



# Finance (No. 2) Act 2015

## 2015 CHAPTER 33

### PART 4

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

##### *Income tax*

#### **21 Pensions: special lump sum death benefits charge**

- (1) Section 206 of FA 2004 (special lump sum death benefits charge) is amended in accordance with subsections (2) to (5).
- (2) In each of subsections (1), (1A), (1B)(a) and (1C)(a) (which specify payments attracting the charge) after “paid” insert “, to a non-qualifying person,”.
- (3) In subsection (1B)(b) (payments attracting charge if paid more than 2 years after death of member under 75), before the “or” at the end of sub-paragraph (ii) insert—  
“(ia) a defined benefits lump sum death benefit,”.
- (4) In subsection (7) (sums taxed under section 206 not income for income tax purposes), at the end insert “(but see subsection (8)).”
- (5) After subsection (7) insert—
  - “(8) Where—
    - (a) a lump sum death benefit in respect of which tax is charged under this section is one paid to a non-qualifying person in the person’s capacity as a trustee, and
    - (b) a payment of any part of the lump sum is made out of a settlement to a beneficiary who is an individual,

the amount received by the beneficiary, together with so much of the tax charged under this section on the lump sum as is attributable to the amount received by the beneficiary, is income of the beneficiary for income tax purposes but the beneficiary may claim to deduct that much of that tax from

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the income tax charged on the beneficiary's total income for the tax year in which the payment is made to the beneficiary.

(9) For the purposes of this section, a person is a “non-qualifying person” in relation to payment of a lump sum if—

- (a) the person is not an individual, or
- (b) the person is an individual and the payment is made to the person in the person's capacity as—
  - (i) a trustee or personal representative,
  - (ii) a director of a company,
  - (iii) a partner in a firm, or
  - (iv) a member of a limited liability partnership,

except that a person is not a “non-qualifying person” in relation to payment of a lump sum if the payment is made to the person in the person's capacity as a bare trustee.

(10) In subsection (9)—

“bare trustee” means a person acting as trustee for—

- (a) an individual absolutely entitled as against the trustee,
- (b) two or more individuals who are so entitled,
- (c) an individual who would be so entitled but for being a minor or otherwise lacking legal capacity, or
- (d) two or more individuals who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity,

“director” is read in accordance with section 452 of CTA 2010, and references to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).”

(6) In section 251(4) of FA 2004 (powers to impose information requirements), after paragraph (b) insert—

“(ba) requiring, in a case where a payment (“the onwards payment”) is made directly or indirectly out of a sum on whose payment tax has been charged under section 206, the person making the onwards payment to provide information of a prescribed description to the person to whom the onwards payment is made.”

(7) In paragraph 16 of Schedule 32 to FA 2004 (benefit crystallisation event 7: defined benefits lump sum death benefit is a “relevant lump sum death benefit”)—

- (a) in the first sentence, in paragraph (a), after “benefit” insert “, other than one—
  - (i) paid by a registered pension scheme in respect of a member of the scheme who had not reached the age of 75 at the date of the member's death, but
  - (ii) not paid before the end of the relevant two-year period”, and
- (b) in the second sentence, for “sub-paragraph” substitute “paragraphs (a)(ii) and”.

(8) In Part 2 of Schedule 29 to FA 2004 (interpretation of lump sum death benefit rule), in paragraph 13 (defined benefits lump sum death benefit)—

- (a) in sub-paragraph (1) omit the second sentence (exclusion of sums paid more than 2 years after death of member under 75), and
  - (b) omit sub-paragraph (2) (interpretation of that sentence).
- (9) In consequence of subsection (8), in paragraph 33 of Schedule 16 to FA 2011—
- (a) in sub-paragraph (3) omit paragraph (c), and
  - (b) omit sub-paragraph (4).
- (10) The amendments made by this section have effect in relation to lump sums paid on or after 6 April 2016.

## **22 Pensions: some lump sum death benefits taxed as pension income**

- (1) Part 9 of ITEPA 2003 (pension income) is amended in accordance with subsections (2) to (7).
- (2) In section 636A (lump sums under registered pension schemes) for subsection (4) (certain death benefit lump sums) substitute—
- “(4) If a lump sum under a registered pension scheme—
- (a) is listed in section 636AA, and
  - (b) is paid to a non-qualifying person (see subsection (8)),
- the sum is subject to income tax under section 206 of FA 2004 (charge to tax on scheme administrator in respect of certain lump sum death benefits) and not otherwise (but see section 206(8) of FA 2004).
- (4ZA) If a lump sum under a registered pension scheme—
- (a) is listed in section 636AA, and
  - (b) is paid to a qualifying person (see subsection (8)),
- section 579A applies in relation to the sum as it applies to any pension under a registered pension scheme.”
- (3) In section 636A(1) (no liability to income tax on certain lump sum death benefits)—
- (a) after paragraph (c) insert “or”, and
  - (b) omit paragraph (d) (certain defined benefits lump sum death benefits) and the “or” preceding it.
- (4) In section 636A, after subsection (7) insert—
- “(8) For the purposes of this section—
- (a) a person is a “non-qualifying person” in relation to payment of a lump sum if, for the purposes of section 206 of FA 2004, the person is a non-qualifying person in relation to payment of the sum, and
  - (b) a person is a “qualifying person” in relation to payment of a lump sum except where the person is a non-qualifying person in relation to payment of the sum.”
- (5) After section 636A insert—

### **“636AA Taxable lump sum death benefits**

- (1) The following are the lump sums mentioned in section 636A(4) and (4ZA).

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- (2) An annuity protection lump sum death benefit, or a pension protection lump sum death benefit, paid in respect of a member of the scheme who had reached the age of 75 at the date of the member's death.
- (3) A drawdown pension fund lump sum death benefit under paragraph 17(1) of Schedule 29 to FA 2004, a flexi-access drawdown fund lump sum death benefit under paragraph 17A(1) of that Schedule, a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit—
- (a) paid in respect of a member of the scheme who had reached the age of 75 at the date of the member's death, or
  - (b) paid in respect of a member of the scheme who had not reached the age of 75 at the date of the member's death, but not paid before the end of the relevant 2-year period in respect of the member's death.
- (4) A drawdown pension fund lump sum death benefit under paragraph 17(2) of Schedule 29 to FA 2004 or a flexi-access drawdown fund lump sum death benefit under paragraph 17A(2) of that Schedule—
- (a) paid on the death of a dependant of a deceased member of the scheme where the dependant had reached the age of 75 at the date of the dependant's death, or
  - (b) paid on the death of a dependant of a deceased member of the scheme where the dependant had not reached the age of 75 at the date of the dependant's death, but not paid before the end of the relevant 2-year period in respect of the dependant's death.
- (5) A flexi-access drawdown fund lump sum death benefit under paragraph 17A(3) or (4) of Schedule 29 to FA 2004—
- (a) paid on the death of a nominee or successor (as the case may be) of a deceased member of the scheme where the nominee or successor ("the beneficiary") had reached the age of 75 at the date of the beneficiary's death, or
  - (b) paid on the death of a nominee or successor (as the case may be) of a deceased member of the scheme where the nominee or successor ("the beneficiary") had not reached the age of 75 at the date of the beneficiary's death, but not paid before the end of the relevant 2-year period in respect of the beneficiary's death.
- (6) In this section—
- "dependant", "nominee" and "successor" have the meaning given, respectively, by paragraphs 15, 27A and 27F of Schedule 28 to FA 2004, and
- "relevant 2-year period", in relation to a death, means the period of 2 years beginning with the earlier of—
- (a) the day on which the scheme administrator of the scheme mentioned in section 636A(4) or (4ZA) (as the case may be) first knew of the death, and
  - (b) the day on which that scheme administrator could first reasonably have been expected to have known of it.
- (7) Section 636A(4A) and (7) (interpretation) apply also for the purposes of this section."

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- (6) In section 579CA as substituted by paragraph 117 of Schedule 45 to FA 2013 (pensions under registered pension schemes: temporary non-residents), in subsection (4) (which lists relevant withdrawals) as substituted by the Taxation of Pensions Act 2014—
- (a) omit the “or” at the end of paragraph (k), and
  - (b) after paragraph (l) insert “, or
    - (m) any payment to the person of a lump sum to which section 579A applies by virtue of section 636A(4ZA).”
- (7) In the version of section 579CA which has effect if the year of departure is the tax year 2012-13 or an earlier tax year, in subsection (3A) (which lists relevant withdrawals)—
- (a) omit the “or” at the end of paragraph (k), and
  - (b) after paragraph (l) insert “, or
    - (m) any payment to the person of a lump sum to which section 579A applies by virtue of section 636A(4ZA).”
- (8) In section 683 of ITEPA 2003 (meaning of “PAYE income”)—
- (a) in subsection (3) (meaning, subject to subsections (3A) and (3B), of “PAYE pension income”) for “and (3B)” substitute “to (3C)”, and
  - (b) after subsection (3B) insert—

“(3C) PAYE pension income” for a tax year does not include any taxable pension income that is treated as accruing in that tax year by virtue of section 636A(1A) to (1C) or (4ZA) so far as having effect as applied by paragraph 1(3)(da) or (db) of Schedule 34 to FA 2004.”
- (9) In section 168(2) of FA 2004 (meaning of “lump sum death benefit”), at the end insert “, or a lump sum payable in respect of the member on the subsequent death of a dependant, nominee or successor of the member.”
- (10) In Schedule 34 to FA 2004 (application of certain charges to non-UK pension schemes) —
- (a) in paragraph 1(3) (meaning of “member payment charges”), before the “and” at the end of paragraph (da) insert—
    - “(db) the charge under section 636A(4ZA) of ITEPA 2003 (certain payments of lump sum death benefits),” and
  - (b) in paragraph 1(4)(b) (provisions of ITEPA 2003 which are “member payment provisions”) after “636A(1A) to (1C)” insert “and (4ZA) and section 636AA”.
- (11) In consequence of subsections (2) and (3)—
- (a) in Schedule 16 to FA 2011, omit paragraph 42(2)(b) and (4), and
  - (b) in the Taxation of Pensions Act 2014—
    - (i) in Schedule 1 omit paragraph 31(a), and
    - (ii) in Schedule 2 omit paragraph 19(3)(a)(i).
- (12) The amendments made by subsections (2) to (8), (10) and (11) have effect in relation to lump sums paid on or after 6 April 2016.
- (13) The amendment made by subsection (9) is to be treated as having come into force on 15 July 2015.

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## **23 Pensions: annual allowance**

Schedule 4 contains provision in connection with the annual allowance for inputs into pension schemes.

## **24 Relief for finance costs related to residential property businesses**

- (1) ITTOIA 2005 is amended in accordance with subsections (2) to (6).
- (2) After section 272 insert—

### **“272A Restricting deductions for finance costs related to residential property**

- (1) Where a deduction is allowed for costs of a dwelling-related loan in calculating the profits of a property business for the tax year 2017-18, the amount allowed to be deducted in respect of those costs in calculating those profits for income tax purposes is 75% of what would be allowed apart from this section.
- (2) Where a deduction is allowed for costs of a dwelling-related loan in calculating the profits of a property business for the tax year 2018-19, the amount allowed to be deducted in respect of those costs in calculating those profits for income tax purposes is 50% of what would be allowed apart from this section.
- (3) Where a deduction is allowed for costs of a dwelling-related loan in calculating the profits of a property business for the tax year 2019-20, the amount allowed to be deducted in respect of those costs in calculating those profits for income tax purposes is 25% of what would be allowed apart from this section.
- (4) In calculating the profits of a property business for income tax purposes for the tax year 2020-21 or any subsequent tax year, no deduction is allowed for costs of a dwelling-related loan.
- (5) Subsections (1) to (4) do not apply in relation to calculating the profits of a property business for the purposes of charging a company to income tax on so much of those profits as accrue to it otherwise than in a fiduciary or representative capacity.
- (6) For the meaning of “costs of a dwelling-related loan” see section 272B.

### **272B Meaning of “costs of a dwelling-related loan”**

- (1) Subsections (2) to (5) apply for the purposes of section 272A.
- (2) “Dwelling-related loan”, in relation to a property business, means so much of an amount borrowed for purposes of the business as is referable (on a just and reasonable apportionment) to so much of the business as is carried on for the purpose of generating income from—
  - (a) land consisting of a dwelling-house or part of a dwelling-house, or
  - (b) an estate, interest or right in or over land within paragraph (a),but see subsections (3) and (4).

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- (3) Anything that in the course of a property business is done for creating (by construction or adaptation) a dwelling-house, or part of a dwelling-house, from which income is to be generated is, for the purposes of subsection (2), to be treated as done for the purpose mentioned in that subsection.
  - (4) An amount borrowed for purposes of a property business is not a dwelling-related loan so far as the amount is referable (on a just and reasonable apportionment) to so much of the property business as consists of the commercial letting of furnished holiday accommodation.
  - (5) “Costs”, in relation to a dwelling-related loan, means—
    - (a) interest on the loan,
    - (b) an amount in connection with the loan that, for the person receiving or entitled to the amount, is a return in relation to the loan which is economically equivalent to interest, or
    - (c) incidental costs of obtaining finance by means of the loan.
  - (6) Section 58(2) to (4) (meaning of “incidental costs of obtaining finance”) apply for the purposes of subsection (5)(c).
  - (7) A reference in this section to a “dwelling-house” includes any land occupied or enjoyed with it as its garden or grounds.”
- (3) In section 274(1)(b) (rules which override rules allowing deductions) after “as applied by section 272” insert “, and to section 272A (finance costs)”.
  - (4) In section 274(3) (meaning of “relevant prohibitive rule”) after “as applied by section 272” insert “, and apart also from section 272A”.
  - (5) After section 274 insert—

*“Tax reduction for non-deductible costs of a dwelling-related loan*

#### **274A Tax reduction for individuals**

- (1) Subsections (2) to (5) apply if—
  - (a) an amount (“A”) would be deductible in calculating the profits for income tax purposes of a property business for a tax year but for section 272A, and
  - (b) a particular individual is liable to income tax on N% of those profits, where N is a number—
    - (i) greater than 0, and
    - (ii) less than or equal to 100.
- (2) The individual is entitled to relief under this section for the tax year in respect of an amount (the “relievable amount”) equal to N% of A.
- (3) Subject to subsection (4), the amount of the relief is given by—

$$\mathbf{BR \times L}$$

where BR is the basic rate of income tax for the year, and L is the lower of—

- (a) the total of—
  - (i) the relievable amount, and

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- (ii) any difference available in relation to the individual and the property business for carry-forward to the year under subsection (5), and
  - (b) the profits for income tax purposes of the property business for the year after any deduction under section 118 of ITA 2007 (“the adjusted profits”) or, if less, the share of the adjusted profits on which the individual is liable to income tax.
- (4) If the individual’s gross finance-costs relief for the year (“GFCR”) is greater than the individual’s adjusted total income for the year (“ATI”), the amount of the relief under this section for the year in respect of the relievable amount is—

$$\frac{\text{ATI}}{\text{GFCR}} \times (\text{BR} \times \text{L})$$

where BR and L have the same meaning as in subsection (3).

- (5) Where the amount (“AY”) of the relief under this section for the year in respect of the relievable amount is less than—

$$\text{BR} \times \text{T}$$

where BR is basic rate of income tax for the year and T is the total found at subsection (3)(a), the difference between—

- (a) T, and
  - (b) AY divided by BR (with BR expressed as a fraction for this purpose),
- is available in relation to the individual and the property business for carry-forward to the following tax year.
- (6) For the purposes of this section—
- (a) an individual’s adjusted total income for a tax year is the individual’s total income for that year less the total of—
    - (i) so much of that total income as is savings income,
    - (ii) so much of that total income as is dividend income, and
    - (iii) any allowances to which the individual is entitled for that year under Chapter 2 of Part 3 of ITA 2007 (individuals: personal and blind person’s allowance), and
  - (b) an individual’s gross finance-costs relief for a tax year is the total relief to which the individual is entitled for the year under this section before any adjustment under subsection (4).

### **274B Tax reduction for accumulated or discretionary trust income**

- (1) Subsections (2) to (4) apply if—
- (a) an amount (“A”) would be deductible in calculating the profits for income tax purposes of a property business for a tax year but for section 272A,
  - (b) the trustees of a particular settlement are liable for income tax on N % of those profits, where N is a number—
    - (i) greater than 0, and
    - (ii) less than or equal to 100, and



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(c) in relation to those trustees, that N% of those profits is accumulated or discretionary income.

(2) The trustees of the settlement are entitled to relief under this section for the tax year in respect of an amount (“the relievable amount”) equal to N% of A.

(3) The amount of the relief is given by—

$$BR \times L$$

where BR is the basic rate of income tax for the year, and L is the lower of—

(a) the total of—

- (i) the relievable amount, and
- (ii) any difference available in relation to the trustees of the settlement and the property business for carry-forward to the year under subsection (4), and

(b) the profits for income tax purposes of the property business for the year after any deduction under section 118 of ITA 2007 (“the adjusted profits”) or, if less, the share of the adjusted profits—

- (i) on which the trustees of the settlement are liable to income tax, and
- (ii) which, in relation to the trustees of the settlement, is accumulated or discretionary income.

(4) Where the amount (“AY”) of the relief under this section for the year in respect of the relievable amount is less than—

$$BR \times T$$

where BR is the basic rate of income tax for the year and T is the total found at subsection (3)(a), the difference between—

(a) T, and

(b) AY divided by BR (with BR expressed as a fraction for this purpose), is available in relation to the trustees of the settlement and the property business for carry-forward to the following tax year.

(5) In this section “accumulated or discretionary income” has the meaning given by section 480 of ITA 2007.”

(6) In section 322 (which lists provisions relying on the definition of “commercial letting of furnished holiday accommodation”)—

(a) in subsections (2) and (2A), before paragraph (a) insert—

“(za) section 272B(4) (exception from restriction on deductibility of finance costs),”

(b) in subsection (2), before the “and” at the end of paragraph (g) insert—

“(ga) section 399A(9) of ITA 2007 (exception from restriction on deductibility of interest on loans to invest in partnerships),” and

(c) in subsection (2A), before the “and” at the end of paragraph (e) insert—

“(ea) section 399A(9) of ITA 2007 (exception from restriction on deductibility of interest on loans to invest in partnerships),”.

(7) In ITA 2007, after section 399 insert—

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**“399A Property partnerships: restriction of relief for investment loan interest**

- (1) This section applies to interest on a loan within section 398 if—
  - (a) the partnership concerned carries on a property business, and
  - (b) that property business or part of it is carried on for the purpose of generating income from—
    - (i) land consisting of a dwelling-house or part of a dwelling-house, or
    - (ii) an estate, interest or right in or over land within subparagraph (i).
- (2) Subsections (3) to (6) have effect to restrict relief under section 383(1) for so much of the interest as is referable (on a just and reasonable apportionment) to the property business or (as the case may be) the part of it within subsection (1) (b).
- (3) For the tax year 2017-18, the amount of that relief is 75% of what would be given apart from this section.
- (4) For the tax year 2018-19, the amount of that relief is 50% of what would be given apart from this section.
- (5) For the tax year 2019-20, the amount of that relief is 25% of what would be given apart from this section.
- (6) For the tax year 2020-21 and subsequent tax years, that interest is not eligible for relief under this Chapter.
- (7) Section 399(4) is to be applied in relation to the tax year to which subsection (3), (4) or (5) applies before that subsection is applied in relation to that tax year.
- (8) Anything that in the course of a property business is done for creating (by construction or adaptation) a dwelling-house, or part of a dwelling-house, from which income is to be generated is, for the purposes of subsection (1) (b), to be treated as done for the purpose mentioned in subsection (1)(b).
- (9) A property business, or part of a property business, that consists of the commercial letting of furnished holiday accommodation (as defined by Chapter 6 of Part 3 of ITTOIA 2005) is not within subsection (1)(b).
- (10) A reference in this section to a “dwelling-house” includes any land occupied or enjoyed with it as its garden or grounds.
- (11) In this section “property business” means a UK property business or an overseas property business.

**399B Property partnerships: tax reduction for non-deductible loan interest**

- (1) Subsections (2) and (3) apply if for a tax year an individual would be given relief for an amount (“the relievable amount”) by section 383(1) but for section 399A.

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(2) The individual is entitled to relief under this section for the tax year in respect of the relievable amount.

(3) The amount of the relief is given by—  
**BR × the relievable amount**

where BR is the basic rate of income tax for the year.”

(8) In section 26(1)(a) of ITA 2007 (tax reductions deductible at Step 6 of the calculation in section 23 of ITA 2007)—

(a) after the entry for Chapter 1 of Part 7 of ITA 2007 insert—  
“section 399B (relief for non-deductible interest on loan to invest in partnership with residential property business),” and

(b) before the entry for section 535 of ITTOIA 2005 insert—  
“section 274A of ITTOIA 2005 (property business: relief for non-deductible costs of a dwelling-related loan),”.

(9) In section 26(2) of ITA 2007 (tax reductions deductible at Step 6 of the calculation in section 23 of ITA 2007 in the case of taxpayer who is not an individual), before the “and” at the end of paragraph (a) insert—

“(aa) section 274B of ITTOIA 2005 (trusts with accumulated or discretionary income derived from property business: relief for non-deductible costs of dwelling-related loans),”.

## **25 Enterprise investment scheme**

Schedule 5 contains amendments of Part 5 of ITA 2007 (enterprise investment scheme).

## **26 Venture capital trusts**

Schedule 6 contains amendments of Part 6 of ITA 2007 (venture capital trusts).

## **27 EIS, VCTs etc: excluded activities**

(1) In section 192 of ITA 2007 (excluded activities for the purposes of sections 181 and 189 (and, by virtue of section 257HF(2), Part 5A)), in subsection (1)—

(a) in paragraph (kb), omit the final “and”;

(b) after paragraph (kb) insert—  
“(kc) making reserve electricity generating capacity available (or, where such capacity has been made available, using it to generate electricity), and”.

(2) In section 303 of ITA 2007 (excluded activities for the purposes of sections 290 and 300), in subsection (1)—

(a) in paragraph (kb), omit the final “and”;

(b) after paragraph (kb) insert—  
“(kc) making reserve electricity generating capacity available (or, where such capacity has been made available, using it to generate electricity), and”.

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- (3) The amendment made by subsection (1) has effect in relation to shares issued on or after 30 November 2015.
- (4) The amendment made by subsection (2) has effect in relation to relevant holdings issued on or after 30 November 2015.

## **28 EIS, VCTs and EMI: meaning of “farming”**

- (1) In section 996 of ITA 2007 (meaning of “farming” and related expressions), omit subsection (7).
- (2) The amendment made by subsection (1)—
  - (a) in relation to the application of section 996 of ITA 2007 for the purposes of section 192(1) of that Act, has effect in relation to shares issued on or after the day on which this Act is passed;
  - (b) in relation to the application of section 996 of that Act for the purposes of section 303(1) of that Act, has effect for the purposes of determining whether shares or securities issued on or after that day are to be regarded as comprised in a company’s qualifying holdings;
  - (c) in relation to the application of section 996 for the purposes of paragraph 16 of Schedule 5 to ITEPA 2003, has effect in relation to options granted on or after that day.

## **29 Travel expenses of members of local authorities etc**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 229(2) (mileage allowance payments), for “section 236(1)” substitute “sections 235A and 236(1)”.
- (3) After section 235 insert—

### **“235A Journeys made by members of local authorities etc**

- (1) Subject to subsections (2) and (3), a qualifying journey made by a member of a relevant authority is to be treated as business travel for the purposes of this Chapter if a qualifying payment is made by the authority—
  - (a) to the member for expenses related to the member’s use for the journey of a vehicle to which this Chapter applies, or
  - (b) to another member of the authority for carrying the member as a passenger on the journey in a car or van.
- (2) A qualifying journey is not to be treated as business travel—
  - (a) for the purposes of section 231, or
  - (b) when calculating for the purposes of that section the mileage allowance payments paid to the member in respect of the journey and the approved amount for such payments.
- (3) If a journey made by a member of a relevant authority is a qualifying journey and a qualifying payment is made to the member for carrying a passenger on the journey, the member’s journey is not to be treated as business travel in

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respect of that passenger for the purposes of sections 233 and 234 unless the passenger is also a member of the authority.

- (4) A journey made by a member of a relevant authority is a “qualifying journey” for the purposes of this section if—
- (a) it is a journey between the member’s home and permanent workplace, and
  - (b) the member’s home is situated in the area of the authority, or no more than 20 miles outside the boundary of the area.
- (5) In this section “permanent workplace” has the same meaning as in Part 5 (see section 339).
- (6) The Treasury may by regulations—
- (a) provide for bodies specified in the regulations (which must be local authorities or bodies that have similar or related functions or purposes) to be relevant authorities for the purposes of this section,
  - (b) provide for references in this section to a member of a relevant authority to be read as references to a member of a description prescribed in the regulations, and
  - (c) define what is meant by “qualifying payment” for the purposes of this section.
- (7) The regulations may contain transitional provision and savings.”

- (4) In section 236 (interpretation of Chapter 2 of Part 4), after subsection (1) insert—

“(1A) For journeys that are treated as business travel for the purposes of certain provisions of this Chapter, see section 235A (journeys made by members of local authorities etc).”

- (5) After section 295 insert—

*“Members of local authorities etc*

#### **295A Travel expenses of members of local authorities etc**

- (1) No liability to income tax arises in respect of a qualifying payment made to a member of a relevant authority for travel expenses incurred by the member if—
- (a) the payment is for expenses other than those related to the member’s use of a vehicle to which Chapter 2 applies, and
  - (b) the expenses are not excluded by subsection (2).
- (2) Expenses are excluded by this subsection if—
- (a) they are incurred on a journey between the member’s home and permanent workplace, and
  - (b) the member’s home is situated more than 20 miles outside the boundary of the area of the relevant authority.
- (3) In this section “permanent workplace” has the same meaning as in Part 5 (see section 339).
- (4) The Treasury may by regulations—

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- (a) provide for bodies specified in the regulations (which must be local authorities or bodies that have similar or related functions or purposes) to be relevant authorities for the purposes of this section,
- (b) provide for references in this section to a member of a relevant authority to be read as references to a member of a description prescribed in the regulations, and
- (c) define what is meant by “qualifying payment” for the purposes of this section.

(5) The regulations may contain transitional provision and savings.”

- (6) In Schedule 1 (index of defined expressions), in the entry relating to business travel in Chapter 2 of Part 4, for “section 236(1)” substitute “sections 235A and 236(1)”.
- (7) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

### **30 London Anniversary Games**

- (1) A duly accredited competitor who performs an Anniversary Games activity is not liable to income tax in respect of any income arising from the activity if the non-residence condition is met.
- (2) The following are Anniversary Games activities—
  - (a) competing at the Anniversary Games, and
  - (b) any activity that is performed during the Games period the main purpose of which is to support or promote the Anniversary Games.
- (3) The non-residence condition is that—
  - (a) the accredited competitor is non-UK resident for the tax year 2015-16, or
  - (b) the accredited competitor is UK resident for the tax year 2015-16 but the year is a split year as respects the competitor and the activity is performed in the overseas part of the year.
- (4) Section 966 of ITA 2007 (deductions of sums representing income tax) does not apply to any payment or transfer which gives rise to income benefiting from the exemption under subsection (1).
- (5) In this section—
  - “Anniversary Games” means the athletics event held at the Olympic Stadium in London on 24 - 26 July 2015;
  - “Games period” means the period—
    - (a) beginning with 22 July 2015, and
    - (b) ending with 28 July 2015;
  - “income” means employment income or profits of a trade, profession or vocation (including profits treated as arising as result of section 13 of ITTOIA 2005).
- (6) This section is treated as having come into force on 8 July 2015.

## *Corporation tax*

### **31 R&D expenditure credits: ineligible companies**

- (1) CTA 2009 is amended as follows.
- (2) In section 104A (R&D expenditure credits), after subsection (7) insert—  
“(7A) Section 104WA contains provision about ineligible companies.”
- (3) After section 104W insert—

#### *“Ineligible companies*

##### **104WA Ineligible companies**

- (1) No claim for an R&D expenditure credit may be made in respect of expenditure incurred by an ineligible company.
- (2) In this section, “ineligible company” means a company that is—
  - (a) an institution of higher education (as defined by section 1142(1)(b)),
  - (b) a charity, or
  - (c) a company of a description prescribed by the Treasury by regulations.”
- (4) In section 1310(4) (orders and regulations subject to affirmative procedure), before paragraph (zza) insert—  
“(zza) section 104WA (ineligible companies for the purposes of R&D expenditure credits),”.
- (5) The amendments made by this section have effect in relation to expenditure incurred on or after 1 August 2015.

### **32 Loan relationships and derivative contracts**

Schedule 7 contains provisions relating to loan relationships and derivative contracts.

### **33 Intangible fixed assets: goodwill etc**

- (1) Part 8 of CTA 2009 (intangible fixed assets) is amended as follows.
- (2) In section 715 (application of Part 8 to goodwill), in subsection (2), at the end insert  
“(see, in particular, section 816A (restrictions on goodwill and certain other assets))”.
- (3) In section 746 (“non-trading credits” and “non-trading debits”), in subsection (2), for paragraph (ba) substitute—  
“(ba) section 816A (restrictions on goodwill and certain other assets), and”.
- (4) In section 800 (introduction to Chapter 10: excluded assets), in subsection (2)(c)—
  - (a) for “section 814 or 815” substitute “any of sections 814 to 816A”, and
  - (b) for “that section” substitute “the section concerned”.
- (5) After section 816 insert—

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### **“816A Restrictions on goodwill and certain other assets**

- (1) This section applies if a company acquires or creates a relevant asset.
- (2) “Relevant asset” means—
  - (a) goodwill,
  - (b) an intangible fixed asset that consists of information which relates to customers or potential customers of a business,
  - (c) an intangible fixed asset that consists of a relationship (whether contractual or not) between a person carrying on a business and one or more customers of that business,
  - (d) an unregistered trade mark or other sign used in the course of a business, or
  - (e) a licence or other right in respect of an asset within any of paragraphs (a) to (d).
- (3) No debits are to be brought into account by the company for tax purposes, in respect of the relevant asset, under Chapter 3 (debts in respect of intangible fixed assets).
- (4) Any debit brought into account by the company for tax purposes, in respect of the relevant asset, under Chapter 4 (realisation of intangible fixed assets) is treated for the purposes of Chapter 6 as a non-trading debit.”
- (6) In section 844 (overview of Chapter 13: transactions between related parties), omit subsection (2A).
- (7) Omit sections 849B to 849D (restrictions relating to goodwill etc acquired from a related individual or firm) and the italic heading immediately before those sections.
- (8) In consequence of the amendments made by this section, in FA 2015, omit section 26.
- (9) The amendments made by this section have effect in relation to accounting periods beginning on or after 8 July 2015.
- (10) But the amendments made by this section do not apply in a case in which a company acquires a relevant asset if the company does so—
  - (a) before 8 July 2015, or
  - (b) in pursuance of an obligation, under a contract, that was unconditional before that date.
- (11) For the purposes of subsection (9), an accounting period beginning before, and ending on or after, 8 July 2015 is to be treated as if so much of the accounting period as falls before that date, and so much of the accounting period as falls on or after that date, were separate accounting periods.
- (12) An apportionment for the purposes of subsection (11) must be made in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.
- (13) For the purposes of subsection (10)(b), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).



### **34 Election of designated currency by UK resident investment company**

- (1) Chapter 4 of Part 2 of CTA 2010 (currency) is amended as follows.
- (2) Section 9A (designated currency of a UK resident investment company) is amended as follows.
- (3) For subsection (2) substitute—
  - “(2) An election under this section by a company (“X”) takes effect only if, at the time when it is to take effect (see section 9B(1))—
    - (a) X is a UK resident investment company, and
    - (b) Condition A or Condition B is met.”
- (4) Omit subsection (3).
- (5) After subsection (8) insert—
  - “(9) In relation to any period of account for which a currency is X’s designated currency as a result of an election under this section, profits or losses of X that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated as if—
    - (a) the designated currency were the functional currency of the company, and
    - (b) no part of X’s business could, in accordance with generally accepted accounting practice, be regarded as having another currency as its functional currency.”
- (6) Section 9B (period for which election under section 9A has effect) is amended as follows.
- (7) In subsection (1), for “section 9A(2)(a)” substitute “section 9A”.
- (8) Omit subsection (2).
- (9) In subsection (3), for “section 9A(2)(a)” substitute “section 9A”.
- (10) In subsection (6), for the words from the beginning to “only” substitute “A revocation event occurs in the period of account in which X’s first accounting period begins”.
- (11) After subsection (6) insert—
  - “(6A) A revocation event also occurs in a period of account (whether or not a period to which subsection (6) applies) if, at any time during that period, X ceases to be a UK resident investment company.”
- (12) In subsection (7)(a), for “section 9A(2)(a)” substitute “section 9A”.
- (13) In section 17 (interpretation of Chapter), for subsection (4) substitute—
  - “(4) References in this Chapter to the functional currency of a company or of part of a company’s business are references to the currency of the primary economic environment in which the company or part operates.”
- (14) This section has effect in relation to periods of account beginning on or after 1 January 2016.

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- (15) Subsections (16) and (17) apply if a period of account of a company (“the straddling period of account”) begins before, and ends on or after, 1 January 2016.
- (16) It is to be assumed, for the purposes of this section, that the straddling period of account consists of two separate periods of account—
- (a) the first beginning with the straddling period of account and ending immediately before 1 January 2016, and
  - (b) the second beginning with that day and ending with the straddling period of account.
- (17) For the purposes of this section, it is to be assumed—
- (a) that the company prepares its accounts for each of the two periods in the same currency, and otherwise on the same basis, as it prepares its accounts for the straddling period of account, and
  - (b) that if the accounts for the straddling period of account, in accordance with generally accepted accounting practice, identify a currency as the company’s functional currency, the accounts for each of the two periods do likewise.

### **35 Group relief**

- (1) In section 133 of CTA 2010 (claims for group relief: consortium conditions 2 and 3)—
- (a) in subsection (1)—
    - (i) at the end of paragraph (e) insert “and”, and
    - (ii) omit paragraph (g) and the “and” before it,
  - (b) in subsection (2)—
    - (i) at the end of paragraph (e) insert “and”, and
    - (ii) omit paragraph (g) and the “and” before it, and
  - (c) omit subsections (5) to (8).
- (2) Accordingly—
- (a) in section 129(2) of CTA 2010 for “134A” substitute “134”,
  - (b) in section 130(2) of that Act—
    - (i) in paragraph (c), for “and (3) to (8)” substitute “, (3) and (4)”, and
    - (ii) in paragraph (d), for “(8)” substitute “(4)”,
  - (c) omit section 134A of that Act, and
  - (d) in Schedule 6 to the Finance (No. 3) Act 2010, omit paragraphs 4(4) and 5.
- (3) The amendments made by this section have effect in relation to accounting periods beginning on or after 10 December 2014.

### **36 CFC charge: abolition of relief**

- (1) In Part 9A of TIOPA 2010 (controlled foreign companies), omit section 371UD (relief against sum charged).
- (2) Accordingly, omit the following provisions—
- (a) in CTA 2010, section 398D(6) and (6A);
  - (b) in FA 2012, in Schedule 20, paragraph 38;
  - (c) in FA 2015, in Schedule 2, paragraphs 6 and 8;

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- (d) in the Corporation Tax (Northern Ireland) Act 2015, in Schedule 2, paragraph 3.
- (3) The amendments made by this section have effect in relation to accounting periods of CFCs beginning on or after 8 July 2015.
- (4) Subsection (5) applies where a CFC has an accounting period beginning before 8 July 2015 and ending on or after that date (“the straddling period”).
- (5) For the purposes of determining the relief to which a chargeable company in relation to the straddling period is entitled under section 371UD of TIOPA 2010, or on the making of a claim would be so entitled—
  - (a) so much of the straddling period as falls before 8 July 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amount charged on the company in accordance with section 371BC of TIOPA 2010 in relation to the straddling period is to be apportioned on a just and reasonable basis between those two periods.
- (6) In this section, “CFC”, “accounting period” in relation to a CFC, and “chargeable company” have the same meanings as in Part 9A of TIOPA 2010.

### **37 CFC charge: tax avoidance involving carried-forward losses**

- (1) Part 14B of CTA 2010 (tax avoidance involving carried-over losses) is amended as follows.
- (2) In section 730G (disallowance of deductions for relevant carried-forward losses), in subsection (4), after “a relevant corporation tax advantage” insert “or a relevant CFC charge advantage”.
- (3) In that section, after subsection (5) insert—

“(5A) In this section “relevant CFC charge advantage” means a CFC charge advantage involving the deductible amount mentioned in subsection (3).”
- (4) In that section, in subsection (7)—
  - (a) in paragraph (a)—
    - (i) for “the” substitute “any”;
    - (ii) omit the final “and”;
  - (b) after that paragraph insert—

“(aa) any relevant CFC charge advantage, and”;
  - (c) in paragraph (b), at the end insert “or the relevant CFC charge advantage”.
- (5) In that section, in subsection (8), after “subsection (7)(a)” insert “, (aa)”.
- (6) In section 730H (interpretation), in subsection (1), after the definition of “arrangements” insert—

““CFC charge advantage” means the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies);”.
- (7) The amendments made by this section have effect for the purposes of calculating the taxable total profits of companies for accounting periods beginning on or after after 8 July 2015.

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- (8) For the purposes of the amendments made by this section, where a company has an accounting period beginning before 8 July 2015 and ending on or after that date (“the straddling period”)—
- (a) so much of the straddling period as falls before 8 July 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating the taxable total profits of the company for the straddling period are to be apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 of CTA 2010, and
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

### **38 Restitution interest payments**

- (1) CTA 2010 is amended as follows.
- (2) In section 1 (overview of Act), in subsection (3), after paragraph (ac) insert—  
 “(ad) restitution interest (see Part 8C),”.
- (3) After Part 8B insert—

## **“PART 8C**

### RESTITUTION INTEREST

## **CHAPTER 1**

### AMOUNTS TAXED AS RESTITUTION INTEREST

#### **357YA Charge to corporation tax on restitution interest**

The charge to corporation tax on income applies to restitution interest arising to a company.

#### **357YB Restitution interest chargeable as income**

- (1) Profits arising to a company which consist of restitution interest are chargeable to tax as income under this Part (regardless of whether the profits are of an income or capital nature).
- (2) In this Part references to “profits” are to be interpreted in accordance with section 2(2) of CTA 2009.

#### **357YC Meaning of “restitution interest”**

- (1) In this Part “restitution interest” means profits in relation to which Conditions A to C are met.

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- (2) Condition A is that the profits are interest paid or payable by the Commissioners in respect of a claim by the company for restitution with regard to either of the following matters (or alleged matters)—
  - (a) the payment of an amount to the Commissioners under a mistake of law relating to a taxation matter, or
  - (b) the unlawful collection by the Commissioners of an amount in respect of taxation.
- (3) Condition B is that—
  - (a) a court has made a final determination that the Commissioners are liable to pay the interest, or
  - (b) the Commissioners and the company, have in final settlement of the claim, entered into an agreement under which the company is entitled to be paid, or is to retain, the interest.
- (4) Condition C is that the interest determined to be due, or agreed upon, as mentioned in subsection (3) is not limited to simple interest at a statutory rate (see section 357YU).
- (5) Subsection (4) does not prevent so much of an amount of interest determined to be due, or agreed upon, as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of “restitution interest”.
- (6) For the purposes of subsection (2) it does not matter whether the interest is paid or payable—
  - (a) pursuant to a judgment or order of a court,
  - (b) as an interim payment in court proceedings,
  - (c) under an agreement to settle a claim, or
  - (d) in any other circumstances.
- (7) For the purposes of this section—
  - (a) “interest” includes an amount equivalent to interest, and
  - (b) an amount paid or payable by the Commissioners as mentioned in subsection (2) is “equivalent to interest” so far as it is an amount determined by reference to the time value of money.
- (8) For the purposes of this section a determination made by a court is “final” if the determination cannot be varied on appeal (whether because of the absence of any right of appeal, the expiry of a time limit for making an appeal without an appeal having been brought, the refusal of permission to appeal, the abandonment of an appeal or otherwise).
- (9) Any power to grant permission to appeal out of time is to be disregarded for the purposes of subsection (8).

**357YD Further provision about amounts included, or not included, in “restitution interest”**

- (1) Interest paid to a company is not restitution interest for the purposes of this Part if—

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- (a) Condition B was not met in relation to the interest until after the interest was paid, and
  - (b) the amount paid was limited to simple interest at a statutory rate
- (2) Subsection (1) does not prevent so much of a relevant amount of interest determined to be due, agreed upon or otherwise paid as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of “restitution interest”.
- (3) In subsection (2) “relevant amount of interest” means an amount of interest the whole of which was paid before Condition B was met in relation to it.
- (4) Section 357YC(7) applies in relation to this section as in relation to section 357YC.

#### **357YE Period in which amounts are to be brought into account**

- (1) The amounts to be brought into account as restitution interest for any period for the purposes of this Part are those that are recognised in determining the company’s profit or loss for the period in accordance with generally accepted accounting practice.
- (2) If Condition A in section 357YC is met, in relation to any amount, after the end of the period for which the amount is to be brought into account as restitution interest in accordance with subsection (1), any necessary adjustments are to be made; and any time limits for the making of adjustments are to be disregarded for this purpose.

#### **357YF Companies without GAAP-compliant accounts**

- (1) If a company—
- (a) draws up accounts which are not GAAP-compliant accounts, or
  - (b) does not draw up accounts at all,
- this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) Accordingly, references in this Part to amounts recognised for accounting purposes are references to amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- (4) In this section “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

#### **357YG Restitution interest: appeals made out of time**

- (1) This section applies where—
- (a) an amount of interest (“the interest”) arises to a company as restitution interest for the purposes of this Part,

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- (b) Condition B in section 357YC is met in relation to the interest as a result of the making by a court of a final determination as mentioned in subsection (3)(a) of that section,
  - (c) on a late appeal (or a further appeal subsequent to such an appeal) a court reverses that determination, or varies it so as to negative it, and
  - (d) the determination reversing or varying the determination by virtue of which Condition B was met is itself a final determination.
- (2) This Part has effect as if the interest had never been restitution interest.
- (3) If—
- (a) the Commissioners for Her Majesty’s Revenue and Customs have under section 357YO(2) deducted a sum representing corporation tax from the interest, or
  - (b) a sum has been paid as corporation tax in respect of the interest under section 357YQ,
- that sum is treated for all purposes as if it had never been paid to, or deducted or held by, the Commissioners as or in respect of corporation tax.
- (4) Any adjustments are to be made that are necessary in accordance with this section; and any time limits applying to the making of adjustments are to be ignored.
- (5) In this section—
- “final determination” has the same meaning as in section 357YC;
  - “late appeal” means an appeal which is made by reason of a court giving leave to appeal out of time.

### **357YH Countering effect of avoidance arrangements**

- (1) Any restitution-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to amounts to be brought into account for the purposes of this Part.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or otherwise.
- (3) For the meaning of “relevant avoidance arrangements” and “restitution-related tax advantage” see section 357YI.

### **357YI Interpretation of section 357YH**

- (1) This section applies for the interpretation of section 357YH (and this section).
- (2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a tax advantage in relation to the application of the charge to tax at the restitution payments rate.

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- (4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any tax advantages that would (in the absence of section 357YH) arise from them can reasonably be regarded as consistent with wholly commercial arrangements.
- (5) “Tax advantage” includes—
- (a) a repayment of tax or increased repayment of tax,
  - (b) the avoidance or reduction of a charge to tax or an assessment to tax,
  - (c) the avoidance of a possible assessment to tax,
  - (d) deferral of a payment of tax or advancement of a repayment of tax, or
  - (e) the avoidance of an obligation to deduct or account for tax.
- (6) In subsection (5)(b) and (c) the references to avoidance or reduction include an avoidance or reduction effected by receipts accruing in such a way that the recipient does not bear tax on them as restitution interest under this Part.

### **357YJ Examples of results that may indicate exclusion not applicable**

Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a restitution-related tax advantage are not excluded by section 357YI(4) from being “relevant avoidance arrangements” for the purposes of section 357YH—

- (a) the elimination or reduction for the purposes of this Part of amounts chargeable as restitution interest arising to the company in connection with a particular claim, if for economic purposes other or greater profits arise to the company in connection with the claim;
- (b) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company’s accounts as an item of profit or loss, or be so recognised earlier;
- (c) ensuring that a receipt is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements.

## **CHAPTER 2**

### APPLICATION OF RESTITUTION PAYMENTS RATE

#### **357YK Corporation tax rate on restitution interest**

- (1) Corporation tax is charged on restitution interest at the restitution payments rate.
- (2) The “restitution payments rate” is 45%.

#### **357YL Exclusion of reliefs, set-offs etc**

- (1) Under subsection (3) of section 4 (amounts to which rates of corporation tax applied) the amounts to be added together to find a company’s “total profits”



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do not include amounts of restitution interest on which corporation tax is chargeable under this Part.

- (2) No reliefs or set-offs may be given against so much of the corporation tax to which a company is liable for an accounting period as is equal to the amount of corporation tax chargeable on the company for the period at the restitution payments rate.
- (3) In subsection (2) “reliefs and set-offs” includes, but is not restricted to, those listed in the second step of paragraph 8(1) of Schedule 18 to FA 1998.
- (4) Amounts of income tax or corporation tax, or any other amounts, which may be set off against a company’s overall liability to income tax and corporation tax for an accounting period may not be set off against so much of the corporation tax to which the company is liable for the period as is equal to the amount of corporation tax chargeable at the restitution payments rate.

### CHAPTER 3

#### MIGRATION, TRANSFERS OF RIGHTS ETC

##### **357YM Assignment of rights to person not chargeable to corporation tax**

- (1) Subsection (4) applies if—
  - (a) a company which is within the charge to corporation tax under this Part (“the transferor”) transfers to a person who is not within the charge to corporation tax under this Part a right in respect of a claim, or possible claim, for restitution,
  - (b) the transfer is made on or after 21 October 2015, and
  - (c) conditions A and B are met.
- (2) Condition A is that the main purpose, or one of the main purposes, of the transfer is to secure a tax advantage for any person in relation to the application of the charge to tax on restitution interest under this Part.
- (3) Condition B is that as a result of that transfer (or that transfer together with further transfers of the rights) restitution interest arises to a person who is not within the charge to corporation tax under this Part.
- (4) Any restitution interest which arises as mentioned in Condition B is treated for corporation tax purposes as restitution interest arising to the transferor.
- (5) A person is “within the charge to corporation tax under this Part” if the person—
  - (a) is a UK resident company, and
  - (b) would not be exempt from corporation tax on restitution interest (were such interest to arise to it).
- (6) In this section “tax advantage” has the meaning given by section 357YI.

##### **357YN Migration of company with claim to restitution interest**

- (1) This section applies where—

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- (a) restitution interest arises to a non-UK resident company,
  - (b) the rights in respect of which the company is entitled to the restitution interest had (to any extent) accrued when the company ceased to be UK resident, and
  - (c) the company's main purpose, or one of its main purposes, in changing its residence was to secure a tax advantage for any person in relation to the application of the charge to tax on restitution interest under this Part.
- (2) The company is treated as a UK resident company for the purposes of the application of this Part in relation to so much of that restitution interest as is attributable to relevant accrued rights.
- (3) "Relevant accrued rights" means rights which had accrued to the company when it ceased to be UK resident.
- (4) The company is to be treated for the purposes of sections 185 and 187 of TCGA 1992 as not having disposed of its assets on ceasing to be resident in the United Kingdom, so far as its assets at that time consisted of rights to receive restitution interest.
- (5) Any adjustments that are necessary as a result of subsection (4) are to be made; and any time limits for the making of adjustments are to be ignored for this purpose.

## CHAPTER 4

### PAYMENT AND COLLECTION OF TAX ON RESTITUTION INTEREST

#### **357YO Duty to deduct tax from payments of restitution interest**

- (1) Subsection (2) applies if the Commissioners for Her Majesty's Revenue and Customs pay an amount of interest in relation to which Conditions 1 and 2 are met and—
- (a) the amount is (when the payment is made) restitution interest on which a company is chargeable to corporation tax under this Part, or
  - (b) a company would be chargeable to corporation tax under this Part on the interest paid if it were (at that time) restitution interest.
- (2) The Commissioners must, on making the payment—
- (a) deduct from it a sum representing corporation tax on the amount at the restitution payments rate, and
  - (b) give the company a written notice stating the amount of the gross payment and the amount deducted from it.
- (3) Condition 1 is that the Commissioners are liable to pay, or have agreed or determined to pay, the interest in respect of a company's claim for restitution with regard to—
- (a) the payment of an amount to the Commissioners under a mistake of law relating to a taxation matter, or
  - (b) the unlawful collection by the Commissioners of an amount in respect of taxation.

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- (4) Condition 2 is that the interest is not limited to simple interest at a statutory rate.

In determining whether or not this condition is met, all amounts which the Commissioners are liable to pay, or have agreed or determined to pay in respect of the claim are to be considered together.

- (5) For the purposes of Condition 1 it does not matter whether the Commissioners are liable to pay, or (as the case may be) have agreed or determined to pay, the interest—
- (a) pursuant to a judgment or order of a court,
  - (b) as an interim payment in court proceedings,
  - (c) under an agreement to settle a claim, or
  - (d) in any other circumstances.
- (6) For the purposes of subsection (2) the restitution payments rate is to be applied to the gross payment, that is to the payment before deduction of a sum representing corporation tax in accordance with this section.
- (7) For the purposes of this section—
- (a) “interest” includes an amount equivalent to interest, and
  - (b) an amount which the Commissioners pay as mentioned in subsection (1) is “equivalent to interest” so far as it is an amount determined by reference to the time value of money.

### **357YP Treatment of amounts deducted under section 357YO**

- (1) An amount deducted from an interest payment in accordance with section 357YO(2) is treated for all purposes as paid by the company mentioned in section 357YO(1) on account of the company’s liability, or potential liability, to corporation tax charged on the interest payment, as restitution interest, under this Part.
- (2) Subsections (3) and (4) apply if—
- (a) the Commissioners have, on paying an amount which is not (when the payment is made) restitution interest, made a deduction under section 357YO(2) from the gross payment (see section 357YO(6)), and
  - (b) a company becomes liable to repay the net amount to the Commissioners, or it otherwise becomes clear that the gross amount cannot, or will not, become restitution interest.
- (3) If the condition in subsection (2)(b) is met in circumstances where the company is not liable to repay the net amount to the Commissioners, the Commissioners must—
- (a) repay to the company the amount treated under subsection (1) as paid by the company, and
  - (b) make any other necessary adjustments;
- and any time limits applying to the making of adjustments are to be ignored.

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

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- (4) If the condition in subsection (2)(b) is met by virtue of a company becoming liable to repay to the Commissioners the amount paid as mentioned in subsection (2)(a)—
  - (a) this Part has effect as if the company were liable to repay the gross payment to the Commissioners, and
  - (b) the amount deducted by the Commissioners as mentioned in subsection (2)(a) is to be treated for the purposes of this Part as money repaid by the company in partial satisfaction of its liability to repay the gross amount.
- (5) Subsections (3) and (4) have effect with the appropriate modifications if the condition in subsection (2)(b) is met in relation to part but not the whole of the gross amount mentioned in subsection (2)(a).
- (6) In this section “the net amount”, in relation to a payment made under deduction of tax in accordance with section 357YO(2), means the amount paid after deduction of tax.

#### **357YQ Assessment of tax chargeable on restitution interest**

- (1) An officer of Revenue and Customs may make an assessment of the amounts in which, in the officer’s opinion, a company is chargeable to corporation tax under this Part for a period specified in the assessment.
- (2) Notice of an assessment under this section must be served on the company, stating the date on which the assessment is issued.
- (3) An assessment may include an assessment of the amount of restitution income arising to the company in the period and any other matters relevant to the calculation of the amounts in which the company is chargeable to corporation tax under this Part for the period.
- (4) Notice of an assessment under this section may be accompanied by notice of any determination by an officer of Revenue and Customs relating to the dates on which amounts of tax become due and payable under this section or to amounts treated under section 357YP as paid on account of corporation tax.
- (5) The company must pay the amount assessed as payable for the accounting period by the end of the period of 30 days beginning with the date on which the company is given notice of the assessment.

#### **357YR Interest on excessive amounts withheld**

- (1) If an amount deducted under section 357YO(2) in respect of an amount of interest exceeds the amount which should have been deducted, the Commissioners are liable to pay interest on the excess from the material date until the date on which the excess is repaid.
- (2) The “material date” is the date on which tax was deducted from the interest.
- (3) Interest under subsection (1) is to be paid at the rate applicable under section 178 of FA 1989.

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

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### **357YS Appeal against deduction**

- (1) An appeal may be brought against the deduction by the Commissioners for Her Majesty's Revenue and Customs from a payment of a sum representing corporation tax in compliance, or purported compliance, with section 357YO(2).
- (2) Notice of appeal must be given—
  - (a) in writing,
  - (b) within 30 days after the giving of the notice under section 357YO(2).

### **357YT Amounts taxed at restitution payments rate to be outside instalment payments regime**

For the purposes of regulations under section 59E of TMA 1970 (further provision as to when corporation tax due and payable), tax charged at the restitution payments rate is to be disregarded in determining the amount of corporation tax payable by a company for an accounting period.

## **CHAPTER 5**

### **SUPPLEMENTARY PROVISIONS**

#### **357YU Interpretation**

- (1) In this Part “court” includes a tribunal.
- (2) In this Part “statutory rate” (in relation to interest) means a rate which is equal to a rate specified—
  - (a) for purposes relating to taxation, and
  - (b) in, or in a provision made under, an Act.

#### **357YV Relationship of Part with other corporation tax provisions**

- (1) So far as restitution interest is charged to corporation tax under this Part it is not chargeable to corporation tax under any other provision.
- (2) This Part has effect regardless of section 464(1) of CTA 2009 (priority of loan relationship provisions).

#### **357YW Power to amend**

- (1) The Treasury may by regulations amend this Part (apart from this section).
- (2) Regulations under this section—
  - (a) may not widen the description of the type of payments that are chargeable to corporation tax under this Part;
  - (b) may not remove or prejudice any right of appeal;
  - (c) may not increase the rate at which tax is charged on restitution interest under this Part;

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- (d) may not enable any provision of this Part to have effect in relation to the subject matter of any claim which has been finally determined before 21 October 2015.
- (3) Subject to subsection (2), regulations under this section may have retrospective effect.
- (4) For the purposes of this section a claim is “finally determined” if a court has disposed of the claim by a final determination or the claimant and the Commissioners for Her Majesty’s Revenue and Customs have entered into an agreement in final settlement of the claim.
- (5) Section 357YC(8) (which defines when a determination made by a court is final) has effect for the purposes of this section as for the purposes of section 357YC.
- (6) Regulations under this section may include incidental, supplementary or transitional provision.
- (7) A statutory instrument containing regulations under this section must be laid before the House of Commons.
- (8) The regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the House of Commons.
- (9) In reckoning the 28-day period, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) the House of Commons is adjourned for more than 4 days.
- (10) Regulations ceasing to have effect by virtue of subsection (8) does not affect—
- (a) anything previously done under the regulations, or
  - (b) the making of new regulations.”
- (4) In TMA 1970, in section 59D (general rule as to when corporation tax is due and payable)—
- (a) in subsection (3) after “with” insert “the first to fourth steps of”;
  - (b) in subsection (5) after “59E” insert “and section 357YQ of CTA 2010 (assessment of tax chargeable on restitution interest)”.
- (5) Paragraph 8 Schedule 18 to FA 1998 (company tax returns, assessments etc: calculation of tax payable) is amended as follows—
- (a) in paragraph 2 of the first step, after “company” insert “(other than the restitution payments rate)”;
  - (b) After the fourth step insert—
 

*“Fifth step*

Calculate the corporation tax chargeable on any profits of the company that are charged as restitution interest.

    1. Find the amount in respect of which the company is chargeable for the period under the charge to corporation tax on income under Part 8C of CTA 2010.

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2. Apply the restitution payments rate in accordance with section 357YK(1) of that Act.

The amount of tax payable for the accounting period is the sum of the amounts resulting from the first to fourth steps and this step.”

(6) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended in accordance with subsections (7) and (8).

(7) In paragraph 1, in the table after item 6 insert—

“6ZZA	Corporation tax	Amount payable under section 357YQ of CTA 2010	The end of the period within which, in accordance with section 357YQ(5), the amount must be paid.”
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(8) In paragraph 4(1), for “or 6” substitute “, 6 or 6ZZA”.

(9) The amendments made by subsections (1) to (8) have effect in relation to interest (whether arising before or on or after 21 October 2015) which falls within subsection (11).

(10) Section 357YO of CTA 2010, and the amendments made by subsections (1) to (8) so far as relating to the deduction of tax under section 357YO, have effect in relation to payments of interest made on or after 26 October 2015.

This rule is not limited by the rule in subsection (9).

(11) Interest arising to a company falls within this subsection if—

- (a) a determination made by a court that the Commissioners for Her Majesty’s Revenue and Customs are liable to pay the interest becomes final on or after 21 October 2015, or
- (b) on or after 21 October 2015 the Commissioners and a company enter into an agreement in final settlement of a claim for restitution, under which the company is entitled to be paid, or to retain, the interest.

(12) In subsections (9) to (11)—

- (a) the reference to a determination made by a court becoming “final” is to be interpreted in accordance with section 357YC of CTA 2010;
- (b) the references to “interest” are to be interpreted in accordance with section 357YC of CTA 2010.”

### 39 Corporation tax instalment payments

(1) The Corporation Tax (Instalment Payments) (Amendment) Regulations 2014 ([S.I. 2014/2409](#)) are to be treated as always having had effect as if in regulation 1(2) (commencement) “ending” were substituted for “beginning”.

(2) Consequently, for the purposes of the application of regulations 2(2) and 3(5B) of the Corporation Tax (Instalment Payments) Regulations 1998 ([S.I. 1998/3175](#)) to accounting periods beginning before, and ending on or after, 1 April 2015—

- (a) sections 279F and 279G of CTA 2010 are taken to have effect in relation to such periods, and
- (b) paragraph 22 of Schedule 1 to FA 2014 is to be disregarded accordingly.

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

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*Income tax and corporation tax*

**40 Changes in trading stock not made in course of trade**

- (1) In section 161 of CTA 2009 (changes in trading stock: transfer pricing rules to take precedence), after subsection (1) insert—

“(1A) Subsection (1B) applies in relation to a disposal or acquisition if—

- (a) by virtue of subsection (1), section 159 or 160 does not apply, and
- (b) the market value amount is greater than the Part 4 TIOPA amount.

(1B) An amount equal to the market value amount less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(1C) In subsections (1A) and (1B)—

“market value amount” means the amount referred to in section 159(2)(a) or 160(2)(a);

“Part 4 TIOPA amount” means the amount which, following the application of Part 4 of TIOPA 2010 to the relevant consideration, is brought into account in respect of the relevant consideration in calculating the profits of the trade.”

- (2) In section 172F of ITTOIA 2005 (changes in trading stock: transfer pricing rules to take precedence), after subsection (1) insert—

“(1A) Subsection (1B) applies in relation to a disposal or acquisition if—

- (a) by virtue of subsection (1), section 172D or 172E does not apply, and
- (b) the market value amount is greater than the Part 4 TIOPA amount.

(1B) An amount equal to the market value amount less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(1C) In subsections (1A) and (1B)—

“market value amount” means the amount referred to in section 172D(2)(a) or 172E(2)(a);

“Part 4 TIOPA amount” means the amount which, following the application of Part 4 of TIOPA 2010 to the relevant consideration, is brought into account in respect of the relevant consideration in calculating the profits of the trade.”

- (3) The amendments made by this section apply in relation to a disposal or acquisition made on or after 8 July 2015, unless it is made pursuant to an obligation, under a contract, that was unconditional before that date.

- (4) For the purposes of subsection (3), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

**41 Valuation of trading stock on cessation**

- (1) In section 162 of CTA 2009 (valuation of trading stock on cessation), after subsection (2) (transfer pricing rules to take precedence) insert—



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- “(2A) Subsection (2B) applies if—
- (a) by virtue of subsection (2), no valuation of the stock under this Chapter is required, and
  - (b) the market value of the stock is greater than the Part 4 TIOPA amount.

(2B) An amount equal to the market value of the stock less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(2C) In subsections (2A) and (2B)—

“market value”, in relation to stock, is the value the stock would have been determined to have if it had been valued in accordance with sections 164 to 167, and

“Part 4 TIOPA amount” is the amount which, following the application of Part 4 of TIOPA 2010 in relation to the provision referred to in subsection (2), is brought into account in respect of that provision in calculating the profits of the trade.”

- (2) In section 173 of ITTOIA 2005 (valuation of trading stock on cessation), after subsection (2) (transfer pricing rules to take precedence) insert—

“(2A) Subsection (2B) applies if—

- (a) by virtue of subsection (2), no valuation of the stock under this Chapter is required, and
- (b) the market value of the stock is greater than the Part 4 TIOPA amount.

(2B) An amount equal to the market value of the stock less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(2C) In subsections (2A) and (2B)—

“market value”, in relation to stock, is the value the stock would have been determined to have if it had been valued in accordance with sections 175 to 178, and

“Part 4 TIOPA amount” is the amount which, following the application of Part 4 of TIOPA 2010 in relation to the provision referred to in subsection (2), is brought into account in respect of that provision in calculating the profits of the trade.”

- (3) The amendments made by this section apply in relation to a cessation of trade on or after 8 July 2015.

## **42 Transfer of intangible assets not at arm’s length**

- (1) In section 846 of CTA 2009 (transfers of intangible assets not at arm’s length), after subsection (1) insert—

“(1A) Subsection (1B) applies in relation to the transfer of an intangible asset where—

- (a) by virtue of subsection (1), section 845 does not apply, and
- (b) the market value of the asset is greater than the Part 4 TIOPA amount.

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(1B) An amount equal to the market value of the asset less the Part 4 TIOPA amount is to be brought into account for the purposes of corporation tax in relation to the transfer (in addition to the Part 4 TIOPA amount).

(1C) In subsections (1A) and (1B)—

“market value”, in relation to an asset, has the meaning given in section 845(5);

“Part 4 TIOPA amount” means the amount which, following the application of Part 4 of TIOPA 2010 in relation to the consideration for the transfer, is brought into account in respect of the consideration for the purposes of corporation tax.”

- (2) The amendment made by this section applies in relation to a transfer which takes place on or after 8 July 2015, unless it takes place pursuant to an obligation, under a contract, that was unconditional before that date.
- (3) For the purposes of subsection (2), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

### *Income tax and capital gains tax*

## 43 Carried interest

- (1) In Part 3 of TCGA 1992 (individuals, partnerships, trusts and collective investment schemes etc), after section 103K insert—

### “CHAPTER 5

#### CARRIED INTEREST

##### **103KA Carried interest**

- (1) This section applies where—
- (a) an individual (“A”) performs investment management services directly or indirectly in respect of an investment scheme under arrangements involving at least one partnership, and
  - (b) carried interest arises to A under the arrangements.
- (2) If the carried interest arises to A in connection with the disposal of one or more assets of the partnership or partnerships—
- (a) a chargeable gain equal to the amount of the carried interest less any permitted deductions (and no other chargeable gain or loss) is to be treated as accruing to A on the disposal, and
  - (b) the chargeable gain is to be treated as accruing to A at the time the carried interest arises.
- (3) If the carried interest arises to A in circumstances other than those specified in subsection (2), a chargeable gain of an amount equal to the amount of the carried interest less any permitted deductions is to be treated as accruing to A at the time the carried interest arises.

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- (4) Subsections (2) and (3) do not apply in relation to carried interest to the extent that—
- (a) it is brought into account in calculating the profits of a trade of A for the purposes of income tax for any tax year, or
  - (b) it constitutes a co-investment repayment or return.
- (5) For the purpose of subsections (2) and (3) “permitted deductions” in relation to A means such parts of the amounts specified in subsection (6) as is just and reasonable.
- (6) The amounts referred to in subsection (5) are—
- (a) the amount of any consideration in money given to the scheme by or on behalf of A wholly and exclusively for entering into the arrangements referred to in subsection (1)(a) (but not consideration in respect of co-investments),
  - (b) any amount that constituted earnings of A under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of A’s entering into those arrangements (but not any earnings in respect of co-investments or any amount of exempt income within the meaning of section 8 of that Act), and
  - (c) any amount which, by reason of events occurring no later than the time the carried interest arises, counts as income of A under the enactments referred to in section 119A(3) in respect of A’s participation in the arrangements referred to in subsection (1)(a) (but not an amount counting as income of A in respect of co-investments); and section 119A(5) applies for the purposes of this paragraph as it applies for the purposes of section 119A(4).

For the purposes of this Act no other deduction may be made from the amount of the carried interest referred to in subsection (2) or (3).

- (7) Where the carried interest arises to A by virtue of his or her acquisition of a right to it from another person for consideration given in money by or on behalf of A, the amount of the chargeable gain accruing to A under subsection (2) or (3) is, on the making of a claim by A under this subsection, to be regarded as reduced by the amount of the consideration.
- (8) In this section—
- “co-investment”, in relation to A, means an investment made directly or indirectly by A in the scheme, where there is no return on the investment which is not an arm’s length return within the meaning of section 809EZB(2) of ITA 2007;
  - “co-investment repayment or return” means a repayment in whole or in part of, or a return on, a co-investment;
  - “trade” includes profession or vocation.

### **103KB Carried interest: consideration on disposal etc of right**

- (1) For the purposes of section 103KA, consideration received or receivable by an individual for the disposal, variation, loss or cancellation of a right to carried interest is to be treated as carried interest arising to that individual at the time of the disposal, variation, loss or cancellation.

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- (2) But subsection (1) does not apply if and to the extent that the consideration is a disguised fee arising to the individual for the purposes of section 809EZA of ITA 2007.

#### **103KC Carried interest: foreign chargeable gains**

In a case where section 103KA applies, a chargeable gain accruing or treated as accruing to an individual in respect of carried interest is a foreign chargeable gain within the meaning of section 12 only to the extent that the individual performs the services referred to in section 103KA(1)(a) outside the United Kingdom.

#### **103KD Carried interest: anti-avoidance**

In determining whether section 103KA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not to any extent apply in relation to—

- (a) the individual, or
- (b) the individual and one or more other individuals.

#### **103KE Carried interest: avoidance of double taxation**

- (1) This section applies where—
  - (a) capital gains tax is charged on an individual by virtue of section 103KA in respect of any carried interest, and
  - (b) Condition A or Condition B is met.
- (2) Condition A is that—
  - (a) at any time, tax (whether income tax or another tax) charged on the individual in relation to the carried interest has been paid by the individual (and has not been repaid), and
  - (b) the amount on which tax is charged as specified in subsection (1)(a) is not a permissible deduction under section 103KA(6)(b) or (c).
- (3) Condition B is that at any time tax (whether income tax or another tax) charged on another person in relation to the carried interest has been paid by that other person (and has not been repaid).
- (4) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the capital gains tax charged as mentioned in subsection (1)(a).
- (5) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (6) The value of any consequential adjustments made must not exceed the lesser of—
  - (a) the capital gains tax charged as mentioned in subsection (1)(a), and
  - (b) the tax charged as mentioned in subsection (2)(a) or (3).

- (7) Consequential adjustments may be made—
- (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under an enactment.
- (8) Where—
- (a) an individual makes a claim under this section in respect of a year of assessment, and
  - (b) apart from this subsection, an amount falls to be deducted under section 2(2)(b) from the total amount of chargeable gains accruing to the individual in that year,
- the individual may elect that the amount to be so deducted be reduced by any amount not exceeding the amount on which tax is charged as specified in subsection (2)(a) or (3).

### **103KF Relief for external investors on disposal of partnership asset**

- (1) If—
- (a) a chargeable gain accrues to an external investor in an investment scheme on the disposal of one or more partnership assets, and
  - (b) the external investor makes a claim for relief under this section,
- then subsection (2) applies in relation to the disposal.
- (2) The amount of the chargeable gain is to be reduced by an amount equal to—

$$I - C$$

where—

- (a) I is an amount equal to such part of the sum invested in the fund by the external investor which on a just and reasonable basis is referable to the asset or assets disposed of, and
- (b) C is the amount deducted under section 38(1)(a) in respect of consideration given wholly and exclusively for the acquisition of the asset or assets.

### **103KG Meaning of “arise” in Chapter 5**

- (1) For the purposes of this Chapter, carried interest “arises” to an individual (“A”) if, and only if, it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007.
- (2) But section 809EZDB of ITA 2007 (sums arising to connected company or unconnected person) does not apply in relation to a sum of carried interest arising to—
- (a) a company connected with A, or
  - (b) a person not connected with A,
- where the sum is deferred carried interest in relation to A.
- (3) In this section, “deferred carried interest”, in relation to A—

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- (a) means a sum of carried interest where the provision of the sum to A or a person connected with A is deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and
- (b) includes A's share (as determined on a just and reasonable basis) of any carried interest the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, the reference to a person connected with A does not include that company.

(4) Where—

- (a) section 809EZDB of ITA 2007 has been disapplied in relation to a sum of deferred carried interest by virtue of subsection (2),
  - (b) the sum ceases to be deferred carried interest in relation to A, and
  - (c) the sum does not in any event arise to A apart from this subsection,
- the sum is to be regarded as arising to A at the time it ceases to be deferred carried interest.

(5) But subsection (4) does not apply if—

- (a) none of the enjoyment conditions is met in relation to the sum when it ceases to be deferred carried interest, and
- (b) there is no reasonable likelihood that any of those conditions will ever be met in relation to the sum.

(6) The enjoyment conditions are—

- (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
- (b) the sum's ceasing to be deferred carried interest in relation to A operates to increase the value to A or a person connected with A of any assets which—
  - (i) A or the connected person holds, or
  - (ii) are held for the benefit of A or the connected person;
- (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
- (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
- (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, references to a person connected with A do not include that company.

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- (7) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—
- (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
  - (b) all benefits which may at any time accrue to a person as a result of the sum ceasing to be deferred carried interest in relation to A must be taken into account, irrespective of—
    - (i) the nature or form of the benefits, or
    - (ii) whether the person has legal or equitable rights in respect of the benefits.
- (8) The enjoyment condition in subsection (6)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
- (9) The enjoyment condition in subsection (6)(a) or (e) is to be treated as not met if the sum referred to in subsection (2) arises to a company connected with A and—
- (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
  - (b) paragraph (a) does not apply but—
    - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
    - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.
- In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.
- (10) But subsections (8) and (9) do not apply if the sum referred to in subsection (2) arises to the company referred to in subsection (2)(a) or the person referred to in subsection (2)(b) as part of arrangements where—
- (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and
  - (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
- (11) The condition in subsection (10)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.
- (12) Subsection (2) does not apply in relation to any sum in relation to which the condition in subsection (8)(b) of section 809EZDB is met by virtue of subsection (9) of that section.
- (13) Subsection (2) also does not apply if—
- (a) it is reasonable to assume that the deferral referred to in subsection (3) (a) or (b) is not the effect of genuine commercial arrangements, or
  - (b) that deferral is the effect of such arrangements but it is reasonable to assume that the arrangements have as their main purpose, or one of

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their main purposes, the avoidance of a liability to pay income tax, capital gains tax, corporation tax or inheritance tax.

- (14) In subsection (13), “genuine commercial arrangements” means arrangements involving A (alone or jointly with others performing investment management services) and external investors in the investment scheme.
- (15) Section 993 of ITA 2007 (meaning of “connected”) applies for the purposes of this section but as if—
- (a) subsection (4) of that section were omitted, and
  - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

### **103KH Interpretation of Chapter 5**

- (1) In this Chapter—

“arrangements” has the same meaning as in Chapter 5E of Part 13 of ITA 2007 (see section 809EZE of that Act);

“carried interest”, in relation to arrangements referred to in section 103KA(1)(a), has the same meaning as in section 809EZB of ITA 2007 (see sections 809EZE and 809EZD of that Act);

“investment scheme”, “investment management services” and “external investor” have the same meanings as in Chapter 5E of Part 13 of ITA 2007 (see sections 809EZA(6) and 809EZE of that Act).”

- (2) The amendment made by subsection (1) has effect in relation to carried interest arising on or after 8 July 2015 under any arrangements, unless the carried interest arises in connection with the disposal of an asset or assets of a partnership or partnerships before that date.
- (3) But section 103KB(1) of TCGA 1992 (as inserted by subsection (1)) does not have effect in relation to a variation of a right to carried interest occurring on or after 8 July 2015 and before 22 October 2015.
- (4) And section 103KG(2) to (15) of TCGA 1992 (as inserted by subsection (1)) has effect in relation to carried interest arising on or after 22 October 2015 under any arrangements, unless the carried interest arises in connection with the disposal of an asset or assets of a partnership or partnerships before that date.
- (5) In subsections (2) to (4), “arise”, “arrangements” and “carried interest” have the same meanings as in Chapter 5 of Part 3 of TCGA 1992 (as inserted by subsection (1) of this section).

## **44 Disguised investment management fees**

- (1) In section 809EZB of ITA 2007 (disguised investment management fees: meaning of “management fee”), after subsection (2) insert—

“(2A) For the purposes of subsection (2)(b), the return on the investment is reasonably comparable to the return to external investors on the investments referred to in subsection (2)(a) if (and only if)—

- (a) the rate of return on the investment is reasonably comparable to the rate of return to external investors on those investments, and



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- (b) any other factors relevant to determining the size of the return on the investment are reasonably comparable to the factors determining the size of the return to external investors on those investments.”
- (2) In section 809EZG of ITA 2007 (avoidance of double taxation), in subsection (1)(b), after “the individual” insert “or another person”.
- (3) The amendments made by this section have effect in relation to sums arising on or after 8 July 2015 (whenever the arrangements under which the sums arise were made).
- (4) In subsection (3), “arise” has the same meaning as it has for the purposes of Chapter 5E of Part 13 of ITA 2007.

#### **45 Carried interest and disguised investment management fees: “arise”**

- (1) In ITA 2007, after section 809EZD insert—

##### **“809EZDA Sums arising to connected persons other than companies**

- (1) This section applies in relation to an individual (“A”) if—
  - (a) a sum arises to a person (“B”) who is connected with A,
  - (b) B is not a company,
  - (c) income tax is not charged on B in respect of the sum by virtue of this Chapter,
  - (d) capital gains tax is not charged on B in respect of the sum by virtue of Chapter 5 of Part 3 of TCGA 1992, and
  - (e) the sum does not arise to A apart from this section.
- (2) The sum referred to in subsection (1)(a) arises to A for the purposes of this Chapter.
- (3) Where a sum arises to A by virtue of this section, it arises to A at the time the sum referred to in subsection (1)(a) arises to B.
- (4) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
  - (a) subsection (4) of that section were omitted, and
  - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

##### **809EZDB Sums arising to connected company or unconnected person**

- (1) This section applies in relation to an individual (“A”) if—
  - (a) a sum arises to—
    - (i) a company connected with A, or
    - (ii) a person not connected with A,
  - (b) any of the enjoyment conditions is met, and
  - (c) the sum does not arise to A apart from this section.
- (2) The enjoyment conditions are—

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- (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
- (b) the arising of the sum operates to increase the value to A or a person connected with A of any assets which—
  - (i) A or the connected person holds, or
  - (ii) are held for the benefit of A or the connected person;
- (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
- (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
- (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (1)(a) arises to a company connected with A, references to a person connected with A do not include that company.

- (3) There arises to A for the purposes of this Chapter—
  - (a) the sum referred to in subsection (1)(a), or
  - (b) if the enjoyment condition in subsection (2)(a), (c), (d) or (e) is met in relation to part of the sum, that part of that sum, or
  - (c) if the enjoyment condition in subsection (2)(b) is met, such part of that sum as is equal to the amount by which the value of the assets referred to in that condition is increased.
- (4) Where a sum (or part of a sum) arises to A by virtue of this section, it arises to A at the time it arises to the person referred to in subsection (1)(a)(i) or (ii) (whether the enjoyment condition was met at that time or at a later date).
- (5) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—
  - (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
  - (b) all benefits which may at any time accrue to a person as a result of the sum arising as specified in subsection (1)(a) must be taken into account, irrespective of—
    - (i) the nature or form of the benefits, or
    - (ii) whether the person has legal or equitable rights in respect of the benefits.
- (6) The enjoyment condition in subsection (2)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
- (7) The enjoyment condition in subsection (2)(a) or (e) is to be treated as not met if the sum referred to in subsection (1)(a) arises to a company connected with A and—

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- (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
- (b) paragraph (a) does not apply but—
  - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
  - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.

In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.

- (8) But subsections (6) and (7) do not apply if the sum referred to in subsection (1) (a) arises to the company referred to in subsection (1)(a)(i) or the person referred to in subsection (1)(a)(ii) as part of arrangements where—
  - (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and
  - (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
- (9) The condition in subsection (8)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.
- (10) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
  - (a) subsection (4) of that section were omitted, and
  - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).”

(2) In ITA 2007, in section 809EZA(3)(c), omit “directly or indirectly”.

(3) The amendments made by this section have effect in relation to—

- (a) sums other than carried interest arising on or after 22 October 2015, (whenever the arrangements under which the sums arise were made), and
- (b) carried interest arising on or after 22 October 2015 under any arrangements, unless the carried interest arises in connection with the disposal of an asset or assets of a partnership or partnerships before that date.

(4) In subsection (3), “arise”, “arrangements” and “carried interest” have the same meanings as in Chapter 5E of Part 13 of ITA 2007.