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## SCHEDULES

### SCHEDULE 1

Section 22

#### BANK PAYROLL TAX

##### PART 1

##### THE TAX

###### *The tax*

- 1 (1) This Schedule makes provision for taxable companies to be charged to a tax to be known as “bank payroll tax”.
- (2) Bank payroll tax is chargeable on the aggregate of the amounts of chargeable relevant remuneration awarded during the chargeable period to or in respect of relevant banking employees of a taxable company by reason of their employment as relevant banking employees.
- (3) Relevant remuneration awarded during the chargeable period to or in respect of a relevant banking employee of a taxable company by reason of the employee's employment as a relevant banking employee is “chargeable” relevant remuneration only if and to the extent that its amount exceeds £25,000.

###### *Rate*

- 2 Bank payroll tax is charged at the rate of 50%.

###### *“Taxable company”*

- 3 “Taxable company” means a company which—
- (a) is a UK resident bank or a relevant foreign bank,
  - (b) is a company not within paragraph (a) which is a member of a banking group and—
    - (i) is a UK resident investment company or a UK resident financial trading company, or
    - (ii) is a relevant foreign financial trading company, or
  - (c) is a building society or is a UK resident investment company, or a UK resident financial trading company, which is a member of the same group as a building society.

###### *“Relevant remuneration”*

- 4 (1) “Relevant remuneration”, in relation to a relevant banking employee of a taxable company, means anything that—

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- (a) constitutes earnings (within the meaning of section 62 of ITEPA 2003) in relation to the employee's employment by the taxable company as a relevant banking employee, or
  - (b) while not constituting earnings, constitutes a benefit provided by reason of that employment.
- (2) Whether or not the relevant banking employee is chargeable to income tax in respect of anything is irrelevant in determining whether or not it is relevant remuneration.
- (3) Excluded remuneration is not relevant remuneration.

*“Excluded remuneration”*

- 5 (1) “Excluded remuneration” means—
- (a) anything which is regular salary or wages or a regular benefit,
  - (b) anything in the case of which a contractual obligation to pay or provide it to or in respect of the employee concerned arose before the beginning of the chargeable period,
  - (c) any shares awarded under an approved share incentive plan (within the meaning of section 488 of ITEPA 2003), or
  - (d) any share option granted under an approved SAYE option scheme (within the meaning of section 516 of that Act).
- (2) In sub-paragraph (1)(a) “regular”, in relation to salary or wages or a benefit, means so much of the amount of the salary or wages or benefit as cannot vary according to—
- (a) the performance of, or of any part of—
    - (i) any business of the taxable company concerned, or
    - (ii) any business of a person connected with the taxable company,
  - (b) the contribution made by the employee concerned to the performance of, or of any part of, any business within paragraph (a)(i) or (ii),
  - (c) the performance by the employee of any of the duties of the employment, or
  - (d) any similar considerations.
- (3) For the purposes of sub-paragraph (1)(b) a contractual obligation to pay or provide something to or in respect of the employee does not arise until—
- (a) the amount to be paid or provided is fixed or is capable of becoming fixed without the exercise of discretion by any person, or
  - (b) the total amount of things to be paid or provided to or in respect of a number of employees including the employee is fixed or is capable of becoming fixed without the exercise of discretion by any person.
- (4) A contractual obligation to pay or provide something is taken to arise for those purposes even if payment or provision of it is dependent on compliance by the employee with any conditions.

*“Awarded”*

- 6 (1) Relevant remuneration is “awarded” during the chargeable period if—
- (a) a contractual obligation to pay or provide it arises during the chargeable period, or
  - (b) the relevant remuneration is paid or provided during the chargeable period without any such obligation having arisen during the chargeable period,

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but subject to sub-paragraph (3).

- (2) Sub-paragraph (3)(a) of paragraph 5 applies for the purposes of sub-paragraph (1) as for the purposes of sub-paragraph (1)(b) of that paragraph.
- (3) Relevant remuneration is not to be taken to be awarded during the chargeable period by virtue of sub-paragraph (1)(a) if—
  - (a) it is required to be paid or provided at intervals,
  - (b) it is to be paid or provided in respect of contribution, performance or similar considerations only for times after the end of the chargeable period, and
  - (c) the reduction or elimination of a liability to bank payroll tax is not the main purpose or one of the main purposes of any person in assuming the obligation to pay or provide it.
- (4) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as for the purposes of sub-paragraph (1)(b) of that paragraph.

*“Amount” of remuneration*

- 7 (1) Subject to sub-paragraphs (2) to (4), the amount of any relevant remuneration is—
  - (a) if it is money, its amount when awarded,
  - (b) if it is money's worth, the amount of the money's worth when awarded, or
  - (c) if it is a benefit not constituting earnings, the cost of providing it.
- (2) Where relevant remuneration is awarded to or in respect of an employee by virtue of paragraph 6(1)(a) and its amount is not fixed when it is awarded, its amount is such as it is reasonable at that time to assume would be its amount (in accordance with sub-paragraph (1)) if and when paid or provided.
- (3) Where the market value of any relevant remuneration at the time it is awarded exceeds, or would exceed, what would otherwise be its amount, its amount is that market value.
- (4) Where anything constituting relevant remuneration is or would be, when awarded, subject to any restriction or restrictions, the restriction is, or restrictions are, to be ignored in arriving at its amount.
- (5) For this purpose “restriction” means any condition, restriction or other similar provision which causes the value of the relevant remuneration to be less than it otherwise would be.

*“The chargeable period”*

- 8 “The chargeable period” is the period—
  - (a) beginning at 12.30 pm on 9 December 2009, and
  - (b) ending with 5 April 2010.

*“Relevant banking employee”*

- 9 (1) An employee of a taxable company is a relevant banking employee of the taxable company if—
  - (a) the employment in which the employee is employed by the taxable company is a banking employment, and

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- (b) either—
- (i) the employee is resident in the United Kingdom in the tax year 2009-10, or
  - (ii) the duties of the banking employment are at any time in that tax year performed wholly or partly in the United Kingdom.
- (2) “Banking employment” means an employment the duties of which are wholly or mainly concerned (whether directly or indirectly) with activities to which sub-paragraph (3) applies.
- (3) This sub-paragraph applies to activities which are—
- (a) listed regulated activities, or
  - (b) activities which are not listed regulated activities but consist of the lending of money or of dealing in currency or commodities as principal.
- (4) “Listed regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—
- (a) article 5 (accepting deposits),
  - (b) article 14 (dealing in investments as principal),
  - (c) article 21 (dealing in investments as agent),
  - (d) article 25 (arranging deals in investments),
  - (e) article 40 (safeguarding and administering investments),
  - (f) article 53 (advising on investments), and
  - (g) article 61 (entering into regulated mortgage contracts).
- (5) But an activity is not a listed regulated activity in relation to an employee of a taxable company if—
- (a) the taxable company is an insurance company, or a member of the same group as an insurance company, and the activity is carried on wholly on behalf of the insurance company, or
  - (b) it—
    - (i) is either of the activities described in the provisions mentioned in sub-paragraph (4)(c) and (d), and
    - (ii) is carried on as part of, or wholly in support of, activities of the taxable company, or of a company which is a member of the same group as the taxable company, and the activities consist of acting as discretionary investment manager for clients none of which is a linked entity.
- (6) An employee of a taxable company who spends no more than 60 days in the United Kingdom in the tax year 2009-10 is to be treated as not being a relevant banking employee of the taxable company.
- (7) In determining for the purposes of sub-paragraph (6) whether an individual spends no more than 60 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.
- (8) 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—

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- (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 which are to a substantial extent unrelated to the individual's passage through the United Kingdom.

#### *Multiple employments*

- 10 (1) The threshold of £25,000 in paragraph 1(3) applies whether or not an employee has more than one employment as a relevant banking employee with a taxable company.
- (2) If relevant remuneration is awarded during the chargeable period to or in respect of a relevant banking employee by reason of the employee's employment as such by a number of associated taxable companies, the threshold in paragraph 1(3) in relation to each of the taxable companies is £25,000 divided by the number of the taxable companies.
- (3) For this purpose taxable companies are associated if—
- (a) one of them is under the control of the other, or
  - (b) one of them is under the control of a third person who controls or is under the control of the other.

#### *Payments etc to intermediaries*

- 11 (1) This paragraph applies where—
- (a) an individual personally performs banking services for a taxable company,
  - (b) the banking services are provided not under a contract directly between the individual and the taxable company but under arrangements involving any other person (“the intermediary”), and
  - (c) the circumstances are such that, if the banking services were provided under a contract directly between the taxable company and the individual, the individual would be a relevant banking employee of the taxable company.
- (2) The individual is to be regarded as a relevant banking employee of the taxable company.
- (3) Anything done by the intermediary in relation to the individual which, if the banking services were provided under a contract directly between the taxable company and the individual, would be regarded as the award of relevant remuneration during the chargeable period to or in respect of the individual (as a relevant banking employee) by reason of the employee's employment as a relevant banking employee is to be so regarded.
- (4) “Banking services” means services which are wholly or mainly concerned (whether directly or indirectly) with activities which are activities to which paragraph 9(3) applies.

#### *Arrangements for future payments etc*

- 12 (1) This paragraph applies where—
- (a) arrangements are made during the chargeable period by reason of an employee's employment as a relevant banking employee of a taxable company,

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- (b) the arrangements make provision under which money may be paid, or any money's worth or other benefit provided, to or in respect of the employee in accordance with the arrangements, and
  - (c) were the money so paid, or the money's worth or other benefit so provided, during the chargeable period, it would be relevant remuneration awarded to or in respect of the employee during the chargeable period.
- (2) The making of the arrangements is to be regarded as the awarding of relevant remuneration to or in respect of the relevant banking employee by reason of the employment; and the amount of the relevant remuneration is to be regarded as the amount of any money which it is reasonable to assume will be paid, and any money's worth or other benefit which it is reasonable to assume will be provided, as mentioned in sub-paragraph (1).

#### *Loans*

- 13 (1) This paragraph applies where—
- (a) at any time during the chargeable period a relevant loan is provided to or in respect of a relevant banking employee of a taxable company by reason of the employee's employment as a relevant banking employee otherwise than pursuant to a contractual obligation arising before the chargeable period, or
  - (b) at any time during the chargeable period there arises a contractual obligation to provide a relevant loan to or in respect of the employee by reason of the employee's employment as a relevant banking employee of the taxable company.
- (2) A loan is a “relevant” loan if the main purpose, or one of the main purposes, of providing it, or undertaking to provide it, is the reduction or elimination of a liability to bank payroll tax or any other tax or national insurance contributions.
- (3) The loan is to be regarded as relevant remuneration awarded during the chargeable period to or in respect of the relevant banking employee by reason of the employee's employment as a relevant banking employee; and the amount of the relevant remuneration is to be regarded as the amount which is loaned or (where the amount of the loan is not fixed) the amount which it is reasonable to assume will be loaned.
- (4) A contractual obligation to provide a relevant loan is taken to arise for the purposes of this paragraph even if provision of it is dependent on compliance by the relevant banking employee with any conditions.

#### *Anti-avoidance*

- 14 (1) This paragraph applies where—
- (a) relevant arrangements are entered into by one or more persons during the chargeable period, and
  - (b) the main purpose, or one of the main purposes, of the person, or any of the persons, in entering into the relevant arrangements is a relevant tax avoidance purpose.
- (2) “Relevant arrangements” means arrangements involving either or both of the following—
- (a) the making of a payment of money, or the provision of any money's worth or other benefit, otherwise than during the chargeable period, and

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- (b) the giving otherwise than in the form of relevant remuneration of any reward which equates in substance to relevant remuneration.
- (3) A “relevant tax avoidance purpose” is the reduction or elimination of a liability to bank payroll tax which would exist if—
- (a) in a case within paragraph (a) of sub-paragraph (2), the money were paid, or the money's worth or other benefit provided, during the chargeable period, or
  - (b) in a case within paragraph (b) of that sub-paragraph, the reward were given in the form of relevant remuneration.
- (4) Liability to bank payroll tax is to be determined as it would have been if—
- (a) in a case within paragraph (a) of sub-paragraph (2), the money were paid, or the money's worth or other benefit provided, during the chargeable period, or
  - (b) in a case within paragraph (b) of that sub-paragraph, the reward were given in the form of relevant remuneration.

*No deduction in computing profits*

- 15 No amount of bank payroll tax is to be taken into account in calculating profits or losses for the purposes of income tax or corporation tax.

**PART 2**

COLLECTION AND MANAGEMENT OF TAX

*Responsibility for collection and management*

- 16 The Commissioners are responsible for the collection and management of bank payroll tax.

*Due date for payment*

- 17 Bank payroll tax is payable by taxable companies on or before 31 August 2010.

*Obligation to deliver return*

- 18 (1) In order to establish the amount of bank payroll tax payable by it, every taxable company must deliver a return to HMRC.
- (2) The return must be delivered on or before 31 August 2010.
- (3) A return under this paragraph is referred to as a bank payroll tax return.

*Content etc of return*

- 19 (1) HMRC may publish requirements as to—
- (a) the information to be contained in bank payroll tax returns,
  - (b) the form in which they must be made,
  - (c) the manner in which they must be delivered, and
  - (d) the documents to be delivered with them.
- (2) A bank payroll tax return must include—

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- (a) an assessment (a “self-assessment”) of the amount of bank payroll tax payable by the taxable company on the basis of the information contained in it, and
- (b) a declaration by the person making it that, to the best of that person's knowledge, it is correct and complete.

*Failure to include self-assessment*

- 20 (1) If a taxable company delivers a bank payroll tax return but fails to include a self-assessment, HMRC may make the assessment on the company's behalf on the basis of the information contained in it.
- (2) The assessment is treated for the purposes of this Schedule as a self-assessment and as included in the return.

*Amendment of return by company*

- 21 (1) A taxable company may amend its bank payroll tax return.
- (2) An amendment under this paragraph is made by notice to HMRC in such form, and accompanied by such information, as HMRC may reasonably require.
- (3) No such amendment may be made after 31 August 2011.
- (4) Nothing in sub-paragraph (1) permits a taxable company to amend its return to revise an amount determined under paragraph 7(2), 12(2) or 13(3) merely because the amount determined under that provision differs from the amount which is actually paid or provided (or loaned).

*Correction of return by HMRC*

- 22 (1) HMRC may amend a bank payroll tax return so as to correct obvious errors or omissions in it (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this paragraph is made by notice to the taxable company concerned.
- (3) No such correction may be made more than 9 months after—
- (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment made under paragraph 21, the day on which that amendment was made.
- (4) A correction under this paragraph is of no effect if the taxable company gives notice rejecting it.
- (5) Notice of rejection must be given—
- (a) to the officer of Revenue and Customs by whom the correction notice was given, and
  - (b) before the end of the period of 30 days beginning with the date on which the correction notice was given.



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### *Enquiry into return*

- 23 (1) HMRC may enquire into a bank payroll tax return if they give notice to the taxable company of their intention to do so within the time allowed.
- (2) If the return was delivered on or before 31 August 2010, notice of enquiry may be given at any time on or before 31 August 2011.
- (3) If the return was delivered after 31 August 2010, notice of enquiry may be given at any time up to and including whichever of 31 January, 30 April, 31 July or 31 October next follows the first anniversary of the day on which the return was delivered.
- (4) An enquiry extends to anything contained in the return or required to be contained in the return.
- (5) The following provisions of Schedule 18 to FA 1998 apply to an enquiry into a bank payroll tax return under this Schedule as they apply to an enquiry into a company tax return under that Schedule—
- (a) paragraph 24(4) to (5) (notice of enquiry),
  - (b) paragraph 25(2) (enquiry following amendment by company) (but as if the reference there to paragraph 24(2) or (3) were to sub-paragraph (2) or (3) of this paragraph),
  - (c) paragraph 31 (amendment of return by company during enquiry),
  - (d) paragraphs 31A to 31D (referral of questions to the tribunal during enquiry),
  - (e) paragraph 32(1) (completion of enquiry),
  - (f) paragraph 33 (direction to complete enquiry), and
  - (g) paragraph 34 (amendment of return after enquiry).

### *Determination by HMRC*

- 24 (1) HMRC may determine to the best of their knowledge and belief the amount of bank payroll tax payable by a taxable company if the company has not delivered a bank payroll tax return on or before 31 August 2010.
- (2) Notice of the determination—
- (a) must be served on the company, and
  - (b) must state the date on which it is given.
- (3) The amount determined by HMRC is taken to be the amount payable by the company (in the same way as if it were an assessment) unless and until the determination is superseded by a relevant assessment.
- (4) A relevant assessment is an assessment—
- (a) included in a bank payroll tax return delivered by the company within the period of 12 months beginning with the date on which notice of the determination was given, or
  - (b) made by HMRC under paragraph 20 following delivery of such a return.
- (5) If—
- (a) proceedings have been commenced for the recovery of an amount determined by HMRC under this paragraph, and
  - (b) before the proceedings are concluded, the determination is superseded by a relevant assessment,

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the proceedings may be continued as if they were proceedings for the recovery of so much of the tax shown in the assessment as has not been paid.

- (6) No determination may be made under this paragraph after 31 August 2013.

*Discovery assessment by HMRC*

- 25 (1) This paragraph applies if HMRC discover, with respect to a taxable company, any of the following situations—
- (a) an amount which ought to have been assessed to bank payroll tax has not been assessed,
  - (b) an assessment to bank payroll tax is insufficient, or
  - (c) an amount of bank payroll tax has been repaid which ought not to have been repaid.
- (2) HMRC may make an assessment (a “discovery assessment”) in the amount or further amount which ought in their opinion to be charged or recovered in order to make good to the Crown the loss of bank payroll tax.
- (3) If the company has delivered a bank payroll tax return, HMRC may only make a discovery assessment if condition A or condition B is met.
- (4) Condition A is that the situation discovered by HMRC was brought about carelessly or deliberately by the company or a person acting on its behalf.
- (5) Condition B is that HMRC could not reasonably have been expected to be aware of the situation at the time when they—
- (a) ceased to be entitled to give notice of enquiry into the return, or
  - (b) completed their enquiries into the return.
- 26 Notice of a discovery assessment—
- (a) must be served on the taxable company, and
  - (b) must state the date on which it is given and the time by which an appeal may be brought against it.
- 27 (1) No discovery assessment may be made after the relevant deadline.
- (2) The relevant deadline is 5 April 2030 if the situation—
- (a) was brought about deliberately by the taxable company, or
  - (b) was attributable to the taxable company's careless failure to deliver a bank payroll tax return on or before 31 August 2010.
- (3) Subject to sub-paragraph (2)(b), the relevant deadline is 5 April 2016 if the situation was brought about carelessly by the taxable company.
- (4) In all other cases, the relevant deadline is 5 April 2014.
- (5) In this paragraph—
- (a) references to the situation are to the one discovered by HMRC, and
  - (b) references to the taxable company include a person acting on the company's behalf.
- 28 (1) If a discovery assessment is made with respect to a taxable company, the company may appeal against it.
- (2) Notice of appeal must be given—

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- (a) in writing,
  - (b) within the period of 30 days beginning with the date on which notice of the assessment was given, and
  - (c) to the officer of Revenue and Customs by whom notice of the assessment was given.
- (3) Any objection to a discovery assessment on the ground that paragraph 25, 26 or 27 was not complied with can only be made on an appeal against the assessment under this paragraph.

#### *Collection and recovery*

- 29 (1) HMRC may publish requirements as to the method or methods of payment to be used by taxable companies for paying bank payroll tax.
- (2) Part 6 of TMA 1970 (collection and recovery) applies in relation to a charge to bank payroll tax as it applies in relation to a charge to corporation tax.
- (3) See also Chapter 5 of Part 7 of FA 2008 (which makes general provision about payment and enforcement).

#### *Interest on late payments and repayments*

- 30 (1) This paragraph applies if an order is made under section 104(3) of FA 2009 appointing a day on which sections 101 to 103 of that Act are to come into force for the purposes of bank payroll tax.
- (2) Part 2 of Schedule 53 to that Act (which makes special provision about the late payment interest start date) has effect for those purposes as if—
- (a) the reference in paragraph 4(1) to income tax or capital gains tax included a reference to bank payroll tax, and
  - (b) the Part included a provision that the late payment interest start date in respect of an amount of bank payroll tax assessed and recoverable under paragraph 25(1)(c) of this Schedule is 31 August 2010.
- (3) Interest charged under section 101 of FA 2009 on an amount of bank payroll tax may be enforced as if it were an amount of bank payroll tax payable by the taxable company.

#### *Overpaid tax etc*

- 31 (1) Paragraphs 50 to 51G of Schedule 18 to FA 1998 (overpaid tax etc) apply (so far as relevant) to bank payroll tax assessable for the chargeable period as they apply to corporation tax assessable for an accounting period, subject to the following modifications.
- (2) With respect to bank payroll tax, a claim under paragraph 51 may not be made after 31 August 2014.
- (3) For the purposes of paragraph 51E, the relevant restrictions for making a discovery assessment under this Schedule are—
- (a) the conditions mentioned in paragraph 25(3), and
  - (b) expiry of the relevant deadline as defined in paragraph 27.

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- (4) Nothing in sub-paragraph (1) permits a taxable company to make a claim under paragraph 51 of Schedule 18 to FA 1998 with respect to bank payroll tax merely because an amount determined under paragraph 7(2), 12(2) or 13(3) differs from the amount which is actually paid or provided (or loaned).

*Appeals and other proceedings*

- 32 (1) Part 5 of TMA 1970 (appeals and other proceedings) applies in relation to an appeal against a discovery assessment to bank payroll tax as it applies in relation to an appeal against an assessment to corporation tax.
- (2) References in that Part to tax are to be read accordingly.
- 33 (1) Where a provision of FA 1998 is applied by this Part of this Schedule, a reference in section 46D of TMA 1970 (questions to be determined by the relevant tribunal) to that provision includes a reference to that provision as so applied.
- (2) A reference in section 48 of TMA 1970 (application to appeals and other proceedings) to the Taxes Acts includes a reference to those Acts as applied by this Part of this Schedule.
- (3) Where a provision of FA 1998 is applied by this Part of this Schedule—
- (a) a reference in section 55 of TMA 1970 (recovery of tax not postponed) to that provision includes a reference to that provision as so applied, and
  - (b) references in that section to tax are to be read accordingly.

*Obligation to preserve records*

- 34 (1) Each taxable company must—
- (a) keep such records as may be needed to enable it to establish and verify the amount of bank payroll tax payable by it and to deliver a correct and complete bank payroll tax return, and
  - (b) preserve those records, and any other relevant records, until the end of 31 August 2016.
- (2) Other relevant records are records that—
- (a) may be needed for a purpose mentioned in sub-paragraph (1)(a), and
  - (b) are in the company's possession or power immediately before the commencement of this Schedule.
- (3) The obligation under sub-paragraph (1)(b) may be discharged by—
- (a) preserving the records in any form and by any means, or
  - (b) preserving the information contained in them in any form and by any means.
- (4) The obligation under sub-paragraph (1)(b) includes an obligation to preserve supporting documents (such as contracts, accounts and correspondence).
- 35 (1) A taxable company which fails to comply with paragraph 34 is liable to a penalty of an amount not exceeding £3,000.
- (2) Sections 100 to 102 of TMA 1970 apply to a penalty under this paragraph as they apply to a penalty under section 12B(5) of that Act.

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### *Information powers*

- 36 (1) Schedule 36 to FA 2008 (information and inspection powers) has effect as if the definition of tax in paragraph 63(1) included bank payroll tax.
- (2) Paragraph 21 of that Schedule (taxpayer notices) applies where a taxable company has made a bank payroll tax return as it applies where a person has made a company tax return and, in relation to bank payroll tax—
- (a) a reference in that paragraph to a chargeable period is to the chargeable period within the meaning of this Schedule, and
  - (b) a reference in that paragraph to a notice of enquiry is to a notice of enquiry under paragraph 23 of this Schedule.

### *Penalties*

- 37 (1) Schedule 24 to FA 2007 (penalties for errors) has effect as if in the Table in paragraph 1—
- (a) the list of taxes included bank payroll tax, and
  - (b) the list of documents included a bank payroll tax return.
- (2) In relation to bank payroll tax, any reference in that Schedule to a tax period is to the chargeable period within the meaning of this Schedule.
- 38 (1) Schedule 55 to FA 2009 (penalties for failure to make returns etc) has effect as if—
- (a) a bank payroll tax return were specified in the Table in paragraph 1 (and bank payroll tax were specified in relation to it), and
  - (b) the reference in paragraph 2 to a return falling within certain items in the Table included a reference to a bank payroll tax return.
- (2) Schedule 55 to FA 2009 has effect for the purposes of bank payroll tax in accordance with this paragraph whether or not it has come into force for other purposes.
- 39 (1) Schedule 56 to FA 2009 (penalties for failure to make payments on time etc) has effect for the purposes of bank payroll tax as follows.
- (2) The part of the Table in paragraph 1 headed “Principal amounts” has effect as if bank payroll tax were specified in column 2 and, in relation to that tax—
- (a) an amount shown (or treated as shown) in a bank payroll tax return were specified in column 3, and
  - (b) 31 August 2010 were specified in column 4.
- (3) The part of that Table headed “Amounts payable in default of a return being made” has effect as if bank payroll tax were specified in column 2 and, in relation to that tax—
- (a) an amount shown in a determination under paragraph 24 of this Schedule were specified in column 3, and
  - (b) 31 August 2010 were specified in column 4.
- (4) The part of that Table headed “Amount shown to be due in other assessments, determinations, etc” has effect as if—
- (a) bank payroll tax were a tax falling within any of items 1 to 6, 9 or 10, and
  - (b) an amount shown (or treated as shown) in a bank payroll tax return were an amount falling within any of those items.

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- (5) Paragraph 2 (assessments and determinations in default of return) has effect as if the reference in paragraph (a) to a return falling within any item in the Table in Schedule 55 included a reference to a bank payroll tax return.
- (6) Paragraph 3 (amount of penalty) has effect as if sub-paragraph (1)(a) included a reference to a payment of bank payroll tax.
- (7) Schedule 56 to FA 2009 has effect for the purposes of bank payroll tax in accordance with this paragraph whether or not it has come into force for other purposes.

#### *Miscellaneous*

- 40 (1) The following provisions of TMA 1970 apply for the purposes of bank payroll tax and this Schedule as they apply for the purposes of corporation tax and the Taxes Acts—
  - (a) section 108 (responsibility of company officers),
  - (b) section 112 (loss, destruction or damage to assessments, returns etc),
  - (c) section 114 (want of form), and
  - (d) section 115 (delivery and service of documents).
- (2) The application of section 115 of TMA 1970 in relation to the delivery of bank payroll tax returns is subject to any requirements published under paragraph 19(1) of this Schedule.
- 41 Chapter 6 of Part 22 of CTA 2010 (collection etc of tax from UK representatives of non-UK resident companies) applies to this Part of this Schedule as it applies to enactments relating to corporation tax.
- 42 Section 118(5) to (7) of TMA 1970 (meaning of carelessly etc) applies for the interpretation of this Part of this Schedule, with references to tax being read as references to bank payroll tax.

### PART 3

#### DEFINITIONS

##### *“UK resident bank” and “relevant foreign bank”*

- 43 (1) “UK resident bank” means a company which—
  - (a) is resident in the United Kingdom,
  - (b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),
  - (c) is a person—
    - (i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 44(1)(a), or
    - (ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in paragraph 44(1)(b) to (f) and which meets the capital resources condition,

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- (d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade, and
  - (e) is not an excluded company.
- (2) “UK resident bank” also includes a company which—
- (a) meets the conditions in sub-paragraph (1)(a) and (e), and
  - (b) is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (d).
- (3) “Relevant foreign bank” means a company which—
- (a) is not resident in the United Kingdom,
  - (b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),
  - (c) is a person which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom and—
    - (i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 44(1)(a), or
    - (ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in paragraph 44(1)(b) to (f) and which meets the capital resources condition,
  - (d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of that trade, and
  - (e) is not an excluded company.
- (4) “Relevant foreign bank” also includes a company which—
- (a) meets the conditions in sub-paragraph (3)(a) and (e), and
  - (b) is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (d).

*“Relevant regulated activity”, “capital resources condition”, “excluded company”, “asset management activities”, “linked entity” etc*

- 44 (1) “Relevant regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—
- (a) article 5 (accepting deposits),
  - (b) article 14 (dealing in investments as principal),
  - (c) article 21 (dealing in investments as agent),
  - (d) article 25 (arranging deals in investments),
  - (e) article 40 (safeguarding and administering investments), and
  - (f) article 61 (entering into regulated mortgage contracts).
- (2) “The capital resources condition” is that the company has a capital resources requirement of at least £100 million.
- (3) But if the company is a member of a group, “the capital resources condition” is that the company and—
- (a) any other companies which—
    - (i) are members of the group,

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- (ii) meet either of the conditions in sub-paragraph (4),
  - (iii) are not excluded companies, and
  - (iv) are not members of any partnership within paragraph (b), and
- (b) any partnership—
  - (i) the members of which are or include one or more companies that are members of the group and not excluded companies, and
  - (ii) which meets either of those conditions,
 have (in aggregate) capital resources requirements of at least that amount.
- (4) The conditions referred to in sub-paragraph (3) are that the company or partnership—
  - (a) is both a BIPRU 730k firm and a full scope BIPRU investment firm, or
  - (b) is a company or partnership which carries on in the United Kingdom activities including the relevant regulated activity described in the provision mentioned in sub-paragraph (1)(a).
- (5) For the purposes of sub-paragraphs (2) and (3) the capital resources requirement of a company or a partnership is that as at the end of the last period of account of the company or partnership ending no later than the end of the chargeable period.
- (6) In determining whether the company is a UK resident bank or a relevant foreign bank by virtue of paragraph 43(2) or (4), the references in sub-paragraph (2) to the company are to the partnership.
- (7) If any company or partnership whose capital resources may be material for the purposes of sub-paragraph (2) or (3) prepares its accounts in a currency other than sterling, the amount of its capital resources at the end of the period of account mentioned in that sub-paragraph is to be translated into its sterling equivalent by reference to the average spot rate of exchange on the day on which that period ends.
- (8) If any company whose capital resources may be material for the purposes of sub-paragraph (2) or (3) carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom, its capital resources are to be determined as they would be for the purposes of corporation tax (see Chapter 4 of Part 2 of CTA 2009).
- (9) “Excluded company” means a company which is—
  - (a) an insurance company or an insurance special purpose vehicle,
  - (b) a company which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or insurance special purpose vehicle which is a member of the same group,
  - (c) a company which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme,
  - (d) an investment trust (within the meaning given by section 1158 of CTA 2010),
  - (e) a company which does not carry on any relevant regulated activities other than asset management activities,
  - (f) an exempt BIPRU commodities firm,
  - (g) a company which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives,
  - (h) a company which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences as principal with persons all or all but an insignificant proportion of whom are



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- retail clients or of dealing in contracts for differences with another person to enable the company or other person to deal in contracts for differences as principal with such persons,
- (i) a society incorporated under the Friendly Societies Act 1992,
  - (j) a society registered as a credit union under the Industrial and Provident Societies Act 1965 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (NI 12)), or
  - (k) a building society.
- (10) “Asset management activities” means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—
- (a) acting as the operator of a collective investment scheme (within the meaning of Part 17 of FISMA 2000: see sections 235 and 237 of that Act),
  - (b) acting as a discretionary investment manager for clients none of which is a linked entity, and
  - (c) acting as an authorised corporate director.
- (11) “Linked entity”, in relation to a company (“C”), means—
- (a) a member of the same group as C,
  - (b) a company in which a company which is a member of the same group as C has a major interest (within the meaning of Part 5 of CTA 2009: see section 473 of that Act), or
  - (c) a partnership the members of which include a company—
    - (i) which is a member of the same group as C, and
    - (ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the chargeable period is at least a 40% share (see Part 17 of CTA 2009 for provisions about shares of partnership profits and losses).
- (12) The following have the meanings given in the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time)—
- “authorised corporate director”,
  - “BIPRU 730k firm”,
  - “capital resources requirement”,
  - “contracts for differences”,
  - “discretionary investment manager”,
  - “exempt BIPRU commodities firm”,
  - “full scope BIPRU investment firm”,
  - “pension scheme”,
  - “principal”, and
  - “retail clients”.
- (13) A company which would be a BIPRU 730k firm and a full scope BIPRU investment firm by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one.
- (14) The Treasury may by order amend this paragraph.

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- (15) An order under this paragraph may be made so as to have effect in relation to any time after the beginning of the chargeable period.
- (16) An order under this paragraph is to be made by statutory instrument.
- (17) An order under this paragraph may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

*“Member of a banking group”*

- 45 (1) A company is a “member of a banking group” at any time if—
- (a) it is within sub-paragraph (2) at that time, or
  - (b) it was within that sub-paragraph immediately before the chargeable period.
- (2) A company is within this sub-paragraph if—
- (a) it is a member of a group,
  - (b) any of conditions A to C is met, and
  - (c) the group does not meet the exempt activities test.
- (3) Condition A is that the principal company of the group is a UK resident bank or a relevant foreign bank.
- (4) Condition B is that—
- (a) the principal company of the group is a company which is not resident in the United Kingdom but which (if it were so resident) would be a UK resident bank, or
  - (b) the principal company of the group is a company which is not resident in the United Kingdom, and is a member of a partnership which is not so resident, but which (if both the company and the partnership were so resident) would be a UK resident bank,
- and (in either case) any member of the group is a UK resident bank or a relevant foreign bank.
- (5) Condition C is that—
- (a) the principal company is the holding company of another company, and
  - (b) if that other company were the principal company of the group, condition A or B would be met.
- (6) For the purposes of condition C a company (“H”) is a “holding company” of another company (“S”) if—
- (a) H is an investment company, and
  - (b) S is—
    - (i) an effective 51% subsidiary of H, and
    - (ii) not an effective 51% subsidiary of any company which is not an investment company.
- (7) A group meets the exempt activities test if at least 90% of the trading income of the group for the relevant period is derived from exempt activities.
- (8) For this purpose—
- “exempt activities” means—

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- (a) insurance activities, asset management activities and related activities, and
- (b) activities carried on by a company which is not a financial trading company (or a company which would be a financial trading company if it were resident in the United Kingdom) other than lending activities or dealing on own account,

“the relevant period”, in relation to a group, means the last period of account of the group ending no later than the end of the chargeable period, and

“the trading income of the group” for the relevant period is to be calculated in accordance with paragraph 46.

(9) In sub-paragraph (8)—

“insurance activities” means—

- (a) the effecting or carrying out of contracts of insurance by a regulated insurer, and
- (b) investment business that arises directly from activities falling within paragraph (a);

“lending activities” means—

- (a) acceptance of deposits or other repayable funds,
- (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting),
- (c) finance leasing (as lessor),
- (d) issuing and administering means of payment,
- (e) provision of guarantees or commitments to provide money,
- (f) money transmission services,
- (g) provision of alternative finance arrangements, and
- (h) other activities carried on in connection with activities falling within any of paragraphs (a) to (g);

“related activities” means—

- (a) activities which are ancillary to insurance activities or asset management activities of any company which is a member of the group (whether or not the company carrying on the insurance activities or asset management activities), and
- (b) activities which would not be carried on but for such insurance activities or asset management activities being carried on,

but does not include dealing on own account.

(10) In sub-paragraph (9)—

“activities” includes buying, holding, managing and selling assets;

“regulated insurer”, in relation to a group, means a member of the group that—

- (a) is authorised under the law of any territory to carry on insurance business, or
- (b) is a member of a body or organisation which is so authorised.

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- (11) A company which is a member of a banking group ceases to be a member of a banking group when it ceases to be within sub-paragraph (2), but only if it ceases to be within that provision as a result of—
- (a) an arm's length transaction undertaken for wholly commercial purposes, or
  - (b) following a recommendation of a relevant regulatory body.
- (12) For the purposes of sub-paragraph (11) obtaining a tax advantage is not a commercial purpose.
- (13) “Tax advantage” means—
- (a) a relief from tax or increased relief from tax (relief here including a tax credit),
  - (b) a repayment of tax or increased repayment of tax,
  - (c) the avoidance or reduction of a charge to tax or an assessment to tax (obtained in any way), or
  - (d) the avoidance of a possible assessment to tax (so obtained),
- and, for this purpose, “tax” includes bank payroll tax and any other tax.
- (14) In sub-paragraph (11) “relevant regulatory body” means—
- (a) the Financial Services Authority, or
  - (b) a body discharging functions under the law of a country or territory outside the United Kingdom corresponding to functions discharged by the Financial Services Authority.
- (15) In this paragraph “dealing on own account” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (see Article 4(1)(6)).

*“The trading income of the group” for the relevant period*

- 46 (1) This paragraph applies for calculating the “trading income of the group” for the relevant period for the purposes of paragraph 45.
- (2) The trading income for the group for the relevant period is the aggregate of—
- (a) the gross income calculated in accordance with sub-paragraph (3), and
  - (b) the net income calculated in accordance with sub-paragraph (4).
- (3) The income referred to in sub-paragraph (2)(a) is the gross income—
- (a) arising from the activities of the group (other than net-basis activities), and
  - (b) disclosed as such in the financial statements of the group,
- without taking account of any deductions (whether for expenses or otherwise).
- (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the group that—
- (a) is accounted for as such under international accounting standards or in accordance with practice which is generally accepted accounting practice in the territory in which the principal company of the group is resident, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under such standards or in accordance with such practice.
- (5) In this paragraph “net-basis activities” means activities normally reported on a net basis in financial statements prepared in accordance with such standards or practice.

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*“Investment company” etc*

- 47 (1) “Investment company”—
- (a) means a company whose business consists wholly or mainly of, and the principal part of whose income is derived from, the making of investments, and
  - (b) also includes any savings bank or other bank for savings.
- (2) “UK resident investment company” means an investment company which is resident in the United Kingdom.

*“Financial trading company” etc*

- 48 (1) “Financial trading company” means a company which—
- (a) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act), or
  - (b) is not within paragraph (a) but carries on a trade consisting wholly or partly in dealing in securities.
- (2) “UK resident financial trading company” means a financial trading company which is resident in the United Kingdom.
- (3) “Relevant foreign financial trading company” means a company which meets conditions A and B.
- (4) Condition A is that the company—
- (a) is not resident in the United Kingdom, and
  - (b) carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (5) Condition B is that, disregarding any activities of the company other than those carried on through that permanent establishment, the company is a financial trading company.
- (6) In this paragraph “securities” includes—
- (a) shares,
  - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of that Act, and
  - (c) in the case of a company with no share capital, interests in the company possessed by members of the company.

*Other interpretative provisions*

- 49 (1) In this Schedule—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “benefit” includes a facility of any kind;
  - “building society” means a building society within the meaning of the Building Societies Act 1986;
  - “the Commissioners” means the Commissioners of Her Majesty’s Revenue and Customs;
  - “contract of insurance” has the meaning given by section 431(2) of ICTA;
  - “control” has the meaning given by section 995 of ITA 2007;

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“employment”, “employee” and “employer” have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act);

“enactment” includes an enactment or instrument (whenever passed or made);

“HMRC” means Her Majesty's Revenue and Customs;

“insurance company” and “insurance special purpose vehicle” have the meaning given by section 431(2) of ICTA;

“market value” has the same meaning it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act;

“money's worth” has the meaning given by section 62(3) of ITEPA 2003;

“partnership” includes—

- (a) a limited liability partnership, and
- (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership (and “member”, in relation to a partnership, is to be read accordingly);

“period of account” and “permanent establishment” have the meaning given by section 1119 of CTA 2010;

“the tax year 2009-10” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007).

- (2) Section 170(2) to (11) of TCGA 1992 (“group”, “principal company”, “effective 51% subsidiary”, “company” etc) has effect for the interpretation of this Schedule as for the interpretation of sections 171 to 181 of that Act.
- (3) Section 993 of ITA 2007 (meaning of “connected” persons) applies for the purposes of this Schedule.
- (4) For the purposes of this Schedule the territory in which a company is resident is to be determined as for the purposes of the Corporation Tax Acts.

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