under the Financial Services and Markets Act 2000.

4. Subsection (3) introduces paragraph 8(3) and (4) which contain the criteria used to determine the location of risk for IPT. The criteria are substantively the same as those referred to in the regulations made under the Financial Services and Markets Act 2000. Sub-paragraph (3) contains a table which sets out the criteria. Sub-paragraph (4) defines the term “establishment” for the purpose of the last entry in the table in paragraph 8(3).

5. Subsection (4) specifies that this measure has effect in relation to contracts of

insurance entered on or after the day on which the Act is passed.

Background note

6. This clause is intended to ensure clarity and continuity by relocating the criteria for determining the location of risk for IPT into IPT legislation. This will ensure that risks located outside the United Kingdom remain exempt from IPT.

7. The regulations used to establish the location of an insurance risk for IPT purposes were replaced in 2009 and the new regulations did not include an equivalent provision. Instead, reliance was placed on directly effective European Union legislation.

8. In order to ensure clarity for the insurance industry, this measure relocates the criteria into primary legislation.

Clause 73: Transitioned trade remedies: decisions by Secretary of State

Summary

1. This clause relates to transitioned trade remedies measures. It empowers the Secretary of State to notify the Trade Remedies Authority that the Secretary of State will decide the outcome of a particular transition review or reconsideration of a transition review. Where the power is exercised, the Secretary of State will be able to take a decision that need not be based on a prior recommendation or decision of the Trade Remedies Authority. The clause also includes a power to make regulations relating to the Secretary of State's decision.

Details of the clause

2. Subsection (1) provides that subsections (2) to (10) apply where the Trade

Remedies Authority has initiated, but not yet concluded, a relevant transition review or reconsideration of a transition review.

3. Subsection (2) provides that the Secretary of State may notify the Trade Remedies Authority that the Secretary of State is to decide the outcome of a particular transition review or reconsideration. Subsections 2(a) and (b) set out the nature of the decision that the Secretary of State will take where the power is exercised.

4. Subsection (3) (a) provides that functions of the Trade Remedies Authority that would otherwise be exercisable in relation to matters under review or reconsideration will cease once the power under subsection (2) is exercised. Subsection 3(b) provides that the Secretary of State's decision need not be based on a prior recommendation or decision of the Trade Remedies Authority. Subsection 3(c) provides that provision made by certain

regulations have effect subject to provision made by or under this section.

5. Subsection (4) requires the Secretary of State to publish a notice giving effect to a decision taken under subsection (2).

6. Subsection (5) provides that the Secretary of State may make regulations for the purposes of subsection (2).

7. Subsection (6) illustrates the type of provision that regulations under subsection (5) may make. The list is not exhaustive.

8. Subsection (7) sets out when a relevant reconsideration or review is initiated and when it is concluded. These dates are the earliest and latest points at which the Secretary of State can exercise the power under subsection (2).

9. Subsection (8) defines “original decision”.

10. Subsection (9) provides that Section 32(7) and (8) of the Taxation (Cross-border

Trade) Act 2018 apply to regulations made under this section as if they were regulations made under Part 1 of that Act.

11. Subsection (10) sets out the procedure applicable to regulations made under subsection (5).

12. Subsection (11) amends regulation 14 of The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910). The amendment requires the Trade Remedies Authority to notify the Secretary of State of its intention to uphold certain categories of original decision at least 30 days before taking the steps specified under regulation 14(5).

13. Subsection (12) gives definitions.

14. Subsection (13) sets out when this section enters into force.

Background note

15. The government transitioned 43 trade remedies measures that had been

previously implemented by the EU. These transitioned measures were maintained in force after 31 December 2020 by the UK as part of its independent trade policy.

16. The Trade Remedies Authority is responsible for conducting transition reviews and, where appropriate, reconsiderations relating to the transitioned trade remedies measures. Transition reviews assess whether the maintained measure is appropriate for the UK market and whether it should be maintained, changed, or terminated. The Trade Remedies Authority's functions include providing a recommendation to the Secretary of State on whether a measure should be revoked or varied, or in certain cases maintained or replaced. The Secretary of State is required to take a decision following receipt of such a recommendation that involves either accepting or rejecting the recommendation in its entirety.

17. This clause allows the Secretary of State to ‘call in’ certain transition reviews and reconsiderations of transition reviews that are being conducted (but have not yet been completed) by the Trade Remedies Authority. After calling a particular case in, the Secretary of State will be responsible for determining the outcome of the review or reconsideration. The Secretary of State’s decision need not be based on a prior decision or recommendation of the Trade Remedies Authority.

18. This measure is intended to ensure that the Secretary of State can act effectively in the interest of UK industry when considering the impact on the UK economy of dumped or subsidised imports, or of unforeseen surges in imports, and can respond to these events by applying appropriate measures to protect UK industry.

Clause 74: Reference documents: amount of import duty

Summary

1. This clause inserts a new section 32A into the Taxation (Cross-border Trade) Act 2018 (TCTA) which provides that where regulations made under sections 8 to 19 make provision by reference to a document – for example, a document detailing the UK's tariff schedule or listing goods subject to tariff suspensions - that these documents can be modified or replaced by notice. However, the clause is clear that a modification or replacement by notice will not be possible if the outcome of these changes alters the amount of import duty applicable to any goods. For these instances, regulations will continue to be required and current levels of parliamentary oversight maintained.

Details of the clause

2. This clause confers a power to make provision in relation to reference documents referred to in regulations made under sections 8 to 19 of the TCTA.

3. Subsection 2 confers powers on the "appropriate authority" – normally, HM Treasury or the Department for International Trade – to use a public notice to modify or publish a new version of the reference document that is referred to in regulations. If, for example, the regulations refer to a reference document "version 1.5, dated 19th July 2021", a notice can update this, so that the reference document is replaced by another document, and the reference in regulations is treated as if it said, "version 1.6, dated 25th October 2021".

4. Subsection 3 provides that these powers are limited to changes that have no impact on the amount of import duty applicable to any goods. Changes to the amount of import

duty applicable to any goods will continue to be made by regulations under sections 8 to 19 of the TCTA.

5. Subsections 4, 5 and 6 are technical provisions around the process for making a public notice under these powers, including allowing the "appropriate authority" to publish a notice in a manner it considers appropriate, confirming that section 32(10) of the TCTA applies to notices made under this section, and defining who an "appropriate authority" is, and what "modified" means for this section.

Background note

6. The government will legislate to amend the Taxation (Cross-border Trade) Act 2018 so that technical updates to tariff legislation, which do not alter the rate of an import duty, will made by public notice instead of regulations.

7. This measure will ensure routine technical

changes to the UK's tariff schedule will be implemented more quickly, which may benefit stakeholders who refer to tariff legislation for information.

Clause 75 and Schedule 10: Restriction of use of rebated diesel and biofuels

Summary

1. This clause and Schedule make technical amendments to the Hydrocarbon Oil Duties Act 1979 (HODA) to adjust restrictions on entitlement to use rebated diesel and rebated biofuels to a number of qualifying uses. The changes will take effect from 1 April 2022.

Details of the clause

2. Subsection (1) introduces Schedule 10 which amends HODA to restrict the use of rebated diesel ('red diesel') and biofuels to categories of machines specified in HODA and makes related provision.

3. Subsection (2) provides that Part 1 of the Schedule will come into force on 1 April 2022.

4. Subsection (3) allows the Treasury to prescribe in regulations consequential,

supplementary, transitional, transitory or saving provisions in connection with the coming into force of the Schedule.

5. Subsection (4) provides that these regulations may amend, repeal or revoke provisions made by or under an Act that is passed before this Act; and make different provisions for different purposes or areas.

6. Subsection (5) provides that these regulations are to be made by statutory instrument.

7. Subsection (6) provides that these regulations will be subject to the negative resolution procedure of the House of Commons.

8. Subsection (7) amends paragraph 21 of Schedule 11 to Finance Act 2020 to provide that the power to make amendments consequential to that Schedule also includes the power to amend the Schedule being introduced by this clause.

Details of the Schedule

Part 1: Amendments to HODA 1979

9. Paragraph 1 provides that all paragraphs in Part 1 of the Schedule amend HODA. All references to legislation in the following paragraphs are to sections and Schedules in that Act unless specifically stated.

10. Paragraph 2 amends section 12 to replace subsections (2)(a) and (b) to provide that a rebate is not allowed on fuel used or taken into the fuel system of a vehicle, vessel, machine or appliance that is not an excepted machine as set out in Schedule 1A, unless an amount equal to the rebate has been paid to Her Majesty's Revenue and Customs in accordance with regulations. It also replaces section 12(2A) to provide that subsection (2) does not apply to fuel used or taken in as mentioned in section 14E, which relates to

private pleasure craft (PPC).

11. Paragraph 3 amends section 13 in consequence of the amendments to section 12 by, or as a result of, paragraphs 2 and 10 of the Schedule.

12. Paragraph 4 amends section 14E as it extends to Northern Ireland (NI), inserting a new subsection (1A) which permits the use of rebated fuel in a PPC in NI where the user has made a declaration of propulsion use in accordance with subsection (3) of that section, for rebated fuel to be taken into the PPC in NI before the 1 October 2021 or in another part of the United Kingdom (UK) at any time.

13. Paragraph 5 amends section 14F as it extends to England and Wales and to Scotland, inserting a new subsection (6) so that rebated diesel and biofuels will be liable for forfeiture if used for propulsion of a PPC in contravention of section 14E(2).

14. Paragraph 6 omits section 24(3A)

concerning the control of use of duty-free and rebated oil, which is no longer required because of other changes made by the Schedule.

15. Paragraph 7 introduces a new section 24A(9) to disapply penalties for the use of marked oil where: its use is lawful under section 12; on and after 1 April 2022, it is taken into a vehicle, vessel, machine or appliance that is not an excepted machine, in a place outside the UK and in line with the law of that place; or it is taken into a PPC as set out in section 14E. It also includes a minor correction to section 24A(1).

16. Paragraph 8 amends an incorrect reference to a Schedule number in section 27. It also substitutes the word “vehicle” for “machine” in sub-paragraphs (a) to (c) of that section to allow for the Treasury to make regulations to amend Schedule 1A adding or removing categories of excepted machines.

17. Paragraph 9 amends some of the categories of excepted machines in Schedule 1A. The changes include: amending the definition of agricultural vehicles and the circumstances in which they may use rebated diesel or biofuels; slightly widening the circumstances in which special vehicles, machines or appliances can use rebated diesel or biofuels; omitting references to NI from the provision relating to vessels so that PPC in Great Britain will not be excepted machines; slightly widening the circumstances in which other machines or appliances can use rebated diesel or biofuels; ensuring that other machines or appliances used for heating of premises used for commercial purposes can continue to use kerosene for fuel; and amending the definition of a travelling fair and circus to require that it can be dismantled at least once a year and can travel from place to place.

Part 2: Amendments to FA 2021

18. Paragraph 10 omits various provisions set out in Schedule 21 to the Finance Act 2021 to amend sections 12, 13, 24, 14E and 14F, as these provisions are no longer required as a result of the amendments made by this Schedule.

Background note

19. This measure introduces technical amendments to the changes being introduced to restrict the entitlement to use rebated diesel and biofuels from 1 April 2022, which were legislated for in Finance Act 2021. The amendments will address the following:

- altering the circumstances in which the use of rebated diesel and rebated biofuels will be permitted from 1 April 2022, including provisions aimed at transition to the new rules;
- amending definitions relating to certain vehicles, machines and

appliances, and to travelling fairs and circuses which are being allowed to continue to use rebated diesel and biofuels after 1 April 2022.

20. These changes contribute towards the government's objectives to reduce carbon emissions and improve air quality in the UK. These tax changes will ensure that most users of rebated diesel use fuel taxed at the full rate for diesel from April 2022, like motorists, which more fairly reflects the harmful impact of the emissions they produce. Restricting use of rebated diesel and biofuels will also help to ensure that the tax system incentivises users of polluting fuels like diesel to improve the energy efficiency of their vehicles and machinery, invest in cleaner alternatives, or just use less fuel.

21. Motor and heating fuels are liable to fuel duty, with only fuel taxed at the full rate of fuel duty allowed to be used in road vehicles. Some oils and fuels are

taxed at a lower (rebated) rate as they are not for use in road vehicles, such as gas oil (diesel). These rebated fuels are usually chemically marked and dyed. This is to enable law enforcement agencies to identify rebated fuel and detect when the wrong sort of fuel is being used, providing a deterrent to fuel fraud. Due to the colour of the dye used, rebated gas oil in the UK is known as 'red diesel'. Gas oil intended for use in diesel engine road vehicles is known as 'white diesel' (has no marker or dye) and has a fuel duty rate of 57.95 pence per litre (ppl). Rebated diesel has a duty rate of 11.14ppl.

22. At Budget 2020 the government announced its intention to restrict the entitlement to use rebated diesel and biofuels from 1 April 2022. It published a consultation in summer 2020, which set out proposals to remove entitlement to use rebated diesel except for a limited number of qualifying uses: for vehicles

and machinery used in agriculture, forestry, horticulture and fish farming; as fuel to propel passenger, freight or maintenance vehicles designed to run on rail tracks; and for non-commercial heating.

23. As a result of the consultation, Spring Budget 2021 announced that further uses of rebated diesel and biofuels would be allowed, including: generating electricity in premises being used for non-commercial purposes; as fuel for all marine craft operating in the UK (except PPC in Northern Ireland); for maintaining community amateur sports clubs and all golf courses and ranges; and for powering the machinery (including caravans) of travelling fairs and circuses. The government's response to the consultation was published alongside Budget 2021.

24. Legislation to implement the changes from 1 April 2022 was included in Finance Act 2021. The legislation in this clause

and Schedule amends the legislation introduced by Finance Act 2021 and make additional changes to ensure that the government's policy on rebated diesel use will work as intended from 1 April 2022.

Private pleasure craft

25. Since 1 October 2021 PPC in NI have not been allowed to use rebated diesel to propel their craft, but their supplier can claim repayment of the difference in duty between the full and rebated rate of duty on 40% of the fuel supplied, to allow for non-propulsion uses on board. Further information about these changes can be found in Excise Notice 554.

Clause 76: Rates of tobacco products duty

Summary

1. This clause provides for changes to the rates of excise duty on tobacco products (cigarettes; cigars; hand-rolling tobacco; other smoking tobacco and chewing tobacco; and tobacco for heating) and to the Minimum Excise Tax (MET) on cigarettes. It also provides for changes to the simplified calculation contained within the Travellers' Allowances Order (TAO) 1994, S.I. 1994/955. These changes are to have effect from 6pm on 27 October 2021.

Details of the clause

2. Subsection (1) amends the table contained in Schedule 1 to the Tobacco Products Duty Act 1979. The duty on tobacco products is changed as follows:

    - Cigarettes – The duty rate on

cigarettes is the higher of either the usual application of duty or the MET. The usual application of duty consists of two components, which are added together. The first component is a specific duty element, which is increased from £244.78 per thousand cigarettes to £262.90 per thousand cigarettes. The second component is a percentage of the retail price, which remains unchanged at 16.5%. The MET for cigarettes will be increased from £320.90 to £347.86 per 1000 cigarettes

- Cigars – The duty rate on cigars is increased from £305.32 to £327.92 per kilogram;
- Hand rolling tobacco – The duty rate on hand-rolling tobacco is increased from £271.40 to £302.34 per kilogram;

- Other smoking tobacco and chewing tobacco – The duty rate on other smoking tobacco and chewing tobacco is increased from £134.24 to £144.17 per kilogram;
- Tobacco for heating – The duty rate on tobacco for heating is increased from £251.60 to £270.22 per kilogram.

3. Subsection (2) contains consequential amendments that make commensurate changes to the simplified calculation of duty specified in the TAO.

Background note

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The government is committed maintaining high tobacco rates to support public health objectives and the public finances.

Research has consistently shown that the price of tobacco products negatively affects demand.

5. This clause increases excise duty on all tobacco products by the duty escalator (RPI + 2%). In addition, the excise duty rate for hand-rolling tobacco is increased by an additional 4% (RPI+6%). The clause also increases the MET on cigarettes by an additional 1% (RPI+3%).
6. These increases, together with consequential VAT, will on average increase the price of a packet of cigarettes by 54p, a 30g pack of hand-rolling tobacco by £1.11, 10g of cigars by 27p, a 30g pack of pipe tobacco by 36p, and 30g of tobacco for heating by 13p.
7. The change to the MET on cigarettes supports public health objectives and tackles the very cheapest cigarettes. A MET sets a minimum level of excise duty for any packet of cigarettes. This means

that the total excise duty on a packet of cigarettes is higher of either the usual application of duty or the MET.

8. The TAO was amended by Regulations 2-8 of the Travellers' Allowances and Miscellaneous Provisions (EU Exit) Regulations 2020/1412 which came into force on IP completion day. It introduced a regime of simplified calculation of duty on excise goods brought into Great Britain in the personal luggage of travellers to facilitate declarations where the amount brought exceeds the allowances. As a result of the increases to excise duty on tobacco products, the rates in Schedule 2 of the TAO, applied for the purposes of the simplified calculation, will be amended.

Clause 77: Rates for light passenger or light goods vehicles, motorcycles etc

Summary

1. This clause provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2022.

Details of the clause

2. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change rates of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £15. It also amends paragraph 1(2A) of Schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an engine capacity not exceeding 1,549cc to increase the duty rate by £10.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to substitute new VED rates for light passenger vehicles first registered between 1 March 2001 and 31 March 2017. The reduced rate applies to alternatively fueled light passenger vehicles, including those powered by bioethanol and liquid petroleum gas and hybrids.

4. Subsection (4) amends paragraph 1B of Schedule 1 to VERA in the sentence immediately following the table, to substitute for paragraphs (a) and (b), "(a) in column (3), in the last rows, "350" were substituted for "605" and "620", and (b) in column (4), in the last two rows, "360" were substituted for "615" and "630, applying to light passenger vehicles first registered between 1 March 2001 and 31 March 2017 with CO_2 emissions between 225g/km and 255g/km and CO_2 emissions above 255g/km respectively.

5. Subsection (5) amends paragraphs 1GC of Schedule 1 to VERA to change rates on the first vehicle licence for light passenger vehicles (other than higher rate diesel vehicles) first registered on or after 1 April 2017.
6. Subsection (6) amends paragraph 1GC of Schedule 1 to VERA to change rates on the first licence for higher rate diesel light passenger vehicles first registered on or after 1 April 2017.
7. Subsection (7) amends paragraph 1GD(1) of Schedule 1 to VERA to change the rate of duty applicable to light passenger vehicles first registered on or after 1 April 2017 from the second vehicle licence onwards. The reduced rate of duty is increased by £10 to £155 per annum. The standard rate of duty is increased by £10 to £165 per annum.
8. Subsection (8) amends paragraph 1GE(2) of Schedule 1 to VERA to change the rates

for light passenger vehicles with a list price exceeding £40,000 registered on or after 1 April 2017. In paragraph (a) the rate is increased by £30 to £510 and in paragraph (b) the rate is increased by £30 to £520.

9. Subsection (9) amends paragraph 1(J) of Schedule 1 to VERA to change rates for some light goods vehicles first registered on or after March 2001 by increasing the duty rate from £275 to £290. The rate of duty for light goods vehicles first increased between 1 January 2009 and 31 December 2010 is unchanged at £140.

10. Subsection (10) amends paragraph 2(1) of Schedule 1 to VERA to change rates for motorcycles weighing no more than 450 kilograms unladen. The range of duty increased by £1 to £22 for motorcycles with an engine size not more than 150cc; by £2 to £47 for motorcycles with an engine size of over 150cc but not more

than 400cc; by £4 to £73 for motorcycles with an engine size of over 400cc but not more than 600cc; and by £5 to £101 for motorcycles with an engine size of over 600cc, motor tricycles with an engine size over 150cc and trade licences for motorcycles.

Background note

11. The rate of vehicle excise duty (VED) is chargeable on vehicles dependent on various factors including the vehicle type, engine size, date of first registration, fuel type and CO_2 emissions data. In general:

a. cars and vans first registered prior to March 2001, and all motorcycles, pay VED by reference to the engine size.

b. vans registered on or after 1 March 2001 pay a flat rate of VED.

c. cars first registered between 1 March 2001 and 31 March 2017 pay VED according to CO_2 emissions and fuel

type.

d. cars registered on or after 1 April 2017 pay VED based on CO_2 emissions and fuel type when first licensed, followed by a standard rate for subsequent licences. Vehicles with a list price exceeding £40,000 pay the expensive car supplement.

Clause 78: Vehicle excise duty: exemption for cabotage operations

Summary

1. This clause provides for temporary changes to Vehicle Excise Duty (VED) legislation relating to heavy goods vehicles (HGVs) to allow unlimited cabotage movements of HGVs within Great Britain for up to 14 days after arriving in the United Kingdom on a laden international journey, without transport operators needing to pay VED. It has effect for cabotage journeys on or after 28 October 2021. The temporary changes are to last until the end of 30 April 2022.

Details of the clause

2. This clause modifies provisions of the Motor Vehicles (International Circulation) Order 1975 ("the 1975 Order") to implement an exemption to VED for

HGVs being used for or in connection with a cabotage operation in Great Britain, so long as: the cabotage operation consists of national carriage for hire or reward by a haulier; no more than 14 days has elapsed beginning with the day on which the vehicle arrived in the United Kingdom in the course of a laden journey; and the vehicle is being used at any time during the period ending with 30 April 2022.

Background note

3. As announced at the Autumn Budget 2021, the government will temporarily relax cabotage rules for international HGV journeys within Great Britain to provide greater resilience for supply chains, in the face of acute driver shortages. The Government will allow, until 30 April 2022, unlimited cabotage movements of HGVs within Great Britain for a period of 14 days after arriving in the United Kingdom on a laden international journey.

4. This clause will amend the Motor Vehicles (International Circulation) Order 1975 to exempt vehicles which are being used for these cabotage operations from paying VED.

5. This clause is associated with a statutory instrument, the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) (Amendment) Regulations 2021 ("the Operator Licensing Regulations 2021") which is being laid separately. The "Operator Licensing Regulations 2021" will provide for a temporary exemption from the requirement for goods vehicles to have an Operator's Licence under the Goods Vehicles (Licensing of Operators) Act 1995.

6. Cabotage (in this context) is the transport of goods between two places in the same country by a transport operator established in another country for the purposes of hire and reward. It is

restricted both in the UK and abroad.

7. The temporary additional cabotage rights are being implemented in order to provide more resilience in supply chains in Great Britain, due to capacity issues connected with a shortage of HGV drivers.

8. The temporary changes are to last until the end of 30 April 2022 and permit foreign goods vehicles which entered Great Britain on international carriage to operate cabotage transports for no longer than within 14 days of entry into the United Kingdom. There is no restriction on the number of cabotage transports permitted during a 14-day period. The cabotage transports must operate within Great Britain. Cabotage journeys in Northern Ireland are not relaxed under these temporary changes.

9. The permissions are not restricted by country. The temporary permission of additional cabotage rights is not part of a

wider trade agreement or other mechanism that avoids the obligation under World Trade Organisation rules to offer the rights to all nations without favour.

10. In practice the vast majority of foreign-operated international transports into the UK are done so by operators established within the EU. Operators from other countries in the EEA and Switzerland have good access across the EU to the UK for international transport, but the restrictions by some EU Member States in practice restrict the volume of other non-EU operators reaching the UK.

Clause 79: HGV road user levy: extension of suspension

Summary

1. This clause suspends the charging and collection of the heavy goods vehicle (HGV) Road User Levy for a further 12 months from 1 August 2022 to 31 July 2023.

Details of the clause

2. This clause amends section 88(3) of the Finance Act 2020 so as to define the exempt period as 36 months beginning with 1 August 2020 instead of 24 months.

Background note

3. The HGV Road User levy is an annual charge for UK hauliers paid alongside their vehicle excise duty, and a daily,

weekly or monthly charge for non-UK based hauliers.

4. The levy was suspended under the Finance Act 2020 for an initial period of 12 months to support the haulage sector and pandemic recovery efforts, and was suspended for further 12 months under the Finance Act 2021 for the same reason.
5. The government has decided to suspend the levy for a further 12 months to support the haulage sector and pandemic recovery efforts.

Clause 80: Amounts of gross gaming yield charged to gaming duty

Summary

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2022.

Details of the clause

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

3. Subsection 2 provides for this change to have effect for accounting periods beginning on or after 1 April 2022.

Background note

4. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the

playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of GGY (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £ 2,686,000 of GGY, then 20 per cent for the next £1,852,000 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October.

5. The change made by this clause increases the GGY bands but makes no changes to the rates. This ensures that casino operators' profits are not subject to the higher gaming duty bands simply as a result of inflation. There is therefore no duty increase in real terms. The basis of revalorisation of the bands is a forecast Retail Price Index of 5.4 per cent.

Clause 81: Excise duty: penalties

Summary

1. This clause enables the application of the excise wrongdoing penalty regime as provided for in Schedule 41 to the Finance Act 2008 to the new free zone customs special procedure. This will have the effect of covering breaches relating to excise goods in the new free zone customs special procedure. It also amends paragraph 1 of Schedule 41 to the Finance Act 2008 to recognize a procedural change in the customs regime, with the introduction of the authorised use procedure. This replaces the previous end use procedure that the wrongdoing penalty covered. These changes will come into force on the 3rd November 2021.

Details of the clause

2. Paragraph 1 inserts the words 'authorised use' into the table for failure to comply

with an obligation for these types of movements by a registered consignor.

3. Paragraph 4 (2) amends the section to include references to excise duty points created or deemed to be created under section 45 of the Taxation (Cross-border Trade) Act 2018.

Background note

4. On 2nd August 2019 the International Trade Secretary announced the creation of new freeports, to boost international trade and economic growth after the UK's departure from the EU. This was a government manifesto commitment.

5. On 10th February a public consultation on freeport policy was launched, which closed on the 13th of July. A response to the consultation was published on this included a high-level statement confirming excise goods being permitted to enter the free zone procedure within the freeport.

6. Currently, there is no legal provision to apply the excise wrongdoing penalty regime to the new free zone customs procedure and authorised use procedure that has been introduced or ready to be introduced in the United Kingdom. These provisions will reflect the introduction of these customs procedures and provide coherence and fairness across customs suspensive arrangements through consistent application of the excise wrongdoing penalty regime when dealing with irregularities and wrongdoing regarding excise goods.
7. This provision will protect revenue by dissuading and tackling serious non-compliance.
8. Autumn Budget 2021 announced the application of the excise wrongdoing penalty regime within the new free zone special customs special procedure and authorised use procedure.
9. These changes will come into force on 3rd

November 2021.

Clause 82: Rates of landfill tax

Summary

1. This clause amends section 42(1)(a) and 42(2) of the Finance Act 1996 ("FA96") to increase both the standard and lower rates of Landfill tax in line with inflation (rounded to the nearest 5 pence). The increased rates apply to any disposal of relevant materials made (or treated as made) at a landfill site in England or Northern Ireland on or after 1 April 2022. The increased standard rate also applies from the same date to any disposal of relevant materials made (or treated as made) at an unauthorized waste site in England or Northern Ireland. The standard rate will increase to £98.60 per tonne and the lower rate to £3.15 per tonne.

Details of the clause

2. Subsection (2) substitute "£96.70" to "£98.60" in sections 42(1)(a) of FA96.

3. Subsection (3) substitutes "£96.70" to "£98.60" and "£3.10" to "£3.15" in sections 42(2) of FA96.

4. Subsection (4) provides the commencement date for the change to the standard and lower rate of tax.

Background note

5. Landfill Tax was introduced on 1 October 1996 to encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste material through increasing the cost of waste disposal at landfills.

6. There is a lower rate of tax, which applies to less polluting qualifying materials listed in two Treasury Orders, and a standard rate which applies to all other taxable

material. From 1 April 2018 the scope of Landfill tax was extended to include the disposal of relevant materials made to unauthorized waste sites. Previously, the tax applied across the UK but from 1 April 2015 it was devolved in Scotland and from 1 April 2018 in Wales.

7. Legislation contained in Finance Act 2018 meant that, from 1 April 2018, the scope of Landfill Tax was extended to sites operating without the appropriate environmental disposal permit. Operators of such sites became liable for Landfill Tax at the standard rate for all disposals.

Clause 83 and Schedule 11: Plastic packaging tax

Summary

1. This clause and Schedule introduce amendments to Part 2 of the Finance Act 2021 (FA 2021), the primary legislation for Plastic Packaging Tax, which is being introduced from 1 April 2022, to ensure that the tax works as intended and meets announced policy objectives.

Details of the clause

2. Section 83 introduces Schedule 11 which makes miscellaneous amendments to FA 2021.

Details of the Schedule

3. Paragraph 1 sets out that amendments in this Schedule amend Part 2 of FA 2021.

4. Paragraph 2 amends section 43 of FA 2021 so that a person who does not need to

register for Plastic Packaging Tax is not treated as acting in the course of a business for the tax. This ensures that businesses below the de minimis threshold, and those within the amendment at paragraph [4] below, are not liable for the tax.

5. Paragraph 3 amends section 50 of FA 2021 to allow the Commissioners to make regulations by made affirmative procedure setting out when a chargeable plastic packaging component is imported into the UK for the purposes of Plastic Packaging Tax. This change ensures that the tax can be amended if changes to other legislation, for example regarding customs or Freeports, require a consequential amendment to Plastic Packaging Tax legislation to ensure it continues to work effectively.

6. Paragraph 4 amends section 55 of FA 2021 to provide relief from Plastic Packaging

Tax to any person enjoying certain immunities and privileges, such as members of visiting armed forces, by making them exempt from registering for the tax. This paragraph also allows the Commissioners to make regulations about the administration of this exemption.

7. Paragraph 5 amends section 63 of FA 2021 to provide for records to be kept under secondary legislation for up to 6 years from the day after the end of an accounting period or, where the records do not relate to an accounting period, up to 6 years from the creation of the records.

8. Paragraph 6 subparagraph 1 sets out that paragraph 6 subparagraphs 2 to 4 amend section 71 of FA 2021.

9. Paragraph 6 subparagraph 2 inserts the words "treated as" into subsection (1) of section 71 of FA 2021 so that the legislation applies when a business is treated as part of a group.

10. Paragraph 6 subparagraph 3 provides for the representative member of a group to take on the Plastic Packaging Tax obligations and entitlements of group members while they are treated as part of the Plastic Packaging Tax group.

11. Paragraph 6 subparagraph 4 gives the Commissioners the power to make secondary legislation on the obligations or entitlements under Plastic Packaging Tax that transfer to the members of the group during group treatment under subparagraph 3.

12. Paragraph 6 subparagraph 5 amends Schedule 13 of FA 2021 so that the Commissioners must notify the applicant or representative member of the date that group treatment and modifications will take effect from. This change removes references to the "specified time" and provides flexibility for group treatment and modifications to take effect from the

date of the application.

13. Paragraph 7 amends Schedule 9 of FA 2021 to substitutes the term "unincorporated association" for "unincorporated body (other than a partnership)" and "the association" for "the body". These changes ensure that the language used is consistent throughout the Plastic Packaging Tax legislation.

Background note

14. Plastic Packaging Tax is being introduced from 1 April 2022 to provide a clear economic incentive for businesses to use recycled plastic in the manufacture of plastic packaging, which will create greater demand for this material. In turn this will stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

15. The amendments to FA 2021

introduced by this legislation ensure that the tax meets previously announced policy objectives and works as intended.

Part 5: Miscellaneous and Final

Clause 84: Winding-up petitions by an officer of Revenue and Customs

Summary

1. This clause introduces a new power in the Finance Act 2021-22 which allows Her Majesty's Revenue and Customs (HMRC) to present a winding-up petition to the court for companies and partnerships operating against the public interest. The measure applies to companies and partnerships involved in the promotion, management and facilitation of tax avoidance.

Details of the clause

2. Subsection 1 introduces the clause by defining the circumstances in which an officer of HMRC can present a winding-up petition to the court.

3. Subsection 2 provides that an officer of HMRC may present a petition for the winding up of a relevant body.

4. Subsection 3 provides that the court may wind up the body if it is just and equitable to do so.
5. Subsection 4 defines the terms 'relevant body', 'court' and 'indirect tax' for the purposes of this measure.
6. Subsection 5 provides that where a petition is presented to wind up a partnership, that partnership is to be treated as an unregistered company for the purposes of the Insolvency Act 1986 and Insolvency (Northern Ireland) Order 1989.
7. Subsection 6 provides that petitions under this section are governed by the same practice and procedure rules as petitions under s124A Insolvency Act 1986 and Article 104A of the Insolvency (Northern Ireland) Order 1989. For example, the Insolvency (England and Wales) Rules 2016/1024, the Insolvency (Scotland) (Receivership and Winding up) Rules 2018/347, the Insolvency Rules (Northern

Ireland) 1991/364, the Insolvency Proceedings (Fees) Order 2016/692 and the Insolvency (Fees) Order (Northern Ireland) 2006/54.

Background note

8. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

9. The government launched a 10-week consultation on 23 March 2021, 'Clamping Down on Promoters of Tax Avoidance'. The consultation included proposals for a new power for HMRC to present a winding-up petition to the court for companies and partnerships involved in tax avoidance and operating against the public interest. The consultation closed on

1 June 2021. This measure is designed to disrupt the activities of those companies and partnerships by removing them from the market and reducing the harm they cause to taxpayers and the wider economy.

10. The clause will come into effect on the date of Royal Assent of the Finance Bill.

Clause 85: Publication by HMRC of information about tax avoidance schemes

Summary

1. This clause introduces a new power in the Finance (No. 2) Bill which allows HMRC to publish information about tax avoidance schemes, persons suspected to be promoters of those schemes, those connected to them, and other persons involved in making the scheme available, to better inform taxpayers of the risks of relevant schemes, so that they can identify and steer clear of the schemes or exit them.

Details of the clause

2. Subsection 1 provides that an authorised officer of Her Majesty's Revenue and Customs can publish information about relevant proposals or arrangements for the purposes of informing taxpayers

about risks associated with, or concerns the officer has about, the proposal or arrangements, or protecting the public revenue.

3. Subsection 2 provides that the information authorised officers may publish about a scheme includes the identity of persons who are or have been, or they suspect are or have been, promoters of the scheme, connected persons or members of a promotion structure with a role in relation to making the proposal or arrangements available for implementation, or persons with any other role in relation to making the proposal or arrangements available.
4. Subsection 3 provides that the only persons who may be identified when publishing information are persons who are specified in subsection 2. No person will be identified where there are reasonable grounds to believe that a

person's role is limited to activities subject to legal professional privilege.

5. Subsection 4 provides that an authorised officer may publish information in the manner they consider appropriate.

6. Subsection 5 provides that if an authorised officer intends to publish information that would identify a person, HMRC must notify the person and give them 30 days to make representations about whether the information should be published.

7. Subsection 6 requires the authorised officer to consider any representations that a person has made under subsection 5 before arranging to publish information identifying the person.

8. Subsection 7 requires the authorised officer to amend or withdraw information where the officer subsequently considers it to be significantly incorrect or

misleading.

9. Subsection 8 provides that no information can be published under this section if publication would contravene data protection or investigatory powers legislation, but states that this section is to be taken into account in determining the scope of the restrictions imposed by that legislation.

10. Subsection 9 defines the data protection and investigatory powers legislation for the purposes of subsection 8.

11. Subsection 10 provides that this section does not limit the circumstances in which information can be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.

12. Subsection 11 defines connected person for the purposes of the section.

13. Subsection 12 defines who is an authorised officer for the purposes of the section.

14. Subsection 13 provides that terms used in Part 5 of Finance Act 2014 have the same meaning in this section, unless there is express contrary intention.

Background note

15. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

16. The government launched a 10-week consultation on the package of new measures on 23 March 2021. The consultation document was titled 'Clamping Down on Promoters of Tax

Avoidance'. Chapter 5 was titled, 'Supporting taxpayers to identify and steer clear or exit tax avoidance' and set out proposals for a new power for HMRC to publish information about suspected promoters of tax avoidance and the schemes that they promote. This measure is designed to better inform taxpayers at an early stage of the risks of tax avoidance schemes, by allowing HMRC to publish information about the schemes, the scheme promoters, persons connected to the promoters, and persons otherwise involved in marketing the schemes.

17. The consultation closed on 1 June 2021. HMRC published on 20 July 2021 a summary of responses document alongside the draft legislation for each of the new measures. Chapter 6 of the summary of responses document summarises respondents' views on this measure and sets out the government's

response. The consultation on the draft legislation closed on 14 September 2021.

18. The measure will come into effect on Royal Assent.

Clause 86: Freezing orders: England and Wales

Summary

1. This clause makes provision for HM Revenue and Customs to seek an order to freeze the assets of a person when HMRC have commenced, or are about to commence, proceedings for a penalty to be determined by the tribunal under the Disclosure of Tax Avoidance Schemes (DOTAS), Disclosure of Tax Avoidance Schemes for VAT and Other Indirect Taxes (DASVOIT), Promoters of Tax Avoidance Schemes (POTAS) and Enablers of Defeated Tax Avoidance regimes. These changes will apply from Royal Assent.

Details of the clause

2. Subsection 1 sets out the circumstances in which an application by HMRC for a freezing order may be determined by a court in England and Wales in accordance

with subsection 2.

3. Subsection 2 defines how the court is to determine the application.

4. Subsection 3 prevents a freezing order granted by virtue of subsection 2 from taking effect unless HMRC begin proceedings for a penalty before the end of the initial period

5. Subsection 4 defines a freezing order as an order granted in accordance with rule 25.1(1)(f) of the Civil Procedure Rules.

Background note

6. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

7. The government launched a 10-week consultation on 23 March

2021, ‘Clamping Down on Promoters of Tax Avoidance’. The consultation included proposals to enable HMRC to seek a freezing order where they are about to commence proceedings for a tribunal assessed penalty under the current anti-avoidance legislation. The consultation closed on 1 June 2021.

Clause 87: Warrants for diligence on the dependence: Scotland

Summary

1. This clause makes provision for HM Revenue and Customs to seek a warrant in Scotland to freeze the assets of a person when HMRC have commenced, or are about to commence, proceedings for a penalty to be determined by the tribunal under the Disclosure of Tax Avoidance Schemes (DOTAS), Disclosure of Tax Avoidance Schemes for VAT and Other Indirect Taxes (DASVOIT), Promoters of Tax Avoidance Schemes (POTAS) and Enablers of Defeated Tax Avoidance regimes. These changes will apply from Royal Assent.

Details of the clause

2. Subsection 1 sets out the circumstances in which an application by HMRC for a warrant for diligence on the dependence

may be determined by a court in Scotland in accordance with subsection 2.

3. Subsection 2 defines how the court is to determine the application.

4. Subsection 3 prevents a warrant granted by virtue of subsection 2 from being competent unless HMRC begin proceedings for a penalty before the end of the initial period.

Background note

5. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

6. The government launched a 10-week consultation on 23 March 2021, 'Clamping Down on Promoters of Tax Avoidance'. The consultation

included proposals to enable HMRC to seek a freezing order where they are about to commence proceedings for a tribunal assessed penalty under the current anti-avoidance legislation. The consultation closed on 1 June 2021.

Clause 88: Freezing injunctions: Northern Ireland

Summary

1. This clause makes provision for HM Revenue and Customs to seek an injunction in Northern Ireland to freeze the assets of a person when HMRC have commenced, or are about to commence, proceedings for a penalty to be determined by the tribunal under the Disclosure of Tax Avoidance Schemes (DOTAS), Disclosure of Tax Avoidance Schemes for VAT and Other Indirect Taxes (DASVOIT), Promoters of Tax Avoidance Schemes (POTAS) and Enablers of Defeated Tax Avoidance regimes. These changes will apply from Royal Assent.

Details of the clause

2. Subsection 1 sets out the circumstances in which an application by HMRC for a freezing injunction may be determined by

a court in Northern Ireland in accordance with subsection 2.

3. Subsection 2 defines how the court is to determine the application.

4. Subsection 3 prevents a freezing injunction granted by virtue of subsection 2 from taking effect unless HMRC begin proceedings for a penalty before the end of the initial period.

5. Subsection 4 defines a freezing injunction as an injunction granted in accordance with Order 29 of the Rules of the Court of Judicature (NI) 1980 (S.R. (N.I.) 1980 No. 346) or Order 14 of the County Court Rules (Northern Ireland) 1981 (S.R. (N.I.) 1981 No. 225).

Background note

6. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set

out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

7. The government launched a 10-week consultation on 23 March 2021, 'Clamping Down on Promoters of Tax Avoidance'. The consultation included proposals to enable HMRC to seek a freezing order where they are about to commence proceedings for a tribunal assessed penalty under the current anti-avoidance legislation. The consultation closed on 1 June 2021.

Clause 89: Sections 86, 87 and 88: interpretation etc

Summary

1. This clause defines the terms used in clauses 86, 87 and 88, including HMRC, relevant penalty, initial period and how the initial period is calculated. These changes will apply from Royal Assent.

Details of the clause

2. Subsection 1 provides that this section applies for the purposes of clauses 86, 87 and 88.

3. Subsection 2 defines "HMRC".

4. Subsection 3 defines "relevant penalty".

5. Subsection 4 defines "initial period" as a period of 72 hours from the time the application is determined by the court.

6. Subsection 5 sets out how the initial period is to be calculated in relation to days that are not business days.

Background note

7. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.
8. The government launched a 10-week consultation on 23 March 2021, 'Clamping Down on Promoters of Tax Avoidance'. The consultation included proposals to enable HMRC to seek a freezing order where they are about to commence proceedings for a tribunal assessed penalty under the current anti-avoidance legislation. The consultation closed on 1 June 2021.

Clause 90 and Schedule 12: Penalties for facilitating avoidance schemes involving non-resident promoters

Summary

1. This clause and Schedule introduce a new penalty applicable to UK-based entities who facilitate tax avoidances schemes involving non-resident promoters. A UK entity may be liable to a penalty of up to 100% of the total consideration received by related entities involved in promoting that avoidance scheme where the relevant criteria are met.

Details of the clause

2. Subsection 1 introduces Schedule 12 which makes provision for penalties for facilitating avoidance schemes involving non-resident promoters.

3. Subsection 2 amends paragraph 5 of Schedule 13 to Finance Act 2020 (joint and

several liability of company directors etc) to include penalties for facilitating avoidance schemes involving non-resident promoters.

Details of the Schedule

4. Paragraph 1 subparagraph 1 provides that Paragraph 1 subparagraph 2 applies to a person "A" if they are liable to pay a penalty within Paragraph 1 subparagraph 3, or one or more penalties within Paragraph 1 subparagraph 4 provided that the total of those penalties is at least £100,000. Penalties that satisfy subparagraph 3 or 4 are called "the original penalties".

5. Paragraph 1 subparagraph 2 provides that A is liable to a further penalty for facilitating an avoidance scheme involving a non-resident promoter if they have incurred original penalties in respect of activities undertaken as a member of the same promotion structure as the non-

resident promoter "P" and those activities related to a relevant proposal or arrangements in relation to which P was a promoter (the "facilitated proposal or arrangements").

6. Paragraph 1 subparagraphs 3 and 4 specify the penalties that can be original penalties for the purposes of this Schedule.

7. Paragraph 1 subparagraph 5 specifies when a person is treated as liable to pay an original penalty for the purposes of paragraph 1 subparagraph 1.

8. Paragraph 1 subparagraph 6 defines non-resident promoter for the purposes of this Schedule.

9. Paragraph 2 subparagraph 1(a) provides that the amount of the further penalty payable under paragraph 1 subparagraph 2 is an amount equal to the total value of all consideration received by all members of the promotion structure who, at the

time of the original activities, were members of the same promotion structure asA and P in connection with:

a. the facilitated proposal or arrangements, and

b. any other proposals or arrangements that are substantially the same as the facilitated proposal or arrangements.

10. Paragraph 2 subparagraph 1(b) allows the person assessing the penalty to assess it in such lower amount as they consider just and reasonable.

11. Paragraph 2 subparagraph 2 specifies what falls to be treated as consideration for the purposes of this Schedule.

12. Paragraph 3 subparagraph 1 provides that Authorised Officers may assess ‘further’ penalties under this Schedule.

13. Paragraph 3 subparagraph 2 provides that where an Authorised Officer assesses a further penalty they must notify the

person who is liable for the penalty.

14. Paragraph 3 subparagraph 3 specifies the due date for payment of further penalties assessed under this Schedule.

15. Paragraph 3 subparagraph 4 provides that a further penalty assessed under this Schedule is to be treated for procedural purposes as an assessment to tax and may be enforced as such.

16. Paragraph 3 subparagraph 5 allows an Authorised Officer to make a supplementary assessment in respect of a penalty where A, P or any other member of the promotion structure receives further consideration after the penalty is assessed, or where the Authorised Officer considers it just and reasonable on the basis of information received after the further penalty was first assessed.

17. Paragraph 3 subparagraphs 6 and 7 allow HMRC to reduce a penalty assessment when they find it was

calculated by reference to an excessive amount

18. Paragraph 3 subparagraph 8 provides that an amendment under paragraph 3 subparagraph 7 does not change the date by which the penalty must be paid; and that the amendment may be made after the last day on which the assessment in question could have been made under paragraph 3 subparagraph 9.

19. Paragraph 3 subparagraph 9 provides that a penalty under paragraph 1 subparagraph 2 may not be assessed later than 2 years from when HMRC first became aware of information sufficient to enable the assessment.

20. Paragraph 4 subparagraph 1(a) provides a right of appeal against an Authorised Officer's decision to issue a penalty.

21. Paragraph 4 subparagraph 1(b) provides a right of appeal against the

quantum of a penalty.

22. Paragraph 4 subparagraph 2 specifies the time limit for making an appeal.

23. Paragraph 4 subparagraph 3 treats an appeal under paragraph 4 subparagraph 1 as if it were an appeal against an assessment to the tax to which the facilitated proposal or arrangements relate.

24. Paragraph 4 subparagraph 4 disapplies subparagraph 3 in specified respects.

25. Paragraph 4 subparagraphs 5 and 6 specify the Tribunal's powers where appeals are made under paragraph 4 subparagraphs 1(a) and 1(b).

26. Paragraph 5 applies certain provisions of Taxes Management Act 1970 for the purposes of this Schedule.

27. Paragraph 6 subparagraph 1 applies Schedule 36 Finance Act 2008 for the

purpose of allowing HMRC to check a relevant person's position as regards liability to a penalty under paragraph 1 subparagraph 2.

28. Paragraph 6 subparagraph 2 defines "relevant person" for the purposes of paragraph 6.

29. Paragraph 6 subparagraph 3 makes specific provision for how Schedule 36 Finance Act 2008 applies for the purposes of this Schedule.

30. Paragraph 7 is a commencement provision which provides that an onshore facilitator can only be liable to a further penalty under this Schedule where their original penalties relate to activities carried out after this Schedule comes into force.

31. Paragraph 8 provides further definitions that apply for the purpose of this Schedule.

Background note

32. This measure was first announced on 12 November 2020 as part of a package of measures to take further action to tackle promoters of tax avoidance. This announcement followed the approach set out in the strategy 'Tackling Promoters of Mass-marketed Avoidance Schemes', published on 19 March 2020.

33. The government launched a 10-week consultation on 23 March 2021, 'Clamping Down on Promoters of Tax Avoidance'. The consultation included proposals for tackling offshore promoters and the UK entities that support them. The consultation proposed a penalty chargeable on UK based entities who facilitate avoidance schemes involving non-resident promoters based on the total amount of fees (or economic equivalent of fees) generated in respect of an avoidance scheme by all entities involved. This measure is designed to deter the UK

entities from facilitating those avoidance schemes by making it no longer economically viable to do so.

34. The consultation closed on 1 June 2021.

35. The measure will come into effect on Royal Assent.

Clause 91 and Schedule 13: Electronic sales suppression penalties

Summary

1. This clause and Schedule introduce penalties for activities which facilitate electronic sales suppression. The clause and Schedule also introduce powers to enable HM Revenue and Customs (HMRC) to gather information about activities connected with electronic sales suppression. The powers have effect from the date of Royal Assent.

Details of the clause

2. Clause 91 introduces Schedule 13, which makes provision for penalties for electronic sales suppression and provision for associated information powers.

Details of the Schedule

Part 1: Introductory

3. Paragraph 1, sub-paragraph (1) introduces the definition of an "electronic sales suppression tool" and other terms used in the Schedule.

4. Sub-paragraph (2) defines an "electronic sales suppression tool". The definition applies where a main function of a tool is the suppression of relevant electronic sales records. The notions of relevant electronic sales records and their suppression are defined in sub-paragraphs (3) and (5) respectively.

5. Sub-paragraph (3) defines a "relevant electronic sales record". This is a record which is required to be kept under legislation relating to a tax; and which would normally be recorded by an electronic point of sales system (as defined in sub-paragraph (4)).

6. Sub-paragraph (4) defines an "electronic

point of sale system”. This produces electronic records of sales transactions.

7. Sub-paragraph (5) defines how a relevant electronic sales record is “suppressed”. The definition includes any form of dealing with the record which renders it inaccurate.

8. Sub-paragraph (6) defines “tool” for the purposes of the Schedule. This includes physical, electronic or any other type of tool or data, wherever held.

9. Sub-paragraph (7) defines an “electronic sales suppression penalty” as a penalty under the Schedule.

Part 2: Liability to penalty

10. Paragraph 2 provides for a person who makes an electronic sales suppression tool to be liable to a penalty. This includes the modification of a tool that is not an electronic sales suppression tool so that is

becomes an electronic sales suppression tool.

11. Paragraph 3, sub-paragraph (1) provides for a person who supplies an electronic sales suppression tool to be liable to a penalty.

12. Sub-paragraph (2) provides for circumstances where a person who has supplied an electronic sales suppression tool will not be liable to a penalty. This is where the person satisfies HMRC or the tribunal that they were unaware the tool was an electronic sales suppression tool.

13. Paragraph 4, sub-paragraph (1) provides that a person who promotes the use of an electronic sales suppression tool to suppress a relevant sales record is liable to a penalty. The penalty applies on each occasion when they do so. Promoting the use of such a tool is defined in sub-paragraph (2).

14. Sub-paragraph (2) defines the

promotion of an electronic sales suppression tool as the communication of information about a tool with a view to its being used to suppress a relevant electronic sales record.

15. Paragraph 5, sub-paragraph (1) provides that the penalty under paragraphs 2, 3 or 4 is the amount that an authorised officer of HMRC considers appropriate, not exceeding £50,000.

16. Sub-paragraph (2) sets out the matters that the authorised officer of HMRC must and may take into account in setting the level of the penalty. The officer must take into account matters specified in relevant HMRC guidance and may take into account any other appropriate matter.

17. Sub-paragraph (3) defines an "authorised HMRC officer" as an officer who is, or a member of a class of officers who are, authorised by the Commissioners for HMRC for this

purpose.

18. Paragraph 6, sub-paragraph (1) provides that a person is liable for a penalty where they have possession of, or have otherwise obtained access to, an electronic sales suppression tool and condition 1 or 2 applies. The penalty may be up to £1,000.

19. Sub-paragraph (2) sets out condition 1. This condition is that HMRC has notified the person of their belief that the person has possession of, or has otherwise obtained access to, an electronic sales suppression tool and the person has not, within 30 days, satisfied HMRC that they no longer have possession of, or otherwise have access to, the electronic sales suppression tool.

20. Sub-paragraph (3) sets out condition 2. This condition is that HMRC comes to have the belief that the person has possession of, or has otherwise gained

access to, an electronic sales suppression tool within the 5-year period since the person was assessed to an electronic sales suppression penalty. The effect of condition 1 and condition 2 together is that a person will generally have a 'grace period' of 30 days to satisfy HMRC that they no longer have possession of, or otherwise have access to, an electronic sales suppression tool, except where they have been assessed to an electronic sales suppression penalty within the previous 5 years.

21. Sub-paragraph (4) defines the relevant concepts used in paragraphs 6 and 7. A person has possession of an electronic sales suppression tool if they possess it in any manner. They have access to such a tool if it is available to them to use to suppress an electronic sales record. They have obtained access to it if they have taken steps to have access.

22. Sub-paragraph (5) provides that the person may be in possession of, or otherwise have obtained access to, the electronic sales suppression tool regardless of whether the person owns the tool; or has access to the tool remotely; of if other persons have access to the tool.

23. Sub-paragraph (6) ensures that a person is not liable to a penalty for possession of, or otherwise obtaining access to, an electronic sales suppression tool in addition to a penalty for making or supplying that tool.

24. Sub-paragraph (7) sets out the circumstances in which a person who has possession of, or otherwise obtains access to, an electronic sales suppression tool will not be liable to a penalty under paragraph 6. The circumstances are where the person satisfies HMRC or the tribunal that they were unaware that the tool was an electronic sales suppression tool.

25. Paragraph 7, sub-paragraph (1) sets out the circumstances in which paragraph 7 applies. It applies when a person is assessed to a penalty under paragraph 6 (for possessing, or otherwise obtaining access to, an electronic sales suppression tool) and continues to possess, or otherwise have access to, the tool after being notified of the assessment.

26. Sub-paragraph (2) provides that such a person is liable for an additional penalty on each day on which they continue to have possession of, or otherwise have access to, the tool. The amount of the daily penalty may not exceed £75.

27. Sub-paragraph (3) provides that the total of the penalties to which a person may be liable under paragraph 7 may not exceed £50,000.

Part 3: Supplementary provision

28. Paragraph 8 provides for an exception to liability to a penalty for electronic sales

suppression, where the conduct which would give rise to the penalty is undertaken under the auspices of a public authority for revenue protection purposes.

29. Paragraph 9 prohibits double jeopardy, by providing that a person is not liable to an electronic sales suppression penalty for any act in relation to which they have been convicted of a criminal offence.

30. Paragraph 10, sub-paragraph (1) provides that HMRC may reduce a penalty where they consider there are special circumstances.

31. Sub-paragraph (2) provides that "special circumstances" do not include the ability of the person who is liable to the penalty to make payment.

32. Sub-paragraph (3) provides that "reducing" a penalty for these purposes also includes staying or compromising it.

33. Paragraph 11, sub-paragraph (1) sets out HMRC's responsibilities when a person becomes liable to an electronic sales suppression penalty. They may assess the penalty and, if they do, must notify the person who is liable to it.

34. Sub-paragraph (2) prescribes the period in which an electronic sales suppression penalty must be notified, namely the two-year period beginning with the day on which the evidence of facts, sufficient in the opinion of HMRC to indicate liability to the penalty, comes to HMRC's knowledge.

35. Paragraph 12, sub-paragraph (1) provides for a right to appeal against an electronic sales suppression penalty. A person who is liable may appeal against HMRC's decision that the penalty is payable, or HMRC's decision as to its amount.

36. Sub-paragraph (2) prescribes the

period in which written notice of appeal must be given to HMRC, namely the 30-day period beginning when HMRC notified the person of the penalty.

37. Sub-paragraph (3) provides that the notice of appeal must state the grounds of the appeal.

38. Sub-paragraph (4) sets out the powers of the tribunal when it is notified of an appeal against a decision by HMRC that an electronic sales suppression penalty is payable. The tribunal may affirm or cancel the decision.

39. Sub-paragraph (5) sets out the powers of the tribunal when it is notified of an appeal against a decision by HMRC as to the amount of an electronic sales suppression penalty. The tribunal may affirm HMRC's decision or substitute for it any decision that HMRC could have made.

40. Sub-paragraph (6) provides that, if a

tribunal substitutes its decision as to the amount of a penalty for HMRC's decision, it may follow HMRC's application of paragraph 10 (special reduction), or may apply a different special reduction but only if it considers that HMRC's decision in that respect was flawed (in the sense defined in sub-paragraph (7)).

41. Sub-paragraph (7) provides that, for the purposes of sub-paragraph (6), the notion of a "flawed" decision is the notion applying on a judicial review.

42. Sub-paragraph (8) provides for the application of Part 5 of the Taxes Management Act 1970 (which contains procedural provisions relating to appeals) to appeals against electronic sales suppression penalties.

43. Paragraph 13, sub-paragraph (1) prescribes the period in which the electronic sales suppression penalty must be paid. If there is no appeal, this is the 30-

day period beginning with notification of the assessment. If there is an appeal, this is the 30-day period beginning with the determination or withdrawal of the appeal.

44. Sub-paragraph (2) provides that an electronic sales suppression penalty is recoverable as a debt to the Crown.

45. Paragraph 14 provides for the application of sections 108, 114 and 115 of the Taxes Management Act 1970 for the purpose of electronic sales suppression penalties. Section 108 makes provision for the responsibility of company officers. The application of section 114 means that an electronic sales suppression penalty notified to a person will not be invalidated by a minor mistake that does not affect the substance of the notice. The application of section 115 means that notifications of electronic sales suppression penalties may be given in the same way as any other

documents under the Taxes Acts.

46. Paragraph 15, sub-paragraph (1) provides for the Treasury to amend by regulations the value of penalties in paragraphs 5(1), 6(1), 7(2) or 7(3), where it appears to the Treasury that there has been a change in the value of money since the last relevant date.

47. Sub-paragraph (2) defines the "relevant date" as the date on which Finance Act 2022 is passed; and each date on which the Treasury has exercised the power conferred by sub-paragraph (1).

48. Sub-paragraph (3) provides that the regulations under sub-paragraph (1) are subject to annulment in pursuance of a resolution of the House of Commons.

49. Sub-paragraph (4) provides that regulations under sub-paragraph (1) do not apply to a penalty when the liability arose before the date on which the regulations come into force.

50. Paragraph 16 defines "HMRC" as Her Majesty's Revenue and Customs; and defines "tribunal" for the purposes of the Schedule as the First-tier Tribunal or, where applicable under the Tribunal Procedure Rules, the Upper Tribunal.

Part 4: Information

51. Paragraph 17, sub-paragraph (1) provides for the application of Schedule 36 to Finance Act 2008 ("Schedule 36") to electronic sales suppression penalties. Schedule 36 gives HMRC various powers to require information in order to check a person's tax position. This sub-paragraph provides that Schedule 36 applies for a relevant purpose, in relation to a relevant person, as it applies to checking a person's tax position. "Relevant person" and "relevant purpose" are defined in sub-paragraphs (3) and (4) respectively.

52. Sub-paragraph (2) provides that the application of Schedule 36 to electronic

sales suppression penalties is subject to general modifications under paragraph 17 and specific modifications under paragraph 18.

53. Sub-paragraph (3) defines a "relevant person" for these purposes, as a person with a reasonably suspected liability to an electronic sales suppression penalty.

54. Sub-paragraph (4) defines the three "relevant purposes" in relation to a relevant person:

a. determining whether they are liable to an electronic sales suppression penalty;

b. enabling HMRC to understand the electronic sales suppression tool in relation to which the person's suspected penalty liability arises; and

c. identifying anyone else who may be liable for a penalty in relation to that tool.

55. Paragraph 18 sets out the general modifications of Schedule 36 in its application to electronic sales suppression penalties. In this context, provisions of Schedule 36 which can have no application are omitted, and references in Schedule 36:

a. to taxpayers, are to be read as references to relevant persons;

b. to prejudice to the assessment or collection of tax, are to be read as including prejudice to relevant purposes; and

c. to pending tax appeals, are to be read as references to pending appeals against electronic sales suppression penalties.

56. Paragraph 19 sets out the specific modifications of Schedule 36 in its application to electronic sales suppression penalties. In connection with the relevant purpose of identifying other persons who

may be liable for an electronic sales suppression penalty in relation to the same tool as the relevant person, the operation of paragraph 5 of Schedule 36 (power to obtain information and documents about persons whose identity is not known) is modified. In particular, paragraphs 5(3) to 5(4) of Schedule 36 are omitted. This means that, when HMRC is obtaining information about unknown persons who may be liable to an electronic sales suppression penalty for using the same tool as the relevant person, they do not need to obtain the tribunal's approval before giving an information notice.

Background note

57. These provisions strengthen the government's approach to tackling the form of tax evasion known as electronic sales suppression ("ESS"). ESS is where businesses manipulate electronic records of sales data, either during or after the

point of sale, in order to hide or reduce the value of individual transactions. This is done to reduce the recorded turnover of the business and corresponding tax liabilities, whilst providing what appears to be a credible and compliant audit trail.

58. The provisions create new penalties for the possession, making, supplying or promotion of tools which facilitate ESS. There are also new ESS-specific information powers.

59. This supports the government policy of ensuring that everyone pays the right amount of tax. ESS results in a loss of money for public services and has the potential to give non-compliant businesses an unfair market advantage over their competitors.

Clause 92: Tobacco products: tracing and security

Summary

1. This clause grants the power to make future regulations linked to the Tobacco Track and Trace system (TTS) and details the sanctions that can be included in those regulations. The clause also provides powers for a new information gateway which will allow HMRC to share relevant data when necessary to support those new sanctions. It will have effect on or after Royal Assent.

Details of the clause

2. This clause introduces new sections 8JA, 8JB and 8JC into the Tobacco Products Duty Act 1979 (TPDA). It also makes a minor amendment to Finance Act 2008, Schedule 41, paragraph 15 set out further at paragraph 27.

Section 8JA – Tracing and security: regulations

3. New section 8JA contains new subsections 1 to 7 which detail powers to make regulations for TTS.
4. Subsection 1 grants the Commissioners, which in this case means HM Revenue & Customs (HMRC), the power to make regulations:
    a. To establish and operate a traceability system for tobacco products;
    b. Require that tobacco products carry security features;
5. Subsection 2 explains what a traceability system for tobacco products is:
    a. A traceability system for tobacco products is a system which tracks the movements of tobacco products and makes sure those movements are recorded;
    b. The reference to security features

refers to the features that tobacco packaging must carry for the purpose of identifying and verifying the authenticity of tobacco products.

6. Subsection 3 details what the future tracing and security regulations may cover for the operation of a traceability system for tobacco products. Amongst other things, this may include:
   a. The requirement that packets of tobacco must be marked with a unique code which allows the product to be tracked throughout their movements.
   b. The ability to extend the functions detailed in the regulations to 'other persons' specified in the regulations. The government is considering extending some functions detailed in the regulations to other persons e.g. Trading Standards.
   c. The ability for public notices to be

drafted to support the regulations.

d. Specify technical standards; the technical specifications will be published on the UK ID Issuer's website.

e. How data related to TTS and the sanctions is used.

f. The ability to impose restrictions on persons of a specified description will allow for clearer obligations in relation to TTS on those who sell to the public.

g. Provide for the imposition of sanctions for contravention of the restrictions and requirements outlined in section 8JB.

h. Provide a statutory appeals and reviews process.

7. Subsection 4 deals with the requirement for equipment to operate TTS.

8. Subsection 5 details the scope of future TTS regulations in relation to the

definition of tobacco products and other relevant legislation.

9. Subsection 6 explains that future TTS regulations must always link back to HMRC's focus on the collection of the correct excise duty.

10. Subsection 7 details the relevant law. These are all laws that link directly to either TTS, tobacco products or tobacco products duty or a related appeals process and the legislation can be amended, supplemented or revoked where necessary for the purposes of the new TTS regulations. It also gives various definitions that are used throughout these clauses.

Section 8JB – Tracing and security: sanctions

11. Section 8JB contains subsections 1 to 4 which detail powers for new sanctions, which can be included in the regulations, to tackle contraventions of TTS.

12. Subsection 1 explains that the powers

for sanctions in the regulations will apply when a person fails to comply with the requirements of TTS.

13. Subsection 2 details the type of sanctions that can be legislated for in the regulations.

a. A financial penalty of up to £10,000. Details on how the penalty amount will be determined will be set out in the regulations.

b. States that products that fail to comply with TTS will be liable to forfeiture. This provision is subject to having regulations.

c. Allows the Commissioners to take steps to remove an Economic Operator ID (EOID) which is required to participate in TTS. This provision is subject to having regulations.

14. Subsection 3 gives further detail to subsection 2(a) – financial penalty.

a. The regulations may include provision for a penalty notice to be given by a person authorised by or under the regulations, including payment details.

b. The regulations can specify points to which the person giving the notice must have regard, for example, reasonable excuse.

c. Provide for enforcement action if the penalty is not paid.

15. Subsection 4 further explains subsection 2(b) – forfeiture of tobacco products.

a. Products that do not comply with TTS will be liable to forfeiture. This provision is subject to having regulations. There are already some forfeiture provisions in SI 2019/593 so these are additional powers.

b. Products found together with non-

compliant product could also be liable to forfeiture. This provision is subject to having regulations.

Section 8JC – Tracing and security: disclosure of information

16. Section 8JC contains subsections 1 to 9 which detail powers for a new information gateway which will allows HMRC to share relevant data when necessary to support the new sanction regime.

17. Subsection 1 explains that the Commissioners can share information to anyone who has powers to act under TTS

18. Subsection 2 states that persons listed in subsection 1 may share information with the Commissioners.

19. Subsection 3 explains that information may only be shared if it is connected with a function under these regulations or the wider TTS regime.

20. Subsection 4 explains what cannot be

done with the information

a. Any information shared under subsection 1 cannot be used for any other reason beyond the support of the operation of TTS except with the Commissioners consent.

b. Any information shared under subsection 1 cannot be shared further without the consent of the Commissioners.

21. Subsection 5 details that section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies to any person who disclosed information unlawfully or reveals the identity of an individual.

22. Subsection 6 explains that all information shared must comply with data protection legislation or the investigatory powers legislation.

23. Subsection 7 specifies that "data

protection legislation" in subsection 6 refers to the Data Protection Act 2018 (particularly section 3) and "the investigatory powers legislation" means Parts 1 to 7 and Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

24. Subsection 8 states that Section 8JC does not have any impact on information that can be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or any other legislation.

25. Subsection 9 explains that authorised officer of any person means anyone who can receive information because they are involved in the operation of TTS and have been identified as such.

26. Subsection 2 of this clause inserts a reference to new section 8JA into section 9(1A) of the Tobacco Products Duty Act 1979, which sets out the procedure for making regulations.

27. Subsection 3 amends Schedule 41 to

the Finance Act 2008 to ensure that a penalty under Schedule 41 is adjusted to reflect any penalty under paragraph 4(1), which has already been incurred under the new TTS regulations for the same conduct.

Background note

28. At Budget 2020, the government introduced a package of measures to tackle illicit tobacco at street level. HMRC consulted on tough new sanctions to tackle tobacco duty evasion in early 2021 and these sanctions reflect the outcomes of that consultation.

29. The track and trace system was introduced in the UK in 2019, as part of an EU wide traceability system implemented by virtue of the Tobacco Products Directive (2014/40) to regulate the tobacco supply chain.

30. The sanctions have been introduced to

support the government’s commitment to tackling tobacco duty evasion that takes place at retail level and deals in smaller quantities.

Clause 93 and Schedule 14: Treatment of goods in free zones

Summary

1. This clause and Schedule amend the Value Added Tax Act 1994 (VATA) by inserting a new section 57A which deems a taxable supply of goods or services to have been made by, and to, a person in certain circumstances following receipt of zero-rated supplies in a free zone. The deemed supply is referred to informally as an exit charge. The Schedule makes amendments to sections 6, 7 and 7A VATA which are consequential on the deemed supply provisions. The clause and Schedule also make consequential amendments to sections 17 and 18 VATA to remove inconsistencies with the new free zone scheme. The Schedule is treated as coming into force on 3 November 2021.

Details of the clause

2. Clause 93 introduces Schedule 14 which makes provision about the treatment of goods in free zones for the purposes of value added tax.

Details of the Schedule

3. Paragraph 1 of the Schedule provides for amendments to VATA.
4. Paragraphs 2 to 4 make consequential amendments to sections 6(1), 7(1) and 7A(1) VATA (time of supply, place of supply of goods and place of supply of services respectively), so that the specific provisions in new section 57A have effect instead of the general provisions.
5. Paragraph 5 amends section 17 VATA (free zone regulations) by omitting subsection (2).
6. Paragraph 6 amends section 18(6) VATA by inserting a definition of free zone procedure and amending the definition of

a warehouse to exclude a warehouse in so far as it is used for the storage of goods declared for a free zone procedure.

7. Paragraph 7 inserts the new section 57A VATA which provides for the deemed supply.

New section 57A: Importation following zero-rated free zone supply: deemed supply

8. New subsection 1 sets out conditions for section 57A VATA to apply, which are:
   - Receipt by a person of a zero-rated free zone supply of goods or services; and
   - Meeting one of two conditions referred to as Condition A and Condition B.

   A zero-rated free zone supply of goods or services is a supply of goods or services

which is within the scope of the zero-rating provisions in Group 22 of Schedule 8 (free zones) to VATA.

9. New subsection 2 describes the circumstances in which Condition A is met. That is, that after receipt of the zero-rated free zone supply of goods or services there is a breach of a requirement of the free zone procedure without there having been a supply of those goods which is zero-rated under Group 22 of Schedule 8 to VATA.

10. New subsection 3 describes the circumstances in which Condition B is met. That is, that after receipt of the zero-rated supply of goods or services both

- those goods are imported under VATA (but not where Condition A is met) without there having been a supply of those goods which is zero-rated under Group 22 of Schedule 8 to VATA; and

- within 3 months of the date of importation the recipient of the zero-rated supply has not made a taxable supply of those goods to another person in the course or furtherance of the recipient's business.

11. New subsection 4 provides that a supply identical to the zero-rated free zone supply of goods or services is treated as made **by** the recipient of that supply in the course or furtherance of that person's business, and that the supply is also treated as made **to** that person. Subsection 4 also determines the characteristics of the deemed supply, including when and where it is made and its value. That is, that:

- it takes place on the relevant day, which is defined in subsection 7;
- it is made in the UK;
- it has the same value as the zero-rated free zone supply of goods or services;

and

- it is a taxable and not a zero-rated supply.

12. New subsection 5 gives the meaning of a breach of a requirement of a free zone procedure as it relates to Condition A.

13. New subsection 6 provides that the Commissioners may by regulations modify the application or effect of the exit charge in cases set out in the regulations.

14. New subsection 7 defines the terms ‘free zone procedure’, ‘zero-rated free zone supply of goods’ and ‘zero-rated free zone supply of services’ by reference to Group 22 of Schedule 8 (free zones) to VATA. It also defines ‘relevant day’, which is the day on which the supply is treated as made.

Background note

15. A free zone is a secure customs site within a wider Freeport area.

16. This clause and Schedule are supplementary to the value added tax provisions in Statutory Instrument 1156/2021 – The Free Zones (Customs, Excise and Value Added Tax) Regulations 2021 which was laid on 18 October 2021.

17. Those Regulations introduce a new Group 22 to Schedule 8 of the Value Added Tax Act 1994 (zero-rating) which provides for the zero-rating of certain supplies of goods and services in free zones.

18. The purpose of the deemed supply provided for in this clause is to ensure businesses do not gain an unintended advantage from the zero-rate.

Clause 94 and Schedule 15: Large businesses: notification of uncertain tax treatment

Summary

1. This clause and Schedule introduce a new requirement for large businesses to notify HMRC where they have taken a tax position in a return that is uncertain. The new requirement has effect for returns within scope that are due to be filed on or after 1 April 2022.

Details of the clause

2. Clause 94 introduces Schedule 15.

Details of the Schedule

Part 1: Key definitions

3. Paragraph 2 provides definitions of the companies that will be in scope of the requirement to notify uncertain tax treatments.

4. Sub-paragraph 1 specifies what is a company for the purposes of the regime. It also details entities that are specifically excluded from the regime.
5. Sub-paragraph 2 provides the turnover and balance sheet tests which determine whether a company is in scope. The turnover and balance sheet amounts relate only to the UK presence.
6. Sub-paragraph 3 provides for how the turnover and balance sheet tests for companies not within a group should be applied.
7. Sub-paragraph 4 provides for how the turnover and balance sheet tests for companies within a group should be applied.
8. Sub-paragraph 5 explains how the turnover and balance sheet tests apply where members of a group have different financial year end dates.

9. Sub-paragraph 6 allows the Treasury, by secondary legislation, to exclude additional types of company from the scope of the regime.

10. Paragraph 3 defines a 'group' for the purposes of the regime.

11. Paragraph 4 defines which partnerships are in scope of the regime. These include firms or entities formed under an overseas law, which are similar in nature to a partnership, and which have a presence in the UK.

12. Sub-paragraph 2 specifies that certain collective investment schemes or AIFs are not qualifying partnerships, and provides the meanings of 'collective investment scheme' and 'AIF', for the purposes of this Schedule.

13. Sub-paragraph 3 provides the turnover and balance sheet tests for partnerships within scope. The turnover and balance sheet amounts relate only to

the UK presence.

14. Sub-paragraph 4 allows the Treasury, by secondary legislation, to exclude additional types of partnership from the scope of the regime.

15. Paragraph 5 lists the taxes and returns covered by the regime and provides definitions of the taxes.

16. Sub-paragraph 1 lists the taxes within scope of the regime and the corresponding returns in relation to each of those taxes.

17. Sub-paragraph 2 provides definitions of terms used in sub-paragraph 1 and elsewhere in the Schedule. It details what is included as "corporation tax" for the purposes of the Schedule and what is excluded. The latter being banking surcharge, controlled foreign companies surcharge and bank levy.

18. Sub-paragraph 3 provides that 'relevant return' includes part-year

returns.

19. Paragraph 6 explains 'financial year' for the purposes of the regime and provides definitions of partnerships and partners.

20. Sub-paragraph 1 specifies the definition of "financial year" for a company or partnership, including where a company or partnership is non-UK resident.

21. Sub-paragraph 2 defines "UK resident partnership", "non-UK resident partnership", and "representative partner", for the purposes of this Schedule.

22. Sub-paragraph 3 explains where a partnership is treated as resident for the purposes of this paragraph.

23. Paragraph 7 provides definitions of 'turnover' and 'balance sheet total' for the purposes of determining whether a

company or partnership is in scope of the regime.

24. Sub-paragraph 2 provides that for non-UK resident companies and partnerships, the UK turnover means a just and reasonable apportionment of the total turnover that is attributable to the activities of that entity in the UK.

25. Sub-paragraph 3 provides the definition for “balance sheet total”.

26. Sub-paragraph 4 provides that for non-UK resident companies and partnerships, the UK balance sheet total means a just and reasonable apportionment of the balance sheet total that is attributable to the activities of that entity in the UK.

27. Sub-paragraph 5 defines “UK resident company”, “non-UK resident company”, “UK resident partnership”, and “non-UK resident partnership” for the purposes of this paragraph.

28. Sub-paragraph 6 specifies where a partnership is considered to be resident, and where a non-UK resident partnership is regarded as having a UK permanent establishment, for the purposes of this paragraph.

Part 2: Requirement to notify HMRC of Uncertain Tax Treatment

29. Paragraph 8 sets out the requirement to notify.

30. Sub-paragraph 1 specifies that the notification obligation at paragraph 8(2) applies where a qualifying company or partnership delivers a relevant return to HMRC for a financial year.

31. Sub-paragraph 2 creates an obligation to notify where returns are filed that include an uncertain amount (defined in paragraph 10) including nil. For these purposes 'an amount brought into account' can include the absence of an amount that would have been brought

into account if it were not for the uncertain tax treatment adopted. If an amount becomes uncertain after a relevant return is delivered to HMRC, this sub-paragraph specifies that a notification must be made if the amount becomes uncertain by virtue of an accounting provision being made to reflect the probability of a different tax treatment being applied (defined in paragraph 10(2)).

32. Sub-paragraph 3 provides that amounts included in amended returns (where the amendment is not made by HMRC) that are notified to HMRC are also considered 'amounts included in a relevant return' for the purposes of paragraph 8.

33. Sub-paragraph 4 provides that a separate notification is required for each relevant tax in respect of which there is an uncertain amount, and provides for exclusions from the requirement to notify

which are defined in later paragraphs.

34. Sub-paragraph 5 provides that where a relevant return for a relevant tax includes more than one uncertain amount, only one notification must be made that covers all those uncertain amounts for that relevant tax.

35. Sub-paragraph 6 provides that the notification must be given including the content, in the format and by the method of notification specified by HMRC.

36. Paragraph 9 specifies when the notification under paragraph 8(2) is required. For all types of returns, this is aligned with the due dates for those returns.

37. Sub-paragraph 1 provides the specific deadlines for notification in respect of uncertain amounts included in the relevant returns of each of the taxes in scope.

38. Sub-paragraph 3 provides that if the uncertain amount is included in an amendment to a return, the notification of the uncertain amount must be made no later than 30 days after the day on which the amendment is notified to HMRC.

39. Paragraph 10 defines “uncertain tax treatment” for the purposes of the regime.

40. Sub-paragraph 1 explains that an amount brought into account is uncertain if any of the conditions in sub-paragraphs (2) or (3) apply. Respectively, these sub-paragraphs cover tax provisions and a divergence from HMRC’s known position.

41. Sub-paragraph 2 applies where a provision has been made in the accounts in respect of an uncertain tax outcome. The requirement to make a provision, under generally accepted accounting practice, is where it is more probable than not that a different tax treatment would be applied.

42. Sub-paragraph 3 applies where a different position has been taken to that set out in HMRC's published material. This covers differences in how the law is interpreted, as well as how the law is applied to a set of facts.

43. Sub-paragraph 4 gives a definition of when HMRC's position is "known".

44. Paragraph 11 sets out a threshold test of £5m below which taxpayers are not required to notify.

45. Sub-paragraph 1 explains that paragraphs 12 to 17 apply in order to determine if the threshold test is met.

46. Sub-paragraph 2 provides that for the threshold test to be met, there must be an uncertain amount (as defined in paragraph 10) which gives rise to a tax advantage when compared with the expected amount. The net value of the tax advantage must be at least £5 million in the relevant period. Amounts that are

"related amounts", as defined in paragraph 17, are to be amalgamated with the uncertain amount for these purposes.

47. Sub-paragraph 3 defines "tax advantage", "expected amount", "relevant period", and "related" for the purposes of the threshold test..

48. Sub-paragraph 4 provides that where the relevant period is other than 12 months, the threshold of £5m is to be increased or reduced proportionately.

49. Sub-paragraph 5 provides a regulation-making power for the amount of the threshold to be modified in future.

50. Paragraph 12 states what is meant by "tax advantage" in relation to corporation tax or income tax for the purposes of the threshold test.

51. Paragraph 13 states what is meant by "tax advantage" in relation to VAT for the purposes of the threshold test.

52. Sub-paragraph 1 lists scenarios which would constitute a "tax advantage" in relation to an uncertain amount of VAT.

53. Sub-paragraph 2 states that in calculating the "tax advantage" of an uncertain amount of VAT for the purposes of assessing the threshold, a company or partnership cannot include amounts which are not ordinarily deductible or reclaimable by a company or partnership.

54. Sub-paragraph 3 defines situations where VAT is "incurred" for the purposes of assessing whether the threshold test is met.

55. Sub-paragraph 4 confirms that words used within paragraph 12 are to be read as having the meanings given by section 96 of VATA 1994.

56. Paragraph 14 defines what is meant by "value of a tax advantage", and explains how it should be calculated in different circumstances.

57. Sub-paragraph 1 provides for a comparison between the "uncertain amount" included in the return and the "expected amount" given by paragraph 15

58. Sub-paragraph 2 lists reliefs which are to be ignored in the calculation of the tax advantage.

59. Sub-paragraph 3 provides that where the uncertain tax treatment gives rise to a corporation tax or income tax loss, and that loss is fully utilised, the tax advantage is as given by sub-paragraph 1.

60. Sub-paragraph 4 explains how to calculate the value of the tax advantage where a loss is not wholly utilised.

61. Sub-paragraph 5 explains that sub paragraphs 3 and 4 apply where a loss is created or increased by virtue of an uncertain amount.

62. Sub-paragraph 6 provides that where there is no realistic prospect of a loss being

utilised, the value of it is to be treated as nil.

63. Paragraph 15 provides that, for the purposes of the threshold test, the "expected amount" should be determined by reference to the specific notification criterion in paragraph 10 that applies to the uncertain amount. Taxpayers will compare the uncertain amount with the "expected amount" when calculating whether the threshold test is met, but the amount of the "expected amount" will be approached differently depending upon whether paragraph 10(2) or 10(3) is in point. In some circumstances, both of the notification criteria in paragraph 10 may apply. Paragraph 15 sets out how the "expected amount" should be arrived at where this is the case, to ensure that the threshold test is applied correctly.

64. Sub-paragraph 1(a) states that if an amount is uncertain by virtue of

paragraph 10(2), then the "expected amount" to be used in the threshold test is the amount which has been provided for.

65. Sub-paragraph 1(b) states that if an amount is uncertain by virtue of paragraph 10(3), then the "expected amount" to be used in the threshold test is the amount which would have been derived from adopting a tax treatment in accordance with HMRC's known interpretation and application of the law.

66. Sub-paragraph 2 addresses situations where HMRC is known to accept more than one tax treatment, or a range of tax treatments. Where this is the case, for the purposes of the threshold test, taxpayers should use the treatment known to be acceptable to HMRC which is closest to the treatment included in the tax return.

67. Sub-paragraph 3 explains that where there is more than one "expected amount" because both notification criteria in

paragraph 10 are met, for the purposes of the threshold test, taxpayers must use the "expected amount" which would result in the largest tax advantage in accordance with paragraph 15(3), when determining whether the threshold test is met.

68. Sub-paragraph 4 provides that the meaning of HMRC's "known" position given in paragraph 10(4) also applies in sub-paragraph 1(b).

69. Paragraph 16 defines what is meant by the "relevant period" to which the threshold test is applied. The threshold test is applied to returns delivered to HMRC in relation to the relevant period. The threshold must always be applied to a 12-month period for which a relevant return (or returns) has been delivered. The start and end dates of this 12-month period depend upon the type of relevant return.

70. Sub-paragraph 1(a) defines "relevant

period" where the relevant return is a Company tax return under paragraph 3 of Schedule 18 to FA 1998. Where the uncertain amount is included in a return of this kind, the relevant period over which the threshold must be applied is the 12-month period ending on the last day of the financial year to which the relevant return relates. For example, if the relevant return is a Company tax return relating to the financial year ending 31 December 2024, the relevant period is the 12-month period ending on 31 December 2024 for the purposes of applying the threshold test (including consideration of related amounts at paragraph 15).

71. Sub-paragraph 1(b) defines "relevant period" where the relevant return is a partnership return. Where the uncertain amount is included in a return of this kind, the relevant period over which the threshold must be applied is the 12-month period ending on the last day of the

financial year for which the relevant return is delivered to HMRC.

72. Sub-paragraph 1(c) defines "relevant period" where the relevant return is a return under PAYE regulations. Where the uncertain amount is included in a return under PAYE regulations, the relevant period over which the threshold must be applied is the 12-month period ending on the last day of the latest return period falling wholly within the financial year to which the relevant return relates. For example, if the relevant return is an EPS return ending on 5 December 2024, where the corresponding financial year ends on 31 December 2024, the 12-month period to be considered for the threshold test is the 12-month period ending 5 December 2024.

73. Sub-paragraph 1(d) defines "relevant period" where the relevant return is a VAT return under regulations under paragraph 2 of Schedule 11 to VATA 1994.

Where the uncertain amount is included in a return falling within paragraph 2 of Schedule 11 to VATA 1994, the period over which the threshold must be applied is the 12-month period ending on the last day of the last prescribed accounting period falling wholly within the financial year to which the relevant return relates. For example, if the relevant return is a quarterly VAT return ending on 31 October 2024, where the corresponding financial year ends on 31 December 2024, the 12-month period to be considered for the threshold test is the 12-month period ending 31 October 2024.

74. Sub-paragraph 2 provides that the definition of “prescribed accounting period” for the purposes of sub-paragraph 14(1)(c) is given by section 25(1) of VATA 1994.

75. Paragraph 17 provides a definition of “related amounts”. Paragraph 11(2)

requires that, when assessing whether the threshold test is met, amounts which are related to the uncertain amount must be aggregated for the purposes of this test. Paragraph 17 sets out the way in which "related amounts" are to be identified.

76. Sub-paragraph 17(1)(a) provides the first condition that must be met (in addition to the conditions set out in sub-paragraphs 17(1)(b) and 17(1)(c)) when assessing whether an amount is related, is that the amount and the uncertain amount are included in the same relevant return delivered to HMRC (or included in a return that is of the same description as the relevant return).

77. Sub-paragraph 17(1)(b) provides that, in addition to the conditions in sub-paragraphs 17(1)(a) and 17(1)(c), both amounts must relate to the same relevant tax. "Relevant tax" is defined in paragraph 5(1).

78. Sub-paragraph 17(1)(c) provides that, in addition to the conditions in sub-paragraphs 17(1)(a) and 17(1)(b), the tax treatment applied to both the uncertain amount and the related amount must be substantially the same.

79. Paragraph 18 provides for a general exemption from the requirement to notify.

80. Sub-paragraph 1 removes the requirement to notify where the company or partnership can reasonably conclude that HMRC already have all, or substantially all, of the information that would be required in a notification.

81. Sub-paragraph 2 lists other disclosure requirements under which HMRC might already be taken to have information relating to an uncertainty. It also specifies that the general exemption may apply by virtue of dealings that the company or partnership has had with HMRC.

82. Sub-paragraph 3 allows the Treasury,

by secondary legislation, to amend the list provided in sub-paragraph 2.

83. Paragraph 19 provides for an exemption from the notification requirement at paragraph 8(2) in relation to specified uncertain amounts of Corporation Tax, where the overall tax advantage (taking into account the group position) is below the threshold.

84. Sub-paragraph 19(a) specifies that this paragraph only applies to matters relating to Corporation Tax. This should also be read in conjunction with paragraph 5(2) which provides a definition of "corporation tax" for this purpose.

85. Sub-paragraph 19(b) provides the second condition which must be met in addition to the conditions in sub-paragraphs 19(a) and 19(c), for this exemption to apply. This condition is that there are two or more companies, who are members of the same group (as defined by

paragraph 3), transacting with one another. "Transaction" is defined in paragraph 30. Where this condition is met, and there is an uncertain amount of corporation tax (as required in sub-paragraph 19(a)), taxpayers must then consider whether the third and final condition in sub-paragraph 19(1)(c) is met in order to determine whether this notification exemption applies.

86. Sub-paragraph 19(c) provides the third and final condition that must be met, in addition to the conditions in sub-paragraphs 19(a) and 19(b), for this exemption to apply. This condition is that the net effect of the transaction across the group (as defined) results in a tax advantage that is below the threshold.

Part 3: Penalties

87. Paragraph 20 contains penalty provisions for failures to notify in accordance with paragraph 8.

88. Sub-paragraph 1 provides for a penalty where a company or partnership fails to comply with the obligation to notify an uncertain tax treatment under paragraph 8(2)(a).

89. Sub-paragraph 2 lays out the amounts of escalating fixed penalties under sub-paragraph 1 for first, second and further failures.

90. Sub-paragraph 3 provides for a penalty where a company or partnership fails to comply with the obligation to notify an uncertain tax treatment under paragraph 8(2)(b).

91. Sub-paragraph 4 lays out the amount of a penalty under sub-paragraph (3).

92. Paragraph 21 provides for determining penalty provisions where a company or partnership repeatedly fails to notify in accordance with paragraph 8(2)(a).

93. Sub-paragraph 1 sets out that the paragraph applies for determining if a failure is a first, second or third failure, which is relevant to determining the amount of the penalty under Sub-paragraph 20(2).

94. Sub-paragraph 2 defines that a first failure occurs if the company or partnership has not been assessed to a notification penalty for the same tax in the three preceding financial years.

95. Sub-paragraph 3 defines that a second failure occurs if the company or partnership has been assessed to a first penalty but not a second or further penalty for the same relevant tax in the three preceding financial years.

96. Sub-paragraph 4 defines that a further failure occurs if the company or partnership has been assessed to a second or further penalty for the same tax in the three preceding financial years.

97. Sub-paragraph 5 defines “applicable three-year period” for the purposes of the escalating penalties.

98. Paragraph 22 provides that there will be no liability to a penalty if the person otherwise liable satisfies HMRC or a tribunal that there is a reasonable excuse for the failure. The reasonable excuse provisions are in line with those in other tax legislation.

99. Paragraph 23 provides that HMRC may assess a penalty, and where they do so, must notify the person assessed within the specified time limits.

100. Paragraph 24 sets out the right of appeal against a penalty and the tribunal procedure.

101. Paragraph 25 specifies the date by which a penalty is due to be paid and how HMRC may enforce its payment.

102. Paragraph 26 provides a regulation-

making power to change the amount of the penalty in line with inflation.

103. Paragraph 27 defines "tribunal" for the purposes of Part 3.

Parts 4 and 5: Supplementary and Consequential Amendments

104. Parts 4 and 5 contain supplementary provisions and consequential amendments.

Background Note

105. This clause and Schedule introduce a new obligation for large businesses to notify HMRC when they have included an uncertain tax treatment in a return.

106. The obligation applies to companies and partnerships with a UK turnover of at least £200m or a UK balance sheet total of more than £2bn in relation to their Corporation Tax, Income Tax (including

PAYE) or VAT obligations.

107. A tax treatment is 'uncertain' if it meets one of the conditions in paragraph 10. It is possible that more than one condition will be met for a given transaction.

108. The first condition is that a provision has been made in the accounts to reflect the probability that a different tax treatment will be applied. This is intended to capture those instances where, in accordance with generally accepted accounting practice, a taxpayer has recognised it is more probable than not that the filing position will not be sustained.

109. The second condition applies where a position has been set out by HMRC, and the taxpayer’s treatment has diverged from that position. HMRC’s known position covers those issues set out in published material of general application,

and any views expressed directly to the taxpayer. Views expressed directly to a particular taxpayer will not apply to other taxpayers. In instances where HMRC's position is unclear, or two different expressions appear contradictory, there will be no 'known position' and the second condition will not be met.

110. Businesses will only need to notify HMRC of uncertainties that exceed a £5m threshold (subject to apportionment provisions where the relevant period is not 12 months), that is, where the difference between the position taken in the return and the appropriate comparator (the amount provided for, or the amount based on HMRC's known position) exceeds £5m. Paragraphs 11 to 17 of Part 2 provide the threshold rules.

111. Businesses that have uncertain tax treatments will not need to notify if one of the exemptions applies. The exemptions

are in paragraphs 18 and 19 of Part 2. Exemptions include:

- Where the business can reasonably conclude that HMRC already has all the information that would otherwise be included in a notification, for example, because it has already been provided under another disclosure regime, or because the business has already discussed the matter with HMRC.
- For corporation tax, where the net difference across a group is less than £5m.

112. If there is a notifiable uncertain tax treatment, paragraph 9 provides the rules for how and when these must be notified to HMRC. Paragraph 8 provides that HMRC can set out, in a notice, further details of the means and form of the notification.

113. If a business fails to report a UTT, HMRC will be able to charge a

penalty. Part 3 provides details of:

- when a penalty may be charged,
- the amounts chargeable, and
- the safeguards available to the taxpayer.

Clause 95: Discovery assessments for unassessed income tax or capital gains tax

Summary

1. This clause amends s.29(1)(a) of the Taxes Management Act 1970 to provide certainty that HMRC can use discovery assessments to make good a loss of tax where they discover that charges including High Income Child Benefit, Gift Aid and certain Pension charges have not been accounted for. The clause also removes regulation 9, (modification of section 29(1)(a) TMA1970 from the Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (S.I. 2005/3454) which is no longer needed. The clause will come into effect at Royal Assent of the Finance Bill. It will apply retrospectively to s.29(1)(a) TMA1970 for High Income Child Benefit Charges, Gift Aid charges and specified

pension charges. It will also have prospective effect for all other tax charges.

Details of the clause

2. Subsection 1 amends Section 29(1)(a) of the Taxes Management Act 1970 (assessment where loss of tax discovered) to provide that HMRC may make an assessment where they discover that an amount of income tax or capital gains tax that ought to have been assessed has not been assessed.

3. Subsection 2 amends the Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (SI 2005/3454) to remove regulation 9 which ceases to have effect following the introduction of this clause.

4. Subsection 3 provides that the amendments made by the section apply prospectively to tax year 2021-22 and future years and that they apply with

retrospective effect in relation to a discovery assessment for 2020-21 and earlier years where it meets the conditions of being a "relevant protected assessment" under subsections (4) to (6).

5. Subsection 4 specifies the conditions for a discovery assessment to be a relevant protected assessment. A discovery assessment is a relevant protected assessment if it is in respect of an amount of tax chargeable in respect of High Income Child Benefit charge (paragraph (a)), Gift Aid charge (paragraph (b)) and certain pension charges (paragraphs (c) and (d)).

6. Subsection 5 stipulates that a discovery assessment is not a relevant protected assessment where it is subject to an appeal, notice of which has been given to HMRC on or before 30th June 2021, where (under subsection (a)) an issue in the appeal is a challenge to the validity of the

assessment on the basis of its not relating to the discovery of income which ought to have been assessed but which has not been assessed, and (subsection (b)), the appeal issue was raised on or before 30 June 2021 either by the appellant or in a tribunal decision.

7. Subsection 6 stipulates further conditions excepting a discovery assessment from being a relevant protected assessment, namely where the discovery assessment is subject to an appeal, notice of which is given to HMRC on or before 30th June 2021 (subsection (a)), where the appeal is temporarily paused before the 27th October 2021, (subsection (b)) and it is reasonable to conclude that the pausing was wholly or in part because an issue of a kind described in subsection (5)(a) is, or might be, relevant to determining the appeal.

8. Subsection (7) provides that appeals given

to HMRC on or before 30th June include cases where under subsection (a) notice of the appeal is given after that date as a result of section 49 TMA1970 but, under subsection (b), a written request was made to HMRC on or before that date asking for HMRC's agreement to the late notice.

9. Subsection (8) lists three circumstances where an appeal is subject to a temporary pause before 27TH October 2021. The circumstances are (a) the appeal is stayed by the tribunal, (b) parties to the appeal agree to it being stayed, or (c) HMRC have notified the appellant that they are suspending work on the appeal pending the determination of another appeal the details of which have been notified to the appellant.

10. Subsection (9) defines "discovery assessment", "HMRC" and "notified" as used within the clause.

Background note

11. Prior to the introduction of this clause, Section 29(1)(a) of the Taxes Management Act 1970 provided that where HMRC discovered a taxpayer had income or chargeable gains that should have been assessed to either income tax or capital gains tax but which had not been assessed, HMRC could issue a discovery assessment to assess that tax.

12. The application of Section 29(1)(a) has been subject to legal challenges on the grounds that the discovery provision cannot be used to assess tax charges arising from sources that do not meet the definition of "income" as stated within the provision.

13. To put the matter beyond doubt and confirm HMRC's long-standing policy, this retrospective and prospective legislation makes clear that HMRC may use s.29(1)(a) to assess any amounts of

income tax or capital gains tax that ought to have been assessed but have not been assessed.

Clause 96: Notification of liability to income tax and capital gains tax

Summary

1. This clause amends Section 7 of the Taxes Management Act 1970 (TMA 1970) and extends the circumstances in which a person must make a notification under section 7 to the charges listed in section 30 of the Income Tax Act 1970.

Details of the clause

2. Subsection 1 provides that section 7 TMA 1970 is amended by subsections (2) and (3).

3. Subsection 2 amends section 7 (2A) which applies to a person notified of a simple assessment for a year of assessment. The amendment requires such a person to give notice under section 7 (1) if they are chargeable to an amount of income tax or

capital gains tax that is not included in the simple assessment.

4. Subsection 3 amends Section 7(3)(c) and provides that a person is required to notify HMRC of their chargeability to tax where any of the provisions listed under section 30 of the Income Tax Act 2007 apply.

5. Subsection 4 makes a consequential amendment to Schedule 16 to the Finance Act 2020 (taxation of coronavirus support payments). Paragraph 12(4) of Schedule 16 applies Section 7(3)(c) TMA 1970 with modifications to a person who incurs an income tax liability under paragraph 8 of Schedule 16, requiring that person to notify that chargeability under section 7(1) TMA 1970. This clause removes the reference to a high interest child benefit charge from section 7(3)(c), and as a consequence the reference is also removed from the modification of that provision in paragraph 12(4) of Schedule 16.

6. Subsection 5 provides that the amendments made by this clause have effect from the 2021-22 tax year and future tax years.

Background note

7. This clause amends Section 7 to provide that if a person incurs any of the tax charges contained within Section 30 Income Tax Act 2007, they are required to notify HMRC they have incurred that tax liability under the provisions of Section 7 (1) TMA 1970.

Clause 97: Calculation of income tax liability for certain charges relating to pensions

Summary

1. Section 30(1) of the Income Tax Act 2007 (additional tax) lists the provisions for charges to be brought into account at Step 7 of the income tax calculation in section 23 of that Act. This clause replaces the entries in Section 30(1) relating to the unauthorised payments charge and unauthorised payments surcharge at sections 208(2)(a) and 209(3)(a) of the Finance Act 2004 with entries for the entire sections 208 and 209 of that same Act. This clause also inserts an entry for section 244A of the Finance Act 2004.This clause comes into force at Royal Assent and applies to the tax year 2021/22 and subsequent tax years.

Details of the clause

2. Subsection 1 amends Section 30(1) by replacing the entry for section 208(2)(a) of FA 2004 with an entry for section 208 of FA 2004. It also replaces the entry for section 209(3)(a) of FA 2004 with an entry for section 209 FA 2004. This clause also inserts a reference to the overseas transfer charge in section 244A of FA 2004.

3. Subsection 2 provides that the amendments made by subsection 1 of the clause have effect in relation to the 2021-22 tax year and subsequent tax years.

Background note

4. This clause amends the list of other income tax charges in section 30(1) of the Income Tax Act 2007, by replacing the entries relating to unauthorised payments charge and unauthorised payments surcharge at sections 208(2)(a) and 209(3)(a) of FA 2004, with entries for the

entire sections 208 and 209. This ensures that the provisions of section 30(1) apply to all of the liable parties provided for within sections 208 and 209. This clause also places the overseas transfer charge at section 244A of the Finance Act into the list of other income tax charges in Section 30(1) of the Income Tax Act 2007. This clause provides consistency of treatment for all of the pension charges.

Clause 98: Power to make temporary modifications of taxation of employment income

Summary

1. This clause will grant HM Treasury the power to make regulations to temporarily modify Parts 3, 4 or 5 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), under ministerial direction, in the event of a disaster or emergency of national significance. HM Treasury can determine when it is appropriate to use the powers within the legislative criteria. Any modifications made to ITEPA in exercise of the new powers must have effect only for the minimum period of time necessary or desirable to address the circumstances set out in any regulations made under the new power. The regulations must set out which disaster or emergency they are

made in respect of, and the powers can only be exercised in a way that is wholly relieving to the taxpayer and cannot be used to create a tax charge.

Details of the clause

2. This clause gives HM Treasury the power to make regulations to modify Parts 3, 4 or 5 of ITEPA to have a relieving effect for taxpayers in the event of a disaster or emergency of national significance.
3. Subsection 1 specifies that HM Treasury may use regulations to modify Parts 3, 4 or 5 ITEPA so as to provide that an income tax liability that would otherwise arise does not arise.
4. Subsection 2 provides the conditions under which the powers may be used.
5. Subsection 2(a) specifies that regulations may only be made by under this clause if HM Treasury considers that the modifications to ITEPA contained in the

regulations are necessary or desirable to address the circumstances arising from a disaster or emergency of national significance.

6. Subsection 2(b) states that the regulations must specify the period of time after which the effects of the modification will end, and that different periods of time may be specified for different modifications.
7. Subsection 3 provides further conditions under which the powers may be used under this clause.
8. Subsection 3(a) states that the regulations must specify the disaster or emergency in respect of which the modifications are made.
9. Subsection 3(b) states that the regulations may only specify a disaster or emergency that HM Treasury consider to be of national significance.

10. Subsection 4 sets out further rules about the time limits for which any modifications may have effect.

11. Subsection 4(a) states that any modifications made to Parts 3, 4 or 5 of ITEPA must not extend beyond the period of time that the Treasury consider to be necessary or desirable to address the circumstances arising as a result of the disaster or emergency.

12. Subsection 4(b) states that any modifications can only remain in place for a maximum of two tax years, including the tax year in which the modification first takes effect.

13. Subsection 5 clarifies that, where a modification in regulations made under this clause has expired, this does not prevent HM Treasury from making provision to the same or similar effect in further regulations, either in relation to either that disaster or emergency, or in

relation to another disaster or emergency.

14. Subsection 6 provides the scope of how the powers under this clause may be exercised.

15. Subsection 6(a) states that regulations may be used to make different provision for different cases.

16. Subsection 6(b) states that the regulations may make retrospective provision.

17. Subsection 6(c) states that regulations may make incidental or supplemental provision.

18. Subsection 6(d) states that regulations may be used to make consequential provision, including modifying any provision of the Income Tax Acts.

19. Subsection 7 clarifies that the term "specified" in this clause means specified in the regulations.

Background note

20. COVID-19 has highlighted the limited scope to make changes to the current benefits in kind and expenses rules to respond quickly to the pandemic. The government has had to introduce primary and secondary legislation to respond to the pandemic, often with retrospective effect due to the Finance Bill timetable, to make various provision, including exempting a number of benefits in kind, changing the qualifying conditions of certain benefits and providing relief for specified expenses.

21. It is expected that during any future disaster or emergency of national significance, it may be necessary to make similar temporary modifications to Parts 3, 4 or 5 ITEPA to modify the income tax rules in relation to benefits in kind and expenses. The current legislation allows quick modifications to the relevant Parts of ITEPA be made in limited

circumstances through secondary legislation, which means that a Finance Bill is not required.

22. Therefore, in order to be able to respond effectively to disasters or emergencies of national significance like COVID-19 in the future, the government will introduce regulation making powers that will allow HM Treasury to respond quickly to various emergency situations, including but not limited to pandemics, if deemed necessary. Any modifications made in exercise of the new powers would be via a negative procedure Statutory Instrument, given that the modification must be wholly relieving, temporary and exercisable only in a limited range of circumstances.

Clause 99 and Schedule 16: Vehicle CO_2 emissions certificates

Summary

1. This clause and Schedule provide for more types of vehicle approval certification with carbon dioxide (CO_2) emissions figures to be used for the purposes of capital allowances, taxable benefits arising from the provision of cars, and Vehicle Excise Duty. This will include certificates issued under the Great Britain Comprehensive Vehicle Approval Scheme, which is expected to be introduced in 2022. A provisional scheme has been in existence since January 2021.

Details of the clause

2. Clause 99 introduces Schedule 16 to make provisions for certificates in relation to the CO_2 emissions for vehicles for the purposes of the tax legislation specified.

Details of the Schedule

Part 1: Amendments to the Capital Allowances Act 2001

3. Paragraph 1 amends section 268C of the Capital Allowances Act 2001 (CAA).

4. Subparagraph (2) redefines a "qualifying emissions certificate" for the purposes of Part 2 CAA (Plant and machinery allowances) as to include any "certificate or other document on the basis of which the vehicle is registered" and which includes a CO_2 emissions figure.

5. Subparagraphs (3) and (4) makes the "applicable CO_2 emissions figure" determined by subsections (2) and (3) of section 268C CAA subject to new subsection (3A).

6. Subparagraph (5) inserts a new subsection (3A) into section 268C CAA, providing that only WLTP (worldwide harmonized light vehicle test procedure) CO_2 emission values on "qualifying emissions

certificates" are recognised for vehicles registered on or after IP (implementation period) completion day, which is defined as 31 December 2020 at 11pm.

7. Subparagraph (6) removes obsolete definitions from subsection (4) of section 268C CAA.

8. Subparagraph (7)(a) provides that paragraph 1 has effect, for income tax or capital gains tax purposes, in relation to the tax year 2017-18 and subsequent tax years. Subparagraph (7)(b) provides that paragraph 1 has effect, for corporation tax purposes, in relation to accounting periods ending on or after 4 November 2017.

Part 2: Amendments to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

9. Part 2 of Schedule 16 contains amendments to ITEPA.

10. Paragraph 2 provides that the

Schedule amends Chapter 6 of Part 3 of ITEPA. For taxable benefits arising from the provision of cars, the measure will have effect for cars first registered on or after IP completion day or from the 2017-18 tax year for cars first registered after 1 January 1998 with a UK approval certificate.

11. Paragraph 3 amends Section 134 (meaning of car with or without a CO_2 emissions figure). Sub-paragraph 3(a) and (b) amend section 134(1)(b) and insert a new sub-section 134(1)(ba), so that the definition of "a car with a CO_2 emissions figure", for the purposes of Chapter 6 of Part 3, includes cars first registered on or after 1 October 1999 but before IP completion day to which section 136 applies, as well as cars registered on or after IP completion day to which new section 136A applies. Sub-paragraph 3(c) and (d) amend section 134(1)(c) and insert a new sub-section 134(1)(d), so that the

definition of "a car with a CO_2 emissions figure" includes bi-fuel cars first registered on or after 1 January 2000 but before IP completion day to which section 137 applies, as well as bi-fuel cars registered on or after IP completion day to which new section 137A applies.

12. Paragraph 4(1) principally amends Section 136 (car with a CO_2 emissions figure: post-September 1999 registration). Sub-paragraph 4(1)(a) amends the heading to that provision. Sub-paragraph 4(1)(b) amends section 136(1) so that the provision only applies to cars first registered on or after 1 October 1999 but before IP completion day. Sub-paragraph 4(1)(c) amends section 136(3) to reflect a change to the title of section 137 made by other parts of the Schedule.

13. Sub-paragraph 4(2) inserts a new section 136A into ITEPA, which applies to cars with a CO_2 emissions figure

registered on or after IP completion day on the basis of a qualifying emissions certificate that refers to WLTP (worldwide harmonized light vehicles test procedures values).

14. Paragraph 5(1) amends section 137 (car with a CO_2 emissions figure: bi-fuel cars). Sub-paragraph 5(1)(a) amends the heading to that provision. Sub-paragraph 5(1)(b) amends section 137 so that the provision only applies to cars first registered on or after 1 January 2000 but before IP completion day.

15. Sub-paragraph 5(2) inserts a new section 137A into ITEPA, which applies to bi-fuel cars with a CO_2 emissions figure registered on or after IP completion day on the basis of a qualifying emissions certificate that refers to WLTP values.

16. Paragraph 6 amends section 171. Sub-paragraph 6(2) inserts a new definition of a “qualifying emissions certificate” into

section 171. This will have the same meaning as in section 268C(1) of the Capital Allowances Act 2001 (as amended by this Bill).

17. Sub-paragraph 6(3) substitutes a new definition of "UK approval certificate" into section 171 (minor definitions: general) which applies for the purposes of Chapter 6 of Part 3. The new definition not only includes any issued under section 58 of the Road Traffic Act 1988 (and the Northern Ireland equivalent to that legislation), but also any other certificate or document issued in the United Kingdom on the basis of which a vehicle is first registered, other than an EC certificate of conformity or an EC type-approval certificate. Sub-paragraph 6(4) provides that sub-paragraph (3) has effect in relation to the tax year 2017-18 and subsequent tax years.

18. Paragraph 7 makes consequential

amendments to paragraph 22B(2) of Schedule A1 to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) which are required as a result of the amendments made to Chapter 6 of Part 3 of ITEPA by the Schedule.

Part 3: Amendments relating to the Vehicle Excise and Registration Act 1994

19. Paragraph 8 amends paragraph 1G of Schedule 1 to the Vehicle Excise and Registration Act 1994 (VERA).

20. Subparagraph 1 provides that references to a "UK approval certificate" include any UK-issued certificate or document used to first register a vehicle that specifies a CO_2 emissions figure.

21. Subparagraph 2 provides that the change in definition applies to licences taken out on or after 3 November 2021.

Part 4: Power to make consequential provision

22. Paragraph 9 introduces a new power enabling HM Treasury to make

consequential provision arising from this Schedule in regulations.

23. Subparagraph (2) sets out the type of provision which may be made by such regulations.

24. Subparagraph (3) requires that a statutory instrument including such regulations will be subject to annulment in pursuance of a resolution of the House of Commons, which applies where an objection is made to it within a certain period.

Background note

25. Tax relief for the costs of certain capital assets is available through capital allowances, which can be deducted from a business's profits for income tax or corporation tax purposes in place of depreciation, which is not deductible for the purposes of these taxes.

26. The plant and machinery capital

allowances available for the purchase of a car are in part determined by the level of its CO_2 emissions. A 100% first-year allowance is available for new cars purchased which have zero CO_2 emissions, including electric cars. Otherwise writing down allowances (WDAs) are available at the main rate of 18 per cent per annum for electric cars and those with low CO_2 emissions of up to 50 grams per kilometer driven (g/km); or 6 per cent per annum for those with emissions exceeding 50 g/km.

27. Where a business hires a car, tax relief for the hire costs is available as a deduction from a business's turnover when arriving at its net profit. Broadly, where the business hires a car for more than 45 consecutive days which is not an electric car or does not have low CO_2 emissions, the deduction for the hire costs is restricted by 15 per cent. Cars with low CO_2 emissions for the purpose of this

restriction are defined in the same way as those for WDAs, being those with CO_2 emissions of up to 50g/km.

28. For the purpose of capital allowances and tax relief for hire costs, the level of a car's CO_2 emissions is determined from the certification which has been used to first register the car for use on the road within the United Kingdom or another territory. This is being updated to include all types of certification used to register cars for use on the road, provided that the stated value for the level of its CO_2 emissions derives from the Worldwide Harmonised Light Vehicle Test Procedure for cars first registered on or after IP completion date.

29. Chapter 6 of Part 3 of ITEPA applies to a car or van in relation to a particular tax year if in that year the car or van is made available by reason of the employment for the employee's private

use. Section 120 of ITEPA provides for the cash equivalent of the benefit of a car to be treated as earnings from the employment for that tax year. It is therefore necessary to calculate the cash equivalent of the benefit of the car using the calculation set out in section 121 of ITEPA. The cash equivalent of the benefit of a company car made available for private use is based on the list price of the car (when new) plus cost of any accessories multiplied by the appropriate percentage. Step 5 of the calculation refers to finding the "appropriate percentage" for the car for the tax year in accordance with sections 133 to 142 of ITEPA.

30. Section 133 of ITEPA specifies how to determine the "appropriate percentage" for the car, depending on whether it is a car with or without a CO_2 emissions figure, or a diesel car. The appropriate percentage depends on the level of CO_2 emissions produced by the car. For cars

which do not have registered CO_2 emissions figures, the appropriate percentage for these is based on the cylinder capacity of the engine. Section 134 of ITEPA provides a definition of a car with or without a CO_2 emissions figure.

31. Section 136 of ITEPA applied to cars first registered on or after 1 October 1999. It has now been amended to apply to cars first registered on or after that date, but before IP completion day. New section 136A will apply to cars first registered on or after IP completion day, and allows for a wider range of certificates to be used for first registration of the car.

32. The amendments made by paragraphs 3 and 4 of Part 2 of the Schedule apply to cars capable of running on more than one type of fuel (bi-fuel cars) or an automatic car for an employee who is disabled. Section 137 of ITEPA applied to bi-fuel cars with a CO_2 emissions figure

registered on or after 1 January 2000. It has now been amended to apply to cars registered on or after that date but before IP completion day. New section 137A of ITEPA applies to bi-fuel cars registered on or after IP completion day, and allows for a wider range of certificates to be used for first registration of the car.

33. As the new sections 136A and s137A only apply to a car first registered on or after IP completion day, the provisions state that, for the purposes of determining the car's CO_2 emissions figures, only WLTP values are relevant. This is because, where a car is first registered on or after 6 April 2020, only the WLTP value of the car is relevant to determine the car's CO_2 emissions figure, due to the changes made by the Finance Act 2020. New sections 136A and s137A only apply to cars first registered on or after IP completion date, which post-dates 6 April 2020.

34. Section 171 of ITEPA contains various minor definitions applicable to Chapter 6 of Part 3 of ITEPA. The changes made by sub-paragraph 6(3) to section 171 ensure that the legislation applying to cars first registered up to IP completion day covers other types of certificates issued in the UK under various provisions, as well as EC Certificates of Conformity. These changes have effect for the tax year 2017-18 and subsequent tax years. Finally, sub-paragraph 7 makes consequential changes to Schedule A1 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682), which sets out rules about information to be supplied on real time returns under the PAYE system.

35. Vehicle Excise Duty (VED) is an annual tax chargeable on most types of powered vehicles which are to be used or parked on UK roads.

36. The rate of VED chargeable on light

passenger vehicles depends in part on their CO_2 emissions, with both a vehicle's classification and applicable CO_2 emissions being determined with reference to certification used for their registration. That certification is also used to classify light goods vehicles for the purposes of VED.

37. The changes made to Schedule 1 of VERA ensure that all forms of certification used to register a vehicle, and which specifies their classification and CO_2 emissions to certain standards, can be used to determine the rate of VED chargeable.

Clause 100: Increase in membership of the Office of Tax Simplification

Summary

1. This clause increases the maximum independent representation on the Board of the Office of Tax Simplification (OTS) by two members, to a total overall membership of up to ten.

Details of the clause

2. FA 2016 contains Schedule 25 (Office of Tax Simplification), this clause substitutes “eight” for “ten” in paragraph 1(1).

Background note

3. The Office of Tax Simplification (OTS) is the independent adviser to the government on simplifying the UK tax system.

4. Paragraph 1(1) of Schedule 25 to Finance Act 2016 allows the OTS up to eight board members. This clause increases the

maximum representation on the Board by two members, to a total overall membership of up to ten.

Clause 101: Interpretation

1. This clause 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 102: Short title

1. This clause provides for the bill to be known as "Finance Act 2022" upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, there are only three of the Finance (No. 2) Bill clauses that do not apply to the whole of the United Kingdom.
2. The clauses that do not apply to the whole of the United Kingdom relate to:
    a. the main rates of income tax (clause 2),
    b. cabotage (clause 78), and
    c. the rates of landfill tax (clause 82).
3. Clause 2 sets the main rates of income tax for the tax year 2022-23. The non-savings, non-dividend income of a UK resident individual who is not a Scottish taxpayer or Welsh taxpayer is charged at these main rates. Furthermore, although the non-savings, non-dividend income of a Welsh taxpayer is charged at the Welsh basic, higher and additional rates those

Welsh rates are determined in part by reference to the main rates of income tax. But the non-savings, non-dividend income of a Scottish taxpayer is charged at Scottish rates which are set by the Scottish Parliament alone.

4. Clause 78 contains provision about cabotage that extends to the United Kingdom, but only relates to vehicles being used for in connection with a cabotage operation in Great Britain.
5. Clause 82 increases the rates of landfill tax. Landfill tax is charged on taxable disposals made in England or Northern Ireland (see section 40(1) of the Finance Act 1996). Legislative competence to introduce a corresponding tax in relation to disposals to landfill made in Wales was conferred on the National Assembly for Wales by section 116N of the Government of Wales Act 2006 (inserted by section 18 of the Wales Act 2014) and that competence has been exercised with the

enactment of the Landfill Disposals Tax (Wales) Act 2017. Legislative competence to introduce a corresponding tax in relation to disposal to landfill made in Scotland was conferred on the Scottish Parliament by section 80K of the Scotland Act 1998 (inserted by section 30 of the Scotland Act 2012) and that competence has been exercised with the enactment of the Landfill Tax (Scotland) Act 2014.

Minor or consequential effects

6. None identified.

FINANCE (NO. 2) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Finance (No .2) Bill as introduced in the House of Commons on 2 November 2021 (Bill 184).

Ordered by The House of Commons to be printed, 2 November 2021.

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