



# Finance Act 2008

## 2008 CHAPTER 9

### PART 1

#### CHARGES, RATES, ALLOWANCES, RELIEFS ETC

##### *Income tax*

#### **1 Charge and main rates for 2008-09**

- (1) Income tax is charged for the tax year 2008-09.
- (2) For that tax year—
  - (a) the basic rate is 20%, and
  - (b) the higher rate is 40%.

#### **2 Personal allowance for those aged under 65**

- (1) For the tax year 2008-09 the amount specified in—
  - (a) section 35 of ITA 2007, and
  - (b) section 257(1) of ICTA,(personal allowance for those aged under 65) is replaced with “£6,035”.
- (2) Accordingly—
  - (a) section 57 of ITA 2007, so far as relating to the amount specified in section 35 of that Act, and
  - (b) section 257C of ICTA, so far as relating to the amount specified in section 257(1) of that Act,(indexation) do not apply for the tax year 2008-09.
- (3) This section does not require a change to be made in the amounts deductible or repayable under PAYE regulations before 7 September 2008.

### 3 Personal allowances for those aged 65 and over

- (1) For the tax year 2008-09—
- (a) the amount specified in section 36(1) of ITA 2007 and section 257(2) of ICTA (personal allowance for those aged 65 to 74) is replaced with “£9,030”, and
  - (b) the amount specified in section 37(1) of ITA 2007 and section 257(3) of ICTA (personal allowance for those aged 75 and over) is replaced with “£9,180”.
- (2) Accordingly—
- (a) section 57 of ITA 2007, so far as relating to the amounts specified in sections 36(1) and 37(1) of that Act, and
  - (b) section 257C of ICTA, so far as relating to the amounts specified in section 257(2) and (3) of that Act,
- (indexation) do not apply for the tax year 2008-09.

### 4 Basic rate limit

- (1) In section 10 of ITA 2007 (income charged at main rates: individuals), for subsection (5) substitute—
- “(5) The basic rate limit is £34,800.”
- (2) The amendment made by subsection (1) has effect for the tax year 2008-09 and subsequent tax years.
- (3) But until 7 September 2008 for the purpose of ascertaining the amounts deductible or repayable under PAYE regulations it may be assumed that the figure specified in section 10(5) of ITA 2007 for the tax year 2008-09 is £36,000.

### 5 Abolition of starting and savings rates and creation of starting rate for savings

- (1) Section 6 of ITA 2007 (rates at which income tax is charged) is amended as follows.
- (2) In subsection (1), omit paragraph (a).
- (3) In subsection (2), omit “starting rate,”.
- (4) In subsection (3), for paragraph (a) substitute—
- “(a) section 7 (starting rate for savings),”.
- (5) Accordingly, in the heading omit “**starting rate**,”.
- (6) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.
- (7) Schedule 1 contains provision in connection with—
- (a) the abolition of the starting rate and the savings rate, and
  - (b) the creation of the starting rate for savings.

### *Corporation tax*

### 6 Charge and main rates for financial year 2009

- (1) Corporation tax is charged for the financial year 2009.

- (2) For that year the rate of corporation tax is—
  - (a) 28% on profits of companies other than ring fence profits, and
  - (b) 30% on ring fence profits of companies.
- (3) In subsection (2) “ring fence profits” has the same meaning as in Chapter 5 of Part 12 of ICTA (see section 502(1) and (1A)).

## **7 Small companies' rates and fractions for financial year 2008 etc**

- (1) For the financial year 2008 the small companies' rate is—
  - (a) 21% on profits of companies other than ring fence profits, and
  - (b) 19% on ring fence profits of companies.
- (2) For the financial year 2008 the fraction mentioned in section 13(2) of ICTA is—
  - (a)  $\frac{7}{400}$ ths in relation to profits of companies other than ring fence profits (“the standard fraction”), and
  - (b)  $\frac{11}{400}$ ths in relation to ring fence profits of companies (“the ring fence fraction”).
- (3) Subsections (3) to (7) of section 3 of FA 2007 (operation of section 13(2) of ICTA in relation to company profits consisting of both ring fence profits and other profits) apply in relation to profits of a company for an accounting period any part of which falls in the financial year 2008, or any subsequent financial year, as in relation to those for an accounting period any part of which falls in the financial year 2007.
- (4) In this section “ring fence profits” has the same meaning as in Chapter 5 of Part 12 of ICTA (see section 502(1) and (1A)).

### *Capital gains tax*

## **8 Rate etc**

- (1) In TCGA 1992, for section 4 substitute—

### **“4 Rate of capital gains tax**

The rate of capital gains tax is 18%.”

- (2) Schedule 2 contains further provision for and in connection with the reform of capital gains tax.
- (3) The amendment made by subsection (1) has effect for the tax year 2008-09 and subsequent tax years.

## **9 Entrepreneurs' relief**

Schedule 3 contains provision for and in connection with entrepreneurs' relief.

*Status: This is the original version (as it was originally enacted).*

### *Inheritance tax*

#### **10 Transfer of unused nil-rate band etc**

Schedule 4 contains provisions about the transfer of unused nil-rate band between spouses and civil partners for the purposes of the charge to inheritance tax etc.

### *Alcohol and tobacco*

#### **11 Rates of alcoholic liquor duty**

- (1) ALDA 1979 is amended as follows.
- (2) In section 5 (rate of duty on spirits), for “£19.56” substitute “£21.35”.
- (3) In section 36(1AA)(a) (standard rate of duty on beer), for “£13.71” substitute “£14.96”.
- (4) In section 62(1A) (rates of duty on cider)—
  - (a) in paragraph (a) (rate of duty per hectolitre in the case of sparkling cider of a strength exceeding 5.5 per cent), for “£172.33” substitute “£188.10”,
  - (b) in paragraph (b) (rate of duty per hectolitre in the case of cider of a strength exceeding 7.5 per cent which is not sparkling cider), for “£39.73” substitute “£43.37”, and
  - (c) in paragraph (c) (rate of duty per hectolitre in any other case), for “£26.48” substitute “£28.90”.
- (5) For the table in Schedule 1 substitute—

“TABLE OF RATES OF DUTY ON WINE AND MADE-WINE

#### **PART 1**

#### WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i> £
Wine or made-wine of a strength not exceeding 4 per cent	59.87
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	82.32
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling	194.28
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	188.10

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<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	£
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	248.85
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	259.02

## PART 2

### WINE OR MADE-WINE OF A STRENGTH EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per litre of alcohol in the wine or made-wine</i>
	£
Wine or made-wine of a strength exceeding 22 per cent	21.35”.

(6) The amendments made by this section are treated as having come into force on 17 March 2008.

## 12 Rates of tobacco products duty

(1) For the table in Schedule 1 to TPDA 1979 substitute—

“TABLE

1. Cigarettes	An amount equal to 22 per cent of the retail price plus £112.07 per thousand cigarettes
2. Cigars	£163.22 per kilogram
3. Hand-rolling tobacco	£117.32 per kilogram
4. Other smoking tobacco and chewing tobacco	£71.76 per kilogram”.

(2) The amendment made by subsection (1) is treated as having come into force at 6pm on 12 March 2008.

### *Fuel duties*

## 13 Rates and rebates: simplification

(1) HODA 1979 is amended as follows.

(2) In section 1 (hydrocarbon oil), omit—  
(a) subsections (3A) and (3B),

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- (b) in subsection (3C), “; and petrol is “leaded petrol” if it is not unleaded petrol”, and
  - (c) subsections (6) and (7).
- (3) In section 6 (hydrocarbon oil: rates of duty), for subsection (1A) substitute—
- “(1A) The rates are—
- (a) £0.5035 a litre in the case of unleaded petrol,
  - (b) £0.6007 a litre in the case of light oil other than unleaded petrol, and
  - (c) £0.5035 a litre in the case of heavy oil.”
- (4) In section 6AB(5) (duty on bioblend), omit the words from “of the description” to the end.
- (5) In section 11(1) (rebate on heavy oil), omit—
- (a) in paragraph (b), “which is not ultra low sulphur diesel”, and
  - (b) paragraph (ba).
- (6) In section 13AA(6) (restrictions on use of rebated kerosene), omit “which is not ultra low sulphur diesel or sulphur-free diesel”.
- (7) Omit section 13A (rebate on unleaded petrol).
- (8) In section 20AAA(4)(a) (mixing of rebated oil), for “section 6(1A)(d)” substitute “section 6A(1A)(c)”.
- (9) In section 27(1) (interpretation)—
- (a) in the definition of “rebate”, omit “13A,”,
  - (b) omit the definitions of “sulphur-free diesel”, “sulphur-free petrol”, “ultra low sulphur diesel” and “ultra low sulphur petrol”, and
  - (c) for “and “leaded petrol” have” substitute “has”.
- (10) In Article 21(7) of the Renewable Transport Fuel Obligations Order 2007 ([S.I.2007/3072](#)), for “sulphur-free petrol” substitute “unleaded petrol”.
- (11) In consequence of this section, omit—
- (a) in FA 1987, section 1(2) and (3),
  - (b) in FA 1997, section 7(5)(a) and (b) and (8)(b),
  - (c) in FA 2000, section 5(3),
  - (d) in FA 2001, section 2(1), and
  - (e) in FA 2004, section 7(2), (5) to (7) and (8)(a).
- (12) The amendments made by this section are treated as having come into force on 1 April 2008.

#### **14 Biodiesel and bioblend**

Schedule 5 contains provision about biodiesel and bioblend.

#### **15 Rates and rebates: increase from 1 October 2008**

- (1) HODA 1979 is amended as follows.
- (2) In section 6(1A) (main rates)—

- (a) in paragraph (a) (unleaded petrol), for “£0.5035” substitute “£0.5235”,
  - (b) in paragraph (b) (light oil other than unleaded petrol), for “£0.6007” substitute “£0.6207”, and
  - (c) in paragraph (c), (heavy oil), for “£0.5035” substitute “£0.5235”.
- (3) In section 6AA(3) (rate of duty on biodiesel), for “£0.3035” substitute “£0.3235”.
- (4) In section 6AD(3) (rate of duty on bioethanol), for “£0.3035” substitute “£0.3235”.
- (5) In section 8(3) (road fuel gas)—
- (a) in paragraph (a) (natural road fuel gas), for “£0.1370” substitute “£0.1660”, and
  - (b) in paragraph (b) (other road fuel gas), for “£0.1649” substitute “£0.2077”.
- (6) In section 11(1) (rebate on heavy oil)—
- (a) in paragraph (a) (fuel oil), for “£0.0929” substitute “£0.0966”, and
  - (b) in paragraph (b) (gas oil), for “£0.0969” substitute “£0.1007”.
- (7) In section 14(1) (rebate on light oil for use as furnace fuel), for “£0.0929” substitute “£0.0966”.
- (8) In section 14A(2) (rebate on certain biodiesel), for “£0.0969” substitute “£0.1007”.
- (9) The amendments made by this section come into force on 1 October 2008.

## **16 Fuel for aircraft and boats, heating oil and fuel for certain engines**

- (1) In section 6(1A) of HODA 1979 (main rates)—
- (a) after paragraph (a) insert—
    - “(aa) £0.3103 a litre in the case of aviation gasoline,” and
  - (b) in paragraph (b), after “petrol” insert “or aviation gasoline”.
- (2) The amendments made by subsection (1) come into force on 1 November 2008.
- (3) Schedule 6 contains—
- (a) in Part 1, provision consequential on subsection (1) and provision about fuel used for private pleasure-flying or private pleasure craft, and
  - (b) in Part 2, provision about certain heavy oil used for heating or as fuel for certain engines.

### *Environmental taxes and duties*

## **17 Rates of vehicle excise duty**

- (1) Schedule 1 to VERA 1994 (annual rates of duty) is amended as follows.
- (2) In paragraph 1 (general)—
- (a) in sub-paragraph (2) (vehicle not covered elsewhere in Schedule otherwise than with engine cylinder capacity not exceeding 1,549cc), for “£180” substitute “£185”, and
  - (b) in sub-paragraph (2A) (vehicle not covered elsewhere in Schedule with engine cylinder capacity not exceeding 1,549cc), for “£115” substitute “£120”.

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(3) In paragraph 1B (graduated rates for light passenger vehicles), for the table substitute—

“TABLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Reduced rate</i>	<i>Standard rate</i>
<i>g/km</i>	<i>g/km</i>	<i>£</i>	<i>£</i>
100	120	15	35
120	150	100	120
150	165	125	45
165	185	150	170
185	225	195	210
225	—	385	400”

The table has effect in relation to vehicles first registered before 23 March 2006 as if—

- (a) in column (3), in the last row, “195” were substituted for “385”, and  
 (b) in column (4), in the last row, “210” were substituted for “400”.

(4) In paragraph 1J (light goods vehicles)—

- (a) in sub-paragraph (a) (vehicle which is not lower-emission van), for “£175” substitute “£180”, and  
 (b) in sub-paragraph (b) (lower-emission van), for “£115” substitute “£120”.

(5) In paragraph 2(1) (motorcycles)—

- (a) in paragraph (b) (motorbicycle and engine’s cylinder capacity more than 150cc but not more than 400cc), for “£32” substitute “£33”,  
 (b) in paragraph (c) (motorbicycle and engine’s cylinder capacity more than 400cc but not more than 600cc), for “£47” substitute “£48”, and  
 (c) in paragraph (d) (any other case), for “£64” substitute “£66”.

(6) The amendments made by this section have effect in relation to licences taken out on or after 13 March 2008.

## 18 Standard rate of landfill tax

- (1) In section 42(1)(a) and (2) of FA 1996 (amount of landfill tax), for “£32” substitute “£40”.
- (2) The amendments made by subsection (1) come into force on 1 April 2009 and have effect in relation to disposals made (or treated as made) on or after that date.

## 19 Rates of climate change levy

- (1) In Schedule 6 to FA 2000 (climate change levy), for the table in paragraph 42(1) substitute—



“TABLE

<i>Taxable commodity supplied</i>	<i>Rate at which levy payable if supply is not a reduced-rate supply</i>
Electricity	£0.00470 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00164 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01050 per kilogram
Any other taxable commodity	£0.01281 per kilogram”.

- (2) The amendment made by subsection (1) has effect in relation to supplies treated as taking place on or after 1 April 2009.

**20 Rate of aggregates levy**

- (1) In section 16(4) of FA 2001 (rate of aggregates levy), for “£1.95” substitute “£2”.
- (2) The amendment made by subsection (1) has effect in relation to aggregate subjected to commercial exploitation on or after 1 April 2009.

**21 Carbon reduction trading scheme: charges for allocations**

- (1) The Treasury may impose charges by providing for carbon reduction trading scheme allowances to be allocated in return for payment.
- (2) The charges may only be imposed by regulations.
- (3) The regulations may make any other provision about allocations of allowances which the Treasury consider appropriate, including (in particular)—
- provision as to the imposition of fees, and as to the making and forfeiting of deposits, in connection with participation in the allocations,
  - provision as to the persons by whom allocations are to be conducted,
  - provision for allocations to be overseen by an independent person appointed by the Treasury,
  - provision for the imposition and recovery of penalties for failure to comply with the terms of a scheme made under subsection (4),
  - provision for and in connection with the recovery of payments due in respect of allowances allocated (including provision as to the imposition and recovery of interest and penalties), and
  - provision conferring rights of appeal against decisions made in allocations, the forfeiting of deposits and the imposition of penalties (including provision specifying the person, court or tribunal to hear and determine appeals).
- (4) The Treasury may make schemes about the conduct and terms of allocations (to have effect subject to any regulations under this section); and schemes may in particular include provision about—
- who may participate in allocations,

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- (b) the allowances to be allocated, and
  - (c) where and when allocations are to take place.
- (5) In this section—
- “carbon reduction trading scheme allowances” means tradeable allowances that—
- (a) are provided for in a relevant trading scheme, and
  - (b) represent the right to carry on a specified amount of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions;
- “relevant trading scheme” means a trading scheme that—
- (a) is made under Part 3 of the Climate Change Act 2008,
  - (b) applies to persons by reference to their consumption of electricity (whether or not by reference to other matters as well), and
  - (c) applies only to persons who consume electricity—
    - (i) for business or charitable purposes, or
    - (ii) for the performance of functions of a public nature, (whether or not they also consume electricity for other purposes);
- “specified” means specified in the relevant trading scheme.
- (6) Regulations under this section are to be made by statutory instrument.
- (7) A statutory instrument containing the first regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the House of Commons.
- (8) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons unless a draft of the regulations has been laid before, and approved by a resolution of, that House.

### *Gambling duties*

## **22 Rates of gaming duty**

- (1) For the table in section 11(2) of FA 1997 substitute—

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £1,911,000	15 per cent
The next £1,317,000	20 per cent
The next £2,307,000	30 per cent
The next £4,869,500	40 per cent
The remainder	50 per cent”.

- (2) The amendment made by subsection (1) has effect in relation to accounting periods beginning on or after 1 April 2008.

## 23 Amusement machine licence duty

(1) In section 23(2) of BGDA 1981 (amount of duty payable on amusement machine licence), for the table substitute—

“TABLE

<i>Months for which licence granted</i>	<i>Category A</i>	<i>Category B1</i>	<i>Category B2</i>	<i>Category B3</i>	<i>Category B4</i>	<i>Category C</i>
	£	£	£	£	£	£
1	455	230	180	180	165	70
2	905	450	355	355	320	135
3	1355	675	535	535	485	200
4	1805	905	710	710	645	265
5	2260	1130	890	890	805	335
6	2710	1355	1065	1065	965	400
7	3160	1580	1245	1245	1125	465
8	3610	1805	1420	1420	1290	530
9	4065	2030	1600	1600	1450	600
10	4515	2260	1775	1775	1610	665
11	4965	2485	1955	1955	1770	730
12	5160	2580	2030	2030	1840	760”.

(2) The amendment made by subsection (1) has effect in relation to cases where the application for the amusement machine licence is received by the Commissioners for Her Majesty’s Revenue and Customs after 4pm on 14 March 2008.

## PART 2

### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX\_GENERAL

#### *Residence and domicile*

## 24 Periods of residence

(1) Section 831 of ITA 2007 (foreign income of individuals in United Kingdom for temporary purpose) is amended as follows.

(2) In subsection (1), for paragraph (b) substitute—

“(b) during the tax year in question the individual spends (in total) less than 183 days in the United Kingdom.”

(3) After that subsection insert—

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- “(1A) In determining whether an individual is within subsection (1)(b) treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (1B) But in determining that issue do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
- (a) the individual departs from the United Kingdom on the next day, and
  - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual’s passage through the United Kingdom.”
- (4) In section 832 of that Act (employment income of individuals in United Kingdom for temporary purpose), after subsection (1) insert—
- “(1A) In determining whether an individual is within subsection (1)(b) treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (1B) But in determining that issue do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
- (a) the individual departs from the United Kingdom on the next day, and
  - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual’s passage through the United Kingdom.”
- (5) Section 9 of TCGA 1992 (residence, including temporary residence) is amended as follows.
- (6) In subsection (3), for the words after “if and only if” substitute “the individual spends (in total) at least 183 days in the United Kingdom.”
- (7) Insert at the end—
- “(5) In determining for the purposes of subsection (3) above whether an individual spends (in total) at least 183 days in the United Kingdom treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (6) But in determining that issue for those purposes do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
- (a) the individual departs from the United Kingdom on the next day, and
  - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual’s passage through the United Kingdom.”
- (8) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

## **25 Remittance basis**

Schedule 7 contains provision for and in connection with the revision of the remittance basis.

### *Research and development*

## **26 Rates of R&D relief and vaccine research relief**

Schedule 8 contains provision about the rates of research and development relief and vaccine research relief.

## **27 Qualifying expenditure: R&D relief and vaccine research relief**

- (1) Paragraph 5 of Schedule 20 to FA 2000 (R&D tax relief: staffing costs) is amended as follows.
- (2) In sub-paragraph (1)(b), after “company;” insert—
  - “(ba) the compulsory contributions paid by the company in respect of benefits for directors or employees of the company under the social security legislation of an EEA State (other than the United Kingdom) or Switzerland;”.
- (3) Before sub-paragraph (1A) insert—
  - “(1ZB) In sub-paragraph (1)(ba) “social security legislation” means legislation relating to any of the branches of social security listed in Article 3(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the co-ordination of social security systems (as amended from time to time).”
- (4) Schedule 13 to FA 2002 (vaccine research relief) is amended as follows.
- (5) In paragraph 2 (qualifying expenditure)—
  - (a) in sub-paragraph (1)(a), at the end insert “or”,
  - (b) omit sub-paragraph (1)(c) (and the “or” before it), and
  - (c) omit sub-paragraph (4).
- (6) In paragraph 6 (qualifying expenditure on sub-contracted research and development), omit—
  - (a) in sub-paragraph (1), the second sentence, and
  - (b) sub-paragraph (3) (expenditure on research sub-contracted to a charity, a university or a scientific research organisation).
- (7) Omit paragraph 12 (qualifying expenditure on contributions to independent research and development).
- (8) Omit paragraph 25 (refunds of qualifying expenditure on contributions to independent research and development).
- (9) Accordingly, in paragraph 3 of Schedule 8 to this Act (changes to rates of vaccine research relief), omit sub-paragraphs (2)(e) and (3)(d).
- (10) The amendments made by this section have effect in relation to expenditure incurred on or after such day as the Treasury may by order appoint.

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- (11) Paragraph 10(4) of Schedule 13 to FA 2002 (time limit for giving notice of election for connected persons treatment) does not apply to a notice of an election under that paragraph in relation to sub-contractor payments if—
- (a) the sub-contractor falls within paragraph 6(3) of that Schedule (repealed by this section) (charity, university or scientific research organisation), and
  - (b) the notice is given before the end of the period of 12 months beginning with the day appointed under subsection (10).

## **28 Companies in difficulty: SME R&D relief and vaccine research relief**

Schedule 9 contains provision preventing a company from claiming research and development relief and vaccine research relief if it is not a going concern.

## **29 Cap on R&D aid**

- (1) A company is only entitled to R&D relief in respect of expenditure attributable to a research and development project if, or to the extent that, at that time, the total R&D aid in respect of expenditure by the company attributable to the project would not exceed 7.5 million euros.
- (2) In subsection (1)—
 

“R&D relief” means any relief or tax credit under—

  - (a) Schedule 20 to FA 2000 (tax relief for expenditure by SMEs on research and development), or
  - (b) Schedule 13 to FA 2002 (tax relief for expenditure on vaccine research etc), and

“total R&D aid” means the total R&D aid calculated—

  - (a) in accordance with Part 1 of Schedule 10, and
  - (b) as if a claim or election had been made for the R&D relief mentioned in subsection (1).
- (3) The Treasury may by regulations—
  - (a) increase the amount specified in subsection (1), and
  - (b) amend Part 1 of Schedule 10.
- (4) Part 2 of Schedule 10 contains amendments consequential on this section.
- (5) Subsections (1) to (4) and that Schedule come into force on such day as the Treasury may by order appoint.

## **30 Vaccine research relief: declaration about effect of relief**

- (1) In paragraph 21 of Schedule 13 to FA 2002 (tax relief for expenditure by large companies on vaccine research etc), after sub-paragraph (3) insert—
 

“(3A) A claim under this paragraph must include a declaration that the availability of the relief claimed has resulted in an increase in—

  - (a) the amount, scope or speed of the research and development undertaken by the company, or
  - (b) the company’s expenditure on research and development.”

- (2) The amendment made by subsection (1) has effect in relation to claims made on or after such day as the Treasury may by order appoint.

*Venture capital schemes etc*

**31 Enterprise investment scheme: increase in amount of relief**

- (1) In section 158(2)(b) of ITA 2007 (form and amount of EIS relief), for “£400,000” substitute “£500,000”.
- (2) The amendment made by subsection (1) has effect for—
- (a) such tax year as the Treasury may by order specify, and
  - (b) all tax years subsequent to the specified tax year.
- (3) An order under subsection (2) may specify the tax year in which it is made.
- (4) Section 1014(4) of ITA 2007 (orders etc subject to annulment) does not apply in relation to an order under subsection (2).

**32 Venture capital schemes**

Schedule 11 contains provision about venture capital schemes.

**33 Enterprise management incentives: qualifying companies**

- (1) Part 3 of Schedule 5 to ITEPA 2003 (enterprise management incentives: qualifying companies) is amended as follows.
- (2) In paragraph 8 (qualifying companies: introduction), omit the “and” at the end of the entry relating to paragraph 12, and after that entry insert—
- “number of employees (see paragraph 12A), and”.
- (3) After paragraph 12 insert—

*“The number of employees requirement*

- 12A (1) The number of employees requirement in the case of a single company is that the full-time equivalent employee number for it is less than 250.
- (2) The number of employees requirement in the case of a parent company is that the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
- is less than 250.
- (3) The full-time equivalent employee number for a company is calculated as follows—
- Step 1*  
Find the number of full-time employees of the company.
  - Step 2*

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Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

(4) In this paragraph references to an employee—

(a) include a director, but

(b) do not include—

(i) an employee on maternity or paternity leave, or

(ii) a student on vocational training.”

(4) In paragraph 16 (excluded activities), after paragraph (i) insert—

“(ia) shipbuilding (see also paragraph 20A);

(ib) producing coal (see also paragraph 20B);

(ic) producing steel (see also paragraph 20C);”.

(5) After paragraph 20 insert—

*“Excluded activities: shipbuilding*

20A In paragraph 16(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

*Excluded activities: producing coal*

20B (1) This paragraph supplements paragraph 16(ib).

(2) “Coal” has the meaning given by Article 2 of Council Regulation (EC) No. 1407/2002 (state aid to coal industry).

(3) The production of coal includes the extraction of it.

*Excluded activities: producing steel*

20C In paragraph 16(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.”

(6) The amendments made by this section have effect in relation to options granted on or after the day on which this Act is passed.

*Other business and investment measures*

### **34 Tax credits for certain foreign distributions**

(1) Schedule 12 contains provision about tax credits for certain foreign distributions.

(2) The amendments made by that Schedule have effect for the tax year 2008-09 and subsequent tax years.

### **35 Small companies' relief: associated companies**

(1) Section 13 of ICTA (small companies' relief) is amended as follows.



- (2) In the second sentence of subsection (4) (meaning of “control” for purposes of definition of “associated company”), insert at the end “except that, in the application of subsection (6) of that section in relation to the company (“the taxpayer company”) and another company or companies for the purposes of this section, the references to an associate of a person (“P”) include a partner of the person only if the condition in subsection (4A) below is met.”
- (3) After that subsection insert—
  - “(4A) The condition referred to in subsection (4) above is that relevant tax planning arrangements have at any time had effect in relation to the taxpayer company (whether in connection with its formation or otherwise).
  - (4B) In subsection (4A) above “relevant tax planning arrangements” means arrangements which—
    - (a) involve P and the partner, and
    - (b) secure a relevant tax advantage.
  - (4C) In subsection (4B) above—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), other than any guarantee, security or charge given to or taken by a bank, and

“relevant tax advantage” means a reduction of the taxpayer company’s liability to corporation tax by virtue of an increase in relief under this section.”
- (4) The amendments made by this section are treated as having come into force on 1 April 2008.

### **36 Company gains from investment life insurance contracts etc**

- (1) Schedule 13 contains provisions about company gains from investment life insurance contracts.
- (2) Schedule 14 contains amendments and repeals consequential on that Schedule etc.

### **37 Trade profits: changes in trading stock**

- (1) Schedule 15 contains provision about the effect of certain changes in trading stock on the calculation of profits of trades for the purposes of income tax or corporation tax.
- (2) The amendments made by that Schedule have effect in relation to changes in trading stock occurring on or after 12 March 2008.
- (3) In subsection (2) “change in trading stock” means—
  - (a) in relation to new section 172B of ITTOIA 2005, or paragraph 6 of Schedule 15, an appropriation of trading stock,
  - (b) in relation to new section 172C of ITTOIA 2005, or paragraph 7 of Schedule 15, a thing becoming trading stock,
  - (c) in relation to new section 172D of ITTOIA 2005, or paragraph 8 of Schedule 15, a disposal of trading stock, and

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- (d) in relation to new section 172E of ITTOIA 2005, or paragraph 9 of Schedule 15, an acquisition of trading stock.

### **38 Non-residents: investment managers**

Schedule 16 contains provision about—

- (a) the eligibility of an investment manager to be the UK representative of a non-resident, or an agent of independent status in relation to a non-resident, and
- (b) profits or income of non-residents that are to be disregarded if derived from certain investment transactions carried out by investment managers.

### **39 Dormant bank and building society accounts**

- (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations—
  - (a) modify section 17 of TMA 1970 (banks etc required to report interest payments) in relation to interest paid or credited in respect of a relevant dormant account,
  - (b) modify Chapters 2 and 3 of Part 15 of ITA 2007 (deduction of income tax on interest payments at source) in relation to such interest, and
  - (c) provide that, for the purposes of Chapter 2 of Part 4 of ITTOIA 2005 (charge to income tax on interest), such interest is to be treated as not being paid until the time (if any) at which the balance of the dormant account is paid out following a claim made by virtue of section 1(2)(b) or 2(2)(b) of the 2008 Act.
- (2) A relevant dormant account is a dormant account the balance of which is to be, or has been, transferred—
  - (a) to an authorised reclaim fund, with the result that section 1 of the 2008 Act will apply, or applies, in relation to the account, or
  - (b) to an authorised reclaim fund and one or more charities, with the result that section 2 of the 2008 Act will apply, or applies, in relation to the account.
- (3) Interest paid or credited in respect of a relevant dormant account includes interest paid or credited by a person who administers the account on behalf of an authorised reclaim fund after the balance has been transferred.
- (4) “The 2008 Act” means the Dormant Bank and Building Society Accounts Act 2008; and terms used in this section and in that Act have the same meaning in this section as in that Act.
- (5) Regulations under subsection (1) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under that subsection is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In TCGA 1992, after section 26 insert—

#### **“26A Transfer of dormant bank or building society account**

- (1) This section applies where the balance of a dormant account held by a person with a bank or building society is transferred—
  - (a) to an authorised reclaim fund, with the result that section 1 of the Dormant Bank and Building Society Accounts Act 2008 applies in relation to the account, or

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- (b) to an authorised reclaim fund and one or more charities, with the result that section 2 of that Act applies in relation to the account.
- (2) For the purposes of this Act—
  - (a) the transfer is not to be treated as involving any acquisition or disposal of an asset, and
  - (b) the person’s rights under Part 1 of that Act are to be treated as the same asset as the original rights, acquired as the original rights were acquired and having the same characteristics as those rights.
- (3) “The original rights” are the person’s rights against the bank or building society immediately before the transfer.
- (4) Terms used in this section and in the Dormant Bank and Building Society Accounts Act 2008 have the same meaning in this section as in that Act.”
- (8) Subsection (7) comes into force in accordance with provision made by order made by the Treasury.

#### **40 Individual investment plan regulations**

In section 701 of ITTOIA 2005 (investment plan regulations: general and supplementary), insert at the end—

- “(4) They may include provision having effect in relation to times before they are made if the provision does not impose or increase any liability to tax.
- (5) They may make different provision for different cases or circumstances.”

#### *Offshore funds*

#### **41 Tax treatment of participants in offshore funds**

- (1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, capital gains tax or corporation tax.
- (2) In subsection (1)—
  - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and
  - “offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act).
- (3) Regulations under subsection (1) are to be made by statutory instrument.
- (4) The first regulations under subsection (1) may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons.
- (5) Any other statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In Chapter 5 of Part 17 of ICTA (offshore funds)—
  - (a) in section 756A (general definition of offshore fund), omit subsection (4),

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- (b) in section 756B (treatment of umbrella funds)—
    - (i) in subsection (1), omit the words following paragraph (b), and
    - (ii) omit subsection (3),
  - (c) in section 756C (treatment of funds comprising more than one class of interest)—
    - (i) in subsection (2), omit paragraph (b) (and the “or” before it), and
    - (ii) omit subsection (3),
  - (d) omit sections 757 to 763 (further provision about offshore funds), and
  - (e) omit Schedules 27 and 28 (distributing funds and computation of offshore gains).
- (7) In consequence of subsection (6), omit—
- (a) paragraph 12 of Schedule 13 to FA 1988,
  - (b) paragraphs 10 and 11 of Schedule 14 to FA 1990,
  - (c) paragraph 14(43) to (45), (47) to (49) and (63) of Schedule 10 to TCGA 1992,
  - (d) section 134(4) of FA 1995,
  - (e) in paragraph 6 of Schedule 28 to FA 1996, “and in paragraph 5(5) of Schedule 27 to that Act”,
  - (f) paragraph 4(5) and (6) of Schedule 9 to FA 2002,
  - (g) paragraphs 1(1), 2(1), 4, 5, 6(3) to (6), 7 to 9, 14(2), (3), (5)(b) and (7), 15 and 16(1) of Schedule 26 to FA 2004,
  - (h) paragraphs 308, 309 and 350(4) of Schedule 1 to ITTOIA 2005,
  - (i) section 23 of F(No.2)A 2005,
  - (j) paragraph 47(1) of Schedule 12 to FA 2006,
  - (k) paragraphs 179(2)(a) and (b), 180 and 181 of Schedule 1 to ITA 2007, and
  - (l) in this Act, paragraphs 92 to 94 of Schedule 7 and paragraph 30 of Schedule 17.
- (8) Subsections (6) and (7) come into force on such day as the Treasury may appoint by order made by statutory instrument.
- (9) An order under subsection (8)—
- (a) may appoint different days for different purposes, and
  - (b) may include savings.

## **42 Regulations under section 41: supplementary**

- (1) Regulations under section 41 may, in particular—
- (a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, capital gains tax or corporation tax,
  - (b) make provision about—
    - (i) the provision of information to Her Majesty’s Revenue and Customs,
    - (ii) the provision of information to participants,
    - (iii) the preparation of accounts, and
    - (iv) the keeping of records,
 by offshore funds or trustees or officers of offshore funds, and
  - (c) make other provision about the administration of offshore funds.

- (2) Regulations under section 41 may, in particular, make special provision about the treatment of participants in—
  - (a) an umbrella fund (within the meaning of section 756B of ICTA), and
  - (b) an offshore fund which comprises a class of interest in another fund (within the meaning of section 756C of ICTA).
- (3) Regulations under section 41 may include provision consequential on the repeals made by that section.
- (4) Regulations under section 41 may, in particular—
  - (a) provide for Her Majesty’s Revenue and Customs to exercise a discretion in dealing with any matter,
  - (b) make provision by reference to standards or other documents issued by any person,
  - (c) modify an enactment (whenever passed or made),
  - (d) make different provision for different cases or different purposes, and
  - (e) make incidental, consequential, supplementary or transitional provision.
- (5) Regulations under section 41 may, in particular, make provision having effect—
  - (a) in the case of provision relating to income tax or capital gains tax, in relation to the tax year current on the day on which the regulations are made, and
  - (b) in the case of provision relating to corporation tax, in relation to accounting periods current on that day.
- (6) In this section—
  - “enactment” and “offshore fund” have the same meaning as in section 41, and
  - “modify” includes amend, repeal or revoke.

*Insurance companies and friendly societies*

**43 Insurance companies etc**

Schedule 17 contains provisions relating to insurance companies etc.

**44 Friendly societies**

Schedule 18 contains provision relating to friendly societies.

*Employment matters*

**45 Homes outside UK owned through company etc**

- (1) In ITEPA 2003, after section 100 insert—

**“100A Homes outside UK owned through company etc**

- (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D’s family or household if—

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- (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
  - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
- (a) it owns a relevant interest in the property,
  - (b) its main or only asset is that interest, and
  - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—
- (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
  - (b) the company’s main or only asset is its interest in the subsidiary, and
  - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—
- (a) none of D’s interest in the company was acquired directly or indirectly from a person connected with D, and
  - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,  
“the relevant time” is the time D first acquired such an interest.

**100B Section 100A(1): exceptions**

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
- (a) the company’s interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
  - (b) the company’s interest in the property derives from an interest that was so acquired.
- (3) This subsection applies if, at any time after the relevant time—
- (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
  - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.

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- (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
- (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).
- (7) For the purposes of subsection (3)(b), no account is to be taken of—
- (a) any borrowing at a commercial rate, or
  - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
- (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
- (9) In this section “connected company” means—
- (a) a company connected with D, with a member of D’s family or with an employer of D, or
  - (b) a company connected with such a company.”
- (2) The amendment made by subsection (1) is treated as always having had effect.
- (3) Section 145 of ICTA (living accommodation provided for employee) is to be treated as never having applied to living accommodation outside the United Kingdom provided in circumstances in which, had it been provided on or after 6 April 2003, section 100A(1) of ITEPA 2003 would cause Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) not to apply.

#### **46 In-work and return to work credits and payments**

- (1) In section 677(1) of ITEPA 2003 (UK social security benefits wholly exempt from tax), in Part 1 of Table B (benefits payable under primary legislation), insert at the appropriate places—

“In-work credit	ETA 1973	Section 2
	ETA(NI) 1950	Section 1
In-work emergency discretion fund payment	ETA 1973	Section 2
In-work emergency fund payment	ETA(NI) 1950	Section 1”, and
“Return to work credit	ETA 1973	Section 2
	ETA(NI) 1950	Section 1”.

- (2) In Part 1 of Schedule 1 to that Act (abbreviations of Acts etc), insert at the appropriate places—

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“ETA(NI) 1950	The Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.))”, and
“ETA 1973	The Employment and Training Act 1973 (c. 50)”.

- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

#### **47 Company cars: lower threshold for CO<sub>2</sub> emissions figure**

- (1) In section 139(4) of ITEPA 2003 (car with a CO<sub>2</sub>emissions figure: the appropriate percentage), for the table substitute—

<i>“Tax year</i>	<i>Lower threshold (in g/km)</i>
2008-09 or 2009-10	135
2010-11 and subsequent tax years	130”.

- (2) In consequence of the amendment made by subsection (1), omit—
- (a) in FA 2003, section 138(3), and
  - (b) in FA 2006, section 59(6).
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

#### **48 Van fuel benefit**

- (1) In section 239(3) of ITEPA 2003 (exemption in respect of payments and benefits connected with taxable cars and vans subject to section 149), insert at the end “or section 160 (benefit of van fuel treated as earnings).”
- (2) In section 269(2) of that Act (exemption in respect of non-cash vouchers and credit-tokens where benefits or money obtained in connection with taxable car or subject to section 149)—
- (a) for “, but see section 149(3)” substitute “or van, but see section 149(3) or section 160(3)”, and
  - (b) after “earnings)” insert “or section 160 (benefit of van fuel treated as earnings)”.

#### **49 Employment-related securities etc: deductible amounts etc**

- (1) In section 149AA of TCGA 1992 (restricted and convertible employment-related securities), after subsection (6) insert—
- “(7) In subsection (1) the reference to any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 does not include any amount of exempt income (within the meaning of section 8 of that Act).”
- (2) ITEPA 2003 is amended as follows.



- (3) In section 428(2)(b) as originally enacted (conditional interests in shares: amount of charge), insert at the end “(other than an amount of exempt income)”.
- (4) In section 428(7)(b) (restricted securities: amount of charge), insert at the end “(other than an amount of exempt income)”.
- (5) In section 446T(3)(b) (securities acquired for less than market value: amount of charge), insert at the end “(other than an amount of exempt income)”.
- (6) In section 480(5)(a) (securities options: deductible amounts), insert at the end “(other than an amount of exempt income)”.
- (7) In paragraph 21(3) of Schedule 23 to FA 2003 (corporation tax relief for employee share acquisition: amount of relief in case of restricted shares), insert at the end—

“For this purpose the amount that constitutes such earnings does not include any amount of exempt income (within the meaning of section 8 of that Act).”
- (8) In paragraph 22C(3) of that Schedule (corporation tax relief for employee share acquisition: amount of relief in case of convertible shares), insert at the end—

“For this purpose the amount that constitutes such earnings does not include any amount of exempt income (within the meaning of section 8 of that Act).”
- (9) The amendment made by subsection (1) has effect in relation to disposals made on or after 12 March 2008.
- (10) The amendment made by subsection (3) has effect in relation to events within section 427(1)(a) or (b) of ITEPA 2003 (as originally enacted) occurring on or after that date.
- (11) The amendments made by subsections (4) and (6) have effect in relation to chargeable events occurring on or after that date.
- (12) The amendment made by subsection (5) has effect in relation to employment-related securities acquired (or treated as acquired) on or after that date.
- (13) The amendments made by subsections (7) and (8) have effect in relation to awards of shares made on or after that date.

## **50 Employment-related securities: repeal of obsolete provisions**

- (1) In ICTA, omit sections 138 and 139 (share acquisitions by directors and employees: shares acquired before 26 October 1987).
- (2) In ITEPA 2003—
  - (a) in section 418 (other related provisions), omit subsection (4), and
  - (b) in Schedule 7 (transitionals and savings), omit paragraph 57.
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

## **51 Armed forces: the Council Tax Relief**

- (1) In ITEPA 2003, after section 297A insert—

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**“297B Armed forces: the Council Tax Relief**

- (1) No liability to income tax arises in respect of payments of the Council Tax Relief to members of the armed forces of the Crown.
- (2) Payments of the Council Tax Relief are payments designated as such by the Secretary of State.”
- (2) The amendment made by subsection (1) has effect in relation to payments made on or after 1 April 2008.

**52 Greater London Authority: severance payments**

- (1) Section 291(2) of ITEPA 2003 (termination payments to MPs and others ceasing to hold office) is amended as follows.
- (2) In paragraph (ea), omit “or”.
- (3) At the end of paragraph (f) insert “, or
  - (g) made under section 26A of the Greater London Authority Act 1999 (payments on ceasing to hold office as Mayor of London or as a member of the London Assembly).”
- (4) The amendments made by this section have effect in relation to payments made on or after 6 April 2008.

*Charities etc*

**53 Gift aid: payments to charities**

Schedule 19 contains provision for the Commissioners for Her Majesty’s Revenue and Customs to make payments to charities which receive donations under the gift aid scheme.

**54 Community investment tax relief**

- (1) Paragraph 35 of Schedule 16 to FA 2002 (community investment tax relief) is amended as follows.
- (2) After sub-paragraph (1) insert—
  - “(1A) But if the investor is a bank, the investor does not receive value from the CDFI when the CDFI makes a deposit with the investor in the course of its ordinary banking arrangements.”
- (3) In subsection (5), after “paragraph—” insert—
  - ““bank” has the meaning given by section 840A of the Taxes Act 1988;”.
- (4) The amendments made by this section are treated as always having had effect.

## *Leasing*

### **55 Leases of plant or machinery**

Schedule 20 contains provision about leases of plant or machinery.

### **56 Sale of lessor companies etc**

- (1) Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.
- (2) In paragraph 23 (leasing business carried on in partnership: change in company's interest in the business), after sub-paragraph (4) insert—
  - “(4A) But if at the end of the relevant day the other company is the only person carrying on the business, the expense—
    - (a) is treated as an expense incurred by the other company in its carrying on of the business (at a time when it is the only person carrying it on), and
    - (b) is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the accounting period in which it is treated as incurred.”
- (3) In paragraph 32 (amount of expense)—
  - (a) in sub-paragraph (2), for “The” substitute “Except in a case where sub-paragraph (3A) applies, the”, and
  - (b) after sub-paragraph (3) insert—
    - “(3A) If paragraph 23(4A) applies (business carried on by the other company alone), the amount of the expense of the other company is equal to the amount of the income.”
- (4) In paragraph 39 (relief for certain expenses otherwise giving rise to carried forward loss)—
  - (a) after sub-paragraph (1) insert—
    - “(1A) This paragraph also applies if—
      - (a) a company is treated under paragraph 23(4A) as incurring an expense of a business in an accounting period,
      - (b) the company makes a loss in that accounting period, and
      - (c) some or all of that loss would otherwise be carried forward to the next accounting period of the company (“the subsequent accounting period”).”,
    - (b) in sub-paragraph (2), after “3” insert “, 23(4A)”, and
    - (c) in sub-paragraph (4), after “3” insert “, 23(4A)”,and, accordingly, in the heading before that paragraph, after “3” insert “, 23(4A)”.
- (5) The amendments made by this section are treated as always having had effect.

### *Double taxation arrangements*

#### **57 Double taxation relief**

- (1) Section 798 of ICTA (limits on foreign tax credit: trade income) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) The references in section 796 and this section to income in respect of which a credit for foreign tax is to be allowed are to be treated as referring only to income arising out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.”
- (3) In subsection (3), after “income” insert “in respect of which the credit is to be allowed”.
- (4) The amendments made by this section have effect in relation to a credit for foreign tax which relates to—
  - (a) a payment of foreign tax on or after 6 April 2008, or
  - (b) income received on or after that date in respect of which foreign tax has been deducted at source.

#### **58 UK residents and foreign partnerships**

- (1) In section 115 of ICTA (partnerships involving companies: supplementary), after subsection (5B) insert—
  - “(5C) For the purposes of subsections (5) to (5B) the members of a partnership include any company which is entitled to a share of income or capital gains of the partnership.”
- (2) In section 59 of TCGA 1992 (partnerships), insert at the end—
  - “(4) For the purposes of subsections (2) and (3) the members of a partnership include any person entitled to a share of capital gains of the partnership.”
- (3) In section 858 of ITTOIA 2005 (resident partners and double taxation agreements), insert at the end—
  - “(4) For the purposes of this section the members of a firm include any person entitled to a share of income of the firm.”
- (4) The amendments made by subsections (1) to (3) are treated as always having had effect.
- (5) For the purposes of the predecessor provisions, the members of a partnership are to be treated as having included, at all times to which those provisions applied, a person entitled to a share of income or capital gains of the partnership.
- (6) “The predecessor provisions” means—
  - (a) section 153(4) and (5) of the Income and Corporation Taxes Act 1970 (c. 10) (as it had effect under section 62(2) of F(No.2)A 1987), and
  - (b) sections 112(4) to (6) and 115(5) of ICTA.

#### **59 UK residents and foreign enterprises**

- (1) In ICTA, after section 815A insert—

### **“815AZA UK residents and foreign enterprises**

- (1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
  - (2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
  - (3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.
  - (4) This section does not apply in relation to—
    - (a) income of a company resident in the United Kingdom to which section 115(5A) applies, or
    - (b) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies.”
- (2) The amendment made by subsection (1) has effect in relation to income arising on or after 12 March 2008.

### *Other anti-avoidance provisions*

#### **60 Restrictions on trade loss relief for individuals**

Schedule 21 contains provision restricting relief for losses made by individuals who, otherwise than in partnership, carry on trades in a non-active capacity.

#### **61 Non-active partners**

- (1) In section 103B(2) of ITA 2007 (meaning of “non-active partner” for purposes of provisions restricting trade loss relief), for “carried on for the purposes of the trade” substitute “of the trade and those activities are carried on—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits as a result of the activities.”
- (2) The amendment made by subsection (1) has effect in relation to relevant periods ending on or after 12 March 2008.

#### **62 Financial arrangements avoidance**

Schedule 22 contains provision about avoidance involving financial arrangements.

#### **63 Manufactured payments**

- (1) Schedule 23 contains anti-avoidance provisions about manufactured payments.

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- (2) The amendments made by that Schedule have effect in relation to manufactured payments (including deemed manufactured payments) made (or treated as made) on or after 31 January 2008.

#### **64 Controlled foreign companies**

- (1) Chapter 4 of Part 17 of ICTA (controlled foreign companies) is amended as follows.
- (2) In section 747 (imputation of chargeable profits of controlled foreign companies)—
- (a) in subsection (6), before “and” at the end of paragraph (a) insert—
- “(aa) any reference in this Chapter to its chargeable profits for an accounting period includes (subject to subsections (7) to (9)) income which accrues during that accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary;”, and
- (b) after that subsection insert—
- “(7) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (6)(aa), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
- (8) Where income within subsection (6)(aa) is included in the chargeable profits of a company, any dividend or other distribution received by the company which derives from that income is not included in the chargeable profits of the company to the extent that it is so derived.
- (9) Any income within subsection (6)(aa) which would (apart from this subsection)—
- (a) be included in the chargeable profits of a company which is a beneficiary in relation to a settlement and apportioned under subsection (3), and
- (b) be included in the chargeable profits of a company which is a settlor in relation to the settlement and apportioned under that subsection,
- is not to be included in the chargeable profits of the company which is a settlor.”
- (3) In section 755D (meaning of control)—
- (a) after subsection (1) insert—
- “(1A) For the purposes of this Chapter a person also controls a company if the person possesses, or is entitled to acquire, such rights as would—
- (a) if the whole of the income of the company were distributed, entitle the person to receive the greater part of the amount so distributed,
- (b) if the whole of the company’s share capital were disposed of, entitle the person to receive the greater part of the proceeds of the disposal, or
- (c) in the event of the winding-up of the company or in any other circumstances, entitle the person to receive the greater part

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- of the assets of the company which would then be available for distribution.”, and
- (b) in subsection (2), after “above” insert “or satisfy subsection (1A) above”.
- (4) In paragraph 2A of Schedule 25 (acceptable distribution policy)—
- (a) in sub-paragraph (2), for “sub-paragraph (4)” substitute “sub-paragraphs (4) and (4A)”, and
- (b) after sub-paragraph (4) insert—
- “(4A) Sub-paragraph (2) does not apply where the distribution condition is satisfied in relation to the relevant accounting period, but—
- (a) the relevant profits for that period do not include income within sub-paragraph (4B), and
- (b) if that income were included, the distribution condition would not be satisfied in relation to that period.
- (4B) The income within this sub-paragraph is—
- (a) any income which accrues during the relevant accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.
- (4C) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (4B)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
- (4D) In sub-paragraph (4B)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.”
- (5) In paragraph 6 of Schedule 25 (definition of exempt activities), after sub-paragraph (5B) insert—
- “(5C) For the purposes of this paragraph, the gross income of a holding company or a superior holding company during an accounting period includes—
- (a) any income which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.
- (5D) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (5C)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.

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- (5E) In sub-paragraph (5C)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.”
- (6) The amendments made by subsections (2) and (5) have effect in relation to income accruing on or after 12 March 2008.
- (7) The amendments made by subsection (3) have effect for determining whether, at any time on or after 12 March 2008, a company is controlled by persons resident in the United Kingdom for the purposes of Chapter 4 of Part 17 of ICTA.
- (8) The amendments made by subsection (4) have effect in relation to any dividend paid on or after 12 March 2008.
- (9) In relation to an accounting period of a company beginning before, and ending on or after, 12 March 2008 (“the straddling period”), the amendments made by this section have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.
- (10) The company’s chargeable profits for the straddling period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.
- (11) In this section “accounting period”, “chargeable profits” and “creditable tax” have the same meaning as in Chapter 4 of Part 17 of ICTA.

## **65 Intangible fixed assets: related parties**

- (1) In Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets), after paragraph 95 (meaning of “related party”) insert—

*“Persons treated as “related parties”*

- 95A (1) For the purposes of this Schedule, a person (“P”) shall be treated as a related party in relation to a company (“C”) within a Case in paragraph 95(1) if P would be a related party in relation to C within that Case but for any person (other than an individual) being the subject of—
- (a) insolvency arrangements, or
  - (b) equivalent arrangements under the law of any country or territory (whether made when the person is solvent or insolvent).
- (2) For the purpose of this paragraph, “insolvency arrangements” includes—
- (a) arrangements under which a person acts as the liquidator, provisional liquidator, receiver, administrator or administrative receiver of a company or partnership, and
  - (b) voluntary arrangements proposed or approved in relation to a company or partnership under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989.
- (3) In this paragraph—
- “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989,



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“administrator” means a person appointed to manage the affairs, business and property of the company or partnership under Schedule B1 to that Act or to that Order, and

“receiver” means a person appointed as receiver of some or all of the property of the company or partnership under an enactment or under an instrument issued for the purpose of representing security for, or the rights of creditors in respect of, any debt.”

- (2) Subject to subsections (4) and (5), the amendment made by subsection (1) has effect in relation to the debits and credits to be brought into account for accounting periods beginning on or after 12 March 2008.
- (3) For the purposes of subsection (2), an accounting period beginning before, and ending on or after, that day is treated as if so much of that period as falls before that day, and so much of that period as falls on or after that day, were separate periods.
- (4) The amendment made by subsection (1) does not have effect for the purpose of determining whether a person was a related party in relation to a company at a time before 12 March 2008.
- (5) That amendment has effect, for the purposes of paragraph 92 of Schedule 29 to FA 2002 as it applies otherwise than for determining the debits and credits to be brought into account under that Schedule, in relation to any transfer of an asset made on or after 12 March 2008.

## **66 Repeal of obsolete anti-avoidance provisions**

- (1) In Part 17 of ICTA (tax avoidance)—
  - (a) in section 704 (cancellation of corporation tax advantages: the prescribed circumstances), omit—
    - (i) paragraph B (and the “OR” after it), and
    - (ii) in paragraph C(1), paragraph (b) (and the “or” before it),
  - (b) in section 709 (definitions), omit subsection (2A),
  - (c) omit sections 731 to 735 (purchase and sale of securities), and
  - (d) omit section 736 (company dealing in securities: distribution materially reducing value of holding).
- (2) In Part 13 of ITA 2007 (tax avoidance)—
  - (a) in section 684(2) (person liable to counteraction of income tax advantage), omit the entry relating to section 687 of that Act,
  - (b) omit section 687 (deductions from profits obtained following distribution or dealings), and
  - (c) in section 688 (receipt of consideration representing company’s assets, future receipts or trading stock), omit—
    - (i) in subsection (3), paragraph (b) (and the “or” before it), and
    - (ii) subsections (4), (5) and (9).
- (3) In consequence of the amendments made by subsection (1)(a) and (b), omit—
  - (a) in FA 1997, section 73, and
  - (b) in ITA 2007, paragraph 155(4) and (5) and (6)(b) of Schedule 1.
- (4) In consequence of the amendments made by subsection (1)(c) and (d), omit—

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- (a) in ICTA, sections 343(5) and 738,
  - (b) in FA 1990, section 53,
  - (c) in FA 1991, sections 55 and 56,
  - (d) in TCGA 1992, paragraph 14(40) and (41) of Schedule 10,
  - (e) in FA 1994, paragraph 17 of Schedule 16,
  - (f) in FA 1995, section 81,
  - (g) in FA 1996—
    - (i) paragraph 36 of Schedule 20, and
    - (ii) paragraph 9 of Schedule 38,
  - (h) in FA 1997, section 77,
  - (i) in F(No.2)A 1997—
    - (i) section 26, and
    - (ii) paragraph 14 of Schedule 6,
  - (j) in FA 2003, paragraph 6 of Schedule 38,
  - (k) in ITTOIA 2005, paragraphs 302 and 303 of Schedule 1,
  - (l) in ITA 2007—
    - (i) in section 64(8), paragraph (f) (and the “and” before it),
    - (ii) in section 72(5), paragraph (f) (and the “and” before it),
    - (iii) in section 448(3), “and section 451”,
    - (iv) in section 449(3), “and section 451”,
    - (v) section 451,
    - (vi) in section 505, in subsection (4) “and section 506” and, in subsection (5) “and in section 506”,
    - (vii) section 506, and
    - (viii) paragraphs 167 to 170 of Schedule 1, and
  - (m) in FA 2007, paragraph 6 of Schedule 14.
- (5) The amendments made by subsections (1)(a) and (b), (2) and (3) have effect in relation to transactions in securities entered into on or after 1 April 2008.
- (6) The amendment made by subsection (1)(c) has effect in relation to cases where the purchase by the first buyer (within the meaning of section 731(2) of ICTA) is made on or after that date.
- (7) The amendment made by subsection (1)(d) has effect in relation to distributions made on or after that date.
- (8) The amendments made by subsection (4) have effect in accordance with subsections (6) and (7).

#### *Miscellaneous*

### **67 Income of beneficiaries under settlor-interested settlements**

- (1) In section 685A of ITTOIA 2005 (settlor-interested settlements), after subsection (5) insert—
- “(5A) If the recipient of the annual payment is treated by subsection (3) as having paid income tax in respect of the annual payment, the amount of the payment is treated as the highest part of the recipient’s total income for all income tax

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purposes except the purposes of sections 535 to 537 (gains from contracts for life insurance etc: top slicing relief).

(5B) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—

- (a) the rule in subsection (5A), and
- (b) other rules requiring particular income to be treated as the highest part of a person's income.”

(2) In section 1012(4) of ITA 2007 (relationship between rules on highest part of total income), after the entry relating to section 465A of ITOIA 2005 insert—

“section 685A(5A) of ITTOIA 2005 (payments from trustees of settlor-interested settlements to be treated as highest part of total income),”.

(3) The amendments made by this section have effect for the tax year 2006-07 and subsequent tax years.

## **68 Income charged at dividend upper rate**

(1) In section 13(2) of ITA 2007 (income charged at dividend upper rate: individuals)—

- (a) omit “and” at the end of paragraph (a), and
- (b) at the end of paragraph (b) insert “, and
- (c) is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005.”

(2) The amendments made by subsection (1) have effect for the tax year 2008-09 and subsequent tax years.

## **69 Payments on account of income tax**

(1) In section 964 of ITA 2007, omit subsection (5) (sums representing income tax deducted from annual payments not to be taken into account for the purpose of calculating amounts to be paid on account of income tax).

(2) The repeal made by subsection (1) has effect for the purpose of calculating the amount of any payments to be made under section 59A of TMA 1970 on account of liability to income tax for the tax year 2008-09 and subsequent tax years.

## **70 Allowances etc for non-resident nationals of an EEA state**

(1) In section 278 of ICTA (non-residents eligible for reliefs)—

- (a) in subsection (2)(a), omit “or an EEA national”, and
- (b) omit subsection (9).

(2) In section 56(3) of ITA 2007 (non-UK residents eligible for personal allowances and tax reductions), before paragraph (a) insert—

“(za) is a national of an EEA state,”.

(3) Accordingly, omit section 145 of FA 1996 (personal reliefs for non-resident EEA nationals).

(4) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

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### PART 3

#### CAPITAL ALLOWANCES

##### *Plant and machinery: qualifying expenditure*

#### 71 Thermal insulation of buildings

- (1) Section 28 of CAA 2001 (thermal insulation of industrial buildings) is amended as follows.
- (2) In subsection (1)—
  - (a) for “consisting of a trade” substitute “other than an ordinary property business or an overseas property business”,
  - (b) for “an industrial” substitute “a”, and
  - (c) for “the trade” substitute “the qualifying activity”.
- (3) In subsection (2), for “an industrial” substitute “a”.
- (4) After that subsection insert—
 

“(2A) Subsection (2) is subject to section 35 (expenditure on plant or machinery for use in dwelling-house not qualifying expenditure).

(2B) This section does not apply to expenditure within subsection (2) if a deduction for that expenditure is allowable—

  - (a) under section 31ZA of ICTA, or
  - (b) under section 312 of ITTOIA 2005,

(deductions for expenditure on energy-saving items).

(2C) For the purposes of subsection (2B), whether such a deduction is allowable is to be determined without regard to subsection (1)(e) of the section in question.”
- (5) Omit subsection (3).
- (6) In the heading, omit “**industrial**”.
- (7) In section 23(2) of CAA 2001 (expenditure unaffected by sections 21 and 22), in the entry for section 28, omit “industrial”.
- (8) The amendments made by this section have effect—
  - (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2008, and
  - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2008.

#### 72 Expenditure on required fire precautions

- (1) In CAA 2001, omit section 29 (expenditure on required fire precautions).
- (2) In section 23(2) of that Act, omit “section 29 (fire safety);”.
- (3) In consequence of the amendment made by subsection (1)—

- (a) in the Fire and Rescue Services Act 2004 (c. 21), omit paragraph 96 of Schedule 1, and
  - (b) in the Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), omit paragraph 24 of Schedule 3 (and the entry relating to CAA 2001 in Schedule 4).
- (4) The amendments made by subsections (1) and (2) have effect—
- (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2008, and
  - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2008.

### 73 Integral features

- (1) In section 23 of CAA 2001 (expenditure unaffected by sections 21 and 22)—
- (a) in subsection (2), after the entry for section 33 insert—
    - “section 33A (integral features);”, and
  - (b) in subsection (4), in List C—
    - (i) in item 2, omit “Electrical systems (including lighting systems) and cold water;”,
    - (ii) omit item 3, and
    - (iii) in item 6, for “Lifts, hoists, escalators and moving walkways.” substitute “Hoists.”
- (2) After section 33 of that Act insert—

#### *“Expenditure on integral features*

#### **33A Expenditure on provision or replacement of integral features**

- (1) This section applies where a person carrying on a qualifying activity incurs expenditure on the provision or replacement of an integral feature of a building or structure used by the person for the purposes of the qualifying activity.
- (2) This Part (including in particular section 11(4)) applies as if—
- (a) the expenditure were capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity, and
  - (b) the person who incurred the expenditure owned plant or machinery as a result of incurring it.
- (3) If the expenditure is qualifying expenditure, it may not be deducted in calculating the income from the qualifying activity.
- (4) If the expenditure is not qualifying expenditure, whether it may be so deducted is to be determined without regard to this section.
- (5) For the purposes of this section each of the following is an integral feature—
- (a) an electrical system (including a lighting system),
  - (b) a cold water system,

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- (c) a space or water heating system, a powered system of ventilation, air cooling or air purification, and any floor or ceiling comprised in such a system,
  - (d) a lift, an escalator or a moving walkway,
  - (e) external solar shading.
- (6) The items listed in subsection (5) do not include any asset whose principal purpose is to insulate or enclose the interior of a building or to provide an interior wall, floor or ceiling which (in each case) is intended to remain permanently in place.
- (7) The Treasury may by order—
- (a) provide that subsection (5) does not include a feature of a building or structure specified in the order, expenditure on which would (if not within subsection (5)) be qualifying expenditure other than special rate expenditure, and
  - (b) add to the list in subsection (5) a feature of a building or structure expenditure on the provision of which would not (apart from the order) be expenditure on the provision of plant or machinery.
- (8) An order under subsection (7) may make such incidental, supplemental, consequential and transitional provision as the Treasury thinks fit.

### **33B Meaning of “replacement” in section 33A**

- (1) Expenditure to which this section applies is to be treated for the purposes of section 33A as expenditure on the replacement of an integral feature.
  - (2) This section applies to expenditure incurred by a person on an integral feature if the amount of the expenditure is more than 50% of the cost of replacing the integral feature at the time the expenditure is incurred.
  - (3) Subsection (4) applies where—
    - (a) a person incurs expenditure (“initial expenditure”) on an integral feature which is not more than 50% of the cost of replacing the integral feature at the time it is incurred, but
    - (b) in the period of 12 months beginning with the initial expenditure being incurred the person incurs further expenditure on the integral feature.
  - (4) If the aggregate of—
    - (a) the amount of the initial expenditure, and
    - (b) the amount (or the aggregate of the amounts) of the further expenditure,
 is more than 50% of the cost of replacing the integral feature at the time the initial expenditure was incurred, this section applies to the initial expenditure and the further expenditure.
  - (5) Where section 33A applies because of subsection (4), all such assessments and adjustments of assessments are to be made as are necessary to give effect to that section.”
- (3) In section 74(1) of ICTA (general rules as to deductions not allowable), after paragraph (d) insert—

“(da) any expenditure to which section 33A(3) of the Capital Allowances Act (expenditure on provision or replacement of integral features) applies;”.

- (4) In Chapter 4 of Part 2 of ITTOIA 2005 (rules restricting deductions from trade profits), after section 55 insert—

*“Integral features*

**55A Expenditure on integral features**

Section 33A(3) of CAA 2001 provides that no deduction is allowed in respect of certain expenditure on an integral feature of a building or structure (within the meaning of that section).”

- (5) In the table in section 272(2) of ITTOIA 2005 (provisions of Part 2 applicable to profits of property business), after the entry relating to section 55 insert—

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“section 55A	expenditure on integral features”
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- (6) The amendments made by this section have effect—
- (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2008, and
  - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2008.

*Plant and machinery: annual investment allowance*

**74 Annual investment allowance**

Schedule 24 contains provision about an annual investment allowance in respect of certain qualifying expenditure on plant or machinery.

*Plant and machinery: first-year allowances*

**75 First-year allowance for small and medium-sized enterprises discontinued**

- (1) CAA 2001 is amended as follows.
- (2) Omit section 44 (expenditure incurred by small or medium-sized enterprises).
- (3) In consequence of the repeal made by subsection (2)—
- (a) in the list in section 39 (provisions under which first-year allowances available), omit the entry relating to section 44,
  - (b) in the list in section 46(1) (provisions subject to general exclusions), omit the entry relating to section 44,
  - (c) omit sections 47 to 49 (definition of small and medium-sized enterprises), and
  - (d) in section 52(3) (first-year allowances) omit—
    - (i) in the table, the entry relating to expenditure qualifying under section 44, and

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- (ii) the words from “In the case” to the end.
- (4) Omit the following provisions (which relate to provisions repealed by subsection (3))
  - (a) section 142 of FA 2004 (increase in first-year allowance under section 44 for 2004),
  - (b) section 30 of FA 2006 (increase in first-year allowance under section 44 for 2006), and
  - (c) section 37 of FA 2007 (increase in first-year allowance under section 44 for 2007).
- (5) The repeals made by subsections (2) and (3) have effect in relation to expenditure incurred on or after the relevant date.
- (6) But subsection (7) applies in relation to an additional VAT liability incurred on or after the relevant date which under section 235 of CAA 2001 is treated as qualifying expenditure.
- (7) If the original expenditure (within the meaning of that section) was first-year qualifying expenditure by virtue of section 44 of CAA 2001, Chapter 18 of Part 2 of that Act (additional VAT liabilities and rebates) applies to the additional VAT liability as if the provisions repealed by this section were not so repealed.
- (8) The relevant date is—
  - (a) for corporation tax purposes, 1 April 2008, and
  - (b) for income tax purposes, 6 April 2008.

## 76 Repeal of spent first-year allowances

- (1) CAA 2001 is amended as follows.
- (2) Omit sections 40 to 43 (first-year allowance for Northern Ireland expenditure incurred on or before 11 May 2002).
- (3) Omit section 45 (first-year allowance for ICT expenditure incurred on or before 31 March 2004).
- (4) In Schedule 3 (transitionals and savings), omit paragraphs 46 to 51 (first-year allowance for additional VAT liabilities).
- (5) In consequence of the amendments made by subsections (2) to (4), omit the following provisions—
  - (a) in the list in section 39 (provisions under which first-year allowances available), the entries relating to section 40 and section 45,
  - (b) in section 46 (general exclusions)—
    - (i) in the list in subsection (1), the entries relating to section 40 and section 45, and
    - (ii) in the heading, from “**applying**” to “**45**”,
  - (c) section 51 (disclosure of information between HMRC and Northern Ireland department),
  - (d) in the table in section 52(3) (first-year allowances), the entries relating to expenditure qualifying under section 40 and expenditure qualifying under section 45,



- (e) section 237(2) (exception to section 236 where section 43 applies), and
  - (f) in Schedule 3 (transitionals and savings), paragraph 14 (application of section 45).
- (6) In consequence of the amendments made by this section, omit—
- (a) in section 98 of TMA 1970, in the second column of the table, in the entry relating to requirements imposed by CAA 2001, “43(5) and (6),”,
  - (b) sections 165 and 166 of FA 2003, and
  - (c) paragraph 84 of Schedule 4 to CRCA 2005.
- (7) Subsection (8) applies in relation to an additional VAT liability incurred on or after the day this section comes into force which under section 235 of CAA 2001 is treated as qualifying expenditure.
- (8) If the original expenditure (within the meaning of that section) was first-year qualifying expenditure by virtue of a provision repealed by subsections (2) to (4), Chapter 18 of Part 2 of that Act (additional VAT liabilities and rebates) applies to the additional VAT liability as if that provision were not so repealed.

## **77 Cars with low carbon dioxide emissions**

- (1) Section 45D of CAA 2001 (expenditure on cars with low carbon dioxide emissions) is amended as follows.
- (2) In subsection (1)(a), for “2008” substitute “2013”.
- (3) In subsection (4), for “120” substitute “110”.
- (4) In consequence of the amendment made by subsection (2)—
- (a) in section 60(2)(b) of FA 2002 (period for which section 578A(2A) and (2B) of ICTA have effect), for “2008” (in both places) substitute “2013”, and
  - (b) in section 50(3) of ITTOIA 2005 (cases in which expenses incurred on hiring car with low carbon dioxide emissions are not excluded from section 48 of that Act), for “2008” substitute “2013”.
- (5) The amendment made by subsection (3) has effect in relation to expenditure incurred on or after 1 April 2008.
- (6) But in relation to expenditure incurred on the hiring of a car—
- (a) for a period of hire which begins on or before 31 March 2008, and
  - (b) under a contract entered into on or before 31 March 2008,
- section 578A of ICTA and section 50 of ITTOIA 2005 apply on and after 1 April 2008 as if the amendment made by subsection (3) did not have effect.

## **78 Gas refuelling stations**

- (1) Section 45E of CAA 2001 (expenditure on plant or machinery for gas refuelling station) is amended as follows.
- (2) In subsection (1)(a), for “2008” substitute “2013”.
- (3) After “natural gas” (in each place) insert “, biogas”.
- (4) In subsection (4), before the definition of “gas refuelling station” insert—

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““biogas” means gas produced by the anaerobic conversion of organic matter and used for propelling vehicles;”.

- (5) The amendments made by subsections (3) and (4) have effect in relation to expenditure incurred on or after 1 April 2008.

## 79 First-year tax credits

Schedule 25 contains provision about the payment of first-year tax credits to companies in connection with certain first-year qualifying expenditure.

*Plant and machinery: writing-down allowances and pools*

## 80 Main rate of writing down allowance

- (1) Section 56 of CAA 2001 (amount of allowances and charges) is amended as follows.

- (2) In subsection (1), for “25%” substitute “20%”.

- (3) After that subsection insert—

“(1A) But in relation to qualifying expenditure incurred wholly for the purposes of a ring fence trade in respect of which tax is chargeable under section 501A of ICTA (supplementary charge in respect of ring fence trades), the amount of the writing-down allowance to which a person is entitled for a chargeable period is 25% of the amount by which AQE exceeds TDR.”

- (4) In subsection (2), for “Subsection (1) is” substitute “Subsections (1) and (1A) are”.

- (5) Part 10 of Schedule 22 to FA 2000 (companies within tonnage tax: capital allowances in respect of ship leasing) is amended as follows.

- (6) In each of the following provisions, for “25%” substitute “20%”—

- (a) paragraph 94(3)(a) and (4),
- (b) paragraph 95(4),
- (c) paragraph 97(2) and (3),
- (d) paragraph 98(8), and
- (e) paragraph 99(2).

- (7) In paragraph 99—

- (a) in sub-paragraph (4), for “25%” substitute “the appropriate rate”, and
- (b) after that sub-paragraph insert—

“(5) The appropriate rate is 20%; but if for any part of the period mentioned in sub-paragraph (4) the rate of writing-down allowance to which the lessor would have been entitled under section 56(1) of the Capital Allowances Act 2001 if paragraph 94 had not applied was more than 20%, for that part of the period that rate is the appropriate rate.”

- (8) The amendments made by this section have effect in relation to chargeable periods—

- (a) beginning on or after the relevant date, and
- (b) beginning before, and ending on or after, the relevant date.

- (9) But in respect of a chargeable period within subsection (8)(b), they apply as if in—
- (a) section 56(1) of CAA 2001,
  - (b) the provisions listed in subsection (6), and
  - (c) paragraph 99(5) of Schedule 22 to FA 2000,
- the references to 20% were to x%.
- (10) For the purposes of subsection (9)—

$$x = \left(25 \times \frac{BRD}{CP}\right) + \left(20 \times \frac{ARD}{CP}\right)$$

Where x would be a figure with more than 2 decimal places, it is to be rounded up to the nearest second decimal place.

- (11) In subsection (10)—
- BRD is the number of days in the chargeable period before the relevant date,
  - ARD is the number of days in the chargeable period on and after the relevant date, and
  - CP is the number of days in the chargeable period.
- (12) The relevant date is—
- (a) for corporation tax purposes, 1 April 2008, and
  - (b) for income tax purposes, 6 April 2008.

## **81 Small pools**

- (1) CAA 2001 is amended as follows.
- (2) In section 56(2) (amount of allowances and charges), before paragraph (a) insert—
- “(za) section 56A (small main pools and special rate pools),”.
- (3) After section 56 insert—

### **“56A Writing-down allowances for small pools**

- (1) This section applies in relation to the main pool and the special rate pool.
- (2) Where the amount by which AQE exceeds TDR is less than or equal to the small pool limit, the amount of the writing-down allowance to which a person is entitled for a chargeable period is the amount by which AQE exceeds TDR.
- (3) The small pool limit is £1,000, except that—
- (a) if the chargeable period is more or less than a year, it is proportionately increased or reduced, and
  - (b) if the qualifying activity has been carried on for part only of the chargeable period, it is proportionately reduced.
- (4) A person claiming a writing-down allowance under this section may require the allowance to be reduced to a specified amount.
- (5) The Treasury may by order substitute for the amount for the time being specified in subsection (3) such other amount as it thinks fit.

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- (6) An order under subsection (5) may make such incidental, supplemental, consequential and transitional provision as the Treasury thinks fit.”
- (4) In section 59(1) (definition of unrelieved qualifying expenditure)—
- (a) after “that period” insert “(a)”, and
  - (b) after “TDR” insert “, and
    - (b) where section 56A(2) applies, the person does not claim a writing-down allowance of the amount by which AQE exceeds TDR.”
- (5) The amendments made by this section have effect—
- (a) for corporation tax purposes, in relation to chargeable periods beginning on or after 1 April 2008, and
  - (b) for income tax purposes, in relation to chargeable periods beginning on or after 6 April 2008.

## **82 Special rate expenditure and the special rate pool**

Schedule 26 contains provision about special rate expenditure and the special rate pool.

## **83 Existing long-life asset expenditure treated as special rate expenditure**

- (1) This section applies in relation to long-life asset expenditure—
- (a) incurred before the relevant date, and
  - (b) allocated to a pool in a chargeable period beginning before the relevant date.
- (2) In relation to a transitional chargeable period, section 102 of CAA 2001 applies as if the percentage figure specified in subsection (1) of that section were x%, where—

$$x = \left(6 \times \frac{BRD}{CP}\right) + \left(10 \times \frac{ARD}{CP}\right)$$

Where x would be a figure with more than 2 decimal places, it is to be rounded up to the nearest second decimal place.

- (3) In subsection (2)—
- BRD is the number of days in the chargeable period before the relevant date,  
ARD is the number of days in the chargeable period on and after the relevant date, and  
CP is the number of days in the chargeable period.
- (4) Any unrelieved qualifying expenditure in a long-life asset pool at the end of—
- (a) a transitional chargeable period, or
  - (b) a chargeable period which ends immediately before the relevant date,
- is to be carried forward to the special rate pool.
- (5) In subsequent chargeable periods, expenditure so carried forward is to be treated for the purposes of CAA 2001 as if it were special rate expenditure carried forward in the special rate pool from the chargeable period mentioned in subsection (4).
- (6) Any unrelieved qualifying expenditure in a single asset pool at the end of—

- (a) a transitional chargeable period, or
  - (b) a chargeable period which ends immediately before the relevant date,
- is in subsequent chargeable periods to be treated for the purposes of CAA 2001 as if it were special rate expenditure carried forward in the single asset pool from that chargeable period.
- (7) Where expenditure is treated as special rate expenditure because of this section, for the purposes of section 104E of CAA 2001—
    - (a) the reference in subsection (1)(a) of that section to section 104D of CAA 2001 includes a reference to section 102 of that Act (writing-down allowances in respect of long-life asset expenditure), and
    - (b) the allowances that could have been made to the taxpayer in respect of the expenditure include allowances that could have been made under section 102 of that Act for chargeable periods before that in which the expenditure was first treated as special rate expenditure.
  - (8) A “transitional chargeable period” is one which begins before, and ends on or after, the relevant date.
  - (9) “The relevant date” means—
    - (a) for corporation tax purposes, 1 April 2008, and
    - (b) for income tax purposes, 6 April 2008.
  - (10) Expressions used in this section and in CAA 2001 have the same meaning in this section as in that Act.

#### *Industrial and agricultural buildings allowances*

### **84 Abolition of allowances from 2011**

- (1) Parts 3 and 4 of CAA 2001 (industrial buildings allowances and agricultural buildings allowances) do not apply in relation to expenditure incurred on or after the relevant date.
- (2) Omit those Parts of that Act.
- (3) The amendment made by subsection (2) has effect in relation to chargeable periods beginning on or after the relevant date.
- (4) The relevant date is—
  - (a) for corporation tax purposes, 1 April 2011, and
  - (b) for income tax purposes, 6 April 2011.
- (5) Schedule 27 contains amendments and savings related to this section.

### **85 Phasing out of allowances before abolition**

- (1) For a chargeable period to which this section applies (“a transitional chargeable period”), a person’s entitlement to a writing-down allowance under Part 3 or 4 of CAA 2001 in respect of qualifying expenditure is to be determined in accordance with this section.

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- (2) This section does not apply to a writing-down allowance in respect of qualifying enterprise zone expenditure.
- (3) If the whole of a transitional chargeable period falls within a financial year listed in column 1 of the table (for corporation tax purposes) or a tax year listed in column 2 of the table (for income tax purposes), the writing-down allowance to which the person is entitled for that chargeable period is—

$$WDA \times P$$

where—

WDA is the writing-down allowance to which the person would be entitled for the chargeable period apart from this section, and

P is the percentage specified in relation to that year in column 3 of the table.

- (4) If subsection (3) does not apply in relation to a transitional chargeable period, the writing-down allowance to which the person is entitled for that chargeable period is to be determined by—
- (a) calculating the apportioned writing-down allowance for each financial year (for corporation tax purposes) or tax year (for income tax purposes) in which part of the chargeable period falls, and
  - (b) adding the amounts of the apportioned writing-down allowance for each of those years.
- (5) For the purposes of Part 3 of CAA 2001 (industrial buildings), the apportioned writing-down allowance for a financial year or tax year in which part of a transitional chargeable period falls is—

$$\frac{DCPY}{DCP} \times WDA \times P$$

where—

DCPY is the number of days in the chargeable period which fall in that year,

DCP is the number of days in the chargeable period,

WDA is the writing-down allowance to which the person would be entitled for the chargeable period apart from this section, and

P is the percentage specified in relation to that year in column 3 of the table.

- (6) For the purposes of Part 4 of CAA 2001 (agricultural buildings), the apportioned writing-down allowance for a financial year or tax year in which part of a transitional chargeable period falls is—

$$\frac{RDCPY}{RDCP} \times WDA \times P$$

where—

RDCPY is the number of relevant days in the chargeable period which fall in that year,

RDCP is the number of relevant days in the chargeable period,

WDA is the writing-down allowance to which the person would be entitled for the chargeable period apart from this section, and

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P is the percentage specified in relation to that year in column 3 of the table.

- (7) The relevant days in the chargeable period are the days in that period for which the person was entitled to the relevant interest in relation to the qualifying expenditure (within the meaning of Part 4 of CAA 2001).
- (8) For the purposes of CAA 2001, the residue of the qualifying expenditure at any time is to be calculated as if the writing-down allowance made to a person under Part 3 or 4 of that Act in respect of the qualifying expenditure for any transitional chargeable period were the writing-down allowance which would have been made apart from this section.
- (9) This section applies—
- (a) for corporation tax purposes, to chargeable periods which begin before the relevant date and end on or after 1 April 2008, and
  - (b) for income tax purposes, to chargeable periods which begin before the relevant date and end on or after 6 April 2008.
- (10) In this section references to the table are to the following table—

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Financial year beginning 1 April 2007 and earlier financial years	Tax year 2007-08 and earlier tax years	100%
Financial year beginning 1 April 2008	Tax year 2008-09	75%
Financial year beginning 1 April 2009	Tax year 2009-10	50%
Financial year beginning 1 April 2010	Tax year 2010-11	25%
Financial year beginning 1 April 2011 and later financial years	Tax year 2011-12 and later tax years	0%.

- (11) In this section—
- “the relevant date” has the same meaning as in section 84, and
  - “qualifying expenditure”, in relation to a writing-down allowance under Part 3 or 4 of CAA 2001, means the qualifying expenditure in respect of which the allowance is made.

## **86 Qualifying enterprise zone expenditure: transitional provision**

- (1) For a chargeable period which begins before, and ends on or after, the relevant date, a person’s entitlement to a writing-down allowance under Part 3 of CAA 2001 in respect of qualifying enterprise zone expenditure is to be determined in accordance with subsection (2).
- (2) The writing-down allowance to which the person is entitled is—

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$$\frac{DCPB}{DCP} \times WDA$$

where—

DCPB is the number of days in the chargeable period which fall before the relevant date,

DCP is the number of days in the chargeable period, and

WDA is the writing-down allowance to which the person would be entitled for the chargeable period apart from this section.

- (3) In this section “the relevant date” has the same meaning as in section 84.

## 87 Phasing out of industrial buildings allowance: anti-avoidance

- (1) In CAA 2001, after section 313 insert—

### “313A Calculation of allowance after sale of relevant interest: anti-avoidance

- (1) This section applies where—
- there is a sale of the relevant interest in the building which is a balancing event to which section 314 applies,
  - the buyer and seller have different chargeable periods,
  - the control test (within the meaning of section 567) is met, and
  - the purpose, or one of the main purposes, of the sale is the obtaining of a tax advantage by the buyer under this Part.
- (2) The writing-down allowance to which the buyer is entitled for the chargeable period in which the sale takes place is—

$$\frac{DI}{CP} \times WDA$$

where—

DI is the number of days in the chargeable period for which the buyer is entitled to the relevant interest,

CP is the number of days in the chargeable period, and

WDA is the writing-down allowance to which the buyer would be entitled apart from this section.”

- (2) The amendment made by subsection (1) has effect in relation to the sale of a relevant interest on or after 12 March 2008, except for such a sale in pursuance of a relevant pre-commencement contract (and for this purpose “sale” has the same meaning as for the purposes of Part 3 of CAA 2001).
- (3) A contract is a relevant pre-commencement contract if—
- the contract is a contract in writing made before 12 March 2008,
  - the contract is unconditional or its conditions have been satisfied before that date,
  - no terms remain to be agreed on or after that date, and
  - the contract is not varied in a significant way on or after that date.



### *Supplementary provision*

#### **88 Power to make consequential and transitional provision**

- (1) The Treasury may by order make such amendments (including repeals and revocations) of enactments or instruments as may appear appropriate in consequence of, or otherwise in connection with, sections 71 to 87.
- (2) The Treasury may by order make such transitional or saving provision as may appear appropriate in consequence of, or otherwise in connection with, those sections.
- (3) An order under subsection (1) may make transitional provision and savings.
- (4) An order under subsection (1) or (2) may—
  - (a) make different provision for different cases, and
  - (b) include provision having effect in relation to times before the order is made if that provision does not increase any person's liability to tax.
- (5) An order under subsection (1) or (2) is to be made by statutory instrument.
- (6) A statutory instrument containing an order under subsection (1) or (2) is subject to annulment in pursuance of a resolution of the House of Commons.

### *Anti-avoidance*

#### **89 Balancing allowances on transfers of trade**

- (1) After section 343 of ICTA insert—

##### **“343ZA Transfers of trade to obtain balancing allowances**

- (1) This section applies where—
  - (a) a company (“the predecessor”) ceases to carry on a trade,
  - (b) another company (“the successor”) begins to carry on the activities of that trade as its trade or as part of its trade,
  - (c) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of the Capital Allowances Act to a balancing allowance in respect of the trade, and
  - (d) the predecessor's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor to that balancing allowance.
- (2) This section also applies where—
  - (a) a company (“the predecessor”) ceases to carry on part of a trade,
  - (b) another company (“the successor”) begins to carry on the activities of that part of the trade as its trade or as part of its trade, and
  - (c) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of the trade, to a balancing allowance in respect of the trade under Part 2 of the Capital Allowances Act.

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- (3) This section does not apply where section 343 applies.
  - (4) Where this section applies, the Corporation Tax Acts have effect subject to section 343(2), but as if the words “and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)” were omitted.
  - (5) Where this section applies because of subsection (1), and the successor carries on the activities of the trade the predecessor ceased to carry on as part of the successor’s trade, for the purposes of section 343(2) that part of the successor’s trade is to be treated as a separate trade carried on by the successor.
  - (6) Where this section applies because of subsection (2), for the purposes of section 343(2)—
    - (a) that part of the trade which the predecessor ceased to carry on is to be treated as a separate trade carried on by the predecessor, and
    - (b) where the successor carries on the activities of that part of the trade as part of its trade, that part of the successor’s trade is to be treated as a separate trade carried on by the successor.
  - (7) Where subsection (5) or (6) applies, such apportionment of receipts, expenses, assets and liabilities is to be made as may be just.
  - (8) Section 343(10) applies to an apportionment under subsection (7) as it applies to an apportionment under section 343(9).”
- (2) The amendment made by subsection (1) has effect in relation to the cessation of a trade or part of a trade on or after 12 March 2008.

## PART 4

### PENSIONS

#### 90 Spreading of relief on indirect contributions

- (1) In Part 4 of FA 2004 (pension schemes etc), after section 199 insert—

##### **“199A Indirect contributions**

- (1) This section applies where an employer (“E”)—
  - (a) pays contributions under a registered pension scheme (“the original scheme”) in a chargeable period, and
  - (b) would (apart from subsection (4)) be entitled in the next chargeable period to an amount of relief in respect of a payment within subsection (2),
 and the avoidance condition is met.
- (2) A payment is within this subsection if all or part of the payment is intended to facilitate the payment of pension contributions under the original scheme or a substitute scheme by a person other than E.
- (3) The avoidance condition is that—

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- (a) section 197 would apply if, in the chargeable period mentioned in subsection (1)(b), E paid pension contributions under the original scheme of the amount of the relevant relief, and
  - (b) the purpose, or one of the purposes, of facilitating the payment of pension contributions by a person other than E is to enable pension contributions to be paid without that section applying.
- (4) For the purposes of the spreading provisions, the amount of the relevant relief is to be treated as the amount of a pension contribution paid by E under the original scheme in the chargeable period mentioned in subsection (1)(b).
- (5) The “relevant relief” is the relief to which the employer would (apart from subsection (4)) be entitled in that chargeable period in respect of—
  - (a) the payment within subsection (2), or
  - (b) where only part of the payment is intended to facilitate the payment of pension contributions as mentioned in that subsection, that part of the payment.
- (6) A “substitute scheme” is any registered pension scheme—
  - (a) to which there is a relevant transfer in the period of 2 years ending with the day on which the payment within subsection (2) is made, or
  - (b) to which it is envisaged that a relevant transfer will or may be made after that day.
- (7) A relevant transfer is a recognised transfer from the original scheme of more than 30% of the aggregate of—
  - (a) in a case within subsection (6)(a), the amount of the sums and the market value of the assets held for the purposes of, or representing accrued rights under, the original scheme immediately before the transfer, and
  - (b) in a case within subsection (6)(b), the amount of those sums and the market value of those assets on the day on which the payment is made.
- (8) If there is a transfer from a substitute scheme to another registered pension scheme which would have been a relevant transfer had it been a transfer from the original scheme at the time the relevant transfer was made, that other scheme is also a substitute scheme.
- (9) In subsection (1)(b) the reference to relief in respect of a payment within subsection (2) includes relief for a liability in respect of the making of the payment by a person other than E.
- (10) In this section references to E being entitled to an amount of relief are to an amount—
  - (a) being deductible in computing the amount of the profits of E for the purposes of Part 2 of ITTOIA 2005 (trading income) or Case I or II of Schedule D,
  - (b) being expenses of management of E for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of E.
- (11) In this section—

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“the spreading provisions” means sections 197 and 198 and this section, and

“chargeable period” has the meaning given by section 197.”

- (2) The amendment made by this section has effect in relation to payments within section 199A(2) of FA 2004 made on or after 10 October 2007, except for such payments made pursuant to a contract entered into before 9 October 2007.

## **91 Inheritance etc of tax-relieved pension savings**

Schedule 28 contains provision about the inheritance etc of tax-relieved pension savings.

## **92 Pension schemes: further provision**

Schedule 29 contains further provision about pension schemes.

# **PART 5**

## **STAMP TAXES**

### *Stamp duty land tax*

## **93 Zero-carbon homes**

- (1) Sections 58B and 58C of FA 2003 (relief from SDLT on first acquisition of zero-carbon homes) are amended as follows.

- (2) In section 58B, for subsection (2) substitute—

“(2) For the purposes of this section—

- (a) a building, or a part of a building, is a dwelling if it is constructed for use as a single dwelling, and
- (b) “first acquisition”, in relation to a dwelling, means its acquisition when it has not previously been occupied.”

- (3) Section 58C is amended as follows.

- (4) In subsection (1), for “building” substitute “dwelling”.

- (5) In subsection (2), after paragraph (c) insert—

“(d) provide for the charging of fees of a reasonable amount in respect of services provided as part of a scheme or process of certification.”

- (6) In subsection (3)—

- (a) for “a building” substitute “a dwelling”, and
- (b) for “building itself” substitute “building which, or part of which, constitutes the dwelling”.

- (7) The amendments made by subsections (2), (4) and (6) are treated as always having had effect; and provision included in regulations by virtue of those amendments may be made so as to have effect in relation to acquisitions on or after 1 October 2007.

## **94 Notification and registration of transactions**

- (1) Part 4 of FA 2003 (stamp duty land tax) is amended as follows.
- (2) For section 77 substitute—

### **“77 Notifiable transactions**

- (1) A land transaction is notifiable if it is—
  - (a) an acquisition of a major interest in land that does not fall within one or more of the exceptions in section 77A,
  - (b) an acquisition of a chargeable interest other than a major interest in land where there is chargeable consideration in respect of which tax is chargeable at a rate of 1% or higher or would be so chargeable but for a relief,
  - (c) a land transaction that a person is treated as entering into by virtue of section 44A(3), or
  - (d) a notional land transaction under section 75A.
- (2) This section has effect subject to—
  - (a) sections 71A(7) and 72A(7), and
  - (b) paragraph 30 of Schedule 15.
- (3) In this section “relief” does not include an exemption from charge under Schedule 3.

### **77A Exceptions for certain acquisitions of major interests in land**

- (1) The exceptions referred to in section 77(1)(a) are as follows.
  1. An acquisition which is exempt from charge under Schedule 3.
  2. An acquisition (other than the grant, assignment or surrender of a lease) where the chargeable consideration for that acquisition, together with the chargeable consideration for any linked transactions, is less than £40,000.
  3. The grant of a lease for a term of 7 years or more where—
    - (a) any chargeable consideration other than rent is less than £40,000, and
    - (b) the relevant rent is less than £1,000.
  4. The assignment or surrender of a lease where—
    - (a) the lease was originally granted for a term of 7 years or more, and
    - (b) the chargeable consideration for the assignment or surrender is less than £40,000.
  5. The grant of a lease for a term of less than 7 years where the chargeable consideration does not exceed the zero rate threshold.
  6. The assignment or surrender of a lease where—
    - (a) the lease was originally granted for a term of less than 7 years, and
    - (b) the chargeable consideration for the assignment or surrender does not exceed the zero rate threshold.

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- (2) Chargeable consideration for an acquisition does not exceed the zero rate threshold if it does not consist of or include—
- (a) any amount in respect of which tax is chargeable at a rate of 1% or higher, or
  - (b) any amount in respect of which tax would be so chargeable but for a relief.

- (3) In this section—

“annual rent” has the meaning given in paragraph 9A of Schedule 5,

“relevant rent” means—

- (a) the annual rent, or
- (b) in the case of the grant of a lease to which paragraph 11 or 19 of Schedule 15 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph), and

“relief” does not include an exemption from charge under Schedule 3.”

- (3) In section 79(2) (registration of land transactions), after “every” insert “notifiable”.
- (4) Schedule 30 contains consequential provision.
- (5) The amendments made by this section and that Schedule have effect in relation to transactions with an effective date on or after 12 March 2008.

## **95 Charge where consideration includes rent: 0% band**

- (1) Schedule 5 to FA 2003 (amount of SDLT chargeable: rent) is amended as follows.
- (2) In paragraph 9 (SDLT chargeable in respect of consideration other than rent)—
- (a) in sub-paragraph (1), insert at the end “(but see paragraph 9A)”, and
  - (b) omit sub-paragraphs (2), (2A) and (3),
- and, accordingly, in the heading before that paragraph, insert at the end “: *general*”.
- (3) After that paragraph insert—

*“Tax chargeable in respect of consideration other than rent: 0% band*

- 9A (1) This paragraph applies in the case of a transaction to which this Schedule applies where there is chargeable consideration other than rent.

- (2) If—

- (a) the relevant land consists entirely of land that is non-residential property, and
- (b) the relevant rent is at least £1,000,

the 0% band in Table B in section 55(2) does not apply in relation to the consideration other than rent and any case that would have fallen within that band is treated as falling within the 1% band.

- (3) Sub-paragraphs (4) and (5) apply if—

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- (a) the relevant land is partly residential property and partly non-residential property, and
    - (b) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.
  - (4) For the purpose of determining the amount of tax chargeable under section 55 in relation to the consideration other than rent, the transaction (or, where it is one of a number of linked transactions, that set of transactions) is treated as if it were two separate transactions (or sets of linked transactions), namely—
    - (a) one whose subject-matter consists of all of the interests in land that is residential property, and
    - (b) one whose subject-matter consists of all of the interests in land that is non-residential property.
  - (5) For that purpose, the chargeable consideration attributable to each of those separate transactions (or sets of linked transactions) is the chargeable consideration so attributable on a just and reasonable apportionment.
  - (6) In this paragraph “the relevant rent” means—
    - (a) the annual rent in relation to the transaction in question, or
    - (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.
  - (7) In sub-paragraph (6) the “annual rent” means the average annual rent over the term of the lease or, if—
    - (a) different amounts of rent are payable for different parts of the term, and
    - (b) those amounts (or any of them) are ascertainable at the effective date of the transaction,the average annual rent over the period for which the highest ascertainable rent is payable.
  - (8) In this paragraph “relevant land” has the meaning given in section 55(3) and (4).”
- (4) Each of the following provisions of Schedule 6 to that Act (SDLT: disadvantaged areas relief) is amended in accordance with subsection (5)—
- (a) paragraph 5(4) (residential land wholly situated in disadvantaged area),
  - (b) paragraph 6(6) (mixed land wholly situated in disadvantaged area),
  - (c) paragraph 9(4) (residential land partly situated in disadvantaged area), and
  - (d) paragraph 10(6) (mixed land wholly partly situated in disadvantaged area).
- (5) In those provisions—
- (a) in paragraph (a), omit sub-paragraph (i) (and the “and” after it), and
  - (b) omit paragraph (b).
- (6) In paragraph 12 of that Schedule (rent and annual rent), for “9(2)” substitute “9A”.
- (7) In Schedule 8 to that Act (SDLT: charities relief), in paragraph 3—

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(a) in sub-paragraph (3)(b), for “does not exceed £600” substitute “is less than £1,000”, and

(b) in sub-paragraph (5), for “9(2)” substitute “9A”.

(8) In Schedule 9 to that Act (SDLT: right to buy etc), after paragraph 4A insert—

*“Shared ownership lease: grant not linked with staircasing transactions etc*

4B (1) For the purpose of determining the rate of tax chargeable on the grant of a shared ownership lease of a dwelling, the grant shall be treated as if it were not linked to—

(a) any acquisition of an interest in the dwelling to which paragraph 4A applies, or

(b) a transfer of the reversion to the lessee or lessees under the terms of the lease.

(2) In this paragraph “shared ownership lease” has the same meaning as in paragraph 4A.”

(9) In that Schedule, in paragraphs 10(1) and (2) and 11(b) (shared ownership trusts), omit “additional”.

(10) In that Schedule, insert at the end—

*“Shared ownership trust: declaration not linked with staircasing transactions etc*

12 For the purpose of determining the rate of tax chargeable on the declaration of a shared ownership trust, the declaration shall be treated as if it were not linked to—

(a) any equity-acquisition payment under the trust or any consequent increase in the purchaser’s beneficial interest in the trust property, or

(b) a transfer to the purchaser of an interest in the trust property upon the termination of the trust.”

(11) In Schedule 15 to that Act (SDLT: partnerships)—

(a) in paragraph 11(2B)(a), for “9(2A)” substitute “9A(6)”,

(b) in paragraph 19(2B), for “9(2A)” substitute “9A(6)”, and

(c) in paragraph 23(3)(c), for “9(2)” substitute “9A”.

(12) In Schedule 17A to that Act (SDLT: further provisions relating to leases), in paragraph 18A(5)(a)—

(a) for “9(2)” substitute “9A”,

(b) for “the Tables” substitute “Table B”, and

(c) for “the relevant rental figure exceeds £600” substitute “the relevant rent attributable to non-residential property is not less than £1,000”.

(13) The amendments made by this section have effect in relation to transactions with an effective date on or after 12 March 2008.

## 96 Withdrawal of group relief

(1) Part 1 of Schedule 7 to FA 2003 (group relief) is amended as follows.



- (2) In paragraph 3(5), for “paragraph 4” substitute “paragraphs 4 and 4ZA”.
- (3) In paragraph 4 (cases in which group relief not withdrawn)—
  - (a) omit sub-paragraphs (2) and (3), and
  - (b) in sub-paragraph (5), for “sub-paragraphs (3) and (4)” substitute “sub-paragraph (4)”.
- (4) After that paragraph insert—

*“Group relief not withdrawn where vendor leaves group*

- 4ZA (1) Group relief is not withdrawn under paragraph 3 where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group.
- (2) The vendor is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—
    - (a) the vendor, or
    - (b) another company that—
      - (i) is above the vendor in the group structure, and
      - (ii) as a result of the transaction ceases to be a member of the same group as the purchaser.
  - (3) For the purpose of sub-paragraph (2) a company is “above” the vendor in the group structure if the vendor, or another company that is above the vendor in the group structure, is a 75% subsidiary of the company.
  - (4) But if there is a change in the control of the purchaser after the vendor leaves the group, paragraphs 3, 4(6) and (7), 5 and 6 have effect as if the purchaser had then ceased to be a member of the same group as the vendor (but see sub-paragraph (7)).
  - (5) For the purposes of this paragraph there is a change in the control of the purchaser if—
    - (a) a person who controls the purchaser (alone or with others) ceases to do so,
    - (b) a person obtains control of the purchaser (alone or with others), or
    - (c) the purchaser is wound up.
  - (6) For the purposes of sub-paragraph (5) a person does not control, or obtain control of, the purchaser if that person is under the control of another person or other persons.
  - (7) Sub-paragraph (4) does not apply where—
    - (a) there is a change in the control of the purchaser because a loan creditor (within the meaning of section 417(7) to (9) of the Taxes Act 1988) obtains control of, or ceases to control, the purchaser, and
    - (b) the other persons who controlled the purchaser before that change continue to do so.

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- (8) In this paragraph references to “control” shall be interpreted in accordance with section 416 of the Taxes Act 1988 (subject to sub-paragraph (6)).”
- (5) In paragraph 4A (withdrawal of group relief in certain cases involving successive transactions)—
- (a) in sub-paragraph (1), in the words following paragraph (d), for “and 4” substitute “, 4 and 4ZA”,
  - (b) after that sub-paragraph insert—
 

“(1A) Sub-paragraph (1) has effect subject to sub-paragraph (3A).”
  - (c) in sub-paragraph (3)—
    - (i) for “sub-paragraph (1)(a)” substitute “this paragraph”, and
    - (ii) for “this sub-paragraph” substitute “this paragraph”, and
  - (d) after sub-paragraph (3) insert—
 

“(3A) Sub-paragraph (1) does not apply where—

    - (a) there is a change in the control of the purchaser because a loan creditor (within the meaning of section 417(7) to (9) of the Taxes Act 1988) obtains control of, or ceases to control, the purchaser, and
    - (b) the other persons who controlled the purchaser before that change continue to do so.”
- (6) The amendments made by this section have effect in relation to transactions with an effective date on or after 13 March 2008.

## **97 Transfers of interests in property-investment partnerships**

- (1) Schedule 31 contains provision relating to stamp duty land tax chargeable on transfers to, and of interests in, property-investment partnerships.
- (2) Part 1 of that Schedule (transfer of interest in partnership: “relevant partnership property”), and this section so far as relating to that Part—
  - (a) have effect in respect of transfers occurring on or after 19 July 2007 (subject to subsection (3)), and
  - (b) are treated as having come into force on that day.
- (3) Subsections (14) and (17) of section 72 of FA 2007 (partnerships) apply in relation to the amendments made by Part 1 of that Schedule as they apply in relation to the amendments made by subsections (6) and (10) of that section.

### *Stamp duty*

## **98 Exemption from ad valorem stamp duty for low value transactions**

- (1) Paragraph 1 of Schedule 13 to FA 1999 (charge to stamp duty on conveyance or transfer on sale) is amended as follows.
- (2) In sub-paragraph (3), for “(4)” substitute “(3A)”.
- (3) After that sub-paragraph insert—

“(3A) Stamp duty is not chargeable under sub-paragraph (1) on a transfer of stock or marketable securities where—

- (a) the amount or value of the consideration for the sale is £1,000 or under, and
- (b) the instrument is certified at £1,000.”

(4) In paragraph 6(1) (meaning of instrument being certified at an amount), for “paragraph” substitute “paragraphs 1(3A) and”.

(5) The amendments made by this section have effect in relation to instruments executed on or after 13 March 2008 and not stamped before 19 March 2008.

(6) For the purposes of section 14(4) of the Stamp Act 1891 (c. 39) (instruments not to be given in evidence etc unless stamped in accordance with the law in force at the time of first execution), the law in force at the time of execution of an instrument—

- (a) executed on or after 13 March 2008 but before 19 March 2008, and
- (b) not stamped before 19 March 2008,

shall be deemed to be the law as varied in accordance with this section.

## **99 Abolition of fixed stamp duty on certain instruments**

(1) Schedule 32 contains provision abolishing fixed stamp duty on certain instruments.

(2) The amendments and saving made by that Schedule have effect in relation to instruments executed on or after 13 March 2008 and not stamped before 19 March 2008.

(3) For the purposes of section 14(4) of the Stamp Act 1891 (instruments not to be given in evidence etc unless stamped in accordance with the law in force at the time of first execution), the law in force at the time of execution of an instrument—

- (a) executed on or after 13 March 2008 but before 19 March 2008, and
- (b) not stamped before 19 March 2008,

shall be deemed to be the law as varied in accordance with Schedule 32.

## **100 Gifts inter vivos**

(1) In FA 1985, omit section 82(5) and (9) (adjudication of certain gifts inter vivos).

(2) Accordingly, omit paragraph 9 of Schedule 14 to FA 1999.

(3) The amendments made by this section have effect in relation to instruments executed on or after 13 March 2008, other than instruments effecting a land transaction (within the meaning of paragraph 22 of Schedule 32).

(4) For the purposes of section 14(4) of the Stamp Act 1891 (instruments not to be given in evidence etc unless stamped in accordance with the law in force at the time of first execution), the law in force at the time of execution of such an instrument shall be deemed to be the law as varied in accordance with this section.

## **101 Loan capital**

(1) Section 79 of FA 1986 (stamp duty and loan capital) is amended as follows.

- (2) In subsection (6), for “subsection (7)” substitute “subsections (7) to (7B)”.
- (3) After subsection (7A) insert—
- “(7B) Subsection (4) shall not be prevented from applying to a capital market instrument by virtue of subsection (6)(b) by reason only that the capital market investment concerned carries or has carried a right to interest which ceases or reduces if, or to the extent that, the issuer, after meeting or providing for other obligations specified in the capital market arrangement concerned, has insufficient funds available from that capital market arrangement to pay all or part of the interest otherwise due.”
- (4) After subsection (12) insert—
- “(13) In this section—
- “capital market instrument” means an instrument transferring a capital market investment issued as part of a capital market arrangement, and
- “capital market investment” and “capital market arrangement” have the same meaning as in section 72B of the Insolvency Act 1986 (see paragraphs 1 to 3 of Schedule 2A to that Act).”
- (5) The amendments made by this section have effect in relation to any instrument executed on or after the day on which this Act is passed.

## PART 6

### OIL

#### *Petroleum revenue tax*

#### **102 Meaning of “participator”**

- (1) In section 12 of OTA 1975 (interpretation of Part 1), the definition of “participator” is amended as follows.
- (2) In the words before paragraph (a), after “chargeable period” insert “(“the relevant chargeable period”):”.
- (3) In paragraphs (a), (b) and (c), for “that chargeable period” substitute “the relevant chargeable period”.
- (4) At the end of paragraph (c) insert “and
- (d) a former participator to whom an amount is attributed under paragraph 2A(2) of Schedule 5 in respect of a default payment made in relation to the field in the relevant chargeable period; and
- (e) a former participator to whom an amount was attributed under paragraph 2A(2) of Schedule 5 in respect of a default payment made in relation to the field in either of the two chargeable periods preceding the relevant chargeable period; and
- (f) a person who—

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- (i) made a default payment in relation to the field (whether the person was then a current participator or former participator),
  - (ii) is not a participator during the relevant chargeable period under any of paragraphs (a) to (e) of this definition, and
  - (iii) receives, in the relevant chargeable period, reimbursement expenditure (within the meaning of section 108(1)(c) of the Finance Act 1991) in respect of the default payment; and
- (g) a person who—
- (i) made a default payment in relation to the field (whether the person was then a current participator or former participator),
  - (ii) is not a participator during the relevant chargeable period under any of paragraphs (a) to (f) of this definition, and
  - (iii) received, in either of the two chargeable periods preceding the relevant chargeable period, reimbursement expenditure (within the meaning of section 108(1)(c) of the Finance Act 1991) in respect of the default payment;
- (and for the purposes of paragraphs (f)(i) and (g)(i), “current participator”, “former participator” and “default payment” have the same meaning as in paragraph 2A of Schedule 5;”.
- (5) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

### **103 Abandonment expenditure: default by participator met by former participator**

- (1) In Schedule 5 to OTA 1975 (allowance of expenditure, other than abortive exploration expenditure), for paragraph 2A substitute—
- “2A (1) This paragraph applies if—
- (a) a current participator (“the defaulter”) has defaulted on a liability under—
    - (i) a relevant agreement, or
    - (ii) an abandonment programme,to make a payment towards abandonment expenditure, and
  - (b) a current or former participator (“the contributing participator”) pays an amount in or towards meeting the whole or part of the default (“a default payment”).
- (2) If a claim is made under this Schedule for the allowance of the abandonment expenditure, the amount of the default payment is to be attributed to the contributing participator for the purposes of paragraphs 2(4)(b) and 3(1)(c).
- (3) But the amount attributed under sub-paragraph (2) may not exceed—
- (a) so much of the sum in default as the contributing participator is required to meet in accordance with—
    - (i) the relevant agreement, or
    - (ii) the abandonment programme, or
  - (b) such other amount as the participator may be required to meet in accordance with a direction given under Part 4 of the Petroleum Act 1998.

- (4) Sub-paragraph (2) is subject to paragraph 2B.
  - (5) In determining the amount which is to be attributed to the contributing participator under sub-paragraph (2), account shall be taken of the whole of the defaulter's interest in the relevant oil field.
  - (6) But in determining the share of the abandonment expenditure to be attributed to the defaulter under paragraph 2(4)(b), the amount which would be attributed by reference to the defaulter's interest in the relevant oil field is to be reduced or (as the case may be) extinguished by the deduction of the aggregate of—
    - (a) the amount attributed to the contributing participator under sub-paragraph (2), and
    - (b) any other amounts attributed under sub-paragraph (2) to other current or former participators who make default payments in respect of the defaulter's default.
- 2B
- (1) No amount is to be attributed to a contributing participator under paragraph 2A(2) unless the following conditions are all met.
  - (2) The first condition is that the contributing participator is not connected with the defaulter, applying section 839 of the Taxes Act (connected persons) for the purposes of this sub-paragraph.
  - (3) The second condition is that, at the end of the claim period for which the claim is made, the defaulter still has an interest in the relevant oil field which, under paragraph 2(4)(b), falls to be taken into account in determining the shares in the abandonment expenditure.
  - (4) The third condition is that the relevant participators have taken all reasonable steps by way of legal remedy—
    - (a) to secure that the defaulter meets the whole of the liability referred to in paragraph 2A(1)(a), and
    - (b) to enforce any guarantee or other security provided in respect of that liability.
  - (5) In sub-paragraph (4) “relevant participators” means—
    - (a) each current participator (other than the defaulter), and
    - (b) each former participator who makes a default payment in respect of the defaulter's default.
- 2C
- (1) An amount attributed under paragraph 2A(2) is—
    - (a) in the case of a current participator, to be an addition to the share of the abandonment expenditure referable to the current participator's interest in the oil field, or
    - (b) in the case of a former participator, to be the share of the abandonment expenditure referable to the former participator's interest in the oil field.
  - (2) In paragraphs 2A and 2B and this paragraph—
 

“abandonment expenditure” means expenditure which is allowable for an oil field by virtue of section 3(1)(i) or (j);

“abandonment programme” means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including any such programme as revised);

“current participator” means a person who is, by virtue of paragraph (a), (b) or (c) of the definition in section 12, a participator in the relevant oil field in the chargeable period in which the abandonment expenditure is incurred;

“former participator” means a person who—

- (a) is not a current participator, but
- (b) was, by virtue of paragraph (a), (b) or (c) of the definition in section 12, a participator in the relevant oil field in any chargeable period before the chargeable period in which the abandonment expenditure is incurred;

“relevant agreement” has the meaning given by section 104(5) (a) of the Finance Act 1991;

“relevant oil field” means the oil field to which the abandonment expenditure relates;

“sum in default” means the amount of the payment which the defaulter is liable to make as mentioned in paragraph 2A(1)(a), less the aggregate of—

- (a) so much of that payment as has been made by the defaulter, and
- (b) so much of that payment as has been met by virtue of any guarantee or security provided in respect of the defaulter’s liability.

(3) For the purposes of paragraph 2A, a current participator is to be regarded as defaulting on a liability to make a payment towards abandonment expenditure if the following conditions are met.

(4) The first condition is that the current participator has failed to make the payment in full on the due day.

(5) The second condition is that—

- (a) any of the payment remains unpaid on the sixtieth day after the due day, or
- (b) before that sixtieth day, the current participator’s interest in a relevant licence becomes liable under the relevant agreement to be sold or forfeited, in whole or in part, by reason of the failure to meet the liability.

(6) In sub-paragraphs (4) and (5) “due day” means the day on which the payment towards abandonment expenditure becomes due under the relevant agreement or the abandonment programme.”

(2) The amendment made by subsection (1) has effect in relation to expenditure incurred after 30 June 2008.

## **104 Abandonment expenditure: deductions from ring fence income**

(1) FA 1991 is amended as follows.

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- (2) Section 64 (relief for expenditure incurred by a participator in meeting defaulter’s abandonment expenditure) is amended as follows.
- (3) In subsection (1)(a)—
- (a) omit “(as set out in section 107 of this Act)”, and
  - (b) for “sub-paragraph (1)(a)” substitute “sub-paragraph (2)”.
- (4) In subsection (1)(b)—
- (a) for “sub-paragraph (4)” substitute “sub-paragraph (2)”, and
  - (b) for “qualifying” substitute “contributing”.
- (5) In subsections (2), (3), (4) and (5) (in each place), for “qualifying” substitute “contributing”.
- (6) Section 65 (reimbursement by defaulter in respect of certain abandonment expenditure) is amended as follows.
- (7) In subsection (1)(a)—
- (a) omit “(as set out in section 107 of this Act)”, and
  - (b) for “sub-paragraph (1)(a)” substitute “sub-paragraph (2)”.
- (8) In subsection (1)(b), for “sub-paragraph (4)” substitute “sub-paragraph (2)”.
- (9) In subsections (1) (in each place), (4), (5) (in each place), (6), (7) (in each place) and (8), for “qualifying” substitute “contributing”.
- (10) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

### **105 Abandonment expenditure: former participator reimbursed by defaulter**

- (1) Section 108 of FA 1991 (reimbursement by defaulter in respect of certain abandonment expenditure) is amended as follows.
- (2) In subsection (1)(a), omit “(as set out in section 107 above)”.
- (3) For subsection (1)(b) substitute—
- “(b) an amount is attributed to a contributing participator under paragraph 2A(2) of Schedule 5 to the principal Act; and”.
- (4) In subsection (1)(c), for “qualifying participator” substitute “contributing participator”.
- (5) In subsection (4), for “qualifying participator” (in each place) substitute “contributing participator”.
- (6) In subsection (5), for “qualifying participator” substitute “contributing participator”.
- (7) In subsection (7), for “qualifying participator” substitute “contributing participator”.
- (8) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

### **106 Returns of relevant sales of oil**

- (1) Section 62 of FA 1987 (returns of relevant sales of oil) is amended as follows.



(2) After subsection (3) insert—

“(3A) Subsection (4) applies to a participator in an oil field in any case where—

- (a) paragraph 2 of Schedule 2 to the principal Act requires the participator to make a return for any chargeable period (including cases where the latest time for the delivery of that return is deferred), and
- (b) there are any relevant sales of Category 2 oil (as defined in subsection (6) below).”

(3) In subsection (4), for the words before paragraph (a) substitute—

“(4) In such a case, that participator shall also be required, not later than the end of the second month after the end of that chargeable period, to deliver to the Board a return of all relevant sales of Category 2 oil stating—”.

(4) In subsection (4), in paragraphs (d), (e) and (f), for “oil” (in each place) substitute “Category 2 oil”.

(5) In subsection (6)—

- (a) in the words before paragraph (a), for “oil”, in each place except in the expression “oil field”, substitute “Category 2 oil”,
- (b) in paragraph (a), for “subsection (4)” substitute “subsection (3A)”,
- (c) in paragraph (c), for “oil” substitute “Category 2 oil”, and
- (d) omit paragraph (d) and the “and” before it.

(6) After subsection (8) insert—

“(8A) For provision about the meaning of “Category 2 oil”, see paragraph 2 of Schedule 3 to the principal Act (which applies by virtue of section 72(6) below).”

(7) The amendments made by this section have effect in relation to chargeable periods ending on or after 30 June 2008.

## **107 Elections for oil fields to become non-taxable**

(1) Section 185 of FA 1993 is amended as follows.

(2) Before subsection (1) insert—

“(A1) In this Part of this Act—

“non-taxable field” means an oil field which meets the conditions in subsection (1), (1ZA) or (1A), and

“taxable field” means an oil field which is not a non-taxable field.”

(3) In subsection (1)—

- (a) for the words before paragraph (a) substitute—

“(1) An oil field meets the conditions in this subsection if it is an oil field—”, and

- (b) omit the words after paragraph (b).

(4) After that subsection insert—

“(1ZA) An oil field meets the conditions in this subsection if—

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- (a) the field does not meet the conditions in subsection (1), and
  - (b) an election under Schedule 20A that the field is to be non-taxable is in effect.”
- (5) In subsection (1A), before paragraph (a) insert—
- “(za) the field does not meet the conditions in subsection (1),”.
- (6) Before Schedule 21 to FA 1993, insert Schedule 20A that is set out in Part 1 of Schedule 33 to this Act.
- (7) Part 2 of Schedule 33 contains other amendments relating to the amendments made by this section.

### *Corporation tax*

#### **108 Capital allowances: plant and machinery for use in ring fence trade**

- (1) In section 52(3) of CAA 2001 (amount of first-year allowances), for the two entries in the table relating to section 45F substitute—

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“Expenditure qualifying under section 45F (expenditure for use wholly in a ring fence trade)	100%”.
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- (2) The amendment made by subsection (1) has effect in relation to expenditure incurred on or after 12 March 2008.

#### **109 Capital allowances: decommissioning expenditure**

- (1) Section 163 of CAA 2001 (meaning of “abandonment expenditure”) is amended as follows.
- (2) For the heading substitute “**Meaning of “general decommissioning expenditure”**”.
- (3) For subsections (1) to (3) substitute—
- “(1) Expenditure is “general decommissioning expenditure” for the purposes of sections 164 and 165 if the conditions in subsections (3) and (4) are met.
  - (2) But that is subject to subsections (4ZA) to (4ZC).
  - (3) The expenditure must have been incurred on decommissioning plant or machinery—
    - (a) which has been brought into use for the purposes of a ring fence trade, and
    - (b) which—
      - (i) is, or forms part of, an offshore installation or a submarine pipeline, or
      - (ii) when last in use for the purposes of a ring fence trade, was, or formed part of, such an installation or pipeline.”
- (4) After subsection (4) insert—

“(4ZA) An amount of general decommissioning expenditure determined in accordance with subsection (1) is to be reduced under subsection (4ZB) if it appears that the decommissioned plant and machinery—

- (a) was brought into use partly for the purposes of the ring fence trade and partly for the purposes of another trade, or
- (b) was brought into use wholly for the purposes of the ring fence trade, but has, at any time since, not been used wholly for those purposes.

(4ZB) The amount determined in accordance with subsection (1) is to be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(4ZC) The relevant circumstances include, in particular, the extent to which the decommissioned plant and machinery has not been used for the purposes of the ring fence trade.”

- (5) In subsection (5)(b), omit ““abandonment programme””.
- (6) Schedule 34 contains amendments consequential on this section.
- (7) The amendments made by this section and that Schedule have effect in relation to expenditure incurred on or after 12 March 2008.

## **110 Capital allowances: abandonment expenditure after ceasing ring fence trade**

- (1) Section 165 of CAA 2001 (abandonment expenditure within 3 years of ceasing ring fence trade) is amended as follows.
- (2) In the heading, for “**within 3 years of**” substitute “**after**”.
- (3) For subsection (2) substitute—

“(2) “The post-cessation period” means the period that—

- (a) begins with the day following the last day on which the former trader carried on the ring fence trade, and
- (b) ends with the day on which condition A and condition B are both met (or, if they are met on different days, the later of those days).

(2A) Condition A is met if each approved abandonment programme that relates wholly or partly to relevant plant and machinery has ceased to have effect.

(2B) Condition B is met if the Secretary of State is satisfied that no other abandonment programmes that relate wholly or partly to relevant plant and machinery will be approved.

(2C) For the purposes of condition A, an approved abandonment programme ceases to have effect if and when—

- (a) the programme has been carried out to the satisfaction of the Secretary of State, or
- (b) approval of the programme has been withdrawn.”

- (4) After subsection (4) insert—

“(4A) Abandonment expenditure is to be disregarded for the purposes of this section if the expenditure is incurred in decommissioning plant and machinery at a time—

- (a) after an abandonment programme relating wholly or partly to the plant and machinery has had its approval withdrawn, and
- (b) when no other abandonment programme relating wholly or partly to the plant and machinery is approved.”

(5) After subsection (5) insert—

“(6) For the purposes of this section, it does not matter if approval of an abandonment programme that relates to relevant plant and machinery (including approval of the first such programme) is given before or after the start of the post-cessation period.

(7) In this section—

“abandonment programme” means an abandonment programme under Part 4 of the Petroleum Act 1998;

“approved”, in relation to an abandonment programme, means approved or revised under Part 4 of the Petroleum Act 1998 (and “approval” is to be construed accordingly);

“relevant plant and machinery” means plant and machinery—

- (a) which has been brought into use for the purposes of the ring fence trade that has ceased, and
- (b) which, when last in use for the purposes of that ring fence trade, was, or formed part of, an offshore installation or submarine pipeline;

and for this purpose “offshore installation” and “submarine pipeline” have the same meaning as in Part 4 of the Petroleum Act 1998;

“withdrawn”, in relation to approval of an abandonment programme, means withdrawn under Part 4 of the Petroleum Act 1998.”

(6) Section 393A of ICTA (losses: set off against profits of the same, or an earlier, accounting period) is amended as follows.

(7) In subsection (11)—

- (a) for “In any case where” substitute “Subsection (11A) applies in any case where”,
- (b) in paragraph (a), for “within 3 years of” substitute “after”, and
- (c) omit the words after paragraph (b).

(8) After that subsection insert—

“(11A) In relation to any claim under subsection (1)—

- (a) to the extent that the claim relates to an increase falling within subsection (11)(a), this section shall have effect as if—
  - (i) in subsection (10), “the relevant period” were substituted for “the period of two years”, and
  - (ii) after subsection (10) there were inserted—

- “(10ZA) In subsection (10) “relevant period” means the period calculated by adding two years to the post-cessation period (within the meaning of section 165 of the Capital Allowances Act).”;
- (b) to the extent that the claim relates to expenditure falling within subsection (11)(b), subsection (10) shall have effect with the substitution of “five years” for “two years”.
- (9) The amendments made by this section have effect in relation to ring fence trades that cease to be carried on or after 12 March 2008.

## **111 Losses: set off against profits of earlier accounting periods**

- (1) In ICTA, after section 393A insert—

### **“393B Losses of ring fence trade: set off against profits of an earlier accounting period**

- (1) This section applies if these conditions are met—
- (a) a company makes a claim under section 393A(1) requiring that a loss incurred in a ring fence trade be set off against profits;
- (b) section 393A(2A) applies in relation to that claim (three year set off period) by virtue of—
- (i) section 393A(2B) (loss precedes cessation of trade), or
- (ii) section 393A(2C) (loss arises in year when general decommissioning expenditure incurred); and
- (c) the loss incurred in the ring fence trade that may be set off under section 393A (“L”) exceeds the profits against which L may be set off under section 393A (“P”).
- (2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—
- (a) falls wholly or partly before the three year set off period, and
- (b) ends on or after 17 April 2002.
- (3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—
- (a) the amount by which L exceeds P, or
- (b) so much of that amount as cannot be relieved under this subsection against profits of the ring fence trade of a later accounting period.
- (4) Subsection (3) is subject to subsection (5) in the case of an accounting period that falls partly (but not wholly) before the three year set off period.
- (5) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls before the three year set off period.
- (6) Subsection (3) is subject to subsection (7) in the case of an accounting period that begins before 17 April 2002 and ends on or after that date.

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(7) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls after 16 April 2002.

(8) In this section—

“ring fence” has the same meaning as in section 162 of the Capital Allowances Act;

“three year set off period” means the period of three years that applies to the claim under section 393A(1) by virtue of section 393A(2A) and section 393A(2B) or (2C).”

(2) Schedule 35 contains minor and consequential amendments relating to the amendments made by this section.

(3) The amendments made by this section and that Schedule have effect in relation to losses incurred in accounting periods beginning on or after 12 March 2008.

## **112 Ring fence trade: no deduction for expenses of investment management**

(1) In section 492 of ICTA (treatment of oil extraction activities etc for tax purposes), after subsection (3) insert—

“(3A) No deduction under section 75 (expenses of management of investment business) shall be allowed from a company’s ring fence profits.”

(2) The amendment made by subsection (1) has effect in relation to expenses referable to accounting periods ending on or after 12 March 2008 (but see also subsections (3) and (4)).

(3) In the case of expenses referable to a straddling period, a deduction of the relevant fraction of those expenses shall be allowed under section 75 of ICTA from the company’s ring fence profits.

(4) But the deduction allowed under subsection (3) may not exceed the total amount of the expenses referable to the straddling period that have actually been paid—

- (a) during the first portion of the straddling period, or
- (b) before the start of the straddling period.

(5) In this section—

“first portion”, in relation to a straddling period, means the portion which—

- (a) begins with the first day of the straddling period, and
- (b) ends with 11 March 2008,

“relevant fraction” means—

$$\frac{P}{T}$$

where—

P is the number of days in the first portion of the straddling period, and

T is the total number of days in the straddling period, and

“straddling period” means an accounting period beginning before 12 March 2008 and ending on or after that date.

## PART 7

### ADMINISTRATION

#### CHAPTER 1

##### INFORMATION ETC

###### *New information etc powers*

### **113 Information and inspection powers**

- (1) Schedule 36 contains provision about the powers of officers of Revenue and Customs to obtain information and to inspect businesses.
- (2) That Schedule comes into force on such day as the Treasury may by order made by statutory instrument appoint.
- (3) An order under subsection (2) may contain transitional provision and savings.

### **114 Computer records etc**

- (1) This section applies to any enactment that, in connection with an HMRC matter—
  - (a) requires a person to produce a document or cause a document to be produced,
  - (b) requires a person to permit the Commissioners or an officer of Revenue and Customs—
    - (i) to inspect a document, or
    - (ii) to make or take copies of or extracts from or remove a document,
  - (c) makes provision about penalties or offences in connection with the production or inspection of documents, including in connection with the falsification of or failure to produce or permit the inspection of documents, or
  - (d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).
- (2) An enactment to which this section applies has effect as if—
  - (a) any reference in the enactment to a document were a reference to anything in which information of any description is recorded, and
  - (b) any reference in the enactment to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- (3) An authorised person may, at any reasonable time, obtain access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.
- (4) In subsection (3) “relevant document” means a document that a person has been, or may be, required pursuant to an enactment to which this section applies—
  - (a) to produce or cause to be produced, or
  - (b) to permit the Commissioners or an officer of Revenue and Customs to inspect, to make or take copies of or extracts from or to remove.

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- (5) An authorised person may require—
- (a) the person by whom or on whose behalf the computer is or has been so used, or
  - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
- to provide the authorised person with such reasonable assistance as may be required for the purposes of subsection (3).
- (6) Any person who—
- (a) obstructs the exercise of a power conferred by this section, or
  - (b) fails to comply within a reasonable time with a requirement under subsection (5),
- is liable to a penalty of £300.
- (7) Paragraphs 45 to 49 and 52 of Schedule 36 (assessment of and appeals against penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under paragraph 39 of that Schedule.
- (8) Omit the following—
- (a) section 10 of FA 1985 (production of computer records etc in connection with assigned matters),
  - (b) section 127 of FA 1988 (production of computer records etc in connection with the Taxes Acts), and
  - (c) paragraphs 11(2) to (4) and 13(2) and (3) of Schedule 1 to the Civil Evidence Act 1995 (c. 38).
- (9) In this section—
- “authorised person” means a person who is, or is a member of a class of persons who are, authorised by the Commissioners to exercise the powers under subsection (3),
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
- “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),
- “HMRC matter” means a matter in relation to which the Commissioners, or officers of Revenue and Customs, have a power or duty, and
- “produce”, in relation to a document, includes furnish, deliver and any other equivalent expression.

#### *Other measures*

### **115 Record-keeping**

- (1) Schedule 37 contains provision about the obligations to keep records for the purposes of income tax, capital gains tax, corporation tax and value added tax.
- (2) The amendments made by that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.



## **116 Disclosure of tax avoidance schemes**

- (1) Schedule 38 contains amendments relating to the disclosure of tax avoidance schemes.
- (2) The amendments made by that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

## **117 Power to open or unpack containers**

- (1) CEMA 1979 is amended as follows.
- (2) In section 1(1) (interpretation), in the definition of “container”, after “and any” insert “baggage,”.
- (3) Section 159 (power to examine and take account of goods) is amended as follows.
- (4) In subsection (1)—
  - (a) after “for that purpose” insert “open or unpack any container or”, and
  - (b) insert at the end “and search it or anything in it.”
- (5) In subsection (4), insert at the end “; but if an officer opens or unpacks any container, or searches it or anything in it, the Commissioners are to bear the expense of doing so.”

## **CHAPTER 2**

### TIME LIMITS FOR CLAIMS AND ASSESSMENTS ETC

#### *General*

## **118 Time limits for assessments, claims etc**

- (1) Schedule 39 contains provision about time limits for assessments, claims etc.
- (2) The amendments and saving made by that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (3) An order under subsection (2)—
  - (a) may make different provision for different purposes, and
  - (b) may include transitional provision and further savings.

#### *Income tax and corporation tax*

## **119 Correction and amendment of tax returns**

- (1) In section 9ZB(1) of TMA 1970 (correction of personal or trustee return by HMRC)—
  - (a) after “correct” insert “—
    - (a)
    - (b) insert at the end “, and
      - (b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.”

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- (2) In section 12ABB(1) of that Act (correction of partnership return by HMRC)—
- (a) after “correct” insert “—
  - (a)
  - (b) insert at the end “, and
  - (b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.”
- (3) Schedule 18 to FA 1998 (company tax returns) is amended as follows.
- (4) In paragraph 16(1) (correction of company tax return by HMRC)—
- (a) after “correct” insert “—
  - (a)
  - (b) insert at the end “, and
  - (b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.”
- (5) In paragraph 31 (amendment of return by company during enquiry), in sub-paragraph (4), for paragraph (b) substitute—
- “(b) in any other case, the amendment takes effect as part of the amendments made by the closure notice.”
- (6) In paragraph 34 (amendment of company tax return after enquiry), for sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies where a closure notice is given to a company by an officer.
  - (2) The closure notice must—
  - (a) state that, in the officer’s opinion, no amendment is required of the return that was the subject of the enquiry, or
  - (b) make the amendments of that return that are required—
  - (i) to give effect to the conclusions stated in the notice, and
  - (ii) in the case of a return for the wrong period, to make it a return appropriate to the designated period.
  - (2A) The officer may by further notice to the company make any amendments of other company tax returns delivered by the company that are required to give effect to the conclusions stated in the closure notice.”
- (7) In sub-paragraph (3) of that paragraph, for “any such amendment of a company’s return” substitute “an amendment of a company’s return under sub-paragraph (2) or (2A)”.
- (8) In sub-paragraph (4)(c) of that paragraph, for “notice of amendment” substitute “closure notice”.
- (9) In paragraph 61(1)(a) and (3)(a) (consequential claims etc), for “34(2)(b)” substitute “34(2A)”.
- (10) In paragraph 88 (conclusiveness of amounts stated in return)—
- (a) in sub-paragraph (3)(b), omit the words from “and” to the end,

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- (b) in sub-paragraph (3)(c), for “34(2)” substitute “34”,
  - (c) in sub-paragraph (4)(b), for “the end of the period specified in paragraph 34(1)” substitute “the completion of the enquiry”, and
  - (d) in sub-paragraph (4)(c), for “34(2)” substitute “34”.
- (11) In paragraph 93(1)(b) (general jurisdiction of Special or General Commissioners), for “34(2)” substitute “34”.
- (12) In the following provisions, for “34(2)” substitute “34”—
- (a) in TMA 1970—
    - (i) section 46B(2)(aa) (questions to be determined by Special Commissioners),
    - (ii) section 46C(2)(b) (jurisdiction of Special Commissioners over certain claims included in returns),
    - (iii) section 46D(2)(aa) (questions to be determined by Land Tribunal), and
    - (iv) section 55(1)(a)(ii) (recovery of tax not postponed), and
  - (b) in ICTA, section 754(2E) (assessment, recovery and postponement of tax).
- (13) The amendments made by this section come into force on such day as the Treasury may by order appoint.

#### VAT

### 120 VAT: time limits for assessments of excess credits etc

- (1) In section 73 of VATA 1994 (assessment of overpaid VAT credits etc), after subsection (6) insert—
- “(6A) In the case of an assessment under subsection (2), the prescribed accounting period referred to in subsection (6)(a) and in section 77(1)(a) is the prescribed accounting period in which the repayment or refund of VAT, or the VAT credit, was paid or credited.”
- (2) Section 80 of that Act (credit for, or repayment of, overstated or overpaid VAT) is amended as follows.
- (3) After subsection (4A) insert—
- “(4AA) An assessment under subsection (4A) shall not be made more than 2 years after the later of—
- (a) the end of the prescribed accounting period in which the amount was credited to the person, and
  - (b) the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.”
- (4) In subsection (4C), for “(2)” substitute “(3)”.
- (5) The amendments made by this section are treated as having come into force on 19 March 2008.

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## **121 Old VAT claims: extended time limits**

- (1) The requirement in section 80(4) of VATA 1994 that a claim under that section be made within 3 years of the relevant date does not apply to a claim in respect of an amount brought into account, or paid, for a prescribed accounting period ending before 4 December 1996 if the claim is made before 1 April 2009.
- (2) The requirement in section 25(6) of VATA 1994 that a claim for deduction of input tax be made at such time as may be determined by or under regulations does not apply to a claim for deduction of input tax that became chargeable, and in respect of which the claimant held the required evidence, in a prescribed accounting period ending before 1 May 1997 if the claim is made before 1 April 2009.
- (3) In this section—
  - “input tax” and “prescribed accounting period” have the same meaning as in VATA 1994 (see section 96 of that Act), and
  - “the required evidence” means the evidence of the charge to value added tax specified in or under regulation 29(2) of the Value Added Tax Regulations 1995 ([S.I. 1995/2518](#)).
- (4) This section is treated as having come into force on 19 March 2008.

## **CHAPTER 3**

### **PENALTIES**

## **122 Penalties for errors**

- (1) Schedule 40 contains provisions amending Schedule 24 to FA 2007 (penalties for errors in returns etc).
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 24 to FA 2007 or Schedule 40.
- (5) An order under subsection (4) may include provision amending, repealing or revoking any provision of any Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (6) An order under subsection (4) may make different provision for different purposes.
- (7) The power to make an order under this section is exercisable by statutory instrument.
- (8) A statutory instrument containing an order under subsection (4) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

### **123 Penalties for failure to notify etc**

- (1) Schedule 41 contains provisions for imposing penalties on persons in respect of failures to notify HMRC that they are chargeable to tax etc and certain wrongdoings relating to invoices showing VAT and excise duties.
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 41.
- (5) An order under subsection (4) may include provision amending, repealing or revoking any provision of any Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (6) An order under subsection (4) may make different provision for different purposes.
- (7) The power to make an order under this section is exercisable by statutory instrument.
- (8) A statutory instrument containing an order under subsection (4) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

## **CHAPTER 4**

### **APPEALS ETC**

#### *Reviews and appeals etc: general*

### **124 HMRC decisions etc: reviews and appeals**

- (1) The Treasury may by order made by statutory instrument make provision—
  - (a) for and in connection with reviews by the Commissioners, or by an officer of Revenue and Customs, of HMRC decisions, and
  - (b) in connection with appeals against HMRC decisions.
- (2) An order under subsection (1) may, in particular, contain provision about—
  - (a) the circumstances in which, or the time within which—
    - (i) a right to a review may be exercised, or
    - (ii) an appeal may be made, and
  - (b) the circumstances in which, or the time at which, an appeal or review is, or may be treated as, concluded.
- (3) An order under subsection (1) may, in particular, contain provision about the payment of sums by, or to, the Commissioners in cases where—
  - (a) a right to a review is exercised, or
  - (b) an appeal is made or determined.

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- (4) That includes provision about payment of sums where an appeal has been determined, but a further appeal may be or has been made, including provision—
- (a) requiring payments to be made,
  - (b) enabling payments to be postponed, or
  - (c) imposing conditions in connection with the making or postponement of payments.
- (5) An order under subsection (1) may, in particular, contain provision about interest on any sum that is payable by, or to, the Commissioners in accordance with a decision made on the determination of an appeal.
- (6) Provision under subsection (1) may be made by amending, repealing or revoking any provision of any Act or subordinate legislation (whenever passed or made, including this Act and any Act amended by it).
- (7) An order under subsection (1) may—
- (a) provide that any provision contained in the order comes into force on a day appointed by an order of the Treasury made by statutory instrument (and may provide that different days may be appointed for different purposes),
  - (b) contain incidental, supplemental, consequential, transitional, transitory and saving provision, and
  - (c) make different provision for different purposes.
- (8) A statutory instrument containing an order under subsection (1) may not be made unless a draft of it has been laid before and approved by resolution of the House of Commons.
- (9) But if the order, or any other order under subsection (1) contained in the statutory instrument, is made in connection with a transfer of functions carried out under the Tribunals, Courts and Enforcement Act 2007 (c. 15), the statutory instrument may only be made if a draft of it has been laid before and approved by resolution of each House of Parliament.
- (10) In this section—
- (a) references to appeals against HMRC decisions include any other kind of proceedings relating to an HMRC matter, and
  - (b) references to the making, determination or conclusion of appeals are to be read accordingly.
- (11) In this section—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “HMRC decision” means—
    - (a) any decision of the Commissioners relating to an HMRC matter, or
    - (b) any decision of an officer of Revenue and Customs relating to an HMRC matter,and references to an HMRC decision include references to anything done by such a person in connection with making such a decision or in consequence of such a decision;
  - “HMRC matter” means any matter connected with a function of the Commissioners or an officer of Revenue and Customs.

*Customs and excise decisions subject to review and appeal*

**125 Alcoholic liquor duties**

- (1) Schedule 42 contains amendments of FA 1994 making certain decisions about alcoholic liquor duties subject to review and appeal.
- (2) The amendments made by that Schedule have effect in relation to decisions made on or after the day on which this Act is passed.

**126 Security under CEMA 1979**

- (1) In paragraph 2(1)(s) of Schedule 5 to FA 1994 (decisions under section 157 of CEMA 1979 subject to review and appeal)—
  - (a) after “any security” insert “(or further security)”, and
  - (b) insert at the end “, guarantee or other security”.
- (2) The amendments made by subsection (1) have effect in relation to decisions made on or after the day on which this Act is passed.

**CHAPTER 5**

PAYMENT AND ENFORCEMENT

*Taking control of goods etc*

**127 Enforcement by taking control of goods: England and Wales**

- (1) This section applies if a person does not pay a sum that is payable by that person to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (2) The Commissioners may use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (taking control of goods) to recover that sum.
- (3) This section extends to England and Wales only.

**128 Summary warrant: Scotland**

- (1) This section applies if a person does not pay a sum that is payable by that person to the Commissioners under or by virtue of any enactment or under a contract settlement.
- (2) An officer of Revenue and Customs may apply to the sheriff for a summary warrant.
- (3) An application under subsection (2) must be accompanied by a certificate which—
  - (a) complies with subsection (4), and
  - (b) is signed by the officer.
- (4) A certificate complies with this subsection if—
  - (a) it states that—
    - (i) none of the persons specified in the application has paid the sum payable by that person,

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- (ii) the officer has demanded payment from each such person of the sum payable by that person, and
  - (iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and
  - (b) it specifies the sum payable by each person specified in the application.
- (5) Subsection (4)(a)(iii) does not apply to an application under subsection (2) insofar as it relates to—
- (a) sums payable in respect of value added tax,
  - (b) sums payable in respect of deductions required to be made under section 61 of FA 2004 (sub-contractors in the construction industry), and
  - (c) sums payable by a person in that person’s capacity as an employer.
- (6) The sheriff must, on an application by an officer of Revenue and Customs under subsection (2), grant a summary warrant in, or as nearly as may be in, the form prescribed by Act of Sederunt.
- (7) A summary warrant granted under subsection (6) authorises the recovery of the sum payable by—
- (a) attachment,
  - (b) money attachment,
  - (c) earnings arrestment,
  - (d) arrestment and action of furthcoming or sale.
- (8) Subject to subsection (9) and without prejudice to section 39(1) of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) (expenses of attachment) —
- (a) the sheriff officer’s fees, and
  - (b) any outlays necessarily incurred by that officer,
- in connection with the execution of a summary warrant are to be chargeable against the person in relation to whom the warrant was granted.
- (9) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to the Commissioners for, sums paid to that officer by that person in respect of the sum payable.
- (10) This section extends to Scotland only.

## **129 Consequential provision and commencement**

- (1) Part 1 of Schedule 43 contains provision consequential on section 127.
- (2) Part 2 of that Schedule contains provision consequential on section 128.
- (3) The extent of the amendments and repeals in Schedule 43 is the same as the provision amended or repealed.
- (4) Sections 127 and 128 and Schedule 43 come into force on such day as the Commissioners may by order made by statutory instrument appoint.
- (5) An order under subsection (4) may—
  - (a) make different provision for different purposes, and



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- (b) contain transitional provision and savings.

### *Set off*

## **130 Set-off: England and Wales and Northern Ireland**

- (1) This section applies where there is both a credit and a debit in relation to a person.
- (2) The Commissioners may set the credit against the debit (subject to section 131 and any obligation of the Commissioners to set the credit against another sum).
- (3) The obligations of the Commissioners and the person concerned are discharged to the extent of any set-off under subsection (2).
- (4) “Credit”, in relation to a person, means—
  - (a) a sum that is payable by the Commissioners to the person under or by virtue of an enactment, or
  - (b) a relevant sum that may be repaid to the person by the Commissioners.
- (5) For the purposes of subsection (4), in relation to a person, “relevant sum” means a sum that was paid in connection with any liability (including any purported or anticipated liability) of that person to make a payment to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (6) “Debit”, in relation to a person, means a sum that is payable by the person to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (7) In this section references to sums paid, repaid or payable by or to a person (however expressed) include sums that have been or are to be credited by or to a person.
- (8) This section has effect without prejudice to any other power of the Commissioners to set off amounts.
- (9) In section 429(5) of ITA 2007 (giving through self-assessment)—
  - (a) in the definition of “tax repayment”, for “set-off that falls to be made against the individual’s liabilities” substitute “relevant set-off”, and
  - (b) insert at the end—

““relevant set-off”, in relation to an individual, means any set-off that falls to be made against the individual’s liabilities, other than any set-off under section 130 of FA 2008.”
- (10) Subsections (1) to (8) extend to England and Wales and Northern Ireland only.

## **131 No set-off where insolvency procedure has been applied**

- (1) This section applies where—
  - (a) an insolvency procedure has been applied to a person, and
  - (b) there is a post-insolvency credit in relation to that person.
- (2) The Commissioners may not use the power under section 130 to set that post-insolvency credit against a pre-insolvency debit in relation to the person.
- (3) “Post-insolvency credit” means a credit that—
  - (a) became due after the insolvency procedure was applied to the person, and

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- (b) relates to, or to matters occurring at, times after it was so applied.
- (4) “Pre-insolvency debit” means a debit that—
  - (a) arose before the insolvency procedure was applied to the person, or
  - (b) arose after that procedure was so applied but relates to, or to matters occurring at, times before it was so applied.
- (5) Subject to subsection (6), an insolvency procedure is to be taken, for the purposes of this section, to be applied to a person when—
  - (a) a bankruptcy order or winding up order is made or an administrator is appointed in relation to that person,
  - (b) that person is put into administrative receivership,
  - (c) if the person is a corporation, that person passes a resolution for voluntary winding up,
  - (d) a voluntary arrangement comes into force in relation to that person, or
  - (e) a deed of arrangement takes effect in relation to that person.
- (6) In this section references to the application of an insolvency procedure to a person do not include—
  - (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
  - (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.
- (7) For the purposes of this section—
  - (a) a person shall be treated as being in administrative receivership throughout any continuous period for which there is an administrative receiver of that person (disregarding any temporary vacancy in the office of receiver), and
  - (b) the reference in subsection (5) to a person being put into administrative receivership shall be interpreted accordingly.
- (8) In this section—
  - “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 (c. 45) or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
  - “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order,
  - “credit” and “debit” have the same meaning as in section 130,
  - “deed of arrangement” means a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (c. 47) or Chapter 1 of Part 8 the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and
  - “voluntary arrangement” means a voluntary arrangement approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 (c. 45) or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.
- (9) This section extends to England and Wales and Northern Ireland only.

## **132 VAT: requirement to set-off**

- (1) Section 81 of VATA 1994 (set-off of credits etc) is amended as follows.

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(2) For subsection (4C) substitute—

“(4C) In this section, references to the application of an insolvency procedure to a person do not include—

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.”

(3) In subsection (5)—

- (a) omit paragraph (a),
- (b) in paragraph (b)—
  - (i) for “that Act of 1986” substitute “the Insolvency Act 1986”, and
  - (ii) for “that Order of 1989” substitute “the Insolvency (Northern Ireland) Order 1989”, and
- (c) before the “and” at the end of paragraph (b) insert—
  - “(ba) “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order;”.

### **133 Set-off etc where right to be paid a sum has been transferred**

(1) This section applies where there has been a transfer from one person (“the original creditor”) to another person (“the current creditor”) of a right to be paid a sum (“the transferred sum”) by the Commissioners.

(2) The Commissioners—

- (a) must set the transferred sum against a sum payable to them by the original creditor if they would have had an obligation to do so under or by virtue of an enactment had the original creditor retained the right, and
- (b) may do so if they would have had a power to do so under or by virtue of an enactment or under a rule of law had the original creditor retained the right.

(3) Subsection (2) applies whether the sum payable by the original creditor to the Commissioners first became payable before or after the transfer (but not if it only became payable after the Commissioners discharged their obligation to pay the transferred sum to the current creditor).

(4) The following are discharged to the extent of any set-off under this section—

- (a) the obligations of the Commissioners in relation to the current creditor, and
- (b) the obligations of the original creditor.

(5) An obligation under or by virtue of an enactment (other than this section) to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a) and to any exercise of the power under subsection (2)(b).

(6) A power under or by virtue of an enactment (other than this section) or under a rule of law to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a).

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*Status: This is the original version (as it was originally enacted).*

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- (7) In determining the sum (if any) to be paid, the Commissioners may make any reduction that they could have made if the original creditor had retained the right to be paid the transferred sum (in addition to any other reduction that they are entitled to make), including a reduction arising from any defence to a claim for the sum.
- (8) In this section—
- (a) references to the transfer of a right are to its transfer by assignment, assignation or any other means, except that they do not include its transfer by means of a direction under section 429 of ITA 2007 (giving through self-assessment returns),
  - (b) references to a sum that is payable by or to a person are to a sum that is to be paid, repaid or credited by or to that person and references to the payment of the sum (however expressed) are to be interpreted accordingly, and
  - (c) where a right in relation to a sum has been transferred more than once, references to the original creditor are to the person from whom the right was first transferred (except in subsection (1)).
- (9) Where the right to be paid the transferred sum is dependent on the making of a claim—
- (a) subsection (2) does not apply unless a claim in respect of the transferred sum has been made, and
  - (b) the references in subsections (2) and (7) to the obligations or powers that the Commissioners would have had if the original creditor had retained the right are references to those that they would have had if the original creditor had also made the claim in respect of the transferred sum.
- (10) This section has effect where the right to be paid the transferred sum was transferred from the original creditor on or after 25 June 2008.

### **134 Retained funding bonds: tender by Commissioners**

- (1) Section 939 of ITA 2007 (duty to retain bonds where issue treated as payment of interest) is amended as follows.
- (2) After subsection (4) insert—
- “(4A) If bonds are tendered in accordance with subsection (4), the Commissioners for Her Majesty’s Revenue and Customs may tender the bonds in satisfaction of any amount that is payable by the Commissioners to the relevant creditor in connection with the relevant debt.
- (4B) For the purposes of subsection (4A)—
- (a) “relevant creditor” and “relevant debt” mean the creditor and the debt mentioned in subsection (1)(a), and
  - (b) a bond is to be taken to have the same value that it had at the time of its issue.
- (4C) If bonds that are to be tendered in accordance with subsection (4) or (4A) are subject to restrictions on their tender or transfer, the restrictions do not prevent the bonds from being—
- (a) tendered in accordance with that subsection, or
  - (b) transferred from the person tendering them to the person to whom they are tendered.”

- (3) Omit subsection (5).
- (4) In ITA 2007, after section 940 insert—

**“940A No appropriate bond or combination of bonds**

- (1) This section applies if—
    - (a) the Commissioners for Her Majesty’s Revenue and Customs hold one or more bonds tendered in accordance with section 939(4),
    - (b) the Commissioners wish to tender bonds in accordance with section 939(4A) in satisfaction of an amount payable to the relevant creditor, and
    - (c) the Commissioners consider that they do not hold a bond, or combination of bonds, that is appropriate for satisfying the amount payable.
  - (2) If requested to do so by the Commissioners, the bond issuer must secure that the Commissioners hold a bond, or combination of bonds, that the Commissioners consider to be appropriate for satisfying the amount payable.
  - (3) If requested to do so by the bond issuer, a person must assist the bond issuer to comply with subsection (2).
  - (4) The duty under subsection (2), or under subsection (3), does not apply if it would be impracticable for the bond issuer, or the other person, to comply with the duty.
  - (5) The matters which the Commissioners may take into account when considering whether or not a bond or combination of bonds is appropriate for satisfying the amount payable include—
    - (a) the value of a bond at the time of its issue,
    - (b) the interest which the relevant creditor, or any other person, has in a bond (including the nature or size of the interest), and
    - (c) the terms on which a bond is issued.
  - (6) For the purposes of this section—
    - (a) “bond issuer” means the person by or through whom bonds were issued, and
    - (b) “relevant creditor” and “relevant debt” have the same meanings as in section 939(4A).”
- (5) The amendments made by this section have effect in relation to funding bonds issued on or after 12 March 2008.

*Other measures*

**135 Interest on unpaid tax in case of disaster etc of national significance**

- (1) This section applies in any case where the Commissioners agree that the payment of a relevant sum may be deferred by reason of circumstances arising as a result of a disaster or emergency specified in an order under this section (an “agreement for deferred payment”).

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- (2) In subsection (1) “relevant sum” means a sum to meet any liability to the Commissioners arising under or by virtue of an enactment or a contract settlement.
- (3) No interest on the amount deferred is chargeable in respect of the relief period and no liability to a surcharge on the deferred amount arises during that period.
- (4) The relief period is the period—
  - (a) beginning with a date specified in the order or, if the Commissioners so direct, a later date from which the agreement for deferred payment has effect, and
  - (b) ending with the date on which the agreement for deferred payment ceases to have effect or, if earlier, the date on which the order is revoked.
- (5) The agreement for deferred payment ceases to have effect at the end of the period of deferment specified in the agreement or, if the Commissioners agree to extend (or further extend) that period by reason of circumstances arising as a result of the disaster or emergency, with the end of that extended (or further extended) period.
- (6) If the agreement for deferred payment is an agreement for payment by instalments, the period of deferment in relation to each instalment ends with the date on or before which that instalment is to be paid; but if an instalment is not paid by the agreed date and the Commissioners do not agree to extend the period of deferment, the whole of the agreement for deferred payment is to be treated as ceasing to have effect on that date.
- (7) This section applies whether the agreement for deferred payment was made—
  - (a) before or after the amount to which it relates becomes due and payable, or
  - (b) before or after the making of the order concerned.
- (8) If in any case the Commissioners are satisfied that, although no agreement for deferred payment was made, one could have been made, this section applies as if one had been made; and the terms of the notional agreement for deferred payment are to be assumed to be such as the Commissioners are satisfied would have been agreed in the circumstances.
- (9) An order under this section may be made only in relation to a disaster or emergency which the Treasury consider to be of national significance.
- (10) Such an order—
  - (a) may specify a disaster or emergency which has begun (or both begun and ended) before it is made (including one which has begun, or both begun and ended, before the passing of this Act), and
  - (b) may specify a date before the date on which it is made (including a date before the passing of this Act).
- (11) The power to make an order under this section is exercisable by the Treasury by statutory instrument.
- (12) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons.
- (13) In FA 2001, omit section 107 (interest on unpaid tax etc: foot and mouth disease); but the repeal of that section does not affect any agreement for deferred payment made before this Act is passed.

### **136 Fee for payment**

- (1) The Commissioners may by regulations provide that, where a person makes a payment to the Commissioners or a person authorised by the Commissioners using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.
- (2) A method of payment may only be specified in regulations made under this section if the Commissioners expect that they, or the person authorised by them, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.
- (3) Regulations under this section—
  - (a) may make provision about the time and manner in which the fee must or may be paid,
  - (b) may make provision generally or only for specified purposes, and
  - (c) may make different provision for different purposes.
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### **137 County court proceedings**

- (1) In section 25 of CRCA 2005 (conduct of civil proceedings)—
  - (a) after subsection (1) insert—

“(1A) An officer of Revenue and Customs or a person authorised by the Commissioners may conduct county court proceedings for the recovery of an amount payable to the Commissioners under or by virtue of an enactment or under a contract settlement.”, and
  - (b) after subsection (5) insert—

“(6) In this section “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment.”
- (2) In section 66 of TMA 1970 (county court proceedings)—
  - (a) in subsection (1), omit “commenced in the name of a collector”, and
  - (b) omit subsection (2).
- (3) Accordingly, in FA 1984, omit section 57(2).
- (4) In section 244 of IHTA 1984 (right to address court), omit “county court or”.
- (5) In paragraph 3 of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (recovery of contributions where income tax recovery provisions not applicable)—
  - (a) in sub-paragraph (1), omit “commenced in the name of an authorised officer”, and
  - (b) omit sub-paragraph (2).
- (6) In paragraph 5 of Schedule 12 to FA 2003 (stamp duty land tax)—
  - (a) in sub-paragraph (1), omit “brought in the name of the collector”, and

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(b) omit sub-paragraph (2).

(7) Nothing in subsections (2) to (6) affects proceedings commenced or brought in the name of a collector or authorised officer before this Act is passed.

### **138 Certificates of debt**

(1) In CRCA 2005, after section 25 insert—

#### **“25A Certificates of debt**

(1) A certificate of an officer of Revenue and Customs that, to the best of that officer’s knowledge and belief, a relevant sum has not been paid is sufficient evidence that the sum mentioned in the certificate is unpaid.

(2) In subsection (1) “relevant sum” means a sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement (within the meaning of section 25).

(3) Any document purporting to be such a certificate shall be treated as if it were such a certificate until the contrary is proved.

(4) Subsection (1) has effect subject to any provision treating the certificate as conclusive evidence.”

(2) Schedule 44 contains provisions consequential on this section.

#### *Supplementary*

### **139 Interpretation of Chapter**

In this Chapter—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs, and

“contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment.

## **PART 8**

### MISCELLANEOUS

#### *Inheritance tax*

### **140 Charge on termination of interest in possession where new interest acquired**

(1) In section 53 of IHTA 1984 (exceptions from charge on termination of interest in possession), for subsection (2A) substitute—

“(2A) Subsection (2) above applies by virtue of the person becoming beneficially entitled on or after 12 March 2008 to another interest in possession in the property only if that other interest is—



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- (a) a disabled person’s interest, or
- (b) a transitional serial interest;

and that is the case irrespective of whether the person’s beneficial entitlement to the interest in possession in the property which comes to an end is one which began before, or on or after, 22 March 2006.”

- (2) The amendment made by subsection (1) is treated as having come into force on 22 March 2006 (so that paragraph 14(3) of Schedule 20 to FA 2006 is treated as never having had effect).

#### **141 Interest in possession settlements: extension of transitional period**

- (1) In Chapter 2 of Part 3 of IHTA 1984 (interests in possession etc)—
  - (a) in section 49C (transitional serial interest: interest to which person becomes entitled on or after 22 March 2006 and before 6 April 2008), in subsection (3) and in the heading,
  - (b) in section 49D (transitional serial interest: interest to which person becomes entitled on death of spouse or civil partner on or after 6 April 2008), in subsection (3) and in the heading, and
  - (c) in section 49E (transitional serial interest: contracts of life insurance), in subsection (3),for “April” substitute “October”.
- (2) The amendments made by subsection (1) are treated as having come into force on 6 April 2008.

#### *Insurance premium tax*

#### **142 Tax representatives**

- (1) In Part 3 of FA 1994 (insurance premium tax), omit the following provisions (which relate to tax representatives)—
  - (a) sections 57 and 58,
  - (b) in section 65(1), paragraph (b) and the “and” before it,
  - (c) in section 73(1), the definition of “tax representative”, and
  - (d) in Schedule 7, paragraph 18 and, in paragraph 20, “, 18(2)”.
- (2) In consequence of the repeals made by subsection (1), omit sections 27(4) and (5) of FA 1997.

#### **143 Overseas insurers**

- (1) Section 65 of FA 1994 (insurance premium tax: liability of insured where insurer not established in United Kingdom) is amended as follows.
- (2) In subsection (1), for the words after “time” substitute “the insurer—
  - (a) does not have any business establishment or other fixed establishment in the United Kingdom, and
  - (b) is established in a country or territory in respect of which it appears to the Commissioners that the condition in subsection (1A) below is met.”

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(3) After that subsection insert—

“(1A) The condition mentioned in subsection (1)(b) above is that—

- (a) the country or territory is neither a member State nor a part of a member State, and
- (b) there is no provision for mutual assistance between the United Kingdom and the country or territory similar in scope to the assistance provided for between the United Kingdom and each other member State by the mutual assistance provisions.

(1B) In subsection (1A) above “the mutual assistance provisions” means—

- (a) section 134 of, and Schedule 39 to, the Finance Act 2002 (recovery of taxes etc due in other member States), and
- (b) section 197 of the Finance Act 2003 (exchange of information between tax authorities of member States).”

#### *Vehicle excise duty*

### **144 Rebates**

- (1) VERA 1994 is amended as follows.
- (2) In section 10 (transfer and surrender of vehicle licences), omit subsections (2) and (3) and, in the heading, “**and surrender**”.
- (3) For section 19 (rebates on surrender of licences) substitute—

#### **“19 Rebates**

- (1) If the relevant person makes an application to the Secretary of State under this subsection for a rebate of the duty paid on a vehicle licence in force for a vehicle, the person is entitled to receive from the Secretary of State the amount specified in subsection (2).
- (2) That amount is an amount equal to one-twelfth of the annual rate of duty chargeable on the licence (at the time when it was taken out) in respect of each complete month of the period of the currency of the licence which is unexpired when the application is made.
- (3) An application under subsection (1) may only be made if—
  - (a) the vehicle has been stolen,
  - (b) the vehicle has been destroyed and the Secretary of State is notified of that,
  - (c) an application for a nil licence for the vehicle is made in accordance with regulations under section 22,
  - (d) the vehicle is neither used nor kept on a public road and the particulars and declaration required to be furnished and made by regulations under section 22(1D) are furnished and made in relation to it in accordance with the regulations,
  - (e) the vehicle has been sold or disposed of and the particulars prescribed by regulations under section 22(1)(d) are furnished in relation to it in accordance with the regulations, or

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- (f) the vehicle has been removed from the United Kingdom with a view to its remaining permanently outside the United Kingdom and the Secretary of State is notified of that.
- (4) In subsection (1) “the relevant person” means the person in whose name the vehicle is registered at the time when the application is made; but in a case within subsection (3)(e) also includes the person in whose name it was registered immediately before being sold or disposed of.
- (5) The Secretary of State may specify conditions which must be complied with by a person before making an application under subsection (1).
- (6) The conditions that may be specified include (in particular)—
  - (a) a condition requiring the surrender of the licence,
  - (b) a condition requiring that particulars which are required to be furnished to the Secretary of State are transmitted to the Secretary of State by such electronic means as may be specified, and
  - (c) in a case within subsection (3)(a), conditions relating to the reporting to the police that the vehicle has been stolen.
- (7) Where an application is made under subsection (1) and the licence is not surrendered on the making of the application, it ceases to be in force when the application is made.
- (8) Where a trade licence is surrendered to the Secretary of State under section 14(2), the holder of the licence is entitled to receive from the Secretary of State (by way of rebate of the duty paid on the licence) an amount equal to one-twelfth of the annual rate of duty chargeable on the licence (at the time when it was taken out) in respect of each complete month of the period of the currency of the licence which is unexpired at the date of the surrender.”
- (4) In section 22(1D) (requirement to furnish particulars etc in certain circumstances), omit paragraph (a) (surrender under section 10(2)).
- (5) In—
  - (a) section 31(7)(a),
  - (b) section 31B(9)(a)(i), and
  - (c) section 31C(7)(a),(meaning of “expiry”), after “surrender” insert “or ceasing to be in force under section 19(7)”.
- (6) In consequence of the amendment made by subsection (3), omit section 14 of FA 2001.
- (7) The amendments made by this section come into force on 1 January 2009.

#### **145 Offence of using or keeping unlicensed vehicle**

Schedule 45 contains provision in relation to the offence of using or keeping an unlicensed vehicle.

#### **146 Rates for new lower-emission vans**

- (1) Part 1B of Schedule 1 to VERA 1994 (annual rates of duty: light goods vehicles) is amended as follows.

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- (2) In paragraph 1J(a) and (b) (rates), after “a” insert “pre-2007 or post-2008”.
- (3) In paragraph 1K (meaning of “lower-emission van”), for ““lower-emission van”” substitute ““pre-2007 lower-emission van””.
- (4) After paragraph 1L insert—
- “1M For the purposes of paragraph 1J, a vehicle to which this Part of this Schedule applies is a “post-2008 lower-emission van” if—
- (a) the vehicle is first registered on or after 1 January 2009 and before 1 January 2011,
  - (b) it is a vehicle to which Regulation (EC) No 715/2007 of the European Parliament and of the Council applies (see Article 2 of that Regulation),
  - (c) it is powered by a compression ignition engine, and
  - (d) the emissions from it do not exceed any of the emission limit values specified in Table 1 of Annex 1 to that Regulation in relation to vehicles so powered.”

#### 147 Not exhibiting licence: period of grace

In section 33 of VERA 1994 (not exhibiting licence), after subsection (1A) insert—

“(1B) A person is not guilty of an offence under subsection (1) or (1A) by using or keeping a vehicle on a public road during any of the 5 working days following the time when a licence or nil licence for the vehicle, or a relevant declaration applying to the vehicle, ceases to be in force, if an application for a licence or nil licence for or in respect of the vehicle to run from that time has been received before that time.

(1C) In subsection (1B) “working day” means any day other than—

- (a) a Saturday or Sunday, or
- (b) a day which is Christmas Eve, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(1D) For the purposes of subsection (1B)—

- (a) there is a relevant declaration applying to a vehicle if the particulars and declaration required to be furnished and made by regulations under section 22(1D) have been furnished and made in relation to the vehicle in accordance with the regulations, and
- (b) the relevant declaration ceases to be in force if, after the particulars and declaration have been furnished and made—
  - (i) the vehicle is used or kept on a public road (otherwise than under a trade licence), or
  - (ii) the period of 12 months beginning with the day on which the particulars and declaration were furnished and made expires.”

#### 148 Reduced pollution certificates

- (1) Section 61B of VERA 1994 (certificates as to reduced pollution) is amended as follows.

- (2) In subsection (1), after paragraph (b) insert—
  - “(ba) for the production of information and making of declarations for the purposes of a determination (including provision about the person to whom, and the time at which and manner in which, the information is to be produced and the declarations are to be made);”.
- (3) In paragraph (c) of that subsection, for “examination of an eligible vehicle, for the purposes of the determination mentioned in paragraph (b),” substitute “Secretary of State to specify cases in which a determination is to be made only after an examination of an eligible vehicle”.
- (4) In paragraph (d) of that subsection, for “for such an examination” substitute “in respect of a determination”.
- (5) In paragraph (e) of that subsection, for “on a prescribed examination,” substitute “in accordance with the regulations.”.
- (6) In subsection (3)—
  - (a) in paragraph (a), for “in accordance with the regulations” substitute “(or, if not previously examined, examined) in accordance with the regulations (“a post-certification examination”)”,
  - (b) in paragraph (b), for “such a re-examination” substitute “a post-certification examination”, and
  - (c) in paragraph (c), for “the prescribed re-examination” substitute “a post-certification examination”.

*Climate change levy and landfill tax*

**149 Climate change levy: coal mine methane no longer to be renewable source**

- (1) In paragraph 19 of Schedule 6 to FA 2000 (exemption: electricity from renewable sources), omit sub-paragraph (4A) (coal mine methane to be regarded as renewable source).
- (2) Accordingly, omit—
  - (a) section 126 of FA 2002 (which inserted sub-paragraph (4A)), and
  - (b) regulation 47(2A) of the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838).
- (3) The repeals and revocation made by this section have effect in relation to electricity generated on or after 1 November 2008.

**150 Climate change levy accounting documents: abolition of self-identification**

In paragraph 143(2) of Schedule 6 to FA 2000 (requirements to be met by invoice if it is to be a “climate change levy accounting document”), omit paragraph (a) (requirement that it must state that it is a climate change levy accounting document).

**151 Landfill tax credit: withdrawing approval of environmental bodies**

- (1) Part 3 of FA 1996 (landfill tax) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In section 53(4)(d) (withdrawal of approval of environmental body or regulatory body), for “approval of an environmental body or the regulatory body to be withdrawn” substitute “the withdrawal of approval of an environmental body by the Commissioners or by the regulatory body, and the withdrawal of approval of the regulatory body by the Commissioners.”.
- (3) In section 54(1) (review of Commissioners' decisions), after paragraph (c) insert—
  - “(ca) a decision to withdraw approval of an environmental body under any provision contained in regulations by virtue of section 53(4)(d) above;”.
- (4) The amendments made by this section are treated as having come into force on 19 March 2008.

### *Aviation*

#### **152 Aviation duty**

The Commissioners for Her Majesty's Revenue and Customs may incur expenditure in preparing for the introduction of a new duty chargeable in respect of flights by aircraft.

#### **153 Air passenger duty: class of travel with large seat pitch**

- (1) In section 30 of FA 1994 (rate of air passenger duty), after subsection (10) insert—
  - “(11) But a class of travel is not standard class travel if the seats for passengers whose agreement for carriage provides for that class of travel have a pitch exceeding 1.016 metres (40 inches).
  - (12) For this purpose “pitch”, in relation to a seat, means the distance between a fixed point on the seat and the same point on the seat immediately in front of it; but where there is no seat immediately in front of the seat, the seat is to be treated as having the same pitch as the seat immediately behind it.”
- (2) The amendment made by subsection (1) has effect in relation to any carriage of a passenger on an aircraft which begins on or after 1 November 2008.

### *Alternative finance arrangements*

#### **154 Stamp duty and stamp duty reserve tax: alternative finance investment bonds**

- (1) FA 1986 is amended as follows.
- (2) In section 78(7) (stamp duty: loan capital), after paragraph (c) insert—
  - “(d) any capital raised under arrangements which fall within section 48A of the Finance Act 2005 (alternative finance investment bonds).”
- (3) In section 79 (loan capital: instruments not chargeable to stamp duty), after subsection (8) insert—
  - “(8A) In the application of this section to loan capital that falls within paragraph (d) of section 78(7) (alternative finance investment bonds)—
    - (a) subsection (6) has effect as if—

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- (i) paragraph (a) were omitted, and
  - (ii) for paragraph (c) there were substituted—
    - “(c) a right at the end of the bond term (within the meaning of section 48A(1) of the Finance Act 2005) to a payment of an amount that exceeds the aggregate of—
      - (i) the amount paid for the issue of the bond, and
      - (ii) the notional payment amount;and for this purpose the “notional payment amount” means the amount of the payments that would represent a reasonable commercial return (within the meaning of section 48A(1) of the Finance Act 2005) on the bond over the bond term, less the amount of the payments actually made.”,
  - (b) subsections (6)(b), (7), (7A), (7B) and (13) have effect as if references to interest were references to additional payments (“additional payments” having the same meaning as in section 48A of the Finance Act 2005), and
  - (c) subsections (7B) and (13) also have effect as if—
    - (i) references to a capital market investment were references to the loan capital falling within paragraph (d) of section 78(7), and
    - (ii) references to a capital market arrangement were to the arrangements under which that loan capital is raised.”
- (4) In section 99 (stamp duty reserve tax: interpretation), after subsection (9) insert—
- “(9A) But “unit trust scheme” does not include arrangements falling within section 48A of the Finance Act 2005 (alternative finance investment bonds).”
- (5) The amendments made by subsections (2) and (3) have effect in relation to instruments executed on or after the day on which this Act is passed (and for this purpose it does not matter when the arrangements falling within section 48A of FA 2005 are made).
- (6) The amendment made by subsection (4) has effect in relation to—
- (a) agreements to transfer chargeable securities made on or after the day on which this Act is passed, and
  - (b) the transfer, issue or appropriation of chargeable securities after that day in pursuance of an agreement made after that day;
- (and for this purpose it does not matter when the arrangements falling within section 48A of FA 2005 are made).

## **155 Alternative property finance: anti-avoidance**

- (1) FA 2003 is amended as follows.
- (2) For the heading of section 73A substitute “**Sections 71A to 73: relationship with Schedule 7**”.
- (3) After section 73A insert—

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**“73AB Sections 71A to 72A: arrangements to transfer control of financial institution**

- (1) Section 71A, 72 or 72A does not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.
- (2) That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).
- (3) In this section—
  - “alternative finance arrangements” means the arrangements referred to in section 71A(1), 72(1) or 72A(1);
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are not parties to the alternative finance arrangements);
  - “relevant financial institution” means the financial institution which enters into the alternative finance arrangements.
- (4) Section 840 of the Taxes Act 1988 applies for the purposes of determining who has control of the relevant financial institution.”
- (4) The amendment made by subsection (3) has effect in relation to alternative finance arrangements entered into on or after 12 March 2008.

**156 Alternative finance arrangements: power to vary Chapter 5 of Part 2 of FA 2005**

- (1) Section 98 of FA 2006 (alternative finance arrangements: variation of Chapter 5 of Part 2 of FA 2005 by order) is amended as follows.
- (2) For the heading substitute “**Orders amending Chapter 5 of Part 2 of FA 2005**”.
- (3) For subsection (1) substitute—
  - “(1) The Treasury may by order amend Chapter 5 of Part 2 of FA 2005 (alternative finance arrangements).
  - (1A) The amendments that may be made by an order under subsection (1) include—
    - (a) the variation of provision already included in Chapter 5, and
    - (b) the introduction into Chapter 5 of new provision relating to alternative finance arrangements.”
- (4) For subsection (3) substitute—
  - “(3) An order under this section shall be made by statutory instrument.
  - (4) If a statutory instrument containing an order under this section—
    - (a) introduces into Chapter 5 of Part 2 of FA 2005 new provision relating to alternative finance arrangements, or



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- (b) amends an enactment which is not contained in that Chapter, but is contained in an Act,  
it shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.
- (5) In any other case, a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section “alternative finance arrangements” means arrangements which in the Treasury’s opinion—
  - (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, and
  - (b) achieve a similar effect without including provision for the payment of interest.”

#### **157 Government borrowing: alternative finance arrangements**

- (1) The Treasury may by regulations make provision for raising money through alternative finance arrangements.
- (2) Regulations under subsection (1) must specify the purpose or purposes for which money may be raised through each kind of alternative finance arrangements that, under regulations under subsection (1), is available for raising money.
- (3) The Treasury may not raise money through a particular kind of alternative finance arrangements unless, in the Treasury’s opinion, raising the money would be in accordance with the provision made under subsection (2) in relation to that kind of arrangements.
- (4) Regulations under subsection (2) may, in particular, specify a purpose or purposes for which money may be raised under the National Loans Act 1968 (c. 13).
- (5) Money to be raised under regulations made under this section—
  - (a) may be raised either within or outside the United Kingdom, and
  - (b) may be raised either in sterling or in any other currency or medium of exchange, whether national or international.
- (6) Subsection (5) is subject to provision made in or under the regulations.
- (7) Schedule 46 contains further provision about regulations under this section.
- (8) In this section and Schedule 46 “alternative finance arrangements” means arrangements which in the Treasury’s opinion—
  - (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest (including the issuance of government securities), but
  - (b) achieve a similar effect to such a transaction without including provision for the payment of interest.

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### *Payments from Exchequer accounts*

#### **158 Power of Treasury to make payments**

- (1) This section applies if a person makes a claim which, in the Treasury's opinion, is a financial claim that concerns an Exchequer account.
- (2) The Treasury may pay money from any Exchequer account—
  - (a) to satisfy the claim (in whole or in part), or
  - (b) to enable the claim to be satisfied (in whole or in part) from another government account.
- (3) The reference in this section to a financial claim that concerns an Exchequer account includes, in particular, either of the following cases.
- (4) The first case is where a financial claim relates to—
  - (a) a case where money is paid into a government account, but the money should not have, or need not have, been paid into that account, or
  - (b) a case where money should have been, or needed to be, paid out of a government account, but the money—
    - (i) was not paid out of that account, or
    - (ii) was paid out of that account, but not as it should have been, or needed to be, paid.
- (5) The second case is where a financial claim relates to the exercise of functions that relate to an Exchequer account (whether the functions are exercisable by the Treasury or another person).
- (6) In this section—
 

“Exchequer account” means—

  - (a) the Consolidated Fund,
  - (b) the Debt Management Account,
  - (c) the Exchange Equalisation Account, or
  - (d) the National Loans Fund;

and a reference to an Exchequer account includes a reference to the assets or liabilities of the account;

“financial claim” means a claim (whether or not legally enforceable) for the payment of an amount of money, including a claim in respect of—

  - (a) money paid or not paid by any person,
  - (b) interest earned or not earned by any person, or
  - (c) loss, costs or expenses incurred by any person;

“government account” means—

  - (a) an Exchequer account, or
  - (b) any other account in which money is held by or on behalf of Her Majesty's Government in the United Kingdom.

#### **159 Payments from certain Exchequer accounts: mechanism**

- (1) This section applies to money to be paid under section 158 from—
  - (a) the Consolidated Fund, or
  - (b) the National Loans Fund.

- (2) In the case of the Consolidated Fund—
  - (a) the Comptroller and Auditor General shall on receipt of a requisition from the Treasury grant a credit on the Exchequer Account at the Bank of England (or on its growing balance), and
  - (b) an issue shall be made on orders given to the Bank by the Treasury in accordance with a credit granted under paragraph (a).
- (3) An issue made under subsection (2) shall be recorded in the daily account under section 15(5) of the Exchequer and Audit Departments Act 1866 (c. 39).
- (4) In the case of the National Loans Fund—
  - (a) the Comptroller and Auditor General shall at the request of the Treasury grant a credit on the National Loans Fund, and
  - (b) a payment out of the Fund shall be made by the Treasury in accordance with a credit granted under paragraph (a).
- (5) A payment made under subsection (4) shall be recorded in the daily account under section 1(2) of the National Loans Act 1968 (c. 13).

*Other matters*

**160 Power to give statutory effect to concessions**

- (1) The Treasury may by order make provision for and in connection with giving effect to any existing HMRC concession.
- (2) “Existing HMRC concession” means a statement made by the Commissioners for Her Majesty’s Revenue and Customs before the passing of this Act, and having effect at that time, that they will treat persons as if they were entitled to—
  - (a) a reduction in a liability to a tax or duty, or
  - (b) any other concession relating to a tax or duty,to which they are not, or may not be, entitled in accordance with the law.
- (3) For this purpose “statement” means a statement of any sort, whether it was described as an extra-statutory concession, a statement of practice, an interpretation, a decision or a press release or in any other way.
- (4) The reference in subsection (2) to the Commissioners for Her Majesty’s Revenue and Customs includes the Commissioners of Inland Revenue and the Commissioners of Customs and Excise.
- (5) An order under this section—
  - (a) may give effect to an existing HMRC concession with or without modification,
  - (b) may include supplementary, incidental, consequential or transitional provision, and
  - (c) may include provisions amending (or repealing or revoking) any enactment or instrument (whenever passed or made).
- (6) The power to make an order under this section is exercisable by statutory instrument.
- (7) No order is to be made under this section unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

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**161 Fuel duty: definition of “ultra low sulphur diesel”**

- (1) In section 1(6) of HODA 1979 (definition of “ultra low sulphur diesel”), omit paragraphs (b) and (c) (but not the “and” at the end of paragraph (c)).
- (2) The amendment made by subsection (1) is treated as having come into force on 4 September 2007.

**162 Duties: abolition of disregard of fractions of penny**

In section 137 of CEMA 1979 (calculation of excise duty etc), omit subsection (4) (fractions of penny to be disregarded in calculation of duty).

**163 National savings**

- (1) Section 10 of the National Debt Act 1972 (c. 65) (national savings stamps and gift tokens) is amended as follows.
- (2) In subsection (2), after “tokens; and” insert “(subject to regulations under subsection (2A))”.
- (3) After that subsection insert—

“(2A) Where the Treasury has issued a sum to the National Debt Commissioners under subsection (2), it may by regulations require them to repay to the National Loans Fund, in the way specified in the regulations, so much of that sum as may be specified in, or determined in accordance with, the regulations.”

**164 EU emissions trading: criminal offences**

- (1) Section 16 of FA 2007 (EU emissions trading: charges for allocations) is amended as follows.
- (2) In subsection (4)(c), for “imposition and recovery of penalties” substitute “creation of criminal offences, or for the imposition and recovery of civil penalties,”.
- (3) After subsection (6) insert—

“(6A) Subsection (4)(c) does not permit the creation of a criminal offence with maximum penalties in excess of the maximum penalties which an instrument under section 2(2) of the European Communities Act 1972 may provide in respect of an offence created by such an instrument.”

**PART 9**

FINAL PROVISIONS

**165 Interpretation**

- (1) In this Act—
  - “ALDA 1979” means the Alcoholic Liquor Duties Act 1979 (c. 4),
  - “BGDA 1981” means the Betting and Gaming Duties Act 1981 (c. 63),

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“CAA 2001” means the Capital Allowances Act 2001 (c. 2),  
“CEMA 1979” means the Customs and Excise Management Act 1979 (c. 2),  
“CRCA 2005” means the Commissioners for Revenue and Customs Act 2005 (c. 11),  
“CTTA 1984” means the Capital Transfer Tax Act 1984 (c. 51),  
“HODA 1979” means the Hydrocarbon Oil Duties Act 1979 (c. 5),  
“ICTA” means the Income and Corporation Taxes Act 1988 (c. 1),  
“IHTA 1984” means the Inheritance Tax Act 1984 (c. 51),  
“ITA 2007” means the Income Tax Act 2007 (c. 3),  
“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1),  
“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5),  
“OTA 1975” means the Oil Taxation Act 1975 (c. 22),  
“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12),  
“TMA 1970” means the Taxes Management Act 1970 (c. 9),  
“TPDA 1979” means the Tobacco Products Duty Act 1979 (c. 7),  
“VATA 1994” means the Value Added Tax Act 1994 (c. 23), and  
“VERA 1994” means the Vehicle Excise and Registration Act 1994 (c. 22).

(2) In this Act—

“FA”, followed by a year, means the Finance Act of that year, and  
“F(No.2)A”, followed by a year, means the Finance (No.2) Act of that year.

## **166 Short title**

This Act may be cited as the Finance Act 2008.