



House of Commons

Thursday 19 May 2011

PUBLIC BILL COMMITTEE PROCEEDINGS

FINANCE (No. 3) BILL

(except Clauses 4, 7, 10, 19, 35 and 72)

[SEVENTH AND EIGHTH SITTINGS]

Clauses 21 to 25 agreed to.

David Hanson
Kerry McCarthy

Page 18, line 31, leave out Clause 26.

Not selected 95

Clause agreed to on division.

David Gauke

Schedule 2, page 54, line 6, leave out 'Subject to section 554B(5), in' and insert 'In'. *Agreed to* 102

David Gauke

Schedule 2, page 55, line 21, leave out from beginning to end of line 8 on page 56. *Agreed to* 103

David Gauke

Schedule 2, page 56, line 35, after '420' insert 'for the purposes of Chapters 1 to 5 of Part 7'. *Agreed to* 10

David Gauke

Schedule 2, page 58, leave out lines 35 to 38. *Agreed to* 11

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David Gauke

Agreed to 12

Schedule 2, page 59, line 15, leave out from beginning to end of line 44 and insert—

- ‘(2) Subject to subsection (4), subsection (3) applies to a relevant step taken by a person (“P”) if—
- (a) the relevant step is not taken under an arrangement mentioned in subsection (1)(a) to (c), and
 - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (3) Chapter 2 does not apply by reason of the relevant step if the step is taken solely for the purpose of—
- (a) acquiring or holding shares—
 - (i) to be awarded under an approved SIP, or
 - (ii) to be provided pursuant to options granted under an approved SAYE option scheme or an approved CSOP scheme, or
 - (b) providing shares pursuant to—
 - (i) an award of shares under an approved SIP, or
 - (ii) an option granted under an approved SAYE option scheme or an approved CSOP scheme.
- (4) Subsection (3) does not apply to the relevant step if, immediately before or after the step is taken—
- (a) the total number of shares of any type held, in relation to the approved SIP, the approved SAYE option scheme or the approved CSOP scheme, by P and any other persons for purposes within subsection (3)(a) and (b), exceeds
 - (b) the maximum number of shares of that type which might reasonably be expected to be required, in relation to the approved SIP, the approved SAYE option scheme or the approved CSOP scheme, for those purposes over the period of ten years starting with the day on which the relevant step is taken.’.

David Gauke

Agreed to 13

Schedule 2, page 59, line 46, leave out ‘, 8 or 9’ and insert ‘or 8’.

David Gauke

Agreed to 14

Schedule 2, page 59, line 46, at end insert—

- ‘(5A) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”) if—
- (a) the relevant step is taken for the sole purpose of—
 - (i) granting qualifying options under an EMI arrangement,
 - (ii) acquiring or holding shares to be provided pursuant to qualifying options granted under an EMI arrangement, or

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- (iii) providing shares pursuant to qualifying options granted under an EMI arrangement, and
 - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (5B) But subsection (5A) does not apply to the relevant step if, immediately before or after the step is taken—
- (a) the total number of shares of any type held, in relation to the EMI arrangement, by P and any other persons for purposes within subsection (5A)(a)(i) to (iii), exceeds
 - (b) the maximum number of shares of that type which might reasonably be expected to be required, in relation to the EMI arrangement, for those purposes over the period of ten years starting with the day on which the relevant step is taken.
- (5C) In subsections (5A) and (5B) “EMI arrangement” means an arrangement under which qualifying options are granted.
- (5D) Terms used in subsections (5A) to (5C) have the same meaning as in Chapter 9 of Part 7.’.

David Gauke

Agreed to **15**

Schedule **2**, page **60**, line **3**, leave out ‘(1)(e)’ and insert ‘(3) or (5A)’.

David Gauke

Agreed to **16**

Schedule **2**, page **60**, line **6**, leave out from ‘for’ to ‘but’ in line 7 and insert ‘purposes within subsection (3)(a) and (b) or (5A)(a)(i) to (iii),’.

David Gauke

Agreed to **17**

Schedule **2**, page **62**, line **27**, leave out ‘B awards A’ and insert ‘A is awarded’.

David Gauke

Agreed to **18**

Schedule **2**, page **62**, line **34**, leave out from ‘terms’)’ to first ‘the’ in line 38 and insert ‘the main purpose of which is to defer the provision to A of the deferred remuneration to a specified date (“the vesting date”) which is after the award date, while providing that’.

David Gauke

Agreed to **19**

Schedule **2**, page **63**, leave out lines 11 to 15.

David Gauke

Agreed to **20**

Schedule **2**, page **63**, line **16**, leave out ‘mentioned in subsection (1)(c)(ii)’ and insert ‘relating to revocation required by subsection (1)(c)’.

David Gauke

Agreed to **21**

Schedule **2**, page **64**, line **26**, leave out from ‘terms’ to end of line 42.

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David Gauke

Agreed to **22**

Schedule 2, page 65, line 9, leave out 'shares' and insert 'certain shares or securities'.

David Gauke

Agreed to **23**

Schedule 2, page 65, line 10, leave out 'shares' and insert 'certain shares or securities'.

David Gauke

Agreed to **24**

Schedule 2, page 65, line 11, leave out 'Section 554L is' and insert 'Sections 554L and 554LA are'.

David Gauke

Agreed to **25**

Schedule 2, page 65, line 12, leave out 'shares' and insert 'certain shares or securities'.

David Gauke

Agreed to **26**

Schedule 2, page 65, line 13, leave out 'shares' and insert 'certain shares or securities'.

David Gauke

Agreed to **27**

Schedule 2, page 65, line 14, leave out '554L' and insert '554LA'.

David Gauke

Agreed to **28**

Schedule 2, page 65, line 17, leave out from '393B(2)(a),' to end of line 22 and insert—

“relevant shares” means—

- (a) shares (including stock) in B,
- (b) instruments issued by B which are securities for the purposes of Chapters 1 to 5 of Part 7 within section 420(1)(b), or
- (c) units in a collective investment scheme (as defined in section 420(2)) managed by B which are securities for the purposes of Chapters 1 to 5 of Part 7 within section 420(1)(e), and

“trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade.

- (5) If B is a member of a group of companies, in the definition of “relevant shares” in subsection (4) references to B are to be read as including references to any other company which is a member of that group.
- (6) For the purposes of sections 554K and 554LA an exit event occurs if—
 - (a) shares in the relevant company are admitted to trading on a stock exchange,
 - (b) all the shares in the relevant company, or a substantial proportion of them, are disposed of to persons none of whom are connected with any of the persons making any disposal,

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- (c) if the relevant company is a trading company (as defined in subsection (4)), the company's trade, or a substantial proportion of it, is transferred to a person who is not a relevant connected person,
 - (d) the relevant company's assets, or a substantial proportion of them, are disposed of to a person who is not a relevant connected person,
 - (e) the winding up of the relevant company starts, or
 - (f) a person ("P") who controls the relevant company ceases to control it, so long as no person connected with P starts to control it.
- (7) For the purposes of subsection (6)—
- (a) "the relevant company" means—
 - (i) if the relevant shares mentioned in section 554K(1)(a)(i) or (ii) or 554LA(1)(a)(i) or (ii) are shares (including stock), the company in which they are shares, or
 - (ii) if the relevant shares so mentioned are instruments within paragraph (b) of the definition of "relevant shares" in subsection (4), the company by which those instruments are issued,
 - (b) "relevant connected person" means a person who—
 - (i) is connected with the relevant company, or
 - (ii) is a shareholder in the relevant company or is connected with a shareholder in the relevant company,
 - (c) the relevant company's trade, or a substantial proportion of it, is transferred to another person if—
 - (i) the relevant company ceases to carry on the trade or the proportion of it, and
 - (ii) on that occurring, the other person starts to carry on the trade or the proportion of it, and
 - (d) section 12(7) of CTA 2009 applies for the purpose of determining when the winding up of the relevant company starts.'.

David Gauke

Agreed to **29**

Schedule 2, page 65, line 26, leave out 'B may make to A an award' and insert 'an award may be made to A'.

David Gauke

Agreed to **30**

Schedule 2, page 65, line 35, leave out from 'terms')' to 'the' in line 41 and insert 'the main purpose of which is to defer the receipt of the shares by A, or the payment of the sum of money to A, to a specified date ("the vesting date") which is after the date ("the award date") on which the award is made, while providing that'.

David Gauke

Agreed to **31**

Schedule 2, page 65, line 43, leave out 'five' and insert 'ten'.

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- David Gauke *Agreed to* **32**
 Schedule 2, page 66, leave out lines 1 to 5.
- David Gauke *Agreed to* **33**
 Schedule 2, page 66, line 6, leave out ‘mentioned in subsection (1)(c)(ii)’ and insert ‘relating to revocation required by subsection (1)(c)’.
- David Gauke *Agreed to* **34**
 Schedule 2, page 66, line 20, leave out ‘(subject to subsection (2))’.
- David Gauke *Agreed to* **35**
 Schedule 2, page 66, line 25, leave out ‘(subject to subsection (2))’.
- David Gauke *Agreed to* **36**
 Schedule 2, page 66, line 37, leave out ‘which is three months after’ and insert ‘falling immediately after the period of three months starting with’.
- David Gauke *Agreed to* **37**
 Schedule 2, page 67, line 44, leave out from ‘shares’ to end of line 48 and insert ‘, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the award.’.
- David Gauke *Agreed to* **38**
 Schedule 2, page 68, line 5, leave out from ‘correspondingly,’ to end of line 8 and insert ‘the shares are no longer held by any person in relation to the award.’.
- David Gauke *Agreed to* **39**
 Schedule 2, page 68, line 23, leave out from ‘B,’ to end of line 26 and insert ‘an award may be made to A of—
 (i) relevant shares, or
 (ii) a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,’.
- David Gauke *Agreed to* **40**
 Schedule 2, page 68, line 28, at end insert—
 ‘(ba) the relevant shares would be—
 (i) shares (including stock) in, or
 (ii) instruments within paragraph (b) of the definition of “relevant shares” in section 554I(4) issued by, a trading company or a company which controls a trading company,’.

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David Gauke

Agreed to **41**

Schedule 2, page 68, line 30, leave out from beginning to 'and' in line 32 and insert 'the main purpose of which is to ensure—

- (i) that the relevant shares are received, or
- (ii) that the sum of money is paid,

only if a specified exit event, or an exit event within a specified description, occurs,'.

David Gauke

Agreed to **42**

Schedule 2, page 68, leave out lines 36 to 50.

David Gauke

Agreed to **43**

Schedule 2, page 69, line 7, after first 'of' insert 'relevant shares or'.

David Gauke

Agreed to **44**

Schedule 2, page 69, line 10, leave out '(subject to subsection (3))'.

David Gauke

Agreed to **45**

Schedule 2, page 69, line 12, after first 'of' insert 'relevant shares or'.

David Gauke

Agreed to **46**

Schedule 2, page 69, line 16, leave out '(subject to subsection (3))'.

David Gauke

Agreed to **47**

Schedule 2, page 69, leave out lines 17 and 18.

David Gauke

Agreed to **48**

Schedule 2, page 69, line 30, leave out 'which is three months after' and insert 'falling immediately after the period of three months starting with'.

David Gauke

Agreed to **49**

Schedule 2, page 70, line 20, leave out 'subsection (11) does not apply' and insert 'neither subsection (10A) nor subsection (11) applies'.

David Gauke

Agreed to **50**

Schedule 2, page 70, line 26, at end insert—

(10A) This subsection applies to any earmarked shares if—

- (a) A receives the shares before the end of the exit period, and
- (b) the receipt of the shares by A gives rise to employment income of A which is chargeable to income tax or which is exempt income.'

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David Gauke

Schedule 2, page 70, line 28, leave out '(1)(a)' and insert '(1)(a)(ii)'. *Agreed to 51*

David Gauke

Schedule 2, page 70, line 34, leave out from 'shares' to end of line 38 and insert 'or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the award.'. *Agreed to 52*

David Gauke

Schedule 2, page 70, line 39, after '(10)' insert ', (10A)(a)'. *Agreed to 53*

David Gauke

Schedule 2, page 70, line 40, leave out 'three' and insert 'six'. *Agreed to 54*

David Gauke

Schedule 2, page 71, line 7, leave out 'B may grant A a right ("a relevant share option")' and insert 'a right ("a relevant share option") may be granted to A'. *Agreed to 55*

David Gauke

Schedule 2, page 71, line 16, leave out from 'terms')' to 'the' in line 21 and insert 'the main purpose of which is to ensure that the relevant share option is not exercisable by A before a specified date ("the vesting date") which is after the date ("the grant date") on which the grant is made, while providing that'. *Agreed to 56*

David Gauke

Schedule 2, page 71, line 24, leave out 'five' and insert 'ten'. *Agreed to 57*

David Gauke

Schedule 2, page 71, leave out lines 30 to 34. *Agreed to 58*

David Gauke

Schedule 2, page 71, line 35, leave out 'mentioned in subsection (1)(c)(ii)' and insert 'relating to revocation required by subsection (1)(c)'. *Agreed to 59*

David Gauke

Schedule 2, page 71, line 44, after 'providing' insert 'relevant'. *Agreed to 60*

David Gauke

Schedule 2, page 71, line 49, leave out '(subject to subsection (2))'. *Agreed to 61*

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David Gauke

Schedule 2, page 72, line 5, leave out '(subject to subsection (2))'. *Agreed to 62*

David Gauke

Schedule 2, page 72, line 18, leave out 'which is three months after' and insert 'falling immediately after the period of three months starting with'. *Agreed to 63*

David Gauke

Schedule 2, page 72, line 20, after 'at' insert 'the end of'. *Agreed to 64*

David Gauke

Schedule 2, page 73, line 4, after 'before' insert 'the end of'. *Agreed to 65*

David Gauke

Schedule 2, page 73, line 21, leave out from 'A' to end of line 22 and insert '—
(i) which is chargeable to income tax or would be chargeable apart from section 474, or
(ii) which is exempt income.'. *Agreed to 66*

David Gauke

Schedule 2, page 73, line 30, leave out from 'A' to 'and' in line 31 and insert '—
(i) which is chargeable to income tax or would be chargeable apart from section 474, or
(ii) which is exempt income,.'. *Agreed to 67*

David Gauke

Schedule 2, page 73, line 33, leave out from 'shares' to end of line 37 and insert ' , or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the relevant share option.'. *Agreed to 68*

David Gauke

Schedule 2, page 73, line 42, leave out from 'correspondingly,' to end of line 45 and insert 'the shares are no longer held by any person in relation to the relevant share option.'. *Agreed to 69*

David Gauke

Schedule 2, page 74, line 3, leave out from 'correspondingly,' to end of line 6 and insert 'the shares are no longer held by any person in relation to the relevant share option.'. *Agreed to 70*

David Gauke

Schedule 2, page 74, line 8, leave out 'five' and insert 'ten'. *Agreed to 104*

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David Gauke

Agreed to 71

Schedule 2, page 74, line 19, at end insert—

‘554LA Exclusions: earmarking for employee share schemes (4)

- (1) This section applies if—
 - (a) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, a right (“a relevant share option”) may be granted to A—
 - (i) to acquire relevant shares, or
 - (ii) to receive a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
 - (b) the main purpose of the grant of the relevant share option would not be the provision of relevant benefits,
 - (c) the relevant shares would be—
 - (i) shares (including stock) in, or
 - (ii) instruments within paragraph (b) of the definition of “relevant shares” in section 554I(4) issued by, a trading company or a company which controls a trading company,
 - (d) the grant would be made on terms (“the deferred grant terms”) the main purpose of which is to ensure that the relevant share option is exercisable by A only if a specified exit event, or an exit event within a specified description, occurs, and
 - (e) as at the time the grant is made, there would be a reasonable chance that the specified exit event, or an exit event within the specified description, will occur.
- (2) Chapter 2 does not apply by reason of a relevant step within section 554B (by reason of which it would otherwise apply) taken by a person (“P”) if—
 - (a) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to providing relevant shares, or paying a sum of money, pursuant to—
 - (i) a relevant share option granted to A under B’s employee share scheme as mentioned in subsection (1)(a) in relation to which the requirements of subsection (1)(b) to (e) are met, or
 - (ii) a relevant share option which is expected to be granted to A under B’s employee share scheme as mentioned in subsection (1)(a) and in relation to which the requirements of subsection (1)(b) to (e) would be met,
 - (b) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for providing shares, or paying a sum of money, pursuant to the relevant share option which is granted or expected to be granted, and
 - (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

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- (3) If the relevant step mentioned in subsection (2) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (2)(a)(ii), subsection (4) applies if—
- (a) the grant is not made before the end of the date (“the final grant date”) falling immediately after the period of three months starting with the date on which P takes the relevant step, and
 - (b) as at the end of the final grant date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a).
- (4) This Part has effect as if a relevant step within section 554B were taken at the end of the final grant date—
- (a) the subject of which is—
 - (i) the shares which continue to be held as mentioned in subsection (3)(b), and
 - (ii) any relevant income in relation to those shares (see subsection (14)), and
 - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (5) Subsection (6) applies if, at any time (“the relevant time”)—
- (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a), but
 - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (6) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
- (a) the subject of which is—
 - (i) the shares mentioned in subsection (5), and
 - (ii) any relevant income in relation to those shares (see subsection (14)), and
 - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (7) Subsection (8) applies if—
- (a) the relevant step mentioned in subsection (2) is taken in relation to a grant of a relevant share option made as mentioned in subsection (2)(a)(i), or
 - (b) the relevant step mentioned in subsection (2) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (2)(a)(ii) and the grant is made before the end of the final grant date,
- and the specified exit event, or an exit event within the specified description, occurs.
- (8) This Part has effect as if a relevant step within section 554B were taken at the end of the exit period—
- (a) the subject of which is—
 - (i) any of the earmarked shares to which none of subsections (9) to (11) applies, and

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- (ii) any relevant income in relation to any of the earmarked shares mentioned in sub-paragraph (i) (see subsection (14)), and
 - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (9) This subsection applies to any earmarked shares if—
 - (a) A exercises the relevant share option (wholly or partly) before the end of the exit period and, as a result, receives the shares, and
 - (b) the receipt of the shares gives rise to employment income of A—
 - (i) which is chargeable to income tax or would be chargeable apart from section 474, or
 - (ii) which is exempt income.
- (10) This subsection applies to any earmarked shares if—
 - (a) A exercises the relevant share option (wholly or partly) before the end of the exit period and, as a result, a sum of money is paid to A as mentioned in subsection (1)(a)(ii),
 - (b) the payment of the sum gives rise to employment income of A—
 - (i) which is chargeable to income tax or would be chargeable apart from section 474, or
 - (ii) which is exempt income, and
 - (c) the payment represents the proceeds of the disposal of the shares, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (11) This subsection applies to any earmarked shares if—
 - (a) the relevant share option becomes exercisable by A before the end of the exit period but the option lapses (in whole or in part) at or before the end of that period, and
 - (b) correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (12) In subsections (8), (9)(a), (10)(a) and (11)(a) “the exit period” means—
 - (a) the period of six months starting with the date on which the exit event occurs, or
 - (b) if it ends earlier, the period during which the relevant share option is exercisable by A in accordance with the deferred grant terms.
- (13) If the exit event is an event within section 554I(6)(a), in subsection (12)(a) the reference to six months is to be read as a reference to five years.
- (14) In subsections (4)(a)(ii), (6)(a)(ii) and (8)(a)(ii) “relevant income”, in relation to any earmarked shares, means any income—
 - (a) which, before the relevant step is treated as being taken by subsection (4), (6) or (8) (as the case may be)—
 - (i) arises (directly or indirectly) from the shares, and

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- (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554P, and
- (b) which, at the time the relevant step is treated as being taken, continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).’.

David Gauke

Schedule 2, page 74, line 43, after ‘421E(1),’ insert ‘429, 443,’. *Agreed to 72*

David Gauke

Schedule 2, page 74, line 44, at end insert— *Agreed to 73*

- ‘(6A) Subsection (6E) applies if there is an acquisition of an asset within section 554C(4)(a) or (b) (“the relevant asset”) and—
 - (a) relevant consideration is given by A for the relevant asset of an amount equal to or greater than the market value of the relevant asset at the time of the acquisition, or
 - (b) ignoring any relevant consideration given for the relevant asset, the acquisition gives rise (or would give rise) to earnings of A within Chapter 1 of Part 3 from A’s employment with B—
 - (i) the amount of which is equal to or greater than the market value of the relevant asset at the time of the acquisition, and
 - (ii) which are not exempt income.
- (6B) In subsection (6A) “relevant consideration”—
 - (a) means consideration—
 - (i) which is given before, or at or about, the time of the acquisition, and
 - (ii) which is money or money’s worth, but
 - (b) does not include—
 - (i) a promise to do anything, or
 - (ii) the performance of any duties of, or in connection with, an employment.
- (6C) If section 437(1) or 452(1) applies in relation to the acquisition, or would apply if Chapter 3 or 4A of Part 7 (as the case may be) applied in relation to the acquisition, in subsection (6A) references to the market value of the relevant asset are to be read as references to that value determined on the basis mentioned in section 437(1) or 452(1) (as the case may be).
- (6D) Subsection (6E) also applies if—
 - (a) there is an acquisition of an asset within section 554C(4)(a) or (b) (“the relevant asset”),
 - (b) the acquisition is pursuant to an employment-related securities option (within the meaning of Chapter 5 of Part 7, but ignoring section 474(1)) acquired by reason of A’s employment, or former or prospective employment, with B, and

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- (c) the acquisition is a chargeable event for the purposes of section 476 or would be a chargeable event apart from section 474(1).
- (6E) Chapter 2 does not apply by reason of a relevant step taken after the acquisition if—
- (a) the subject of the relevant step is the relevant asset, and
 - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (6F) In subsections (6A) to (6E) “acquisition” is to be read in accordance with section 421B(2)(a).’.

David Gauke

Agreed to 74

Schedule 2, page 75, line 4, leave out ‘a share option’ and insert ‘an employment-related securities option (within the meaning of Chapter 5 of Part 7)’.

David Gauke

Agreed to 75

Schedule 2, page 75, line 7, after ‘tax’ insert ‘or would be chargeable apart from section 474’.

David Gauke

Agreed to 76

Schedule 2, page 75, leave out lines 11 and 12.

David Gauke

Agreed to 77

Schedule 2, page 75, line 28, leave out from beginning to ‘is’ in line 30 and insert ‘of 40 days starting with the day on which the relevant step mentioned in subsection (7)’.

David Gauke

Agreed to 78

Schedule 2, page 77, line 17, leave out ‘554L’ and insert ‘554LA’.

David Gauke

Agreed to 79

Schedule 2, page 77, line 39, leave out from beginning to end of line 40 and insert—

- ‘(d) subsection (1A) does not apply.
- (1A) This subsection applies if it is reasonable to suppose that, in essence—
- (a) at the time of the acquisition of sum or asset T, the value of sum or asset T is greater or less than the value of sum or asset S, and
 - (b) the difference (or any part of the difference) in the values might not have been expected applying the assumption that all relevant connected persons are acting at arm’s length of each other.
- (1B) In subsection (1A)—
- (a) the reference to sum or asset S is to sum or asset S so far as sum or asset T is acquired out of it, and

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- (b) “relevant connected person” means a person with a connection (direct or indirect) to the arrangement under which sum or asset T is acquired.’.

David Gauke

Schedule 2, page 77, line 43, at end insert—
 ‘(2A) Subsection (3) applies if, on its acquisition, sum or asset T is the subject of a relevant step within section 554B taken by P.’.

Agreed to 80

David Gauke

Schedule 2, page 77, line 44, leave out ‘mentioned in subsection (1)(d)’.

Agreed to 81

David Gauke

Schedule 2, page 78, line 4, at end insert ‘and’.

Agreed to 82

David Gauke

Schedule 2, page 78, line 7, leave out from ‘(b)’ to end of line 18.

Agreed to 83

David Gauke

Schedule 2, page 78, line 20, leave out from beginning to ‘and’ in line 23 and insert—

‘(a) on its acquisition, sum or asset T—

(i) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 applies or would apply apart from subsection (3) above or any of sections 554H to 554LA, 554P or 554S, or

(ii) if sub-paragraph (i) does not apply, is held by or on behalf of P on the same basis as that on which sum or asset S was held by or on behalf of P immediately before the acquisition,’.

Agreed to 84

David Gauke

Schedule 2, page 84, line 42, at end insert—

‘(5A) And for that purpose, section 170(2) to (11) is to be read as if for “75 per cent” (wherever occurring) there were substituted “51 per cent” (with section 1154(2) of CTA 2010 applying accordingly).’

Agreed to 85

David Gauke

Schedule 2, page 88, line 8, after ‘section’ insert ‘or section 554Z6’.

Agreed to 86

David Gauke

Schedule 2, page 88, line 9, leave out ‘sections 554Z5 to’ and insert ‘section 554Z5 or’.

Agreed to 87

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David Gauke

Agreed to **88**

Schedule 2, page 88, line 43, after '(10)' insert 'or 554LA(4), (6) or (8)'.

David Gauke

Agreed to **89**

Schedule 2, page 89, line 2, leave out 'B may grant A a right ("a relevant share option")' and insert 'a right ("a relevant share option") may be granted to A'.

David Gauke

Agreed to **90**

Schedule 2, page 89, line 36, after '554L(10)' insert 'or 554LA(8)'.

David Gauke

Agreed to **91**

Schedule 2, page 90, line 9, leave out 'which is three months after' and insert 'falling immediately after the period of three months starting with'.

David Gauke

Agreed to **92**

Schedule 2, page 90, line 11, after 'at' insert 'the end of'.

David Gauke

Agreed to **93**

Schedule 2, page 96, line 20, at end insert—

'(10) In relation to times after the relief is given, the Tax Acts have effect as if this Chapter had never applied by reason of the original relevant step.'

David Gauke

Agreed to **105**

Schedule 2, page 96, line 29, at end insert—

'CHAPTER 3

UNDERTAKINGS GIVEN BY EMPLOYERS ETC IN RELATION TO RETIREMENT
BENEFITS ETC

554Z15 Application etc

- (1) This Chapter applies if there is an undertaking ("the relevant undertaking") that a contribution to which subsection (2) would apply will be paid.
- (2) This subsection applies to a contribution if—
 - (a) the contribution is paid to an arrangement which is not a registered pension scheme,
 - (b) in connection with that arrangement (directly or indirectly), relevant benefits are to be provided (directly or indirectly) out of the contribution by a relevant third person,
 - (c) the provision of the relevant benefits would be a relevant step, and

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- (d) the contribution is neither a tax-relieved contribution nor tax-exempt provision.
- (3) In subsection (2)—
 - “relevant benefits” has the same meaning as in Chapter 2 of Part 6, but ignoring section 393B(2)(a),
 - “relevant third person” means a person within section 554A(7)(a) to (c) (ignoring this Chapter), and
 - “tax-exempt provision” and “tax-relieved contribution” have the meaning given by paragraph 3(3) and (4) of Schedule 34 to FA 2004.
- (4) In this Chapter references to an undertaking include references to—
 - (a) an undertaking which is not legally enforceable, and
 - (b) an undertaking which is to be performed only on or following the meeting of a condition (including a condition which might never be met).

554Z16 Employer etc to be treated as relevant third person etc

- (1) If B takes a step within section 554Z17 or 554Z18, Chapters 1 and 2 have effect in relation to the step—
 - (a) as if B were a relevant third person for the purposes of section 554A(1)(d), and
 - (b) as if the step were a relevant step within section 554B (if it would not otherwise be).
- (2) For the purpose of determining whether Chapter 2 applies by reason of the step, Chapter 1 has effect—
 - (a) as if sections 554F to 554N, 554R to 554T, 554V and 554W were omitted,
 - (b) if the step is within section 554Z17, as if sections 554P(2)(d), (3) and (4) and 554Q(1)(c) and (d), (1A) and (1B) were omitted, and
 - (c) if the step is within section 554Z18, as if sections 554P and 554Q were omitted.
- (3) If Chapter 2 applies by reason of the step, Chapter 2 has effect as if sections 554Z6 to 554Z11 were omitted.
- (4) If Chapter 2 does not apply by reason of the step by virtue of section 554E(3) or (5A), section 554E(6) and (7) does not apply in relation to the step.
- (5) For further modifications of Chapters 1 and 2, see sections 554Z17(3) and (4), 554Z18(5) and (6), 554Z19 and 554Z20.
- (6) Regulations under section 554X may (in particular) make provision covering cases in which Chapters 1 and 2 have effect as provided for by this section.
- (7) In this Chapter—
 - (a) references to B do not include references to B acting as a trustee,
 - (b) if B is a company and is a member of a group of companies, references to B are to be read as including references to any other company which is a member of that group, and

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- (c) if B is a limited liability partnership, references to B are to be read as including references to any company which is a wholly-owned subsidiary (as defined in section 1159(2) of the Companies Act 2006) of B.

554Z17 Earmarking etc

- (1) B takes a step within this section if—
- (a) a sum of money or asset held by or on behalf of B is earmarked (however informally) by B with a view to the relevant undertaking being performed at a later time (wholly or partly) out of—
 - (i) that sum of money or asset, or
 - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it, or
 - (b) a sum of money or asset otherwise starts being held by or on behalf of B, specifically with a view, so far as B is concerned, to the relevant undertaking being performed at a later time (wholly or partly) out of—
 - (i) that sum of money or asset, or
 - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it.
- (2) For the purposes of subsection (1)(b) it does not matter whether or not the sum of money or asset in question has previously been held by or on behalf of B on a basis which is different to that mentioned in subsection (1)(b).
- (3) Subsection (4) applies if, in the application of section 554P or 554Q in any case, the relevant step mentioned in section 554P(2)(a) or 554Q(3)(a) is a step within this section taken by B.
- (4) In section 554P(2)(c) or 554Q(3)(c) (as the case may be) the reference to section 554B(1)(a) or (b) is to be read as a reference to subsection (1)(a) or (b) above.

554Z18 Provision of security

- (1) B takes a step within this section if B provides security for the performance of the relevant undertaking.
- (2) For the purposes of this Part, the sum of money or asset which is the subject of the step is to be taken to be—
- (a) any sums of money which, as at the time the step is taken, are the subject of the security, and
 - (b) any assets which, as at that time, are the subject of the security,
- and references to the sum of money or asset which is the subject of a relevant step are to be read accordingly.
- (3) If, when the step is taken, the security covers other undertakings as well as the relevant undertaking, the sums of money and assets within subsection (2)(a) and (b) are to be apportioned between the relevant undertaking and the other undertakings on a just and reasonable basis.
- (4) Subsections (2) and (3) are subject to section 554Z19(7).

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- (5) Section 554P does not apply in any case in which the relevant step mentioned in section 554P(2)(a) would be a step within this section taken by B.
- (6) Section 554Q(3) does not apply in any case in which the relevant step mentioned in section 554Q(3)(a) would be a step within this section taken by B.
- (7) In this Chapter references to providing security for the performance of an undertaking are references to providing such security in any way, however informal.

554Z19 Valuation of step within section 554Z18

- (1) This section applies if, by virtue of section 554Z16, Chapter 2 applies by reason of a step taken by B within section 554Z18.
- (2) Section 554Z2 has effect as if subsections (3) and (4) below were substituted for subsections (1) to (6) of that section.
- (3) The value of the relevant step is—
 - (a) the amount to be paid as a contribution under the relevant undertaking determined, as at the time the step is taken, on a just and reasonable basis assuming that any condition to be met before any payment is made will be met, or
 - (b) if lower, the value of the security.
- (4) For the purposes of subsection (3)(b) the value of the security—
 - (a) consists of—
 - (i) the total amount of the sums of money included in the subject of the step (see section 554Z18(2)(a)), and
 - (ii) the total market value, as at the time the step is taken, of the assets included in the subject of the step (see section 554Z18(2)(b)), but
 - (b) is to be subject to a just and reasonable reduction to take account of any term of the security which limits the total amount which may be made available under the security for the performance of the relevant undertaking to an amount which is lower than the amount determined under paragraph (a).
- (5) The following subsections apply if, as at the end of the day of an anniversary of the taking of the step (“the anniversary day”), B continues to provide the security for the performance of the relevant undertaking.
- (6) This Part has effect as if B’s continuing to provide the security were a new step (“the anniversary step”) within section 554Z18—
 - (a) which is taken by B at the end of the anniversary day, and
 - (b) by reason of which Chapter 2 is to apply by virtue of section 554Z16 (subject only to section 554A(4)).
- (7) If the total amount of the sums of money which are the subject of the security (“the security sums”) varies from time to time, for the purpose of determining the sums of money included in the subject of the anniversary step, in section 554Z18(2)(a) the reference to the time the step is taken is to be read as a reference to the time during the

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preceding year at which the total amount of the security sums is at its highest.

- (8) For the purposes of subsection (4)(a)(ii) the market value of any asset included in the subject of the anniversary step may be determined as at any time during the preceding year (so long as the asset is the subject of the security, or one of the assets which is the subject of the security, as at that time).
- (9) In subsections (7) and (8) “the preceding year” means the year ending with the anniversary day.

554Z20 Relief for earmarking or security not followed by contribution or relevant benefit

- (1) This section applies if, by virtue of section 554Z16, Chapter 2 applies by reason of a step taken by B within section 554Z17 or 554Z18.
- (2) Section 554Z13 has effect in relation to the step with the following modifications.
- (3) Subsection (1)(b) has effect as if for “not a relevant step in relation to a relevant sum or asset” there were substituted “neither the payment of the relevant contribution (or any part of it) nor the provision of any relevant benefit”.
- (4) Subsection (1)(c) has effect as if for the words from “no further relevant step” to “any relevant sum or asset” there were substituted “the relevant contribution (or any part of it) will not be paid or a relevant benefit will not be provided”.
- (5) Subsection (1) has effect as if subsection (6) below were substituted for subsection (3).
- (6) In subsection (1)—
 - (a) “the relevant contribution” means the contribution to be paid under the relevant undertaking (within the meaning of Chapter 3), and
 - (b) “relevant benefit” means a relevant benefit to be provided out of the relevant contribution as mentioned in section 554Z15(2)(b) and (c).”.

David Gauke

Agreed to 106

Schedule 2, page 111, line 5, at end insert—

‘57A(1) This paragraph applies if—

- (a) B takes a step within section 554Z18 of ITEPA 2003 before 6 April 2011 by providing security (“the early security”) for the performance of an undertaking (“the early undertaking”),
 - (b) on or after 6 April 2011 at a time when B is continuing to provide the early security, there is a change in the terms of the early undertaking which does not amount to the giving of a new undertaking, and
 - (c) as a result of the change, the amount to be paid as a contribution (“the early contribution”) under the early undertaking increases, or will increase.
- (2) Chapter 3 of Part 7A of ITEPA 2003 has effect—

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- (a) as if the change in the terms of the early undertaking were a new undertaking to pay a contribution covering the increase in the amount of the early contribution as determined on a just and reasonable basis, and
 - (b) as if B, in continuing to provide the early security, provides security for the performance of the new undertaking at the time of the change in the terms.
- (3) Section 554Z16(7) of ITEPA 2003 applies for the purposes of this paragraph as it applies for the purposes of Chapter 3 of Part 7A of that Act.’.

David Gauke

Agreed to **94**

Schedule 2, page 111, line 18, leave out from ‘earnings’ to end of line 28 and insert ‘of A from A’s employment with B within Chapter 1 of Part 3 of ITEPA 2003 for the pre-6 April 2011 tax year, or

- (ii) the tax payable by A for the pre-6 April 2011 tax year was otherwise decided on the basis that the pre-6 April 2011 step was to be treated as giving rise to earnings of A from A’s employment with B within Chapter 1 of Part 3 of ITEPA 2003 for that tax year,
- (e) before the chargeable step is taken, A or B has paid, or otherwise accounted for, any tax which A or B is required to pay or otherwise account for as a consequence of—
- (i) the agreement mentioned in paragraph (d)(i), or
 - (ii) the tax payable by A for the pre-6 April 2011 tax year having otherwise been decided on the basis mentioned in paragraph (d)(ii), and
- (f) after any reductions under sections 554Z3 to 554Z7 of ITEPA 2003, it is determined on a just and reasonable basis that the value of the chargeable step represents (or still represents after any such reductions) to any extent—
- (i) the earnings treated as arising from the pre-6 April 2011 step as mentioned in paragraph (d)(i) or (ii), or
 - (ii) any return on those earnings since the taking of the pre-6 April 2011 step (whether income or capital, direct or indirect or realised or unrealised).
- (2) After any reductions under sections 554Z3 to 554Z7 of ITEPA 2003, the value of the chargeable step is to be reduced (but not below nil) by an amount reflecting the extent to which, as determined under sub-paragraph (1)(f), that value represents (or still represents) the earnings mentioned in sub-paragraph (1)(f)(i) or any return on those earnings mentioned in sub-paragraph (1)(f)(ii).
- (3) In sub-paragraph (1)(f)(ii) “return” does not include any return so far as, it is reasonable to suppose, the return exceeds the return which might have been expected applying the assumption that all relevant connected persons are acting at arm’s length of each other.
- (4) In sub-paragraph (3) “relevant connected person” means a person with a connection (direct or indirect) to an arrangement (within the meaning of Part 7A of ITEPA 2003) by virtue of which the return arises.’.

Schedule, as amended, agreed to on division.

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David Hanson
Kerry McCarthy

Withdrawn 96

Clause 27, page 19, line 3, at end add—

‘(2) The Treasury shall prepare a report by 1 January 2012 on the impact of Schedule 3 on charities and community amateur sports clubs.’

Clause agreed to.

Schedule 3 agreed to.

Clause 28 agreed to.

Schedule 4 agreed to.

Clauses 29 and 30 agreed to.

Schedule 5 agreed to.

David Gauke

Agreed to 107

Clause 31, page 20, leave out lines 14 and 15 and insert—

‘(c) subsection (2) may operate to prevent subsection (1) applying by virtue of paragraph (b), unless subsection (2AB) applies.

(2AB) This subsection applies if company A’s ceasing to be a member of the first group at the same time as one or more associated companies forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of a liability to corporation tax.’

Clause, as amended, agreed to.

Clause 32 agreed to.

Schedule 6 agreed to.

Clauses 33 and 34 agreed to.

David Gauke

Agreed to 113

Schedule 7, page 157, line 2, at end insert—

‘Amendments of ICTA

In Schedule 24 to ICTA (assumptions for calculating chargeable profits, creditable tax and corresponding United Kingdom tax of foreign companies), in paragraph 4 (reliefs under Corporation Tax Acts dependent upon the making of a claim or election), after sub-paragraph (2) insert—

“(2B) For the purposes of sub-paragraph (1) an election under section 9A of CTA 2010 (designated currency of a UK resident investment

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company) is not to be regarded as an election upon which relief under the Corporation Tax Acts is dependent, and sub-paragraph (2)(b) does not apply in relation to such an election.

- (2C) But if, by notice given to an officer of the Board, the United Kingdom resident company which has or, as the case may be, any two or more United Kingdom resident companies which together have, a majority interest in the company so request, the company shall be assumed (subject to section 9A(2) of CTA 2010) to have made an election under section 9A of that Act in the form specified in the notice (and accordingly that section and section 9B of that Act apply to determine the effect (if any) of that election).”

David Gauke

Schedule 7, page 157, line 15, after ‘arises’ insert ‘(“the relevant period”)’.

Agreed to **114**

David Gauke

Schedule 7, page 157, leave out lines 16 to 19 and insert—
‘(b) a change in the company’s functional currency (within the meaning of section 17(4) of that Act) as between the relevant period and a period of account ending in the 12 months immediately preceding that period.’

Agreed to **115**

David Gauke

Schedule 7, page 157, line 31, after ‘arises’ insert ‘(“the relevant period”)’.

Agreed to **116**

David Gauke

Schedule 7, page 157, leave out lines 32 to 35 and insert—
‘(b) a change in the company’s functional currency (within the meaning of section 17(4) of that Act) as between the relevant period and a period of account ending in the 12 months immediately preceding that period.’

Agreed to **117**

Schedule, as amended, agreed to.

[Adjourned until Tuesday 24 May at 9.00 am