



# Finance Act 2009

## 2009 CHAPTER 10

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [21st July 2009]

Most Gracious Sovereign

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and to grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### CHARGES, RATES, ALLOWANCES, ETC

##### *Income tax*

#### **1 Charge and main rates for 2009-10**

- (1) Income tax is charged for the tax year 2009-10.
- (2) For that tax year—
  - (a) the basic rate is 20%, and
  - (b) the higher rate is 40%.

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## 2 Basic rate limit for 2009-10

- (1) For the tax year 2009-10 the amount specified in section 10(5) of ITA 2007 (basic rate limit) is replaced with “£37,400”.
- (2) Accordingly, section 21 of that Act (indexation of limits), so far as relating to the basic rate limit, does not apply for that tax year.

## 3 Personal allowance for 2009-10 for those aged under 65

- (1) For the tax year 2009-10 the amount specified in—
  - (a) section 35 of ITA 2007, <sup>F1</sup>...
  - <sup>F1</sup>(b) .....  
(personal allowance for those aged under 65) is replaced with “£6,475”.
- (2) Accordingly—
  - (a) section 57 of ITA 2007, so far as relating to the amount specified in section 35 of that Act, <sup>F2</sup>...
  - <sup>F2</sup>(b) .....  
(indexation) do not apply for the tax year 2009-10.

### Textual Amendments

- F1** S. 3(1)(b) omitted (with effect in accordance with Sch. 1 para. 7 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(q\)](#)
- F2** S. 3(2)(b) omitted (with effect in accordance with Sch. 1 para. 7 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(q\)](#)

## 4 Reduction of personal allowance for those with income exceeding £100,000

- (1) In section 35 of ITA 2007 (personal allowances for those aged under 65), the existing provision becomes subsection (1) of that section; and after that subsection insert—
  - “(2) For an individual whose adjusted net income exceeds £100,000, the allowance under subsection (1) is reduced by one-half of the excess.
  - (3) If the amount of any allowance that remains after the operation of subsection (2) would otherwise not be a multiple of £1, it is to be rounded up to the nearest amount which is a multiple of £1.
  - (4) For the meaning of “adjusted net income” see section 58.”
- (2) In sections 36(2)(b) and 37(2)(b) of ITA 2007 (limit on reduction of personal allowances for those aged 65 to 74 or 75 and over), for “the amount of a personal allowance under section 35” substitute “ the amount of any allowance to which the individual would be entitled under section 35 if under the age of 65 throughout the tax year ”.
- (3) In section 57(1)(a) and (3)(a) of ITA 2007 (indexation of allowances), for “35” substitute “ 35(1) ”.
- (4) The amendments made by subsections (1) and (2) have effect for the tax year 2010-11 and subsequent tax years.

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- (5) The amendment made by subsection (3) has effect for finding allowances for the tax year 2011-12 and subsequent tax years.

## **5 Abolition of personal reliefs for non-residents**

Schedule 1 contains provision abolishing personal reliefs for non-residents.

## **6 Additional rate, dividend additional rate, trust rates and pension tax rates**

- (1) Section 6 of ITA 2007 (rates of income tax) is amended as follows.
- (2) In subsection (1), omit the “and” at the end of paragraph (b) and insert at the end “, and (d) the additional rate.”
- (3) In subsection (3)(b), for “and dividend upper rate” substitute “, dividend upper rate and dividend additional rate”.
- (4) In section 9 (trust rate and dividend trust rate)—
- (a) in subsection (1), for “40%” substitute “ 50% ”, and
  - (b) in subsection (2), for “32.5%” substitute “ 42.5% ”.
- (5) Schedule 2 contains provision supplementing this section (including provision about rates under Part 4 of FA 2004).
- (6) The amendments made by this section have effect for the tax year 2010-11 and subsequent tax years.

### *Corporation tax*

## **7 Charge and main rates for financial year 2010**

- (1) Corporation tax is charged for the financial year 2010.
- (2) For that year the rate of corporation tax is—
- (a) 28% on profits of companies other than ring fence profits, and
  - (b) 30% on ring fence profits of companies.
- (3) In subsection (2) “ring fence profits” has the same meaning as in Chapter 5 of Part 12 of ICTA (see section 502(1) and (1A) of that Act).

## **8 Small companies' rates and fractions for financial year 2009**

- (1) For the financial year 2009 the small companies' rate is—
- (a) 21% on profits of companies other than ring fence profits, and
  - (b) 19% on ring fence profits of companies.
- (2) For the financial year 2009 the fraction mentioned in section 13(2) of ICTA is—
- (a) 7/400ths in relation to profits of companies other than ring fence profits (“the standard fraction”), and
  - (b) 11/400ths in relation to ring fence profits of companies (“the ring fence fraction”).

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- (3) See section 7(3) of FA 2008 for provision applying section 3(3) to (7) of FA 2007 in relation to profits for an accounting period any part of which falls in the financial year 2009.
- (4) In this section “ring fence profits” has the same meaning as in Chapter 5 of Part 12 of ICTA (see section 502(1) and (1A) of that Act).

#### *Value added tax*

### **9 Extension of reduced standard rate and anti-avoidance provision**

- (1) The Value Added Tax (Change of Rate) Order 2008 (S.I. 2008/3020) (reducing standard rate of value added tax to 15 per cent) is to cease to be in force on 1 January 2010 (rather than ceasing to be in force on 1 December 2009 in accordance with section 2(2) of VATA 1994).
- (2) Schedule 3 contains—
  - (a) provision for a supplementary charge to value added tax on supplies spanning the date of the VAT change (see Parts 1 to 5), and
  - (b) minor amendments of provisions about orders changing the standard rate of value added tax (see Part 6).

#### *Stamp duty land tax*

### **10 Thresholds for residential property**

- (1) Part 4 of FA 2003 (stamp duty land tax) has effect in relation to transactions with an effective date on or after 22 April 2009 but before 1 January 2010 as if—
  - (a) in section 55(2) (amount of tax chargeable: general), in Table A (bands and percentages for residential property), for “£125,000” (in both places) there were substituted “ £175,000 ”, and
  - (b) in paragraph 2(3) of Schedule 5 (amount of tax chargeable: rent), in Table A (bands and percentages for residential property), for “£125,000” (in both places) there were substituted “ £175,000 ”.
- (2) The following are revoked—
  - (a) the Stamp Duty Land Tax (Variation of Part 4 of the Finance Act 2003) Regulations 2008 (S.I. 2008/2338), and
  - (b) the Stamp Duty Land Tax (Exemption of Certain Acquisitions of Residential Property) Regulations 2008 (S.I. 2008/2339).
- (3) The revocations made by subsection (2) have effect in relation to transactions with an effective date on or after 22 April 2009.

#### *Alcohol and tobacco duties*

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

- (1) ALDA 1979 is amended as follows.
- (2) In section 5 (rate of duty on spirits), for “£21.35” substitute “ £22.64 ”.



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- (3) In section 36(1AA)(a) (standard rate of duty on beer), for “£14.96” substitute “£16.47”.
- (4) In section 62(1A) (rates of duty on cider)—
- (a) in paragraph (a) (rate of duty per hectolitre in the case of sparkling cider of a strength exceeding 5.5 per cent), for “£188.10” substitute “£207.20”,
  - (b) in paragraph (b) (rate of duty per hectolitre in the case of cider of a strength exceeding 7.5 per cent which is not sparkling cider), for “£43.37” substitute “£47.77”, and
  - (c) in paragraph (c) (rate of duty per hectolitre in any other case), for “£28.90” substitute “£31.83”.
- (5) For the table in Schedule 1 substitute—

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

**PART 1**

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

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	<b>£</b>
Wine or made-wine of a strength not exceeding 4 per cent	65.94
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	90.68
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling	214.02
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	207.20
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	274.13
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	285.33

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## PART 2

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

<i>Description of wine or made-wine</i>	<i>Rates of duty per litre of alcohol in wine or made-wine</i>
	<b>£</b>
Wine or made-wine of a strength exceeding 22 per cent	22.64.”

(6) The following are revoked—

- (a) the Alcoholic Liquor Duties (Surcharges) and Tobacco Products Duty Order 2008 (S.I. 2008/3026), so far as relating to excise duty on alcoholic liquors, and
- (b) the Alcoholic Liquor (Surcharge on Spirits Duty) Order 2008 (S.I. 2008/3062).

(7) The amendments made by this section are treated as having come into force on 23 April 2009.

## 12 Rates of tobacco products duty

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

“TABLE

1. Cigarettes	An amount equal to 24 per cent of the retail price plus £114.31 per thousand cigarettes
2. Cigars	£173.13 per kilogram
3. Hand-rolling tobacco	£124.45 per kilogram
4. Other smoking tobacco and chewing tobacco	£76.12 per kilogram.”

(2) The Alcoholic Liquor Duties (Surcharges) and Tobacco Products Duty Order 2008 (S.I. 2008/3026), so far as relating to excise duty on tobacco products, is revoked.

(3) The amendments made by this section are treated as having come into force at 6 pm on 22 April 2009.

### *Vehicle excise duty*

## 13 Rates for 2009-10

(1) Schedule 1 to VERA 1994 (annual rates of duty) is amended as follows.

(2) In paragraph 1 (general)—

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- (a) in sub-paragraph (2) (vehicle not covered elsewhere in Schedule otherwise than with engine cylinder capacity not exceeding 1,549cc), for “£185” substitute “ £190 ”, and
  - (b) in sub-paragraph (2A) (vehicle not covered elsewhere in Schedule with engine cylinder capacity not exceeding 1,549cc), for “£120” substitute “ £125 ”.
- (3) In paragraph 1B (graduated rates for light passenger vehicles), for the table substitute—

“TABLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Reduced rate</i>	<i>Standard rate</i>
<i>g/km</i>	<i>g/km</i>	<i>£</i>	<i>£</i>
100	120	15	35
120	140	100	120
140	150	105	125
150	165	130	150
165	185	155	175
185	225	200	215
225		390	405

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

- (a) in column (3), in the last row, “200” were substituted for “ 390 ”, and
  - (b) in column (4), in the last row, “215” were substituted for “ 405 ”.
- (4) In paragraph 1J (light goods vehicles)—
- (a) in sub-paragraph (a) (vehicle which is not lower-emission van), for “£180” substitute “ £185 ”, and
  - (b) in sub-paragraph (b) (lower-emission van), for “£120” substitute “ £125 ”.
- (5) The amendments made by this section have effect in relation to licences taken out on or after 1 May 2009.

#### 14 Rates from April 2010

- (1) Schedule 1 to VERA 1994 (annual rates of duty) is amended as follows.
- (2) In paragraph 1(2) (vehicle not covered elsewhere in Schedule otherwise than with engine cylinder capacity not exceeding 1,549cc), for “£190” substitute “ £205 ”.
- (3) Paragraph 1B (graduated rates for light passenger vehicles) is amended as follows.
- (4) For “table” substitute “ tables ”.
- (5) Omit the “and” at the end of paragraph (a).

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- (6) Insert at the end of paragraph (b) “and  
(c) whether or not the duty is payable on the first vehicle licence for the vehicle.”
- (7) For the table substitute—

“TABLE 1

RATES PAYABLE ON FIRST VEHICLE LICENCE FOR VEHICLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Reduced rate</i>	<i>Standard rate</i>
<i>g/km</i>	<i>g/km</i>	<i>£</i>	<i>£</i>
130	140	100	110
140	150	115	125
150	165	145	155
165	175	240	250
175	185	290	300
185	200	415	425
200	225	540	550
225	255	740	750
255		940	950

TABLE 2

RATES PAYABLE ON ANY OTHER VEHICLE LICENCE FOR VEHICLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Reduced rate</i>	<i>Standard rate</i>
<i>g/km</i>	<i>g/km</i>	<i>£</i>	<i>£</i>
100	110	10	20
110	120	20	30
120	130	80	90
130	140	100	110
140	150	115	125
150	165	145	155
165	175	170	180
175	185	190	200

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185	200	225	235
200	225	235	245
225	255	415	425
255		425	435

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Table 2 has effect in relation to vehicles first registered, under this Act or under the law of a country or territory outside the United Kingdom, before 23 March 2006 as if—

- (a) in column (3), in the last two rows, “235” were substituted for “ 415 ” and “425”, and
  - (b) in column (4), in the last two rows, “245” were substituted for “ 425 ” and “435”.
- (8) In paragraph 1J(a) (light goods vehicle which is not lower-emission van), for “£185” substitute “ £200 ”.
- (9) Schedule 4 contains further provision about rates of vehicle excise duty etc.
- (10) The amendments made by this section have effect in relation to licences taken out on or after 1 April 2010.

#### *Fuel duties*

### **15 Rates and rebates from Spring 2009**

- (1) HODA 1979 is amended as follows.
- (2) In section 6(1A) (main rates)—
  - (a) in paragraph (a) (unleaded petrol), for “£0.5235” substitute “ £0.5419 ”,
  - (b) in paragraph (aa) (aviation gasoline), for “£0.3103” substitute “ £0.3334 ”,
  - (c) in paragraph (b) (light oil other than unleaded petrol or aviation gasoline), for “£0.6207” substitute “ £0.6391 ”, and
  - (d) in paragraph (c) (heavy oil), for “£0.5235” substitute “ £0.5419 ”.
- (3) In section 6AA(3) (rate of duty on biodiesel), for “£0.3235” substitute “ £0.3419 ”.
- (4) In section 6AD(3) (rate of duty on bioethanol), for “£0.3235” substitute “ £0.3419 ”.
- (5) In section 8(3) (road fuel gas)—
  - (a) in paragraph (a) (natural road fuel gas), for “£0.1660” substitute “ £0.1926 ”, and
  - (b) in paragraph (b) (other road fuel gas), for “£0.2077” substitute “ £0.2482 ”.
- (6) In section 11(1) (rebate on heavy oil)—
  - (a) in paragraph (a) (fuel oil), for “£0.0966” substitute “ £0.1 ”, and
  - (b) in paragraph (b) (gas oil), for “£0.1007” substitute “ £0.1042 ”.
- (7) In section 14(1) (rebate on light oil for use as furnace fuel), for “£0.0966” substitute “ £0.1 ”.
- (8) In section 14A(2) (rebate on certain biodiesel), for “£0.1007” substitute “ £0.1042 ”.

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- (9) The amendments made by subsection (2)(b) and (c) are treated as having come into force on 1 May 2009.
- (10) The other amendments made by this section are treated as having come into force on 1 April 2009.

## 16 Rates and rebates from September 2009

- (1) HODA 1979 is amended as follows.
- (2) In section 6(1A) (main rates)—
- in paragraph (a) (unleaded petrol), for “£0.5419” substitute “ £0.5619 ”,
  - in paragraph (aa) (aviation gasoline), for “£0.3334” substitute “ £0.3457 ”,
  - in paragraph (b) (light oil other than unleaded petrol or aviation gasoline), for “£0.6391” substitute “ £0.6591 ”, and
  - in paragraph (c) (heavy oil), for “£0.5419” substitute “ £0.5619 ”.
- (3) In section 6AA(3) (rate of duty on biodiesel), for “£0.3419” substitute “ £0.3619 ”.
- (4) In section 6AD(3) (rate of duty on bioethanol), for “£0.3419” substitute “ £0.3619 ”.
- (5) In section 8(3) (road fuel gas)—
- in paragraph (a) (natural road fuel gas), for “£0.1926” substitute “ £0.2216 ”, and
  - in paragraph (b) (other road fuel gas), for “£0.2482” substitute “ £0.2767 ”.
- (6) In section 11(1) (rebate on heavy oil)—
- in paragraph (a) (fuel oil), for “£0.1” substitute “ £0.1037 ”, and
  - in paragraph (b) (gas oil), for “£0.1042” substitute “ £0.1080 ”.
- (7) In section 14(1) (rebate on light oil for use as furnace fuel), for “£0.1” substitute “ £0.1037 ”.
- (8) In section 14A(2) (rebate on certain biodiesel), for “£0.1042” substitute “ £0.1080 ”.
- (9) The amendments made by this section come into force on 1 September 2009.

### *Other environmental taxes and duties*

## 17 Rates of air passenger duty

- (1) In section 30 of FA 1994 (air passenger duty: rates), for subsections (1) to (4) substitute—
- Air passenger duty is chargeable on the carriage of each chargeable passenger at the rate determined as follows.
  - If the passenger's journey ends at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A—
    - if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is £11, and
    - in any other case, the rate is £22.

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- (3) If the passenger's journey ends at a place in a territory specified in Part 2 of Schedule 5A—
- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is £45, and
  - (b) in any other case, the rate is £90.
- (4) If the passenger's journey ends at a place in a territory specified in Part 3 of Schedule 5A—
- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is £50, and
  - (b) in any other case, the rate is £100.
- (4A) If the passenger's journey ends at any other place—
- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is £55, and
  - (b) in any other case, the rate is £110.”
- (2) Schedule 5 contains further provision about air passenger duty.
- (3) The amendment made by subsection (1) has effect in relation to the carriage of passengers beginning on or after 1 November 2009.

## 18 Standard rate of landfill tax

- (1) In section 42(1)(a) and (2) of FA 1996 (amount of landfill tax), for “£40” substitute “£48”.
- (2) The amendments made by subsection (1) have effect in relation to disposals made (or treated as made) on or after 1 April 2010.

### *Gambling duties*

## 19 Rates of gaming duty

- (1) In section 11(2) of FA 1997 (rates of gaming duty), for the table substitute—

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £1,929,000	15 per cent
The next £1,329,500	20 per cent
The next £2,329,000	30 per cent
The next £4,915,500	40 per cent
The remainder	50 per cent.”

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- (2) The amendment made by subsection (1) has effect in relation to accounting periods beginning on or after 1 April 2009.

## 20 Bingo duty

- (1) BGDA 1981 is amended as follows.
- (2) In section 17(1)(b) (bingo duty chargeable at 15 per cent of bingo promotion profits), for “15” substitute “ 22 ”.
- (3) In paragraph 5(2)(c) of Schedule 3 (maximum prize for small-scale amusements exemption), for “£50” substitute “ £70 ”.
- (4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 27 April 2009.
- (5) The amendment made by subsection (3) has effect in relation to bingo played on or after 1 June 2009.

## 21 Amounts of duty on amusement machine licences

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

“TABLE

<i>Months for which licence granted</i>	<i>Category A</i>	<i>Category B1</i>	<i>Category B2</i>	<i>Category B3</i>	<i>Category B4</i>	<i>Category C</i>
	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>
1	500	255	200	200	180	80
2	985	490	385	385	350	45
3	1475	735	585	585	530	220
4	1965	985	775	775	705	290
5	2465	1230	970	970	875	365
6	2955	1475	1160	1160	1050	435
7	3445	1720	1355	1355	1225	505
8	3935	1965	1550	1550	1405	580
9	4430	2215	1745	1745	1580	655
10	4920	2465	1935	1935	1755	725
11	5410	2710	2130	2130	1930	795
12	5625	2815	2215	2215	2010	830.”



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- (2) The amendment made by subsection (1) has effect in relation to cases where the application for the amusement machine licence is received by the Commissioners for Her Majesty's Revenue and Customs after 4 pm on 22 April 2009.

## **22 Provisions affecting amount of amusement machine licence duty**

- (1) BGDA 1981 is amended as follows.
- (2) Section 21 (gaming machine licences) is amended as follows.
- (3) Subsection (5) (excepted machines) is amended as follows.
- (4) In paragraph (c) (machines in case of which cost of single game does not exceed 10p and maximum value of prize for winning single game does not exceed £5)—
- (a) in sub-paragraph (i), omit the “and” at the end,
  - (b) in sub-paragraph (ii), for “£5” substitute “ £15 ”, and
  - (c) after that sub-paragraph insert—
    - “(iii) the maximum cash component of the prize for winning a single game does not exceed £8.”
- (5) After that paragraph insert—
- “(ca) a gaming machine in respect of which—
    - (i) the cost of a single game does not exceed £1,
    - (ii) the maximum value of the prize for winning a single game does not exceed £50, and
    - (iii) any prize that can be won is neither money nor something that can be exchanged for or used in place of money or that can be exchanged for something other than money, and”.
- (6) After that subsection insert—
- “(6) To the extent that a prize consists of anything other than money, its value for the purposes of this section and sections 22 and 23 below is—
    - (a) in the case of a voucher or token that may be exchanged for, or used in place of, an amount of money, that amount,
    - (b) in the case of a voucher or token that does not fall within paragraph (a) and that may be exchanged for something other than money, the cost that the person providing the machine would incur in obtaining that thing from a person who is not a connected person, and
    - (c) in any other case, the cost that the person providing the machine would incur in obtaining the prize from a person who is not a connected person.
  - (7) Section 839 of the Income and Corporation Taxes Act 1988 (connected persons) applies for the purposes of subsection (6).”
- (7) In section 22(2) (machine in respect of which benefits for winning single game do not exceed £8 to be “small-prize machine”), for “£8” substitute “ £10 ”.
- (8) Section 23 (amount of duty) is amended as follows.
- (9) In subsection (3) (categories of machines), in the definition of Category C gaming machine, in paragraph (ii)—

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- (a) for “50p” substitute “ £1 ”, and
  - (b) for “£35” substitute “ £70 ”.
- (10) Omit subsection (5) (which is superseded by the amendment made by subsection (6)).
- (11) In consequence of the amendments made by the preceding provisions of this section, omit—
- (a) in FA 2000, in Schedule 2, paragraph 3(1)(b), and
  - (b) in FA 2007, section 9(2) and (4).
- (12) The amendments made by this section are treated as having come into force on 1 June 2009.

## PART 2

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

#### *Support for business*

#### **23 Temporary extension of loss carry back provisions**

Schedule 6 contains provision for a temporary extension of provisions allowing the carrying back of losses.

#### **24 First-year capital allowances for expenditure in 2009-2010**

- (1) Part 2 of CAA 2001 (plant and machinery allowances) has effect as if—
- (a) in section 39 (first-year qualifying expenditure), a reference to this section were included in the list of provisions describing first-year qualifying expenditure, and
  - (b) in the Table in section 52(3) (amount of first-year allowances), there were inserted at the end—

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“Expenditure qualifying under section 24 of FA 2009 (expenditure in 2009-2010)	40%”.
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- (2) Expenditure is first-year qualifying expenditure under this section if—
- (a) it is incurred in 2009-2010,
  - (b) it is not within any of the general exclusions in section 46(2) of CAA 2001 (subject to subsection (4)),
  - (c) it is not special rate expenditure (as defined by section 104A of CAA 2001), and
  - (d) it is not first-year qualifying expenditure under a provision of Chapter 4 of Part 2 of CAA 2001.
- (3) For the purposes of this section expenditure is incurred in 2009-2010—
- (a) in the case of expenditure incurred by a person within the charge to corporation tax, if it is incurred on or after 1 April 2009 but before 1 April 2010, and

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- (b) in the case of expenditure incurred by a person within the charge to income tax, if it is incurred on or after 6 April 2009 but before 6 April 2010.
- (4) General exclusion 6 in section 46(2) of CAA 2001 (expenditure on provision of plant or machinery for leasing) does not prevent expenditure being first-year qualifying expenditure under this section if the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building (as defined by section 70R of that Act).
- (5) Expressions used in this section and in Part 2 of CAA 2001 have the same meaning here as in that Part of that Act, subject to subsection (6).
- (6) In determining whether expenditure is incurred in 2009-2010, any effect of section 12 of CAA 2001 (expenditure incurred before qualifying activity carried on) on the time at which it is to be treated as incurred is to be disregarded.

## 25 Agreements to forgo tax reliefs

- (1) If—
  - (a) a person (“P”) makes arrangements under which P agrees (in whatever terms) to forgo (to any extent) tax relief or a right to tax relief (whenever arising), and
  - (b) the Treasury designates the arrangements for the purposes of this section, all relevant enactments are to have effect with such modifications as are necessary or expedient to give effect to the agreement.
- (2) The Treasury may not designate arrangements for the purposes of this section unless—
  - (a) the arrangements have been made with the Treasury, another government department or another public body, and
  - (b) under the arrangements, or under other arrangements, the Treasury, another government department or another public body—
    - (i) guarantees or assumes a loss or other liability of P or another person,
    - (ii) insures or indemnifies P or another person against a loss or other liability,
    - (iii) agrees to make a payment to P or another person in respect of a loss or other liability of any person (whether or not the person to whom the payment is to be made), or
    - (iv) gives other financial support or assistance to P or another person (whether in money or otherwise).
- (3) If P forgoes (to any extent) tax relief or a right to tax relief under subsection (1)—
  - (a) no tax relief is to be given to P or any other person by virtue of what is forgone or anything resulting from or representing what is forgone, and
  - (b) all relevant enactments are to have effect with such modifications as are necessary or expedient to give effect to paragraph (a).
- (4) In this section—
  - “relevant enactments” means—
    - (a) the Corporation Tax Acts, and
    - (b) the enactments relating to petroleum revenue tax;
  - “tax relief” means—
    - (a) a reduction (by any means) of P's liability to any tax, or
    - (b) a payable tax credit.

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- (5) This section has effect in relation to arrangements made on or after 22 April 2009; but that does not prevent subsections (1) and (3) from having effect in relation to times before 22 April 2009.

**26 Contaminated and derelict land**

Schedule 7 contains provision extending Part 14 of CTA 2009 (remediation of contaminated land) to derelict land and other provision amending that Part of that Act.

**27 Venture capital schemes**

Schedule 8 contains provision about venture capital schemes.

**28 Group relief: preference shares**

Schedule 9 contains provision about the treatment of certain preference shares for the purposes of group relief.

**29 Sale of lessor companies etc: reforms**

Schedule 10 contains provision amending Schedule 10 to FA 2006 (sale of lessor companies etc).

**30 Tax relief for business expenditure on cars and motor cycles**

Schedule 11 contains provision about tax relief for business expenditure on cars and motor cycles.

**31 Reallocation of chargeable gain or loss within a group**

Schedule 12 contains provision about the reallocation of chargeable gains and allowable losses between companies that are members of a group.

**32 Stock lending: chargeable gains in event of insolvency etc of borrower**

Schedule 13 contains provision amending TCGA 1992 in respect of stock lending arrangements in the event of the insolvency of the borrower.

**33 FSCS payments representing interest**

- (1) Chapter 2 of Part 4 of ITTOIA 2005 (interest) is amended as follows.
- (2) In section 369(2) (list of provisions extending what is treated as interest for certain purposes), after “bonds,” insert— “ section 380A (FSCS payments representing interest),”.
- (3) After section 380 insert—

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### **“380A FSCS payments representing interest**

- (1) Any payment representing interest which is made under the FSCS is treated as interest for the purposes of this Act.
  - (2) “Payment representing interest” means a payment calculated in the same way as interest which would have been paid to the recipient but for the circumstances giving rise to the making of payments under the FSCS.
  - (3) Where a payment representing interest is made net of an amount equal to a sum representing income tax that would have been deducted on the payment of interest, the amount treated as interest by this section is the aggregate of the payment representing interest and that sum.
  - (4) This section applies to payments made under the FSCS whether or not they are made (in whole or in part) on behalf of the Treasury or any other person.
  - (5) In this section “the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).”
- (4) In ITA 2007, after section 979 insert—

### **“979A FSCS payments representing interest**

- (1) This section applies where a payment is made under the FSCS representing interest net of an amount equal to a sum representing income tax that would have been deducted on the payment of interest but for the circumstances giving rise to the making of payments under the FSCS.
- (2) A payment of the relevant gross amount is treated as having been made under the FSCS after there has been deducted from it a sum representing income tax of that amount.
- (3) That sum is accordingly taken into account under section 59B of TMA 1970 in determining the income tax payable by, or repayable to, the recipient.
- (4) “The relevant gross amount” means the aggregate of the amount of the payment representing interest which is made and that sum.
- (5) If the recipient requests it in writing, the scheme manager of the FSCS must provide the recipient with a statement showing—
  - (a) the relevant gross amount,
  - (b) the amount of the sum treated as deducted, and
  - (c) the amount of the payment representing interest.
- (6) The duty to comply with a request under subsection (5) is enforceable by the recipient.
- (7) In this section—

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);

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“payment representing interest” has the same meaning as in section 380A of ITTOIA 2005.”

- (5) The amendments made by this section have effect in relation to payments made on or after 6 October 2008.

#### *Foreign profits etc*

### **34 Corporation tax treatment of company distributions received**

Schedule 14 contains provision about the treatment for the purposes of corporation tax of dividends and other distributions.

### **35 Tax treatment of financing costs and income**

Schedule 15 contains provision about the treatment for the purposes of corporation tax of certain financing costs and certain financing income of companies that are members of a group.

### **36 Controlled foreign companies**

Schedule 16 contains provision about controlled foreign companies.

### **37 International movement of capital**

Schedule 17 contains provision—

- (a) removing the existing requirements in relation to the international movement of capital in sections 765 to 767 of ICTA, and
- (b) imposing new reporting requirements on certain bodies corporate in relation to the international movement of capital.

### **38 Corporation tax: foreign currency accounting**

Schedule 18 contains provision about foreign currency accounting.

### **39 Certain distributions of offshore funds taxed as interest**

- (1) Chapter 2 of Part 4 of ITTOIA 2005 (interest) is amended as follows.
- (2) In section 369(2) (list of provisions extending what is treated as interest for certain purposes), after the entry relating to section 376 insert— “ section 378A (offshore fund distributions), ”.
- (3) After section 378 insert—

#### **“378A Offshore fund distributions**

- (1) This section applies where—
  - (a) a dividend is paid by an offshore fund, and
  - (b) the offshore fund fails to meet the qualifying investments test at any time in the relevant period.

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- (2) The dividend is treated as interest for income tax purposes.
- (3) For the purposes of this section, an offshore fund fails to meet the qualifying investments test if the market value of the fund's qualifying investments exceeds 60% of the market value of all of the assets of the fund (excluding cash awaiting investment).
- (4) “The relevant period” means—
  - (a) the relevant period of account of the offshore fund, or
  - (b) if longer, the period of 12 months ending on the last day of that period.
- (5) “The relevant period of account” means—
  - (a) the last period of account ending before the dividend is paid, in a case in which the profits available for distribution at the end of that period (and not used since then by distribution or otherwise) equal or exceed the amount of the dividend (aggregated with any other distribution made by the offshore fund at the same time), and
  - (b) the period of account in which the dividend is paid, in any other case.
- (6) This section applies to a manufactured overseas dividend if, and only if, it is representative of a distribution to which this section would apply.
- (7) In this section—
  - “dividend” includes any distribution that (but for this section) would be treated as a dividend for income tax purposes;
  - “manufactured overseas dividend” has the same meaning as in Chapter 2 of Part 11 of ITA 2007 (manufactured payments);
  - “offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act);
  - “qualifying investments” has the meaning given in section 494 of CTA 2009.”
- (4) Accordingly, in section 367 of ITTOIA 2005 (priority between Chapters within Part 4), in subsection (3)—
  - (a) in paragraph (a), after “dividends)” insert “ , 378A (offshore fund distributions) ”, and
  - (b) in paragraph (b), insert at the end “or Chapter 4 (or both)”.
- (5) The amendments made by this section have effect in relation to—
  - (a) distributions arising on or after 22 April 2009, and
  - (b) manufactured overseas dividends that are representative of a distribution arising on or after that date.

#### **40 Income tax credits for foreign distributions**

Schedule 19 contains provision about income tax credits for foreign distributions.

#### *Loan relationships and derivatives*

#### **41 Loan relationships involving connected parties**

Schedule 20 contains provision about loan relationships involving connected parties.

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## **42 Release of trade etc debts**

- (1) CTA 2009 is amended as follows.
- (2) In section 353 (introduction to Chapter 6 of Part 5)—
  - (a) omit subsection (3), and
  - (b) in subsection (6), after “loss” insert “ and release debit ”.
- (3) In section 476(1) (definitions for purposes of Parts 5 and 6), after the definition of “profit sharing arrangements” insert—
 

““release debit”, in relation to a company, means a debit in respect of a release by the company of a liability under a creditor relationship of the company.”.
- (4) Section 479 (relevant non-lending relationships not involving discounts) is amended as follows.
- (5) In subsection (2)—
  - (a) omit the “and” at the end of paragraph (b),
  - (b) in paragraph (c), after “loss” insert “ or release debit ”, and
  - (c) insert at the end “, and
    - (d) a debt in relation to which a relevant deduction has been allowed to the company and which is released.”
- (6) In subsection (3), for “(2)” substitute “ (2)(c) ”.
- (7) After that subsection insert—
 

“(3A) In subsection (2)(d) “relevant deduction” means a deduction allowed in calculating the profits of a trade, UK property business or overseas property business.”
- (8) Section 481 (application of Part 5 to relevant non-lending relationships) is amended as follows
- (9) In subsection (3)—
  - (a) in paragraph (d), after “loss” insert “ or release debit ” and for “impairment, and” substitute “ impairment or release, ”, and
  - (b) insert at the end “and
    - (f) in the case of a debt in relation to which a relevant deduction has been allowed to the company and which is released, the release.”
- (10) In subsection (4), for “(3)” substitute “ (3)(d) and (e) ”.
- (11) After that subsection insert—
 

“(4A) In subsection (3)(f) “relevant deduction” has the meaning given in section 479(3A).”
- (12) The amendments made by this section are treated as having come into force on 22 April 2009.



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#### **43 Foreign exchange matching: anti-avoidance**

Schedule 21 contains anti-avoidance provisions relating to exchange gains and losses arising from loan relationships and derivative contracts.

#### *Collective investment*

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

In Schedule 22—

Part 1 contains provision defining what is meant by an offshore fund for the purposes of section 41 of FA 2008 (tax treatment of participants in offshore funds), and

Part 2 contains provision about the treatment of participants in certain offshore funds under TCGA 1992.

#### **45 Power to enable dividends of investment trusts to be taxed as interest**

- (1) The Treasury may by regulations make provision for and in connection with—
  - (a) the designation by a company that is an investment trust or a prospective investment trust of dividends made by the company, and
  - (b) the treatment of a designated dividend for the purposes of the Tax Acts, in specified circumstances and in the case of specified persons—
    - (i) as a payment of yearly interest, or
    - (ii) as interest under a loan relationship.
- (2) Regulations under this section may, in particular, make provision—
  - (a) about the circumstances in which a dividend may, or may not, be designated,
  - (b) about limits on the amounts that may be designated or treated as a payment of yearly interest or as interest under a loan relationship,
  - (c) disapplying the duty under section 874 of ITA 2007 (deduction of sums representing income tax from payments of yearly interest) in specified circumstances,
  - (d) about the preparation of accounts and the keeping of records by investment trusts and prospective investment trusts, and
  - (e) about the provision by investment trusts and prospective investment trusts of information, whether to recipients of designated dividends or to other persons, including provision imposing a penalty not exceeding £3,000.
- (3) Regulations under this section may, in particular—
  - (a) make provision applying enactments and instruments (with or without modification),
  - (b) make different provision for different cases or different purposes, and
  - (c) make incidental, consequential, supplementary or transitional provision.
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section—

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“company” has the same meaning as in section 842 of ICTA (investment trusts);

“investment trust” means an investment trust within the meaning of section 842(1) of ICTA;

“loan relationship” has the same meaning as in the Corporation Tax Acts (see section 302(1) and (2) of CTA 2009);

“prospective investment trust” means a company that—

(a) intends to seek approval under section 842 of ICTA (investment trusts), and

(b) has a reasonable belief that such approval will be obtained;

“specified” means specified in regulations under this section.

#### *Insurance etc*

#### **46 Insurance companies**

Schedule 23 contains provisions relating to insurance companies.

#### **47 Equalisation reserves for Lloyd's corporate and partnership members**

(1) The Treasury may by regulations provide for section 444BA of ICTA (equalisation reserves) to have effect, in such cases and subject to such modifications as may be specified in the regulations, in relation to equivalent Lloyd's reserves as it has effect in relation to equalisation reserves maintained by virtue of equalisation reserves rules.

(2) For this purpose a reserve is an equivalent Lloyd's reserve if it is maintained by a corporate or partnership member for purposes, or in a manner, such as to make it equivalent to an equalisation reserve maintained by virtue of equalisation reserves rules.

(3) The regulations may include—

(a) provision having effect in relation to periods before they are made, and

(b) supplementary, incidental, consequential and transitional provision.

(4) In this section—

“corporate member” means a body corporate which is a member of Lloyd's;

“equalisation reserves rules” has the same meaning as in section 444BA of ICTA (see subsection (11) of that section);

“member” means underwriting member;

“partnership member” means a limited partnership formed under the law of Scotland, or a limited liability partnership formed under the law of any part of the United Kingdom, which is a member of Lloyd's.

#### *Simplification*

#### **48 Disguised interest**

Schedule 24 contains provision about the corporation tax treatment of disguised interest.

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#### **49 Transfer of income streams**

Schedule 25 contains provision about transfers of income streams.

#### **50 SAYE schemes**

- (1) Schedule 26 contains provision amending Chapter 4 of Part 6 of ITTOIA 2005 (SAYE interest).
- (2) The amendments made by that Schedule are treated as having come into force on 29 April 2009.

#### *Residence and domicile*

#### **51 Remittance basis**

Schedule 27 contains amendments about the remittance basis.

#### **52 Exemption for certain non-domiciled persons**

- (1) In Part 14 of ITA 2007 (income tax: miscellaneous rules), after Chapter 1 insert—

#### **“CHAPTER 1A**

#### **EXEMPTION FOR PERSONS NOT DOMICILED IN UNITED KINGDOM**

##### **828A Introduction**

This Chapter provides for an exemption from liability to income tax for an individual for a tax year if—

- (a) the individual is UK resident in the tax year but not domiciled in the United Kingdom in the tax year,
- (b) section 809B does not apply to the individual for the tax year, and
- (c) conditions A to F in section 828B are met.

##### **828B Conditions to be met**

- (1) Condition A is that in the tax year the individual has income from an employment the duties of which are performed wholly or partly in the United Kingdom.
- (2) Condition B is that, if the individual's income for the tax year consists of or includes relevant foreign earnings—
  - (a) the amount of the relevant foreign earnings does not exceed £10,000, and
  - (b) all of that amount is subject to a foreign tax.
- (3) Condition C is that, if the individual's income for the tax year consists of or includes income that is relevant foreign income by virtue of section 830(2) of ITTOIA 2005—
  - (a) the amount of that income does not exceed £100, and

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(b) all of that amount is subject to a foreign tax.

- (4) Condition D is that the individual has no other foreign income and gains for the tax year.
- (5) Condition E is that the individual would not for the tax year be liable to income tax at a rate other than the basic rate or the starting rate for savings if this Chapter did not apply to the individual for the tax year.
- (6) Condition F is that the individual does not make a return under section 8 of TMA 1970 for the tax year.

### 828C The exemption

- (1) The exemption is given by deducting the relevant amount from what would otherwise be the amount of the individual's liability to income tax for the tax year under section 23.
- (2) “The relevant amount” is so much of the amount of the individual's liability to income tax as is attributable to the individual's foreign income or gains for the tax year.
- (3) But if for the tax year the individual's total income is reduced by any deductions which fall to be made at Step 3 of the calculation in section 23 from the individual's foreign income or gains for the tax year, subsection (2) has effect as if the individual's foreign income or gains for the tax year were reduced by the amount of the deductions.
- (4) And if the individual is entitled under—
  - (a) section 788 of ICTA (double taxation arrangements: relief by agreement), or
  - (b) section 790(1) of that Act (relief for foreign tax where no double taxation arrangements),
 to a tax reduction in respect of the individual's foreign income or gains for the tax year, what would otherwise be the relevant amount is reduced by the amount of that reduction.

### 828D Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) “Employed” and “employment” have the same meaning as in the employment income Parts of ITEPA 2003: see Chapter 1 of Part 2 of that Act.
- (3) “Foreign income and gains”, in relation to an individual, means what would be the individual's foreign income and gains for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(2)).
- (4) “Foreign tax” means any tax chargeable under the law of a territory outside the United Kingdom.
- (5) “Relevant foreign earnings”, in relation to an individual, means what would be the individual's relevant foreign earnings for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(3)).”

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- (2) In section 2(14) of ITA 2007 (overview), after paragraph (a) insert—
  - “(aa) exemption for persons not domiciled in United Kingdom (Chapter 1A),”.
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

### *Employment income*

#### **53 Taxable benefits: cars**

Schedule 28 contains provision about taxable benefits arising from cars made available to employees etc by reason of employment.

#### **54 Taxable benefit of cars: price of automatic car for disabled employee**

- (1) Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars etc) is amended as follows.
- (2) In section 116(3) (meaning of when car is available), after “to section” insert “ 124A or ”.
- (3) In section 121(1) (method of calculating cash equivalent of benefit of car), in step 1, for “124” substitute “ 124A ”.
- (4) In section 122 (price of car), the existing provision becomes subsection (1) of that section and after that subsection insert—
  - “(2) This is subject to section 124A (automatic car for a disabled employee).”
- (5) After section 124 insert—

#### **“124A Automatic car for a disabled employee**

- (1) This section applies where—
  - (a) a car has automatic transmission (“the automatic car”),
  - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person's badge, and
  - (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under section 122 to 124, the price of the automatic car is more than it would have been if the automatic car had been an equivalent manual car, the price of the automatic car is to be the price of an equivalent manual car.
- (3) In subsection (2) “an equivalent manual car” means a car which—
  - (a) is first registered at or about the same time as the automatic car, and
  - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
  - (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or

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- (b) the driver is provided with such means, but they do not include—
  - (i) a clutch pedal, or
  - (ii) a lever which the driver may operate manually.

(5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.”

- (6) The amendments made by this section have effect for the tax year 2009-10 and subsequent tax years.

## **55 Exemption of benefit consisting of health-screening or medical check-up**

- (1) Part 4 of ITEPA 2003 (employment income: exemptions) is amended as follows.
- (2) In section 266(3) (exemption of non-cash vouchers for exempt benefits), omit the “or” at the end of paragraph (e) and insert at the end “or
  - (g) section 320B (health screening and medical check-ups).”
- (3) In section 267(2) (exemption of credit-tokens used for exempt benefits), omit the “and” at the end of paragraph (g) and insert at the end “and
  - (i) section 320B (health screening and medical check-ups).”
- (4) After section 320A insert—

### *“Health-screening and medical check-ups*

#### **320B Health-screening and medical check-ups**

- (1) No liability to income tax arises in respect of the provision for an employee, on behalf of an employer, of a health-screening assessment or a medical check-up.
- (2) Subsection (1) does not apply—
  - (a) to more than one health-screening assessment provided in a tax year by any one employer or by any of a number of persons who are employers of the employee at the same time, or
  - (b) to more than one medical check-up so provided.
- (3) In this section—
  - “health-screening assessment” means an assessment to identify employees who might be at particular risk of ill-health, and
  - “medical check-up” means a physical examination of the employee by a health professional for (and only for) determining the employee’s state of health.”
- (5) The amendments made by this section have effect for the tax year 2009-10 and subsequent tax years.

## **56 MEPs' pay, allowances and pensions under European Parliament Statute**

- (1) Part 18 of ICTA (double tax relief) has effect as if tax for the benefit of the Communities payable in respect of any income under—

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- (a) Articles 9.1 and 10 (salaries),
  - (b) Article 13 (transitional allowances), or
  - (c) Article 14, 15 or 17 (pensions for old-age, incapacity and survivors),
- of the Statute for Members of the European Parliament (2005/684/EC, Euratom) were payable under the law of a territory outside the United Kingdom.
- (2) In section 291(2)(c) of ITEPA 2003 (termination payments under section 3 of European Parliament (Pay and Pensions) Act 1979), insert at the end “ or under Article 13 of the Statute for Members of the European Parliament (transitional allowances), ”.
  - (3) This section has effect for the tax year 2009-10 and subsequent tax years.

### Double taxation

## 57 Tax underlying dividends

- (1) In section 799(1A) of ICTA (computation of foreign tax on dividends), for “in force when the dividend was paid” substitute “ applicable to profits of the company by which the dividend is received for the accounting period in which it is received or, where there is more than one such rate, the average rate over the whole of that accounting period ”.
- (2) Section 801 of ICTA (dividends paid between related companies) is amended as follows.
- (3) In subsection (2), after “had been paid” insert “ (at the time when the dividend mentioned in subsection (1) above is received) ”.
- <sup>F3</sup>(4) .....
- (5) The amendment made by subsection (3) has effect in relation to dividends paid to a company falling within section 801(1A) of ICTA if they are paid on or after 22 April 2009.
- (6) The other amendments made by this section have effect in relation to dividends paid on or after 1 April 2008.

### Textual Amendments

- F3** S. 57(4) omitted (with effect in accordance with Sch. 16 para. 6 of the commencing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 5(k)** (with Sch. 16 para. 78)

## 58 Manufactured overseas dividends

Schedule 29 contains provision about the amount of overseas tax treated as withheld in relation to certain manufactured overseas dividends.

## 59 Payments by reference to foreign tax etc

- (1) Part 18 of ICTA (double taxation relief) is amended as follows.
- (2) Before section 805 insert—

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### “804G Reduction in credit: payment by reference to foreign tax

- (1) This section applies if—
  - (a) credit for foreign tax falls to be allowed to a person (“P”) under any arrangements, and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.
- (2) The amount of that credit is to be reduced by an amount equal to that payment.
- (3) Section 839 applies for the purposes of determining whether or not a person is connected with P.”
- (3) Section 806 (time limit for claims etc) is amended as follows.
- (4) In subsection (2)—
  - (a) after “arrangements” insert “ is reduced under section 804G, or ”,
  - (b) for “to which the adjustment gives rise” substitute “ to which the reduction or adjustment gives rise ”, and
  - (c) for “all such assessments, adjustments” substitute “ all such assessments, reductions, adjustments ”.
- (5) In subsection (3)—
  - (a) in paragraph (b), after “subsequently” insert “ reduced under section 804G or ”, and
  - (b) in the words after paragraph (b), after “Board that” insert “ a reduction has been made or that ”.
- (6) In subsections (4) and (5), for “the adjustment” substitute “ the reduction or adjustment ”.
- (7) In subsection (6)—
  - (a) for “any adjustment” substitute “ any reduction or adjustment ”, and
  - (b) after “allowed” insert “ has been reduced or ”.
- (8) Section 811 (deduction for foreign tax where no credit allowable) is amended as follows.
- (9) After subsection (3) insert—
 

“(3A) If—

  - (a) income of any person (“P”) is treated under subsection (1) as reduced by a sum paid in respect of tax on that income in the place where the income has arisen (“foreign tax”), and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax,

the amount of P’s income is to be increased by an amount equal to the payment made to P or the connected person.

(3B) Section 839 applies for the purposes of determining whether or not a person is connected with P.”
- (10) In subsection (4)—



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- (a) before “nothing” insert “ or the amount of P's income is increased under subsection (3A), ”,
  - (b) for “adjustment gives rise” substitute “ adjustment or increase gives rise ”,
  - (c) for “all such assessments, adjustments” substitute “ all such assessments, adjustments, increases ”, and
  - (d) insert at the end “or increase under subsection (3A) falls to be made”.
- (11) In subsection (5)—
- (a) in paragraph (b), after “United Kingdom” insert “ or an increase under subsection (3A) ”, and
  - (b) in the words after paragraph (b), after “adjustment” insert “ or increase ”.
- (12) In subsections (6), (7) and (8), after “adjustment” insert “ or increase ”.
- (13) The amendments made by this section have effect in relation to payments made on or after 22 April 2009.

## 60 Anti-fragmentation

(1) Part 18 of ICTA (double taxation relief) is amended as follows.

(2) In section 798A (section 797: trade income), after subsection (3) insert—

“(3A) Subsection (3) is subject to subsection (3B) if—

- (a) the taxpayer is a bank or a company connected with a bank, and
- (b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.

(3B) The amount of the notional funding costs is to be included in the subsection (3) total, but only to the extent that it exceeds the amount of the included funding costs.

(3C) In subsections (3A) and (3B) and this subsection—

“bank” has the meaning given by section 840A;

“connected” has the meaning given by section 839;

“included funding costs” means the total of the funding costs that are—

- (a) incurred by the taxpayer, or any company connected with the taxpayer, in respect of capital used to fund the relevant transaction, and
- (b) included in the subsection (3) total (before the application of subsection (3B));

“notional funding costs” means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way (and for this purpose “relevant bank” means the bank that is the taxpayer, or with which the taxpayer is connected);

“relevant transaction” means the transaction, arrangement or asset from which the income or gain arises;

“subsection (3) total” means the amount to be taken into account under subsection (3) for the purposes of section 797(1).”

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(3) Section 798B (section 798A: special cases), after subsection (4) insert—

“(4A) Income of a person (“D”) is to be treated for the purposes of section 798A as trade income (if it is not otherwise trade income) of D in a case where—

- (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),
- (b) if C had received the income, it would be reasonable to assume that it would be trade income of C, and
- (c) a main purpose of the scheme or arrangement is to produce the result that section 798A will not have effect in relation to the income because it is received by D.

(4B) For the purposes of subsection (4A)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to that transaction.

(4C) In subsections (4A) and (4B) and this subsection—

“connected person” means a person with whom D is connected (within the meaning of section 839);

“relevant person” means—

- (a) D, or
- (b) any other connected person who is a party to the scheme or arrangement;

“relevant transaction” means any of the transactions giving rise to the income.”

(4) The amendments made by this section have effect in relation to a credit for foreign tax which relates to—

- (a) a payment of foreign tax on or after 22 April 2009, or
- (b) income received on or after that date in respect of which foreign tax has been deducted at source.

#### *Miscellaneous anti-avoidance provisions*

### **61 Financial arrangements avoidance**

Schedule 30 contains provision to counter avoidance involving financial arrangements.

### **62 Transfers of trade to obtain terminal loss relief**

(1) In section 393A of ICTA (set off of losses against profits of same or earlier accounting period), after subsection (2D) insert—

“(2E) But subsection (2A) above does not apply by reason of a company ceasing to carry on a trade if—

- (a) on the company ceasing to carry on the trade, any of the activities of the trade begin to be carried on by a person who is not (or by persons any or all of whom are not) within the charge to corporation tax, and
- (b) the company's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which

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is to secure that subsection (2A) above applies to a loss by reason of the cessation.”

- (2) The amendment made by subsection (1) has effect in relation to cessations of a trade on or after 21 May 2009.

### **63 Sale of lessor companies etc: anti-avoidance**

Schedule 31 contains provision amending Schedule 10 to FA 2006 (sale of lessor companies etc) to prevent avoidance.

### **64 Leases of plant or machinery**

Schedule 32 contains provision about leases of plant or machinery.

### **65 Long funding leases of films**

Schedule 33 contains provision about long funding leases of films.

### **66 Real Estate Investment Trusts**

Schedule 34 contains provision about Real Estate Investment Trusts.

### **67 Deductions for employee liabilities**

- (1) ITEPA 2003 is amended as follows.

- (2) In section 346 (deduction for employee liabilities), after subsection (2) insert—

“(2A) Nor is a deduction allowed for a payment which falls within paragraph A, B or C if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

- (3) After section 556 insert—

#### **“556A Deductible payments made pursuant to tax avoidance arrangements**

No deduction may be made under section 555 if the deductible payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

- (4) The amendments made by this section have effect in relation to payments made on or after 12 January 2009 (irrespective of when the arrangements are made).

### **68 Employment loss relief**

- (1) In section 128 of ITA 2007 (employment loss relief against general income), after subsection (5) insert—

“(5A) No claim may be made in respect of the loss if and to the extent that it is made as a result of anything done in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

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- (2) The amendment made by subsection (1)—
- (a) has effect in relation to a loss made in the tax year 2009-10 or a subsequent tax year, and
  - (b) has effect in relation to a loss made in the tax year 2008-09 if or to the extent that it is occasioned by an act or omission occurring on or after 12 January 2009.
- (3) Where a person has made a claim under section 128 of ITA 2007 during the relevant period, no penalty is payable by the person on the ground that any return, statement or declaration made in connection with the claim contained an inaccuracy if it would not have done so but for the amendment made by subsection (1).

For this purpose “the relevant period” is the period—

- (a) beginning with 12 January 2009, and
  - (b) ending with 1 April 2009.
- (4) Subsection (2) of section 59C of TMA 1970 (surcharge on unpaid tax) has effect in relation to tax which would not be payable but for the amendment made by subsection (1) as if the reference in that subsection to the due date were to the later of 1 April 2009 and the due date.

## **69 No loss relief for losses from contracts for life insurance etc**

- (1) In section 152(8) of ITA 2007 (losses from miscellaneous transactions: cases that are not “section 1016 income”), after “ICTA” insert “ or Chapter 9 of Part 4 of ITTOIA 2005 ”.
- (2) The amendment made by subsection (1) has effect in relation to losses made in the tax year 2009-10 or a subsequent tax year.
- (3) That amendment also has effect for the tax year 2008-09 in relation to a loss arising to a person under a policy of life insurance, a contract for a life annuity or a contract constituting a capital redemption policy if—
- (a) the policy is issued in respect of an insurance made, or the contract is made, on or after 1 April 2009,
  - (b) the policy or contract is varied on or after that date so as to increase the benefits secured (any exercise of rights conferred by the policy or contract being regarded for this purpose as a variation),
  - (c) there is an assignment (or assignation) to the person (whether or not for money or money's worth) on or after that date of the rights, or a share of the rights, conferred by the policy or contract, or
  - (d) all or part of the rights conferred by the policy or contract become held on or after that date as a security for a debt of the person.
- (4) Where—
- (a) a person has made a claim under section 152 of ITA 2007 for the tax year 2008-09 or an earlier tax year in respect of a loss, and
  - (b) by virtue of the amendment made by subsection (1) no claim could have been made in respect of the loss had it been made in the tax year 2009-10,
- no deduction may be made for the tax year 2009-10 or a subsequent tax year in accordance with step 2 or 3 in section 153 of ITA 2007 in respect of the loss.

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## 70 Intangible fixed assets and goodwill

- (1) Part 8 of CTA 2009 (intangible fixed assets) is amended as follows.
- (2) In section 712(1) (meaning of “intangible asset”), insert at the end “ (and includes an internally-generated intangible asset) ”.
- (3) In section 715 (application of Part 8 to goodwill)—
  - (a) in subsection (3), insert at the end “(and includes internally-generated goodwill)”, and
  - (b) insert at the end—
    - “(4) For the purposes of this Part, goodwill is treated as created in the course of carrying on the business in question.”
- (4) In section 883 (assets treated as created or acquired when expenditure incurred)—
  - (a) in subsection (1), for paragraph (b) substitute—
    - “(b) has effect subject to the provisions specified in subsection (2).”,
  - (b) in subsection (2)(a), omit “internally-generated”,
  - (c) in subsection (2)(b), for “certain other internally-generated assets” substitute “ assets representing non-qualifying expenditure ”, and
  - (d) in subsection (3), omit “to which this section applies”.
- (5) In section 884 (internally-generated goodwill: time of creation)—
  - (a) omit “internally-generated”,
  - (b) for the words from “before” to the end substitute “—
    - (a) before (and not on or after) 1 April 2002 in a case in which the business in question was carried on at any time before that date by the company or a related party, and
    - (b) on or after 1 April 2002 in any other case.”, and
  - (c) in the heading, omit “**Internally-generated**”.
- (6) In section 885 (certain other internally-generated assets: time of creation)—
  - (a) in subsection (1)(b), omit “internally-generated”,
  - (b) in subsection (7), for the words from “before” to the end substitute “—
    - (a) before (and not on or after) 1 April 2002 in a case in which the asset in question was held at any time before that date by the company or a related party, and
    - (b) on or after 1 April 2002 in any other case.”, and
  - (c) in the heading, for “**Certain other internally-generated assets**” substitute “**Assets representing non-qualifying expenditure**”.
- (7) The amendments made by this section have effect in relation to accounting periods beginning on or after 22 April 2009 (and, in relation to those accounting periods, are to be treated as always having had effect).
- (8) For the purposes of subsection (7) an accounting period beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

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## 71 Taxable benefit of living accommodation: lease premiums

(1) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) is amended as follows.

(2) In section 105 (cash equivalent: cost of accommodation not over £75,000)—

- (a) in subsection (3), after “is” insert “ (subject to subsections (4) and (4A)) ”, and
- (b) for subsection (4) substitute—

“(4) Subsection (4A) applies where—

- (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
- (b) the amount so payable is payable at an annual rate greater than the annual value.

(4A) Where this subsection applies—

- (a) subsection (3) does not apply to the relevant period, and
- (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.

(4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—

- (a) any rent for the period payable by P, and
- (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).”

(3) After that section insert—

### “105A Lease premiums

(1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—

- (a) the property consists of premises, or a part of premises, that are subject to a lease,
- (b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
- (c) the lease is for a term of 10 years or less, and
- (d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.

(2) The amount so attributed is—

$$\frac{A}{B} \times C$$

where—

A is the relevant period (in days),

B is the term of the lease (in days), and

C is the net amount payable by P in relation to the lease by way of lease premium.

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- (3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.
- (4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—
  - (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
  - (b) any amount within paragraph (a) that has been repaid or is or will become repayable.
- (5) In this section and section 105B “lease premium” means any premium payable—
  - (a) under a lease, or
  - (b) otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland “premium” includes a grassum.

#### **105B Lease premiums in the case of leases with break clauses**

- (1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.
- (2) For the purposes of this section—
  - (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and
  - (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (3) For the purposes of section 105A—
  - (a) the term of the original lease, and
  - (b) the net amount payable by P in relation to the lease by way of lease premium,
 are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—
  - (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
  - (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
  - (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or

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- (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less
  - (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
  - (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—

$$\frac{D}{E}$$

where—

D is the term of the notional lease (in days), and

E is the sum of—

- (a) the term of the notional lease (in days), and
  - (b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.”
- (4) The amendments made by this section have effect in relation to—
- (a) any lease entered into on or after 22 April 2009, and
  - (b) subject to subsection (5), any lease entered into before that date the term of which is extended on or after that date.
- (5) In relation to a lease of the kind mentioned in subsection (4)(b) the amendments made by this section have effect—
- (a) as if the additional term of the lease created by the extension were the whole of the term of the lease, and
  - (b) ignoring any lease premium payable in respect of the unextended term of the lease.
- (6) In this section “lease premium” has the same meaning as in sections 105A and 105B of ITEPA 2003.



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## PART 3

### PENSIONS

#### 72 Special annual allowance charge etc

Schedule 35 contains provision for and in connection with a special annual allowance charge in respect of pension schemes.

#### 73 Financial assistance scheme

- (1) The Treasury may by regulations make provision for and in connection with—
  - (a) the application of the relevant taxes in relation to the financial assistance scheme, and
  - (b) the application of the relevant taxes in relation to any person in connection with the financial assistance scheme.
- (2) “The financial assistance scheme” means the scheme provided for by regulations under section 286 of the Pensions Act 2004.
- (3) The provision that may be made by regulations under this section includes provision imposing any of the relevant taxes (as well as provisions for exemptions or reliefs).
- (4) The relevant taxes are—
  - (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - (d) inheritance tax,
  - (e) value added tax,
  - (f) stamp duty land tax,
  - (g) stamp duty, and
  - (h) stamp duty reserve tax.
- (5) Regulations under this section may, in particular, include provision for and in connection with the taxation of payments made by virtue of regulations under section 286 of the Pensions Act 2004.
- (6) The exemptions and reliefs that may be given by regulations under this section include, in particular, exemption from charges to income tax, corporation tax or capital gains tax in respect of—
  - (a) income arising from any assets held or managed by, or receipts of, the person who manages the financial assistance scheme (“the scheme manager”) and any chargeable gains arising from the disposal of any such assets, and
  - (b) the receipt of fraud compensation payments (within the meaning of Part 2 of the Pensions Act 2004: see section 182(1) of that Act).
- (7) Regulations under this section may include provision having effect in relation to any time before they are made if the provision does not increase any person's liability to tax.
- (8) The provision made by regulations under this section may be framed as provision applying with appropriate modifications provisions having effect in relation to registered pension schemes; and for this purpose “registered pension scheme” means

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a pension scheme within the meaning of Part 4 of FA 2004 which is registered under Chapter 2 of that Part of that Act.

- (9) Regulations under this section may include—
  - (a) provision amending any enactment or instrument, and
  - (b) consequential, supplementary and transitional provision.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

#### **74 FSCS intervention in relation to insurance in connection with pensions**

- (1) The Treasury may by regulations make provision for and in connection with the application of the relevant taxes in relation to circumstances in which there is relevant intervention under the FSCS.
- (2) “Relevant intervention” means—
  - (a) anything done under, or while seeking to make, arrangements for securing continuity of insurance in connection with registered pension schemes,
  - (b) anything done as part of measures for safeguarding policyholders in connection with registered pension schemes, or
  - (c) the payment of compensation in connection with registered pension schemes.
- (3) “The FSCS” means the Financial Services Compensation Scheme (established under Part 15 of FISMA 2000).
- (4) The provision that may be made by regulations under this section includes provision imposing any of the relevant taxes (as well as provisions for exemptions or reliefs).
- (5) The relevant taxes are—
  - (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - (d) inheritance tax,
  - (e) stamp duty land tax,
  - (f) stamp duty, and
  - (g) stamp duty reserve tax.
- (6) Regulations under this section may include provision having effect in relation to any time before they are made if the provision does not increase any person's liability to tax.
- (7) The provision made by regulations under this section may be framed as provision modifying, or applying with appropriate modifications, provisions having effect in relation to registered pension schemes.
- (8) Regulations under this section may include—
  - (a) provision amending any enactment or instrument, and
  - (b) consequential, supplementary and transitional provision.
- (9) Regulations under this section are to be made by statutory instrument.

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- (10) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (11) In this section “registered pension scheme” means a pension scheme within the meaning of Part 4 of FA 2004 which is registered under Chapter 2 of that Part of that Act.

## 75 Power to make retrospective non-charging provision

- (1) In section 282 of FA 2004 (orders and regulations under Part 4), insert at the beginning—
- “(A1) Any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Part may include provision having effect in relation to times before the order is, or regulations are, made if that provision does not increase any person's liability to tax.
- (A2) Subsection (A1) does not limit any specific power to make provision by an order or regulations in relation to times before the order is, or regulations are, made.”
- (2) In consequence of the amendment made by subsection (1), omit the following provisions of Part 4 of FA 2004—
- (a) section 164(2)(d),
  - (b) section 281(4),
  - (c) section 283(3C),
  - (d) in Schedule 28, paragraphs 3(2CA) and 17(4A), and
  - (e) in Schedule 29A, paragraph 9(2).
- (3) In consequence of subsection (2), omit—
- (a) in FA 2006, in Schedule 23, paragraph 34(4), and
  - (b) in FA 2008, in Schedule 29, paragraph 2.

## PART 4

### VALUE ADDED TAX

## 76 Place of supply of services etc

Schedule 36 contains provisions about the place of supply of services for the purposes of value added tax and related matters.

## 77 Repayment to those in business in other States

- (1) VATA 1994 is amended as follows.
- (2) In subsection (3) of section 39 (repayment of VAT to those in business overseas)—
- (a) in the words before paragraph (a), after “such cases” insert “ and to such extent ”
  - (b) in sub-paragraph (ii) of paragraph (b), after “Act” insert “ in respect of such period as may be prescribed ” and omit the “and” at the end,

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- (c) after that paragraph insert—
  - “(ba) for and in connection with the payment of interest to or by the Commissioners (including in relation to the repayment of interest wrongly paid), and”, and
- (d) in paragraph (c), for “methods by which” substitute “ time by which and manner in which claims must be made, ”.

(3) After that section insert—

**“39A Applications for forwarding of VAT repayment claims to other member States**

The Commissioners must make arrangements for dealing with applications made to the Commissioners by taxable persons, in accordance with Council Directive [2008/9/EC](#), for the forwarding to the tax authorities of another member State of claims for refunds of VAT on—

- (a) supplies to them in that member State, or
- (b) the importation of goods by them into that member State from places outside the member States.”

(4) In section 83(1) (appeals), after paragraph (h) insert—

- “(ha) any decision of the Commissioners to refuse to make a repayment under a scheme under section 39;”.

**78 Information relating to cross-border supplies of services to taxable recipients**

(1) Paragraph 2 of Schedule 11 to VATA 1994 (accounting for VAT and submission of particulars of transactions etc) is amended as follows.

(2) In sub-paragraph (3), for “which involve the movement of goods between member States” substitute “ to which this sub-paragraph applies ”.

(3) After that paragraph insert—

“(3ZA) Sub-paragraph (3) above applies to—

- (a) transactions involving the movement of goods between member States, and
- (b) transactions involving the supply of services to a person in a member State other than the United Kingdom who is required to pay VAT on the supply in accordance with provisions of the law of that other member State giving effect to Article 196 of Council Directive [2006/112/EC](#).”

**79 Effect of VAT changes on arbitration of rent for agricultural holdings**

(1) In paragraph 4(2) of Schedule 2 to the Agricultural Holdings Act 1986 (frequency of arbitrations of rent: changes in rent to be disregarded), insert at the end—

- “(d) an increase or reduction of rent arising from—
  - (i) the exercise of an option to tax under Schedule 10 to the Value Added Tax Act 1994,
  - (ii) the revocation of such an option, or

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- (iii) a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.”
- (2) Paragraph 4(2)(d) of Schedule 2 to that Act (as inserted by subsection (1)) includes an increase or reduction of rent arising from an option, revocation or change in rate that takes effect before the day on which this Act is passed.
- (3) The references in that provision and in subsection (2) to an option to tax, or to the exercise or revocation of such an option, under Schedule 10 to VATA 1994 include a reference to an election to waive exemption, or to the making or revocation of such an election, under that Schedule (as it had effect before 1 June 2008).

## PART 5

### STAMP TAXES

#### *Stamp duty land tax*

#### **80 Exercise of collective rights by tenants of flats**

- (1) Section 74 of FA 2003 (collective enfranchisement by leaseholders) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies where a chargeable transaction is entered into by a person or persons nominated or appointed by qualifying tenants of flats contained in premises in exercise of—
- (a) a right under Part 1 of the Landlord and Tenant Act 1987 (right of first refusal), or
- (b) a right under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (right to collective enfranchisement).”
- (3) In subsection (2)—
- (a) omit “In that case,”, and
- (b) for “flats in respect of which the right of collective enfranchisement is being exercised” substitute “qualifying flats contained in the premises”.
- (4) For subsection (4) substitute—
- “(4) In this section—
- “flat” and “qualifying tenant” have the same meaning as in the Chapter or Part of the Act conferring the right being exercised;
- “qualifying flat” means a flat that is held by a qualifying tenant who is participating in the exercise of the right.”
- (5) For the heading substitute “**Exercise of collective rights by tenants of flats**”.
- (6) Accordingly, in section 55(5) of that Act (amount of tax chargeable), for “collective enfranchisement by leaseholders” substitute “exercise of collective rights by tenants of flats”.

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- (7) The amendments made by this section have effect in relation to transactions with an effective date on or after 22 April 2009.

## 81 Registered providers of social housing

- (1) Part 4 of FA 2003 (stamp duty land tax) is amended as follows.
- (2) Section 71 (certain acquisitions by registered social landlord) is amended as follows.
- (3) Insert at the beginning—
- “(A1) A land transaction under which the purchaser is a profit-making registered provider of social housing is exempt from charge if the transaction is funded with the assistance of a public subsidy.”
- (4) In subsection (4), for “subsection (1)(c)” substitute “ this section ”.
- (5) Schedule 9 (right to buy etc) is amended as follows.
- (6) In paragraph 5 (shared ownership leases: “qualifying body” etc)—
- (a) in sub-paragraph (2), insert at the end—
- “(g) a registered provider of social housing that is not within paragraph (b) (subject to sub-paragraph (2A)).”, and
- (b) after that sub-paragraph insert—
- “(2A) A registered provider of social housing within sub-paragraph (2)(g) (“R”) is only a qualifying body in relation to a lease of premises if the following has been funded with the assistance of a grant or other financial assistance under section 19 of the Housing and Regeneration Act 2008—
- (a) the purchase or construction of the premises by R (or a person connected with R), or
- (b) the adaptation of the premises by R (or a person connected with R) for use as a dwelling.
- (2B) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of sub-paragraph (2A).”
- (7) In paragraph 7 (shared ownership trusts: introduction)—
- (a) in sub-paragraph (3), omit “(within the meaning of paragraph 5(2))”, and
- (b) insert at the end—
- “(7) In Condition 2 “qualifying body” means—
- (a) a qualifying body within the meaning of paragraph 5(2)(a) to (f), or
- (b) a registered provider of social housing within paragraph 5(2)(g) (subject to sub-paragraph (8)).
- (8) A registered provider of social housing within paragraph 5(2)(g) (“R”) is only a qualifying body in relation to a shared ownership trust if the following has been or is being funded with the assistance of a grant or other financial assistance under section 19 of the Housing and Regeneration Act 2008—

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- (a) the purchase or construction of the trust property by R (or a person connected with R), or
  - (b) the adaptation of the trust property by R (or a person connected with R) for use as a dwelling.
- (9) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of sub-paragraph (8).”
- (8) The amendments made by this section have effect in relation to transactions with an effective date on or after the day on which this Act is passed.

## 82 Rent to shared ownership

- (1) In Schedule 9 to FA 2003 (stamp duty land tax: right to buy etc), insert at the end—

### “Rent to shared ownership lease: charge to tax

- 13 (1) The chargeable consideration for transactions forming part of a rent to shared ownership lease scheme is determined in accordance with this paragraph.
- (2) A “rent to shared ownership lease scheme” means a scheme or arrangement under which a qualifying body—
- (a) grants an assured shorthold tenancy of a dwelling to a person (“the tenant”) or persons (“the tenants”), and
  - (b) subsequently grants a shared ownership lease of the dwelling or another dwelling to the tenant or one or more of the tenants.
- (3) The following transactions are to be treated as if they were not linked to each other—
- (a) the grant of the assured shorthold tenancy,
  - (b) the grant of the shared ownership lease, and
  - (c) any other land transaction between the qualifying body and the tenant, or any of the tenants, entered into as part of the scheme.
- (4) For the purpose of determining the effective date of the grant of the shared ownership lease, the possession of the dwelling by the tenant or tenants pursuant to the assured shorthold tenancy is to be disregarded.
- (5) In this paragraph—
- “assured shorthold tenancy” has the same meaning as in Part 1 of the Housing Act 1988;
  - “qualifying body” has the same meaning as in paragraph 5;
  - “shared ownership lease” has the same meaning as in paragraph 4A.

### Rent to shared ownership trust: charge to tax

- 14 (1) The chargeable consideration for transactions forming part of a rent to shared ownership trust scheme is determined in accordance with this paragraph.

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- (2) A “rent to shared ownership trust scheme” means a scheme or arrangement under which—
- (a) a qualifying body grants an assured shorthold tenancy of a dwelling to a person (“the tenant”) or persons (“the tenants”), and
  - (b) the tenant, or one or more of tenants, subsequently becomes the purchaser under a shared ownership trust of the dwelling, or another dwelling, under which the qualifying body is the social landlord.
- (3) The following transactions are to be treated as if they were not linked to each other—
- (a) the grant of the assured shorthold tenancy,
  - (b) the declaration of the shared ownership trust, and
  - (c) any other land transaction between the qualifying body and the tenant, or any of the tenants, entered into as part of the scheme.
- (4) For the purpose of determining the effective date of the declaration of the shared ownership trust, the possession of the dwelling by the tenant or tenants pursuant to the assured shorthold tenancy is to be disregarded.
- (5) In this paragraph—
- “assured shorthold tenancy” has the same meaning as in Part 1 of the Housing Act 1988;
  - “qualifying body” has the same meaning as in paragraph 5;
  - “social landlord” and “purchaser”, in relation to a shared ownership trust, have the same meaning as in paragraph 7.”
- (2) The amendment made by subsection (1) has effect in relation to cases in which the effective date of the grant of the shared ownership lease or the declaration of the shared ownership trust is on or after 22 April 2009.
- (3) Paragraphs 13(4) and 14(4) of Schedule 9 to FA 2003 (inserted by this section) have effect for the purposes of subsection (2).

### *Stock lending arrangements*

## **83 Stamp taxes in event of insolvency**

- (1) Schedule 37 contains provision amending Part 3 (stamp duty) and Part 4 (stamp duty reserve tax) of FA 1986 in respect of repurchase and stock lending arrangements in the event of the insolvency of one of the parties.
- (2) The amendments made by that Schedule have effect where the insolvency in question occurs on or after 1 September 2008.
- (3) This section and that Schedule cease to have effect—
  - (a) in relation to the amendments made to Part 3 of FA 1986, when the repeal of sections 80 to 85 of that Act (by Part 6 of Schedule 19 to, and in accordance with sections 107 to 109 of, FA 1990) comes into force, and
  - (b) in relation to the amendment made to Part 4 of FA 1986, when the repeal of that Part (by Part 7 of Schedule 19 to, and in accordance with section 110 of, FA 1990) comes into force.



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**Modifications etc. (not altering text)**

**C1** S. 83 ceases to have effect in accordance with s. 83(3)

## PART 6

### OIL

#### 84 Capital allowances for oil decommissioning expenditure

Schedule 38 contains provision about capital allowances for oil decommissioning expenditure.

#### 85 Blended oil

Schedule 39 contains provision about the treatment of blended oil for the purposes of petroleum revenue tax.

#### 86 Chargeable gains

Schedule 40 contains provision about chargeable gains in oil trades.

#### 87 Oil assets put to other uses

Schedule 41 contains provision about oil production assets put to certain other uses.

#### 88 Former licensees and former oil fields

Schedule 42 contains provision about the treatment of certain former licensees and former oil fields for the purposes of petroleum revenue tax.

#### 89 Abolition of provisional expenditure allowance

Schedule 43 contains provision abolishing provisional expenditure allowance.

#### 90 Supplementary charge: reduction for certain new oil fields

(1) Schedule 44 contains provision for the reduction of the supplementary charge under section 501A of ICTA on companies that are, or have been, licensees in new oil fields.

(2) In section 501A of ICTA, after subsection (11) insert—

“(12) This section is subject to Schedule 44 to the Finance Act 2009.”

(3) This section and Schedule 44 have effect in relation to accounting periods ending on or after 22 April 2009.

#### 91 Miscellaneous amendments

Schedule 45 contains miscellaneous amendments relating to oil taxation.

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## PART 7

### ADMINISTRATION

#### *Standards and values*

## 92 HMRC Charter

(1) In CRCA 2005, after section 16 insert—

### “16A Charter of standards and values

- (1) The Commissioners must prepare a Charter.
  - (2) The Charter must include standards of behaviour and values to which Her Majesty's Revenue and Customs will aspire when dealing with people in the exercise of their functions.
  - (3) The Commissioners must—
    - (a) regularly review the Charter, and
    - (b) publish revisions, or revised versions, of it when they consider it appropriate to do so.
  - (4) The Commissioners must, at least once every year, make a report reviewing the extent to which Her Majesty's Revenue and Customs have demonstrated the standards of behaviour and values included in the Charter.”
- (2) The duty imposed by section 16A(1) of CRCA 2005 must be complied with before the end of 2009.

## 93 Duties of senior accounting officers of qualifying companies

- (1) Schedule 46 contains provision about the duties of senior accounting officers of qualifying companies.
- (2) That Schedule has effect in relation to financial years (within the meaning of the Companies Act 2006) beginning on or after the day on which this Act is passed.

## 94 Publishing details of deliberate tax defaulters

- (1) The Commissioners may publish information about any person if—
  - (a) in consequence of an investigation conducted by the Commissioners, one or more relevant tax penalties is found to have been incurred by the person, and
  - (b) the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties) exceeds £25,000.
- (2) A “relevant tax penalty” is—
  - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (inaccuracy in taxpayer's document) in respect of a deliberate inaccuracy on the part of the person,
  - (b) a penalty under paragraph 1A of that Schedule (inaccuracy in taxpayer's document attributable to deliberate supply of false information or deliberate withholding of information by person),

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- (c) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify) in respect of a deliberate failure on the part of the person, or
  - (d) a penalty under paragraph 2 (unauthorised VAT invoice), 3 (putting product to use attracting higher duty etc) or 4 (handling goods subject to unpaid excise duty) of that Schedule in respect of deliberate action by the person.
- (3) “Potential lost revenue”, in relation to a penalty, has the meaning given by—
  - (a) paragraphs 5 to 8 of Schedule 24 to FA 2007, or
  - (b) paragraphs 7 to 11 of Schedule 41 to FA 2008,in relation to the inaccuracy, failure or action to which the penalty relates.
- (4) The information that may be published is—
  - (a) the person's name (including any trading name, previous name or pseudonym),
  - (b) the person's address (or registered office),
  - (c) the nature of any business carried on by the person,
  - (d) the amount of the penalty or penalties and the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties),
  - (e) the periods or times to which the inaccuracy, failure or action giving rise to the penalty (or any of the penalties) relates, and
  - (f) any such other information as the Commissioners consider it appropriate to publish in order to make clear the person's identity.
- (5) The information may be published in any manner that the Commissioners consider appropriate.
- (6) Before publishing any information the Commissioners must—
  - (a) inform the person that they are considering doing so, and
  - (b) afford the person reasonable opportunity to make representations about whether it should be published.
- (7) No information may be published before the day when the penalty becomes final (or the latest day when any of the penalties becomes final).
- (8) No information may be published for the first time after the end of the period of one year beginning with that day (or that latest day).
- (9) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (10) No information may be published if the amount of the penalty is reduced under—
  - (a) paragraph 10 of Schedule 24 to FA 2007, or
  - (b) paragraph 13 of Schedule 41 to FA 2008,(reductions for disclosure) to the full extent permitted.
- (11) For the purposes of this section a penalty becomes final—
  - (a) if it has been assessed, when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined, or
  - (b) if a contract is made between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been

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assessed) not to take proceedings to recover it, at the time when the contract is made.

- (12) The Treasury may by order vary the amount for the time being specified in subsection (1).
- (13) This section comes into force on a day appointed by order made by the Treasury.
- (14) Orders under this section are to be made by statutory instrument.
- (15) A statutory instrument containing an order under subsection (12) is subject to annulment in pursuance of a resolution of the House of Commons.
- (16) In this section “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

### *Information etc*

## **95 Amendment of information and inspection powers**

- (1) Schedule 47 contains amendments of Schedule 36 to FA 2008 (information and inspection powers).
- (2) The Treasury may by order make any incidental, supplemental, consequential, transitional or transitory provision or saving which appears appropriate in consequence of, or otherwise in connection with, Schedule 36 to FA 2008 or Schedule 47.
- (3) An order under this section may—
  - (a) make different provision for different purposes, and
  - (b) make provision amending, repealing or revoking an enactment or instrument (whenever passed or made).
- (4) An order under this section is to be made by statutory instrument.
- (5) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.

## **96 Extension of information and inspection powers to further taxes**

- (1) In paragraph 63(1) of Schedule 36 to FA 2008 (information and inspection powers: meaning of “tax”), for paragraph (e) (and the “and” before it) substitute—
  - “(e) insurance premium tax,
  - (f) inheritance tax,
  - (g) stamp duty land tax,
  - (h) stamp duty reserve tax,
  - (i) petroleum revenue tax,
  - (j) aggregates levy,
  - (k) climate change levy,
  - (l) landfill tax, and
  - (m) relevant foreign tax.”.
- (2) Schedule 48 contains further amendments of that Schedule.

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- (3) The amendments made by this section and Schedule 48 come into force on such day as the Treasury may by order appoint.
- (4) An order under subsection (3) may—
  - (a) appoint different days for different purposes, and
  - (b) contain transitional provision and savings.
- (5) The Treasury may by order make any incidental, supplemental, consequential, transitional or transitory provision or saving which appears appropriate in consequence of, or otherwise in connection with, this section and Schedule 48.
- (6) An order under subsection (5) may—
  - (a) make different provision for different purposes, and
  - (b) make provision amending, repealing or revoking an enactment or instrument (whenever passed or made).
- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of the House of Commons.

## **97 Powers to obtain contact details for debtors**

Schedule 49 contains provision about the powers of officers of Revenue and Customs to obtain contact details of debtors.

## **98 Record-keeping**

- (1) Schedule 50 contains provision about obligations to keep records.
- (2) The amendments made by that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.

*Assessments, claims etc*

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

- (1) Schedule 51 contains provision about time limits for assessments, claims etc.
- (2) The amendments made by that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (3) An order under subsection (2)—
  - (a) may make different provision for different purposes, and
  - (b) may include transitional provision and savings.

## **100 Recovery of overpaid tax etc**

- (1) Schedule 52 contains provision for and in connection with the recovery of overpaid income tax, capital gains tax and corporation tax.
- (2) The amendments made by that Schedule have effect in relation to claims made on or after 1 April 2010.

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- (3) The Treasury may by order make any incidental, supplemental, consequential, transitional or transitory provision or saving which appears appropriate in consequence of, or otherwise in connection with, that Schedule.
- (4) An order under this section may—
  - (a) make different provision for different purposes, and
  - (b) make provision modifying an enactment or instrument (whenever passed or made).
- (5) “Modifying” includes amending, repealing or revoking.
- (6) An order under this section is to be made by statutory instrument.
- (7) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### *Interest*

VALID FROM 31/08/2010

#### **101 Late payment interest on sums due to HMRC**

- (1) This section applies to any amount that is payable by a person to HMRC under or by virtue of an enactment.
- (2) But this section does not apply to—
  - (a) an amount of corporation tax,
  - (b) an amount of petroleum revenue tax, or
  - (c) an amount of any description specified in an order made by the Treasury.
- (3) An amount to which this section applies carries interest at the late payment interest rate from the late payment interest start date until the date of payment.
- (4) The late payment interest start date in respect of any amount is the date on which that amount becomes due and payable.
- (5) In Schedule 53—
  - (a) Part 1 makes special provision as to the amount on which late payment interest is calculated,
  - (b) Part 2 makes special provision as to the late payment interest start date,
  - (c) Part 3 makes special provision as to the date to which late payment interest runs, and
  - (d) Part 4 makes provision about the effect that the giving of a relief has on late payment interest.
- (6) Subsection (3) applies even if the late payment interest start date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.
- (7) Late payment interest is to be paid without any deduction of income tax.
- (8) Late payment interest is not payable on late payment interest.

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- (9) For the purposes of this section any reference to the payment of an amount to HMRC includes a reference to its being set off against an amount payable by HMRC (and, accordingly, the reference to the date on which an amount is paid includes a reference to the date from which the set-off takes effect).

VALID FROM 31/08/2010

## 102 Repayment interest on sums to be paid by HMRC

- (1) This section applies to—
- (a) any amount that is payable by HMRC to any person under or by virtue of an enactment, and
  - (b) a relevant amount paid by a person to HMRC that is repaid by HMRC to that person or to another person.
- (2) But this section does not apply to—
- (a) an amount constituting a repayment of corporation tax,
  - (b) an amount constituting a repayment of petroleum revenue tax, or
  - (c) an amount of any description specified in an order made by the Treasury.
- (3) An amount to which this section applies carries interest at the repayment interest rate from the repayment interest start date until the date on which the payment or repayment is made.
- (4) In Schedule 54—
- (a) Parts 1 and 2 define the repayment interest start date, and
  - (b) Part 3 makes supplementary provision.
- (5) Subsection (3) applies even if the repayment interest start date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.
- (6) Repayment interest is not payable on an amount payable in consequence of an order or judgment of a court having power to allow interest on the amount.
- (7) Repayment interest is not payable on repayment interest.
- (8) For the purposes of this section—
- (a) “relevant amount” means any sum that was paid in connection with any liability (including any purported or anticipated liability) to make a payment to HMRC under or by virtue of an enactment, and
  - (b) any reference to the payment or repayment of an amount by HMRC includes a reference to its being set off against an amount owed to HMRC (and, accordingly, the reference to the date on which an amount is paid or repaid by HMRC includes a reference to the date from which the set-off takes effect).

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VALID FROM 31/08/2010

### 103 Rates of interest

- (1) The late payment interest rate is the rate provided for in regulations made by the Treasury under this subsection.
- (2) The repayment interest rate is the rate provided for in regulations made by the Treasury under this subsection.
- (3) Regulations under subsection (1) or (2)—
  - (a) may make different provision for different purposes,
  - (b) may either themselves specify a rate of interest or make provision for such a rate to be determined (and to change from time to time) by reference to such rate, or the average of such rates, as may be referred to in the regulations,
  - (c) may provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (d) may provide for rates arrived at by reference to averages to be rounded up or down,
  - (e) may provide for circumstances in which alteration of a rate of interest is or is not to be take place, and
  - (f) may provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.

### 104 Supplementary

- (1) In sections 101 to 103—
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “late payment interest” means interest payable under section 101;
  - “repayment interest” means interest payable under section 102;
  - “revenue” has the meaning given in section 5(4) of CRCA 2005.
- (2) A reference to the date on which an amount becomes due and payable is a reference to the date (however described) on or before which the amount must be paid.
- (3) Sections 101 to 103 come into force on such day as the Treasury may by order appoint.
- (4) An order under subsection (3)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (5) The Treasury may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, those sections.
- (6) An order under subsection (5) may include provision amending, repealing or revoking any provision of any Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).



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- (7) An order under subsection (5) may make different provision for different purposes.
- (8) The following are to be made by statutory instrument—
- (a) orders under section 101(2) or 102(2),
  - (b) regulations under section 103(1) or (2), and
  - (c) orders under subsection (3) or (5).
- (9) A statutory instrument containing—
- (a) an order under section 101(2) or 102(2),
  - (b) regulations under section 103(1) or (2),
  - (c) an order under subsection (5) which includes provision amending or repealing any provision of an Act,
- is subject to annulment in pursuance of a resolution of the House of Commons.

## 105 Miscellaneous amendments

- (1) Section 239 of ITA 2007 (date from which interest is chargeable when EIS relief is withdrawn or reduced) is amended as follows.
- (2) In subsection (1)—
- (a) for “in column 1 of the following table” substitute “ in subsection (2) ”,
  - (b) for “given by the corresponding entry in column 2 of the table” substitute “ 31 January next following the tax year for which the assessment is made ”, and
  - (c) omit the table.
- (3) For subsection (2) substitute—
- “(2) The provisions are—  
section 163,  
section 164,  
section 173A,  
any of sections 181 to 188,  
section 209,  
section 212(1),  
section 213,  
section 224,  
section 232, and  
section 233.”
- (4) In the following provisions, for the words from “the same rate” to the end substitute “ the rate applicable under section 178 of the Finance Act 1989 ”
- (a) section 48(1) of FA 1975 (interest on repayment of estate duty), and
  - (b) section 235(1) of IHTA 1984 (interest on overpaid inheritance tax).
- (5) In section 178(2) of FA 1989 (setting of rates of interest)—
- (a) after paragraph (g) insert—  
“(ga) section 48(1) of the Finance Act 1975,” and
  - (b) in paragraph (k), after “sections 233” insert “ , 235(1) ”.

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- (6) The following provisions (which require HMRC to make an order specifying the new rate of interest when that rate is changed by operation of regulations) are omitted—
- (a) section 178(5) of FA 1989, and
  - (b) section 197(5) of FA 1996.

### *Penalties*

#### **106 Penalties for failure to make returns etc**

- (1) Schedule 55 contains provision for imposing penalties on persons in respect of failures to make returns and other documents relating to liabilities for tax.
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 55.
- (5) An order under subsection (4) may include provision amending, repealing or revoking any provision of any Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (6) An order under subsection (4) may make different provision for different purposes.
- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under subsection (4) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

#### **107 Penalties for failure to pay tax**

- (1) Schedule 56 contains provision for imposing penalties on persons in respect of failures to comply with obligations to pay tax.
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 56.
- (5) An order under subsection (4) may include provision amending, repealing or revoking any provision of any Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (6) An order under subsection (4) may make different provision for different purposes.

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- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under subsection (4) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

## 108 Suspension of penalties during currency of agreement for deferred payment

- (1) This section applies if—
  - (a) a person (“P”) fails to pay an amount of tax falling within the Table in subsection (5) when it becomes due and payable,
  - (b) P makes a request to an officer of Revenue and Customs that payment of the amount of tax be deferred, and
  - (c) an officer of Revenue and Customs agrees that payment of that amount may be deferred for a period (“the deferral period”).
- (2) P is not liable to a penalty for failing to pay the amount mentioned in subsection (1) if—
  - (a) the penalty falls within the Table, and
  - (b) P would (apart from this subsection) become liable to it between the date on which P makes the request and the end of the deferral period.
- (3) But if—
  - (a) P breaks the agreement (see subsection (4)), and
  - (b) an officer of Revenue and Customs serves on P a notice specifying any penalty to which P would become liable apart from subsection (2),

P becomes liable, at the date of the notice, to that penalty.
- (4) P breaks an agreement if—
  - (a) P fails to pay the amount of tax in question when the deferral period ends, or
  - (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.
- (5) The taxes and penalties referred to in subsections (1) and (2) are—

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<b><i>Tax</i></b>	<b><i>Penalty</i></b>
Income tax or capital gains tax	Surcharge under section 59C(2) or (3) of TMA 1970
Value added tax	Surcharge under section 59(4) or 59A(4) of VATA 1994
Aggregates levy	Penalty interest under paragraph 5 of Schedule 5 to FA 2001
Climate change levy	Penalty interest under paragraph 82 of Schedule 6 to FA 2000
Landfill tax	Penalty interest under paragraph 27(2) of Schedule 5 to FA 1996

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Insurance premium tax	Penalty under paragraph 15(2) or (3) of Schedule 7 to FA 1994 which is payable by virtue of paragraph 15(1)(a) of that Schedule.
Any duty of excise	Penalty under section 9(2) or (3) of FA 1994 which is imposed for a failure to pay an amount of any duty of excise or an amount payable on account of any such duty.

- (6) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and an officer of Revenue and Customs, this section applies from that time to the agreement as varied.
- (7) The Treasury may by order amend the Table by adding or removing a tax or a penalty.
- (8) An order under subsection (7) is to be made by statutory instrument.
- (9) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section, except in the entries in the Table, “penalty” includes surcharge and penalty interest.
- (11) This section has effect where the agreement mentioned in subsection (1)(c) is made on or after 24 November 2008.

**Modifications etc. (not altering text)**

- C2** S. 108 applied (with modifications) by S.I. 2005/2045, reg. 48(8) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2009 \(S.I. 2009/2030\)](#), regs. 1(2), **2(2)**)
- C3** S. 108 applied (with modifications) by S.I. 2003/2682, reg. 203(8) (as inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2009 \(S.I. 2009/2029\)](#), regs. 1(2), **4**)
- C4** S. 108 applied (with modifications) by S.I. 2001/1004, reg. 90K(8) (as inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by [Social Security \(Contributions\) \(Amendment No.4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), **3**)

**109 Miscellaneous amendments**

Schedule 57 contains amendments of Schedule 24 to FA 2007 (penalties for errors), Schedule 41 to FA 2008 (penalties for failure to notify and certain other wrongdoing) and certain other enactments relating to penalties.

*Miscellaneous*

**110 Recovery of debts using PAYE regulations**

Schedule 58 contains provision about the recovery of debts by means of deductions from PAYE income in accordance with PAYE regulations.

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## 111 Managed payment plans

- (1) This section applies where a person (“P”) has entered into a managed payment plan in respect of—
- (a) an amount on account of income tax which is to become payable in accordance with section 59A(2) of TMA 1970,
  - (b) an amount of income tax or capital gains tax which is to become payable in accordance with section 59B of that Act, or
  - (c) an amount of corporation tax which is to become payable in accordance with section 59D of that Act.
- (2) P enters into a managed payment plan in respect of an amount if—
- (a) P agrees to pay, and an officer of Revenue and Customs agrees to accept payment of, the amount by way of instalments,
  - (b) the instalments to be paid before the due date are balanced by the instalments to be paid after it (see subsections (8) to (10)), and
  - (c) the agreement meets such other requirements as may be specified in regulations made by the Commissioners.
- (3) But this section does not apply, in the case of an amount of corporation tax, where an arrangement under section 36 of FA 1998 (payment of tax by members of a group of companies) has been made in relation to the amount.
- (4) If P pays all of the instalments in accordance with the plan, P is to be treated as having paid, on the due date, the total of those instalments.
- (5) If P—
- (a) pays one or more instalments in accordance with the plan, but
  - (b) fails to pay one or more later instalments in accordance with it,
- P is to be treated as having paid, on the due date, the total of the instalments paid before the failure (but this is subject to subsection (6)).
- (6) Where—
- (a) subsection (5) applies in a case where the first failure to pay an instalment occurs before the due date, and
  - (b) P would (in the absence of a managed payment plan) be entitled to be paid interest on any amount paid before that date,
- then, despite that subsection, P is entitled to be paid that interest.
- (7) Where—
- (a) subsection (5) applies,
  - (b) P makes one or more payments after the due date (whether or not in accordance with the plan), and
  - (c) an officer of Revenue and Customs gives P a notice specifying any or all of those payments,
- P is not liable to a penalty or surcharge for failing to pay the amount of the specified payments on or before the due date.
- (8) The instalments to be paid before the due date are balanced by those to be paid after it if the time value of the instalments to be paid before that date is equal, or approximately equal, to the time value of the instalments to be paid after it.

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- (9) The time value of the instalments to be paid before the due date is the total of the time value of each of the instalments to be paid before that date (and the time value of the instalments to be paid after that date is to be construed accordingly).
- (10) The time value of an instalment is—

$$A \times T$$

where—

A is the amount of the instalment, and

T is the number of days before, or after, the due date that the instalment is to be paid.

- (11) The Commissioners may by regulations make provision for the purpose of determining when an amount is approximately equal to another amount.
- (12) Regulations under this section may make different provision for different cases.
- (13) In this section—  
     “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;  
     “the due date”, in relation to an amount mentioned in subsection (1), means the date on which it becomes payable.
- (14) This section has effect where the due date falls after the day on which this Act is passed.

## 112 Customs and excise enforcement: movements between member States

- (1) Section 4 of F(No.2)A 1992 (cases in which customs and excise enforcement powers can be used in relation to movement of persons or things between member States) is amended as follows.
- (2) In subsection (1), after “subsection” insert “ (1A) or ”.
- (3) After that subsection insert—  
     “(1A) The first case in which a power to which this section applies may be exercised as mentioned in subsection (1) above is where it is necessary to exercise the power in order to ascertain whether the movement in question is or is not in fact between different member States.”
- (4) In subsection (2), for the words from the beginning to “or that” substitute “ The second case in which a power to which this section applies may be exercised as mentioned in subsection (1) above is where ”.

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## PART 8

### MISCELLANEOUS

#### *Gambling*

#### **113 VAT exemption for gaming participation fees**

- (1) Group 4 of Schedule 9 to VATA 1994 (exemptions: betting, gaming and lotteries) is amended as follows.
- (2) In Note (1), omit paragraph (b) (granting of right to play game of chance not exempted unless within Note (5)).
- (3) Omit Notes (5) to (11).
- (4) The Value Added Tax (Betting, Gaming and Lotteries) Order 2007 (S.I. 2007/2163) is revoked.
- (5) Omit—
  - (a) in BGDA 1981, sections 19(3)(b) and 26E(2), and
  - (b) in FA 1997, section 11(9)(a).
- (6) The amendments made by this section are treated as having come into force on 27 April 2009.

#### **114 Gaming duty**

- (1) FA 1997 is amended as follows.
- (2) Section 10 (gaming duty) is amended as follows.
- (3) For subsection (2) substitute—

“(2) Subject as follows, this section applies to—

  - (a) casino games, and
  - (b) equal chance gaming.”
- (4) In subsection (3)(e), after “Article” insert “ 77, ”.
- (5) After subsection (3A) insert—

“(3AA) This section does not apply to the playing of a game in respect of which bingo duty or lottery duty is chargeable or would be chargeable but for an express exception.”
- (6) In subsection (3C)(a), after “in” insert “ organising or ”.
- (7) For subsection (4) substitute—

“(4) This section does not apply—

  - (a) in Great Britain, to the playing of a game where the provision of facilities for its playing falls within section 269 of the Gambling Act 2005 (equal chance gaming at members' or commercial clubs and miners' welfare institutes), or

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- (b) in Northern Ireland, to the playing of a game to which Article 128 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (certain clubs) applies.”
- (8) In subsection (5), for “add to the games mentioned in subsection (2) above” substitute “ provide that any specified game is or is not to be a casino game or equal chance gaming for the purposes of this section ”.
- (9) In subsection (6), for “this section, or in an order under subsection (5) above,” substitute “ an order under subsection (5) above ”.
- (10) Section 14 (subordinate legislation) is amended as follows.
- (11) In subsection (2), for “or 11(11) above” substitute “ providing that any game is to be a casino game or equal chance gaming or any order under section 11(11) ”.
- (12) Insert at the end—
  - “(4) A statutory instrument containing an order under section 10(5) that does not provide for any game to be a casino game or equal chance gaming is subject to annulment in pursuance of a resolution of the House of Commons.”
- (13) Section 15(3) (interpretation) is amended as follows.
- (14) After the definition of “accounting period” insert—
  - ““casino games” means games of chance which are not equal chance gaming (but subject to any order under section 10(5));”.
- (15) After the definition of “dutiable gaming” insert—
  - ““equal chance gaming”—
    - (a) in Great Britain, means gaming which does not involve playing or staking against a bank (however described, and whether or not controlled or administered by a player) and in which the chances are equally favourable to all participants, and
    - (b) in Northern Ireland, means gaming in respect of which none of the conditions specified in Article 55 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 is met,
 (but subject to any order under section 10(5));”.
- (16) In consequence of the preceding provisions, omit—
  - (a) in FA 2002, section 11, and
  - (b) in FA 2007, in Schedule 25, paragraph 17(4).
- (17) The amendments made by this section are to be treated as having come into force on 27 April 2009.
- (18) But those amendments do not give rise to a duty under paragraph 6(3)(a) of Schedule 1 to FA 1997 (requirement to notify premises) before 25 May 2009.

## 115 Remote bingo etc

- (1) BGDA 1981 is amended as follows.
- (2) In section 17 (bingo duty), after subsection (2) insert—



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“(2A) Bingo duty is not charged on the playing of bingo which is not licensed bingo if remote gaming duty is charged on the provision of facilities for playing it.”

(3) In section 26H (remote gaming duty: exemptions), after subsection (2) insert—

“(2A) Subsection (2) does not prevent remote gaming duty being charged in respect of the provision of facilities for the playing of bingo which is not licensed bingo (as to the meaning of which terms see section 20C).”

(4) The amendments made by this section have effect in relation to games of bingo that begin to be played on or after 1 July 2009.

## 116 Meaning of “gaming machine” and “gaming”

(1) BGDA 1981 is amended as follows.

(2) Section 25 (meaning of “amusement machine”) is amended as follows.

(3) For subsection (1A) substitute—

“(1A) In this Act “gaming machine” means a machine which is designed or adapted for use by individuals for gambling (whether or not it can also be used for other purposes).

(1B) But a machine is not a gaming machine to the extent that—

- (a) it is designed or adapted for use to bet on future real events,
- (b) it is designed or adapted for the playing of bingo and bingo duty is, or but for paragraphs 1 to 5 of Schedule 3 would be, charged under section 17 on the playing of the bingo, or
- (c) it is designed or adapted for the playing of a real game of chance and the playing of the game is dutiable gaming for the purposes of section 10 of the Finance Act 1997, or would be dutiable gaming but for subsections (3) and (4) of that section.”

(4) In subsection (1C), for “constructed” substitute “designed”.

(5) Insert at the end—

“(5) For the purposes of this section—

- (a) a reference to gambling is to—
  - (i) gaming, or
  - (ii) betting,
- (b) “machine” has the same meaning as in the Gambling Act 2005 (see section 235(3)(a)),
- (c) a reference to a machine being designed or adapted for a purpose includes a reference to a machine to which anything has been done as a result of which it can reasonably be expected to be used for that purpose,
- (d) a reference to a machine being adapted includes a reference to computer software being installed on it,
- (e) “real” has the meaning given by section 353(1) of the Gambling Act 2005,

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- (f) “game of chance” has the meaning given by section 6(2) of that Act, and
- (g) “bingo” includes any version of that game, whatever name it is called.
- (6) The Treasury may by order amend this section.”
- (6) In section 33 (interpretation)—
  - (a) in subsection (1), in the definition of “gaming”, omit “within the meaning of Group 4 of Schedule 9 to the Value Added Tax Act 1994”, and
  - (b) after that subsection insert—
    - “(1A) In the definition of “gaming” in subsection (1)—
      - (a) “game of chance” has the meaning given by section 6(2) of the Gambling Act 2005,
      - (b) “playing a game of chance” is to be read in accordance with section 6(3) of that Act, and
      - (c) “prize” does not include the opportunity to play the game again.”

#### *Climate change levy*

### **117 Taxable commodities ineligible for reduced-rate supply**

- (1) Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- (2) In paragraph 44 (reduced rate for supplies covered by climate change agreement), after sub-paragraph (2) insert—
  - “(2A) The Secretary of State may—
    - (a) give a certificate that includes provision specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply,
    - (b) vary a certificate so that it includes provision (or further provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply, or
    - (c) vary a certificate so that it ceases to include the provision (or some of the provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply.
  - (2B) A taxable supply of a taxable commodity to a facility is not a reduced-rate supply if, at the time of the supply, the commodity falls within a description that is specified (by virtue of sub-paragraph (2A)(a) or (b)) in the certificate relating to the facility.
  - (2C) The Secretary of State may only include provision in a certificate by virtue of sub-paragraph (2A)(a) or (b)—
    - (a) if the Treasury consents in writing to the specification before the specification is made, and
    - (b) if, and for as long as, the result is compatible with the common market by virtue of Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty

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establishing the European Community (General block exemption Regulation) (O.J. 2008 No. L214/3).

(2D) In sub-paragraphs (2A) to (2C) “certificate” means such a certificate as is mentioned in sub-paragraph (1)(a).”

(3) In consequence of subsection (2)—

- (a) in paragraph 44(2), after “subject to” insert “ sub-paragraphs (2A) to (2D) and ”, and
- (b) in paragraph 147 (general interpretation), in the definition of “reduced-rate supply”, after “subject to” insert “ paragraph 44(2A) to (2D) and ”.

### **118 Removal of reduced rate where targets not met**

- (1) Schedule 59 contains provision for removing the reduced rate of climate change levy where the targets set by a climate change agreement have not been met.
- (2) The amendments made by that Schedule have effect where the certification period begins on or after 1 April 2009.

#### *Other environmental taxes and duties*

### **119 Landfill tax: prescribed landfill site activities**

Schedule 60 contains provision about charging landfill tax on prescribed activities at landfill sites.

### **120 Requirement to destroy replaced vehicle registration documents**

In section 22(1) of VERA 1994 (registration regulations), after paragraph (h) insert—  
“(ha) require the destruction of a registration document where a new registration document is issued in place of it.”.

### **121 Hydrocarbon oil duties: minor amendments**

- (1) HODA 1979 is amended as follows.
- (2) In section 11(1) (rebate on heavy oil), omit “12”.
- (3) In section 14D(2) (civil penalty for supplying biodiesel or bioblend intending that it will be put to prohibited use), for “intending” substitute “ having reason to believe ”.
- (4) The amendment made by subsection (3) has effect in relation to supplies on or after the day on which this Act is passed.

#### *Other matters*

### **122 Inheritance tax: agricultural property and woodlands relief for EEA land**

- (1) Part 5 of IHTA 1984 (miscellaneous reliefs) is amended as follows.
- (2) In section 115 (agricultural property relief: preliminary), in subsection (3), insert at the end “(or, in the case of property outside the United Kingdom, the Channel Islands

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and the Isle of Man, if it were subject to provisions equivalent in effect to such a covenant).”

(3) For subsection (5) of that section substitute—

“(5) This Chapter applies to agricultural property only if it is in—

- (a) the United Kingdom, the Channel Islands or the Isle of Man, or
- (b) a state, other than the United Kingdom, which is an EEA state (within the meaning given by Schedule 1 to the Interpretation Act 1978) at the time of the transfer of value in question.”

(4) In section 116 (agricultural property relief: the relief), insert at the end—

“(8) In its application to property outside the United Kingdom, the Channel Islands and the Isle of Man, this section has effect as if any reference to a right or obligation under the law of any part of the United Kingdom were a reference to an equivalent right or obligation under the law governing dispositions of that property.”

(5) In section 125 (woodlands relief), in paragraph (a) of subsection (1), omit “in the United Kingdom”.

(6) After that subsection insert—

“(1A) But this section applies only if the land is in the United Kingdom or another state which is an EEA state (within the meaning given by Schedule 1 to the Interpretation Act 1978) at the time of the person's death.”

(7) The amendments made by this section have effect in relation to transfers of value where the tax payable but for this section (or, in the case of tax payable by instalments, the last instalment of that tax)—

- (a) would have been due on or after 22 April 2009, or
- (b) was paid or due on or after 23 April 2003.

(8) Where tax falling within subsection (7) has been paid, Her Majesty's Revenue and Customs must repay the tax (together with interest under section 235(1) of IHTA 1984) if, but only if, a claim for repayment is made on or before—

- (a) the date determined under section 241(1) of that Act as the last date on which the claim may be made, or
- (b) 21 April 2010,

whichever is later.

(9) Where, by virtue of the amendments made by subsections (5) and (6), an election is made under section 125 of IHTA 1984, that election must be made on or before—

- (a) the date determined under section 125(3) as the last date on which the election may be made, or
- (b) 21 April 2010,

whichever is later.

## 123 Alternative finance investment bonds

Schedule 61 contains provision about the taxation of chargeable gains, stamp duty land tax and capital allowances for and in connection with arrangements falling within section 48A of FA 2005 (alternative finance investment bonds).

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## 124 Mutual societies: tax consequences of transfers of business etc

- (1) The Treasury may by regulations make provision for and in connection with—
  - (a) the tax consequences of a transfer of all or part of the business or engagements of a mutual society,
  - (b) the tax consequences of an amalgamation of mutual societies, and
  - (c) the tax consequences of the conversion of a mutual society into a company.
- (2) “Mutual society” means—
  - (a) a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986,
  - (b) a friendly society within the meaning of the Friendly Societies Act 1992, or
  - (c) an industrial and provident society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965.
- (3) Regulations under this section may, in particular, make provision about—
  - (a) relief from tax in respect of losses,
  - (b) capital allowances,
  - (c) the taxation of chargeable gains (including provision conferring relief for specified transfers and amalgamations),
  - (d) the treatment of intangible fixed assets and goodwill,
  - (e) the treatment of loan relationships (and matters treated as loan relationships),
  - (f) the treatment of derivative contracts (and contracts treated as derivative contracts),
  - (g) exemption or other relief from stamp duty, stamp duty reserve tax or stamp duty land tax, and
  - (h) the treatment of arrangements the purpose, or one of the main purposes, of which is to secure a tax advantage.
- (4) Regulations under this section may, in particular—
  - (a) modify enactments and instruments relating to tax (whenever passed or made),
  - (b) make different provision for different cases or different purposes, and
  - (c) make incidental, consequential or transitional provision (including provision modifying enactments and instruments, whenever passed or made).
- (5) Regulations under this section may include provision having effect in relation to any time before they are made if the provision does not increase any person's liability to tax.
- (6) Regulations under this section are to be made by statutory instrument.
- (7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—
  - “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions;
  - “company” means a company formed and registered under the Companies Act 2006 (or treated as formed and registered under that Act);
  - “derivative contract” has the same meaning as in Part 7 of CTA 2009 (see section 576 of that Act);

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“goodwill” and “intangible fixed asset” have the same meaning as in Part 8 of CTA 2009 (see sections 713 and 715 of that Act);

“loan relationship” has the same meaning as in the Corporation Tax Acts (see section 302(1) and (2) of CTA 2009);

“modify” includes amend, repeal or revoke;

“tax” includes stamp duty;

“tax advantage” means—

- (a) a relief from tax (including a tax credit) or increased relief from tax,
- (b) a repayment of tax or increased repayment of tax,
- (c) the avoidance, reduction or delay of a charge to tax or an assessment to tax, or
- (d) the avoidance of a possible assessment to tax.

## 125 National Savings ordinary accounts: surplus funds

- (1) As soon as practicable after the passing of this Act—
  - (a) the Director of Savings and the Commissioners must prepare a statement showing the relevant surplus, and
  - (b) the Commissioners must pay the relevant surplus into the Consolidated Fund.
- (2) The relevant surplus is the amount held by the Commissioners by virtue of section 17 of the 1971 Act (including any such amount held in investments), less the aggregate of—
  - (a) such sums as the Treasury may determine to be equal to those expended by the Director of Savings in connection with ordinary accounts,
  - (b) such sums as are necessary to defray the expenses incurred by the Commissioners in connection with ordinary accounts, and
  - (c) such sums as are required to be paid into the Consolidated Fund by virtue of section 20 of the 1971 Act.
- (3) The Commissioners—
  - (a) must pay into the Consolidated Fund the sums determined in accordance with subsection (2)(a), and
  - (b) may retain the sums determined in accordance with subsection (2)(b).
- (4) As soon as practicable after preparing a statement under subsection (1), the Director of Savings and the Commissioners must transmit the statement to the Comptroller and Auditor General who must—
  - (a) examine, certify and make a report on it, and
  - (b) lay copies of the statement, together with copies of that report, before Parliament.
- (5) The Treasury may by order repeal or otherwise amend any enactment if the repeal or amendment appears to the Treasury to be necessary or expedient in consequence of—
  - (a) the closure of ordinary accounts and the transfer of their balances to other accounts (see, in particular, regulations 2B to 2BB of the National Savings Bank Regulations 1972 (S.I. 1972/764)), or
  - (b) this section.
- (6) An order under subsection (5) is to be made by statutory instrument.

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- (7) No order may be made under subsection (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (8) In this section—
- (a) a reference to sums expended or expenses incurred in connection with ordinary accounts includes a reference to sums expended or expenses incurred in connection with the holding of amounts by virtue of section 17 of the 1971 Act (including their holding in investments), and
  - (b) expressions used in this section and in the 1971 Act have the same meaning in this section as in that Act.
- (9) In this section—
- “the 1971 Act” means the National Savings Bank Act 1971;
  - “enactment” includes—
    - (a) an enactment contained in the 1971 Act, and
    - (b) subordinate legislation (which has the same meaning as in the Interpretation Act 1978).

## PART 9

### FINAL PROVISIONS

#### 126 Interpretation

- (1) In this Act—
- “ALDA 1979” means the Alcoholic Liquor Duties Act 1979,
  - “BGDA 1981” means the Betting and Gaming Duties Act 1981,
  - “CAA 2001” means the Capital Allowances Act 2001,
  - “CRCA 2005” means the Commissioners for Revenue and Customs Act 2005,
  - “CTA 2009” means the Corporation Tax Act 2009,
  - “FISMA 2000” means the Financial Services and Markets Act 2000,
  - “HODA 1979” means the Hydrocarbon Oil Duties Act 1979,
  - “ICTA” means the Income and Corporation Taxes Act 1988,
  - “IHTA 1984” means the Inheritance Tax Act 1984,
  - “ITA 2007” means the Income Tax Act 2007,
  - “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,
  - “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005,
  - “OTA 1975” means the Oil Taxation Act 1975,
  - “OTA 1983” means the Oil Taxation Act 1983,
  - “PRTA 1980” means the Petroleum Revenue Tax Act 1980,
  - “TCGA 1992” means the Taxation of Chargeable Gains Act 1992,
  - “TMA 1970” means the Taxes Management Act 1970,
  - “TPDA 1979” means the Tobacco Products Duty Act 1979,
  - “VATA 1994” means the Value Added Tax Act 1994, and

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“VERA 1994” means the Vehicle Excise and Registration Act 1994.

(2) In this Act—

“FA”, followed by a year, means the Finance Act of that year, and

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

(3) In the tables in Part 1 of Schedule 1 to CAA 2001, Part 1 of Schedule 1 to ITEPA 2003 and Part 1 of Schedule 4 to ITTOIA 2005, at the beginning insert—

“FA followed by a year	The Finance Act of that year
F(No.2)A followed by a year	The Finance (No.2) Act of that year.”

(4) Omit all of the entries in those tables relating to a Finance Act or a Finance (No.2) Act.

(5) In the following provisions, for “the Finance Act” substitute “FA ”

- (a) in CAA 2001, sections 70G(5), 70H(3) (in both places), 70O(4)(b), 105(2A), 186(3) and (5) (as amended by paragraph 5 of Schedule 27 to FA 2008), 257(2)(a), 360B(2)(a) and 360C(2)(b) and paragraph 105(2) of Schedule 3, and
- (b) in ITEPA 2003, sections 420(1)(h) and 702(5B), paragraph 78(2)(b) of Schedule 2 and paragraph 54 of Schedule 7.

(6) Accordingly, omit—

- (a) in FA 2004, in Schedule 35, paragraphs 49 and 65(2),
- (b) in F(No.2)A 2005, section 10(7),
- (c) in FA 2006, section 84(4), and
- (d) in FA 2008, in Schedule 25, paragraph 6.

## 127 Short title

This Act may be cited as the Finance Act 2009.



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## SCHEDULES

### SCHEDULE 1

Section 5

#### INCOME TAX: ABOLITION OF NON-RESIDENTS' PERSONAL RELIEFS

##### *Introduction*

1 Chapter 1 of Part 7 of ICTA (income tax: personal reliefs) is amended as follows.

##### *Abolition of reliefs*

- 2 Omit—
- (a) section 256 (general),
  - (b) section 256A (“adjusted net income”),
  - (c) section 256B (“the minimum amount”),
  - (d) section 257 (personal allowance),
  - (e) sections 257A to 257BB (married couple's allowance etc),
  - (f) section 257C (indexation),
  - (g) section 265 (blind person's allowance),
  - (h) section 273 (payments securing annuities), and
  - (i) section 278 (non-residents).

##### *Consequential amendments*

- 3 (1) Section 266 (life assurance premiums) is amended as follows.
- (2) In subsection (1)—
- (a) for “individual” substitute “eligible individual”, and
  - (b) omit “or makes a payment falling within subsection (7) below”.
- (3) After that subsection insert—
- “(1A) For the purposes of subsection (1) above an individual is an eligible individual if the individual—
- (a) is resident in the United Kingdom, or
  - (b) meets the conditions in section 56(3) of ITA 2007.”
- (4) In subsection (3), omit “(7),”.
- (5) In subsection (4), for “subsections (7) and” substitute “subsection”.
- (6) Omit subsection (7).
- (7) In subsection (8), for “and is entitled to relief by virtue of section 278(2) or (2ZA)” substitute “(but is entitled to relief by virtue of subsection (1A)(b))”.
- 4 (1) Section 274 (limits on relief under sections 266 and 273) is amended as follows.

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- (2) In subsection (1), omit “or other sums”.
  - (3) In subsection (2)—
    - (a) for “sections 266 and 273” substitute “ section 266 ”, and
    - (b) omit “or sums”, and
    - (c) for “the appropriate rate” substitute “ 12.5% ”.
  - (4) Omit subsection (3).
  - (5) In subsection (4), omit “or other sum” (in both places).
  - (6) In the heading, for “**sections 266 and 273**” substitute “ **section 266** ”.
- 5 In paragraph 6(1) of Schedule 14 (provisions ancillary to section 266), omit “, otherwise than in accordance with subsection (7) of that section,”.

### *Repeals*

- 6 Omit—
- (a) in TMA 1970—
    - (i) in section 36(3A), “section 257BA of the principal Act or”,
    - (ii) in section 37A, “section 257BB or 265 of the principal Act or”, and
    - (iii) in section 43A(2A)(a), “section 257BA of the principal Act or”,
  - (b) in FA 1988, section 33 and, in Schedule 3, paragraphs 8 and 10,
  - (c) in FA 1989, section 33(4)(a), (5)(b), (8)(a) and (9)(b),
  - (d) in F(No.2)A 1992, in Schedule 5, paragraphs 2, 8(4) and 9(3),
  - (e) in FA 1993, section 107(3)(a),
  - (f) in FA 1994, section 77(1) and (2),
  - (g) in FA 1996, in Schedule 20, paragraph 14(3) and, in Schedule 21, paragraphs 4 to 6,
  - (h) in FA 1997, section 56(2),
  - (i) in FA 1998, section 27(1)(a) and, in Schedule 3, paragraph 10,
  - (j) in FA 1999, sections 25(3), 31 and 32,
  - (k) in FA 2000, section 39(8) and (9),
  - (l) in ITEPA 2003, in Schedule 6, paragraph 35,
  - (m) in FA 2004, in Schedule 35, paragraph 12,
  - (n) in ITTOIA 2005, in Schedule 1, paragraph 124,
  - (o) in ITA 2007—
    - (i) in section 23, in Step 3, “or section 257 or 265 of ICTA”,
    - (ii) in sections 26(1)(a) and 27(5), “or section 257A, 257AB, 257BA or 257BB of ICTA”,
    - (iii) in section 423(5), “or section 257 or 265 of ICTA”, “or section 257A, 257AB, 257BA or 257BB of ICTA”, “or section 266(7) of ICTA” and “or section 273 of ICTA”,
    - (iv) in section 811, in subsection (5), “or section 278(2) of ICTA” and, in subsection (6), “or section 257 or 265 of ICTA”, “or section 257A, 257AB, 257BA or 257BB of ICTA” and “or section 273 of ICTA”,
    - (v) in section 833(5), “or section 278 of ICTA”,

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- (vi) in Schedule 1, paragraphs 27 to 35, 36(5) and (6), 37 and 232(2), and
- (vii) in Schedule 2, Part 4,
- (p) in FA 2008—
  - (i) in section 2(1) and (2), paragraph (b) and the “and” before it,
  - (ii) in section 3, in subsection (1), “and section 257(2) of ICTA” and “and section 257(3) of ICTA” and, in subsection (2), paragraph (b) and the “and” before it, and
  - (iii) in Schedule 39, paragraphs 18 to 20, and
- (q) in this Act, in section 3(1) and (2), paragraph (b) and the “and” before it.

#### Commencement

- 7 The amendments made by this Schedule have effect for the tax year 2010-11 and subsequent tax years.

## SCHEDULE 2

Section 6

### INCOME TAX RATES

#### PART 1

##### AMENDMENTS OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 (1) Section 6 (rates of income tax) is amended as follows.
- (2) In subsection (2), for “and higher rate” substitute “, higher rate and additional rate”.
- (3) In the heading, for “**and higher rate**” substitute “, **higher rate and additional rate**”.
- 3 (1) Section 8 (dividend ordinary rate and dividend upper rate) is amended as follows.
- (2) Insert at the end—
- “(3) The dividend additional rate is 42.5%.”
- (3) In the heading, for “**and dividend upper rate**” substitute “, **dividend upper rate and dividend additional rate**”.
- 4 (1) Section 10 (income charged at basic and higher rates: individuals) is amended as follows.
- (2) In subsection (3), insert at the end “and up to the higher rate limit.”
- (3) After that subsection insert—
- “(3A) Income tax is charged at the additional rate on an individual's income above the higher rate limit.”
- (4) After subsection (5) insert—

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“(5A) The higher rate limit is £150,000.”

- (5) In subsection (6), for “is” substitute “ and higher rate limit are ”.
- (6) In the heading, for “**and higher**” substitute “ , **higher and additional** ”.
- 5 (1) Section 13 (income charged at dividend ordinary and dividend upper rates: individuals) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Income tax is charged at the dividend additional rate on an individual's income which—
- (a) is dividend income,
- (b) would otherwise be charged at the additional rate, and
- (c) is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005.”
- (3) In subsection (3), for “and (2)” substitute “ to (2A) ”.
- (4) In subsection (4), for “or higher” substitute “ , higher or additional ”.
- (5) In the heading, for “**and dividend upper**” substitute “ , **dividend upper and dividend additional** ”.
- 6 In section 414(2)(b) (relief for gifts to charity), after “limit” insert “ and the higher rate limit ”.
- 7 In section 515(a) (rate of tax in respect of heritage maintenance settlements), for “higher rate” substitute “ additional rate ”.
- 8 (1) Section 989 (definitions) is amended as follows.
- (2) After the definition of “Act” insert—
- ““additional rate” means the rate of income tax determined in pursuance of section 6(2),”.
- (3) After the definition of “distribution” insert—
- ““dividend additional rate” means the rate of income tax specified in section 8(3),”.
- (4) After the definition of “higher rate” insert—
- ““higher rate limit” has the meaning given by section 10,”.
- 9 (1) Schedule 4 (index of defined expressions) is amended as follows.
- (2) After the entry relating to “Act” insert—

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“additional rate	section 6(2) (as applied by section 989).”
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(3) In the entry relating to “basic rate limit”, for “20(2)” substitute “ 10 ”.

(4) After the entry relating to “dividends (in Chapter 1 of Part 13)” insert—

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“dividend additional rate	section 8(3) (as applied by section 989).”
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(5) After the entry relating to “higher rate” insert—

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“higher rate limit	section 10 (as applied by section 989).”
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## PART 2

### AMENDMENTS OF OTHER ACTS

#### FA 2004

- 10 Part 4 of FA 2004 (pension schemes etc) is amended as follows.
- 11 In section 192 (relief for pension contributions at source), for subsection (4) substitute—
- “(4) If (apart from this section) income tax at the higher rate or the additional rate is chargeable in respect of any part of the individual's total income for the tax year, on the making of a claim the basic rate limit and the higher rate limit for the tax year in the individual's case are increased by the amount of the contribution.”
- 12 In section 208 (unauthorised payments charge), for subsection (6) substitute—
- “(6) The Treasury may by order amend subsection (5) so as to vary the rate of the unauthorised payments charge.
- (6A) An order under subsection (6) may make provision for there to be different rates in different circumstances.”
- 13 In section 209 (unauthorised payments surcharge), for subsection (7) substitute—
- “(7) The Treasury may by order amend subsection (6) so as to vary the rate of the unauthorised payments surcharge.
- (8) An order under subsection (7) may make provision for there to be different rates in different circumstances.”
- 14 In section 215 (amount of lifetime allowance charge), after subsection (2) insert—
- “(2A) The Treasury may by order amend subsection (2) so as to vary the rates of the lifetime allowance charge.
- (2B) An order under subsection (2A) may make provision for there to be different rates in different circumstances.”
- 15 In section 227 (annual allowance charge), after subsection (5) insert—
- “(5A) The Treasury may by order amend subsection (4) so as to vary the rate of the annual allowance charge.
- (5B) An order under subsection (5A) may make provision for there to be different rates in different circumstances.”
- 16 In section 240 (amount of scheme sanction charge), after subsection (3) insert—
- “(3A) The Treasury—

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- (a) may by order amend subsection (1) so as to vary the rate of the scheme sanction charge, and
  - (b) may by order amend subsection (3)(a) so as to vary the percentage mentioned there.
- (3B) An order under subsection (3A) may make provision for there to be different rates or percentages in different circumstances.”
- 17 In section 242 (de-registration charge), insert at the end—
- “(5) The Treasury may by order amend subsection (4) so as to vary the rate of the de-registration charge.
- (6) An order under subsection (5) may make provision for there to be different rates in different circumstances.”
- 18 (1) Section 282 (orders and regulations) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) No order may be made under section 208(6), 209(7), 215(2A), 227(5A), 240(3A) or 242(5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.”
- (3) In subsection (2), after “Part” insert “, if made without a draft having been approved by a resolution of the House of Commons, ”.

#### *ITTOIA 2005*

- 19 ITTOIA 2005 is amended as follows.
- 20 In section 640(6)(b) (grossing-up of deemed income)—
- (a) omit the “and” at the end of sub-paragraph (i), and
  - (b) insert at the end “up to and including the year 2009-2010, and
    - (iii) 50%, if the relevant tax year is the year 2010-2011 or any subsequent tax year.”
- 21 In section 669(3) (reduction in residuary income: inheritance tax on accrued income)—
- (a) in paragraph (a), after “charged at” insert “ the additional rate or ”, and
  - (b) in paragraph (b), after “charged at” insert “ the dividend additional rate or ”.
- 22 In section 685A(3) (settlor-interested settlements), for “higher rate” substitute “ additional rate ”.
- 23 (1) Part 2 of Schedule 4 (index of defined expressions) is amended as follows.
- (2) After the entry relating to “acquisition expenditure (in Chapter 9 of Part 2)” insert—

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“additional rate

section 6(2) of ITA 2007 (as applied by section 989 of that Act).”

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- (3) After the entry relating to “distribution” insert—

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“the dividend additional rate

section 8(3) of ITA 2007 (as applied by section 989 of that Act).”

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### *F(No.2)A 2005*

- 24 In section 7(5) of F(No.2)A 2005 (charge to income tax on social security pension lump sum)—
- (a) in paragraph (d), after “basic rate limit for that year” insert “ but does not exceed the higher rate limit for that year ”, and
  - (b) after that paragraph insert—
    - “(e) if P's Step 3 income for that year of assessment exceeds the higher rate limit for that year, the additional rate for that year.”

## **PART 3**

### COMMENCEMENT

- 25 (1) The powers conferred by the amendments made by this Schedule may be exercised at any time on or after the day on which this Act is passed but not so as to make provision having effect before the tax year 2010-11.
- (2) Subject to that, the amendments made by this Schedule have effect for the tax year 2010-11 and subsequent tax years.

## SCHEDULE 3

Section 9

### VAT: SUPPLEMENTARY CHARGE AND ORDERS CHANGING RATE

## **PART 1**

### SUPPLEMENTARY CHARGE TO VAT

#### *The charge*

- 1 (1) There is a supplementary charge on a supply of goods or services that is treated as taking place on or after 25 November 2008 if—
- (a) the supply spans the date of the VAT change,
  - (b) it is subject to VAT at the rate in force under section 2 of VATA 1994,
  - (c) the person to whom the supply is made is not entitled under VATA 1994 to credit for, or the repayment or refund of, all of the VAT on the supply, and
  - (d) a relevant condition is met.
- (2) In this Schedule “the date of the VAT change” means 1 January 2010.
- (3) For the cases in which a supply, other than the grant of a right to goods or services, spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 2.
- (4) For the cases in which a supply consisting of the grant of a right to goods or services spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 3.

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- (5) Sub-paragraph (1) has effect subject to the exceptions made by or under Part 2 of this Schedule.
- (6) In this Schedule—
- Part 3 contains provision about liability for, and the amount of, a supplementary charge under this Schedule,
  - Part 4 contains special provision about listed supplies, and
  - Part 5 contains provision about administration and interpretation.
- (7) A supplementary charge under this Schedule is to be treated for all purposes as if it were value added tax charged in accordance with VATA 1994.
- Supply spanning the date of the VAT change*
- 2 (1) For the purposes of this Schedule a supply of goods or services spans the date of the VAT change where—
- (a) by virtue of the issue of a VAT invoice or the receipt of a payment by the person making the supply (“the supplier”), the supply is treated as taking place before the date of the VAT change, but
  - (b) the basic time of supply (see paragraph 4) is on or after the date of the VAT change.
- (2) The relevant conditions are—
- (a) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the issue of a VAT invoice, conditions A to D, and
  - (b) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the receipt of a payment, conditions A to C.
- (3) Condition A is that the supplier and the person to whom the supply is made are connected with each other at any time in the period—
- (a) beginning with the day on which the supply is treated as taking place, and
  - (b) ending on the date of the VAT change.
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
- (a) the relevant consideration for the supply, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that a prepayment in respect of the supply is financed by the supplier or a person connected with the supplier (see paragraph 7).
- (7) In sub-paragraph (6) “prepayment”, in respect of a supply, means a payment that is received by the supplier before the basic time of supply.
- (8) Condition D is that full payment of the amount shown on the VAT invoice referred to in sub-paragraph (1)(a) is not due before the end of the period of 6 months beginning with the date on which the invoice is issued.
- (9) This paragraph does not apply in relation to a supply consisting of the grant of a right to goods or services (see paragraph 3).



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### *Grant of right spanning the date of the VAT change*

- 3 (1) For the purposes of this Schedule a supply consisting of the grant by a person (“the grantor”) of a right to goods or services spans the date of the VAT change where—
- (a) that supply is treated as taking place before the date of the VAT change,
  - (b) the goods or services are to be supplied at a discount or free of charge, and
  - (c) the basic time of supply for the supply of some or all of the goods or services (see paragraph 4) is on or after the date of the VAT change.
- (2) In relation to the grant of the right, the relevant conditions are conditions A to C.
- (3) Condition A is that the grantor and the person to whom the right is granted are connected with each other at any time in the period—
- (a) beginning with the day on which the supply consisting of the grant of the right is treated as taking place, and
  - (b) ending on the date of the VAT change or, if the right is exercised (entirely or partly) on a later date, that date (or, if more than one, the first of those dates).
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
- (a) the relevant consideration for the grant of the right, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that the payment made in respect of the grant of the right is financed by the grantor or a person connected with the grantor (see paragraph 7).
- (7) In this Schedule references to a right to goods or services include—
- (a) any right or option with respect to such goods or services, and
  - (b) any interest deriving from such a right or option.

### *“Basic time of supply”*

- 4 (1) In this Schedule the “basic time of supply” is the time given by subsection (2) or (3) of section 6 of VATA 1994 (disregarding subsections (4) to (14) of that section).
- (2) Sub-paragraph (1) does not apply in relation to listed supplies (see Part 4 of this Schedule).

### *Series of supplies*

- 5 (1) This paragraph applies where—
- (a) the supply or grant of a right referred to in paragraph 2 or 3 (“the affected supply or grant”) is one of a series of supplies of, or grants of a right to, the same or substantially the same goods or services, and
  - (b) each of the supplies, and the grants of a right, in the series was or will be made in the expectation that the affected supply or grant would or will take place.
- (2) In condition A in paragraphs 2 and 3 the references to the supplier and the grantor include any person who makes one of the supplies or grants one of the rights in the series.

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*“Relevant consideration” and “related” supplies*

- 6 (1) This paragraph applies for the purposes of condition B in paragraphs 2 and 3.
- (2) “Relevant consideration” means—
- (a) in relation to a supply that is within paragraph 2(1) by virtue of the issue of a VAT invoice, the amount shown on that invoice,
  - (b) in relation to a supply that is within paragraph 2(1) by virtue of the receipt of a payment, the amount of that payment, and
  - (c) in relation to a grant of a right to goods or services within paragraph 3(1), the consideration for the grant of the right,
- but does not include any amount in respect of VAT.
- (3) A supply within paragraph 2(1), or a grant of a right within paragraph 3(1), is related to another such supply or grant if they are both made as part of the same scheme.
- (4) “Scheme” includes any arrangements, transaction or series of transactions.

*Financing*

- 7 (1) This paragraph applies for the purposes of condition C in paragraphs 2 and 3.
- (2) A payment is financed by a person if, directly or indirectly, the person—
- (a) provides funds to enable the person to whom the supply is made to make the whole or part of the payment (whether the funds are provided before or after the payment is made),
  - (b) procures the provision of such funds by another person,
  - (c) provides funds for discharging (in whole or in part) any liability that has been or may be incurred by any person for or in connection with raising funds to enable the person to whom the supply is made to make the payment, or
  - (d) procures that any such liability is or will be discharged (in whole or in part) by another person.
- (3) In sub-paragraph (2) the references to providing funds for a purpose are to—
- (a) making a loan of funds that are or are to be used for that purpose,
  - (b) providing a guarantee or other security in relation to such a loan,
  - (c) providing consideration for the issue of shares or other securities issued wholly or partly for raising those funds,
  - (d) providing consideration for the acquisition by any person of any such shares or securities, or
  - (e) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose.

*Connected persons*

- 8 Section 839 of ICTA (connected persons) applies for the purposes of this Schedule.

*Receipt of payments*

- 9 In this Schedule a reference to receipt of a payment by the person making a supply or granting a right (however expressed) includes a reference to receipt by a person to whom a right to receive it has been assigned.

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### *Power to change relevant conditions*

- 10 (1) The Treasury may by order amend this Part of this Schedule by adding, modifying or omitting relevant conditions.
- (2) An order under this paragraph—
- (a) may make different provision for different cases, and
  - (b) may make incidental or consequential amendments of this Schedule.

### *Supplies treated as taking place before 31 March 2009*

- 11 In relation to supplies treated as taking place before 31 March 2009, this Schedule has effect as if—
- (a) paragraphs 2(5), 3(5) and 6 (condition B) and all references to condition B were omitted,
  - (b) in paragraph 2(6) (condition C), the words “or a person connected with the supplier” were omitted, and
  - (c) in paragraph 3(6) (condition C), the words “or a person connected with the grantor” were omitted.

## **PART 2**

### **EXCEPTIONS**

#### *Letting etc of assets*

- 12 (1) This paragraph applies in relation to a supply within paragraph 2 which arises from the letting, hiring or rental of assets.
- (2) There is no supplementary charge under this Schedule if—
- (a) the period to which the VAT invoice or payment referred to in paragraph 2(1) relates does not exceed 12 months, and
  - (b) the VAT invoice is issued, or the payment is received, in accordance with normal commercial practice in relation to the letting, hiring or rental of such assets.

#### *Condition B cases involving normal commercial practice*

- 13 There is no supplementary charge under this Schedule on a supply of goods or services within paragraph 2 or a grant of a right to goods or services within paragraph 3 if—
- (a) the only relevant condition met is condition B, and
  - (b) the supply is made, or the right is granted, in accordance with normal commercial practice in relation to the supply of, or the grant of a right to, such goods or services.

#### *Normal commercial practice*

- 14 In this Part of this Schedule “normal commercial practice” means normal commercial practice at a time when an increase in the rate of VAT in force under section 2 of VATA 1994 is not expected.

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### *Further exceptions*

- 15 (1) The Treasury may by order provide that there is no supplementary charge under this Schedule on supplies (including grants of rights to goods or services) of a description specified in the order.
- (2) An order under this paragraph may make provision having effect in relation to supplies of goods or services that are treated as taking place on or after 25 November 2008 or a later date.

## PART 3

### LIABILITY AND AMOUNT

#### *Liability*

- 16 (1) A supplementary charge under this Schedule on a supply within paragraph 2—
- (a) is a liability of the supplier (subject to sub-paragraph (3)), and
  - (b) becomes due on the date of the VAT change (rather than at the time of supply).
- (2) A supplementary charge under this Schedule on a supply consisting of the grant of a right to goods or services within paragraph 3—
- (a) is a liability of the grantor (subject to sub-paragraph (3)), and
  - (b) becomes due on the first occasion on or after the date of the VAT change on which the right is exercised (rather than at the time the right is granted).
- (3) If, on the date on which the supplementary charge becomes due, the person who would be liable to pay the charge under sub-paragraph (1) or (2)—
- (a) is not a taxable person, but
  - (b) is treated as a member of a group under sections 43A to 43D of VATA 1994, the supplementary charge is a liability of the representative member of the group.

#### *Amount*

- 17 (1) The amount of the supplementary charge on a supply within paragraph 2 is equal to the difference between—
- (a) the amount of VAT chargeable on the supply apart from this Schedule, and
  - (b) the amount of VAT that would be chargeable on the supply if it were subject to VAT at the rate of 17.5%.
- (2) The amount of the supplementary charge on a grant of a right to goods or services within paragraph 3 is equal to the difference between—
- (a) the amount of VAT chargeable on the grant of the right apart from this Schedule, and
  - (b) the amount of VAT that would be chargeable on the grant of the right if it were subject to VAT at the rate of 17.5%,
- (but see sub-paragraph (3)).
- (3) If the basic time of supply for some of those goods and services is before the date of the VAT change, sub-paragraph (2) has effect as if the references to the amount of

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VAT chargeable and to the amount of VAT that would be chargeable were references to the relevant proportion of each of those amounts.

(4) “The relevant proportion” is—

$$\frac{P}{W}$$

where—

P is so much of the consideration for the grant of the right as is attributable on a just and reasonable basis to a right to the goods and services for which the basic time of supply is on or after the date of the VAT change, and

W is the whole of the consideration for the grant of the right.

#### PART 4

##### LISTED SUPPLIES

###### “Listed supply”

- 18 (1) In this Schedule “listed supply” means a supply falling within sub-paragraph (2)—
- (a) which is made for a consideration the whole or part of which is determined or payable periodically or from time to time, and
  - (b) which is treated as taking place by virtue of the issue of a VAT invoice or the receipt of a payment by the person making the supply.
- (2) The following supplies fall within this sub-paragraph—
- (a) a supply of services,
  - (b) a supply arising from the grant of a major interest in land,
  - (c) a supply of water other than—
    - (i) distilled water, deionised water or water of similar purity, or
    - (ii) bottled water,
  - (d) a supply of—
    - (i) coal gas, water gas, producer gases or similar gases, or
    - (ii) petroleum gases, or other gaseous hydrocarbons, in a gaseous state,
  - (e) a supply of power, heat, refrigeration or ventilation, and
  - (f) a supply of goods together with services in the course of the construction, alteration, demolition, repair or maintenance of a building or civil engineering work.
- (3) The Treasury may by order amend sub-paragraph (2) by—
- (a) adding or omitting any description of supply, or
  - (b) varying any description of supply for the time being listed in that sub-paragraph.

###### “Basic time of supply”: listed supplies

- 19 (1) For the purposes of this Schedule, in relation to a listed supply, “the basic time of supply” is the end of the period to which the VAT invoice or payment mentioned in paragraph 18(1) relates, except as provided in sub-paragraphs (2) and (4).

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- (2) Where the person making the supply issues an invoice—
- (a) in respect of part of the listed supply to which the VAT invoice or payment mentioned in paragraph 18(1) relates, and
  - (b) for a period (a “billing period”) ending before the end of the period to which that VAT invoice or payment relates,
- “the basic time of supply”, in relation to that part of the supply, is the end of the billing period.
- (3) For the purposes of sub-paragraph (2) the listed supply (and the consideration for the supply) must be apportioned between periods on a just and reasonable basis.
- (4) Where a listed supply is treated as taking place by virtue of—
- (a) the issue by the person making the supply of a VAT invoice relating to a premium for the grant of a tenancy or lease, or
  - (b) the receipt by the person making the supply of such a premium,
- “the basic time of supply” is the date of the grant of the tenancy or lease.

## PART 5

### ADMINISTRATION AND INTERPRETATION

#### *Person ceasing to be taxable person before supplementary charge due*

- 20 (1) This paragraph applies if, on the date on which a supplementary charge under this Schedule becomes due (“the due date”), the person who is liable to pay the charge under paragraph 16 is not a taxable person.
- (2) The supplementary charge must be accounted for by that person in accordance with VATA 1994 (and regulations made under that Act) as if it were VAT due in the last period for which the person was required to make a return by or under VATA 1994.
- (3) If an amount assessed as due by way of supplementary charge under this Schedule would (in the absence of this sub-paragraph) carry interest from a date earlier than the due date, it is to be treated as only carrying interest from the due date.

#### *Adjustment of contracts following the VAT change*

- 21 (1) This paragraph applies where—
- (a) a contract for the supply of goods or services is made before the date of the VAT change, and
  - (b) there is a supplementary charge under this Schedule on the supply.
- (2) The consideration for the supply is to be increased by an amount equal to the supplementary charge, unless the contract provides otherwise.

#### *Invoices*

- 22 Regulations under paragraph 2A of Schedule 11 to VATA 1994 (VAT invoices) may make provision about the provision, replacement or correction of invoices in connection with a supplementary charge under this Schedule.

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### *Orders under this Schedule*

- 23 (1) An order under this Schedule is to be made by statutory instrument.
- (2) A statutory instrument containing an order under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons, unless it is an instrument to which sub-paragraph (4) applies.
- (3) Sub-paragraph (4) applies to a statutory instrument containing an order made under paragraph 10 (or under that paragraph and under other provisions) which extends the supplies that are subject to a supplementary charge under this Schedule.
- (4) An instrument to which this sub-paragraph applies—
- (a) must be laid before the House of Commons, and
  - (b) ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless it is approved during that period by a resolution of the House of Commons.
- (5) In reckoning the period of 28 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.
- (6) The order ceasing to have effect does not affect—
- (a) anything previously done under it, or
  - (b) the making of a new order.

### *Interpretation: general*

- 24 (1) Expressions used in this Schedule and in VATA 1994 have the same meaning in this Schedule as in that Act.
- (2) In this Schedule—
- (a) “treated as taking place” means treated as taking place for the purposes of the charge to VAT, and
  - (b) references to the person by or to whom a supply is made (however expressed) are to the person by or to whom the supply is treated as being made for the purposes of VATA 1994.

## **PART 6**

### AMENDMENTS OF VATA 1994

- 25 (1) VATA 1994 is amended as follows.
- (2) In section 2(2) (orders increasing or decreasing rate of VAT), after “such order” insert “that has not previously expired or been revoked”.
- (3) In section 97 (orders, rules and regulations), after subsection (4) insert—
- “(4A) Where an order under section 2(2) is in force, the reference in subsection (4) (c)(i) of this section to the rate of VAT in force under section 2 at the time of the making of an order is a reference to the rate which would be in force at that time if no such order had been made.”

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## SCHEDULE 4

Section 14

### VEHICLE EXCISE DUTY: FURTHER PROVISION ABOUT RATES OF DUTY ETC

- 1       VERA 1994 is amended as follows.
- 2       (1) Section 3 (duration of licences) is amended as follows.
- (2) In subsection (4)(b), for “a licence taken out on the first registration under this Act of” substitute “the first vehicle licence for”.
- (3) Insert at the end—
- “(7) Neither subsection (2) nor any order under subsection (3) permits the first vehicle licence for a vehicle to be taken out for a period of less than twelve months if the annual rate of vehicle excise duty chargeable on the licence would be lower if it were not the first vehicle licence for the vehicle.”
- 3       (1) Section 19 (rebates) is amended as follows.
- (2) In subsection (1), for “from the Secretary of State the amount specified in subsection (2)” substitute “the relevant amount from the Secretary of State”.
- (3) Omit subsection (2).
- (4) After subsection (3) insert—
- “(3A) Subject to subsection (3B), the relevant amount is an amount equal to one-twelfth of the annual rate of duty chargeable on the licence (at the time when it was taken out) in respect of each complete month of the period of the currency of the licence which is unexpired when the application is made.
- (3B) Where—
- (a) the licence is the first vehicle licence for the vehicle,
- (b) the application is made by virtue of paragraph (d), (e) or (f) of subsection (3), and
- (c) the annual rate of duty rate chargeable on the licence (at the time when it was taken out) would have been lower if it had not been the first vehicle licence for the vehicle,
- the relevant amount is an amount equal to one-twelfth of that lower annual rate of duty in respect of each such complete month.”
- 4       (1) Section 62 (definitions) is amended as follows.
- (2) In subsection (1), after the definition of “exempt vehicle” insert—
- ““first vehicle licence”, in relation to a vehicle, means (subject to subsections (1B) and (1C)) the vehicle licence for the vehicle on the issue of which the vehicle is first registered under this Act (so that, if the vehicle is first registered on the issue of a nil licence, there is no first vehicle licence in relation to it).”
- (3) After subsection (1A) insert—
- “(1B) Where a vehicle is first registered under this Act on the issue of a temporary licence, the “first vehicle licence” in relation to the vehicle is the first vehicle licence subsequently issued for it.



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- (1C) Where a vehicle—
- (a) has been registered under the law of a country or territory outside the United Kingdom,
  - (b) is first registered under this Act more than 6 months after the time when it was first registered as mentioned in paragraph (a), and
  - (c) has travelled more than 6,000 kilometres under its own power before it is first registered under this Act,
- there is no first vehicle licence in relation to the vehicle.”
- 5 (1) Schedule 1 (annual rates of duty) is amended as follows.
- (2) In paragraph 1A (vehicles to which Part 1A applies)—
- (a) in sub-paragraph (1)(a), after “registered”, and
  - (b) in sub-paragraph (5), after “registration”,
- insert “, under this Act or under the law of a country or territory outside the United Kingdom,”.
- (3) In paragraph 1C (the reduced rate)—
- (a) in sub-paragraph (3)(a), after “registration” insert “, under this Act or under the law of a country or territory outside the United Kingdom, ”,
  - (b) in sub-paragraph (3)(b), for “its” substitute “ that ”, and
  - (c) in sub-paragraph (4), after “registration” insert “ under this Act ”.
- (4) In paragraph 1H (vehicles to which Part 1B applies)—
- (a) in sub-paragraph (1)(a), after “registered”, and
  - (b) in sub-paragraph (3), after “registration”,
- insert “, under this Act or under the law of a country or territory outside the United Kingdom,”.
- (5) In paragraph 1K(a) (pre-2007 lower-emission vans), after “registered” insert “, under this Act or under the law of a country or territory outside the United Kingdom, ”.
- (6) In paragraph 1M(a) (post-2008 lower-emission vans), after “registered” insert “, under this Act or under the law of a country or territory outside the United Kingdom, ”.
- 6 (1) Paragraph 25 of Schedule 2 (exempt vehicles: light passenger vehicles with low CO<sub>2</sub> emissions) is re-numbered as sub-paragraph (1) of that paragraph.
- (2) After that sub-paragraph insert—
- “(2) A vehicle is an exempt vehicle for the appropriate period if—
- (a) it is a vehicle to which Part 1A of Schedule 1 applies, and
  - (b) the applicable CO<sub>2</sub> emissions figure (as defined in paragraph 1A(3) and (4) of that Schedule) exceeds 100g/km but does not exceed 130g/km.
- (3) “The appropriate period” is the period for which (if the vehicle were not an exempt vehicle by virtue of sub-paragraph (2)) the first vehicle licence for the vehicle would (if taken out) have effect.”
- 7 (1) The amendments made by this Schedule have effect in relation to licences taken out on or after 1 April 2010.

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- (2) But the amendments made by paragraph 5 do not have effect in relation to vehicles first registered under this Act before that date.

## SCHEDULE 5

Section 17

### AIR PASSENGER DUTY

#### *Amendments*

- 1 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.
- 2 (1) Section 30 (rates of duty) is amended as follows.
- (2) After subsection (8) insert—
- “(8A) The Treasury may by order amend Schedule 5A.”
- (3) Omit subsections (9) to (9B).
- 3 For section 39 substitute—

#### **“39 Schemes for simplified operation of Chapter**

- (1) This section applies if the Commissioners consider that, having regard to difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, it is appropriate for this Chapter to have effect in relation to the registered operator in accordance with a special accounting scheme.
- (2) The Commissioners may agree with the registered operator that this Chapter is to have effect in relation to the registered operator in accordance with a special accounting scheme agreed between the Commissioners and the registered operator (but subject to subsection (4)).
- (3) A special accounting scheme is a scheme which makes provision for methods of calculating—
- (a) how many persons are to be regarded for the purposes of this Chapter as chargeable passengers carried by chargeable aircraft operated by a registered operator, and
  - (b) how many of those are to be so regarded as having been so carried on journeys in respect of which duty is chargeable at any particular rate.
- (4) The Commissioners may publish a notice specifying terms and conditions subject to which special accounting schemes are to have effect.
- (5) Where the Commissioners and a registered operator have agreed that this Chapter is to have effect in relation to the registered operator in accordance with a special accounting scheme, this Chapter has effect in relation to the registered operator in accordance with the scheme (and with any notice under subsection (4) which has been published by the Commissioners and not withdrawn) for the period agreed by the Commissioners and the registered operator.

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- (6) The Commissioners and the registered operator may at any time agree to vary the special accounting scheme for the future.
- (7) The Commissioners may at any time terminate the operation of the special accounting scheme—
- (a) on the application of the registered operator, or
- (b) where they have reasonable grounds for doing so, by giving notice to the registered operator.”
- 4 In section 42(4) (orders), after “chargeable passengers” insert “, or to increase the rate of air passenger duty to be charged on the carriage of any chargeable passengers whose journeys end in any place, ”.
- 5 After Schedule 5 insert—

“SCHEDULE  
5A

AIR PASSENGER DUTY: TERRITORIES ETC

**PART 1**

PART 1 TERRITORIES

Albania	Finland	Latvia	Portugal (including Madeira)
Algeria	France (including Corsica)	Libya	Romania
Andorra	Germany	Liechtenstein	Russian Federation, west of the Urals
Austria	Gibraltar	Lithuania	San Marino
Azores	Greece	Luxembourg	Serbia
Belarus	Greenland	Former Yugoslav Republic of Macedonia	Slovak Republic
Belgium	Guernsey	Malta	Slovenia
Bosnia and Herzegovina	Hungary	Moldova	Spain (including the Balearic Islands and the Canary Islands)
Bulgaria	Iceland	Monaco	Sweden
Croatia	Republic of Ireland	Montenegro	Switzerland
Cyprus	Isle of Man	Morocco	Tunisia

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Czech Republic	Italy (including Sicily and Sardinia)	Netherlands	Turkey
Denmark (including the Faroe Islands)	Jersey	Norway (including Svalbard)	Ukraine
Estonia	Republic of Kosovo	Poland	Western Sahara

## PART 2

### PART 2 TERRITORIES

Afghanistan	Egypt	Kazakhstan	Saudi Arabia
Armenia	Equatorial Guinea	Kuwait	Senegal
Azerbaijan	Eritrea	Kyrgyzstan	Sierra Leone
Bahrain	Ethiopia	Lebanon	Sudan
Benin	Gabon	Liberia	Syria
Bermuda	Gambia	Mali	Tajikistan
Burkina Faso	Georgia	Mauritania	Togo
Cameroon	Ghana	Niger	Turkmenistan
Canada	Guinea	Nigeria	Uganda
Cape Verde	Guinea-Bissau	Oman	United Arab Emirates
Central African Republic	Iran	Pakistan	United States of America
Chad	Iraq	Qatar	Uzbekistan
Democratic Republic of Congo	Israel and the Occupied Palestinian Territories	Russian Federation, east of the Urals	Yemen
Republic of Congo	Ivory Coast	Saint Pierre and Miquelon	
Djibouti	Jordan	Sao Tome and Principe	

## PART 3

### PART 3 TERRITORIES

Angola	Cuba	Macao SAR	Saint Helena
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Anguilla	Dominica	Madagascar	Saint Lucia
Antigua and Barbuda	Dominican Republic	Malawi	Saint Martin
Aruba	Ecuador	Maldives	Saint Vincent and the Grenadines
Ascension Island	El Salvador	Martinique	Seychelles
Bahamas	French Guiana	Mauritius	Somalia
Bangladesh	Grenada	Mayotte	South Africa
Barbados	Guadeloupe	Mexico	Sri Lanka
Belize	Guatemala	Mongolia	Suriname
Bhutan	Guyana	Montserrat	Swaziland
Botswana	Haiti	Mozambique	Tanzania
Brazil	Honduras	Namibia	Thailand
British Indian Ocean Territory	Hong Kong SAR	Nepal	Trinidad and Tobago
British Virgin Islands	India	Netherlands Antilles	Turks and Caicos Islands
Burma	Jamaica	Nicaragua	Venezuela
Burundi	Japan	Panama	Vietnam
Cayman Islands	Kenya	Puerto Rico	Virgin Islands
China	North Korea	Reunion	Zambia
Colombia	South Korea	Rwanda	Zimbabwe.
Comoros	Laos	Saint Barthelemy	
Costa Rica	Lesotho	Saint Christopher and Nevis (St Kitts and Nevis)”	

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*Consequential repeals*

- 6 In consequence of the amendments made by section 17 and this Schedule, omit—
- (a) in FA 1995, section 15,
  - (b) in FA 2000, in section 18—
    - (i) subsections (1) to (5), and
    - (ii) subsection (7),
  - (c) in FA 2002, section 121, and
  - (d) in FA 2007, section 12.

*Commencement etc*

- 7 The amendments made by paragraphs 2(3) and 6(a), (b)(i), (c) and (d) have effect in relation to the carriage of passengers beginning on or after 1 November 2009.

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- 8 (1) No agreement for Chapter 4 of Part 1 of FA 1994 to have effect in relation to a registered operator in accordance with a special accounting scheme pursuant to section 39 of FA 1994 as substituted by paragraph 3 may be made so as to have effect as respects the carriage of passengers beginning before 1 November 2009.
- (2) Nothing in this Schedule affects the continuing operation of, or of schemes prepared under, that section as it has effect immediately before this Act is passed as respects the carriage of passengers beginning before 1 November 2009.

## SCHEDULE 6

Section 23

### TEMPORARY EXTENSION OF CARRY BACK OF LOSSES

#### *Income tax*

- 1 (1) A person who has made a loss in a trade in the tax year 2008-09 or 2009-10 may make a claim for relief under this paragraph if—
- (a) relief is available to the person under section 64 of ITA 2007 (trade loss relief against general income) in relation to an amount of the loss (“the section 64 amount”), and
  - (b) condition A or B is met.
- (2) Condition A is that the person makes a claim under that section for relief in respect of the section 64 amount—
- (a) where it is a loss made in the tax year 2008-09, for either or both of the tax years 2007-08 and 2008-09, or
  - (b) where it is a loss made in the tax year 2009-10, for either or both of the tax years 2008-09 and 2009-10.
- (3) Condition B is that—
- (a) where it is a loss made in the tax year 2008-09, for the tax years 2007-08 and 2008-09, or
  - (b) where it is a loss made in the tax year 2009-10, for the tax years 2008-09 and 2009-10,
- the person's total income is nil or does not include any income from which a deduction could be made in pursuance of a claim under that section for relief in respect of the section 64 amount.
- (4) The amount of the loss that may be relieved under this paragraph (“the deductible amount”) is—
- (a) in a case where condition A is met, so much of the section 64 amount as cannot be relieved pursuant to the claim under section 64 of ITA 2007, and
  - (b) in a case where condition B is met, the whole of the section 64 amount,
- (but see sub-paragraph (12)).
- (5) A claim for relief under this paragraph is for the deductible amount to be deducted (in accordance with sub-paragraph (6) and with whichever is applicable of sub-paragraphs (7), (8), (9) and (10))—
- (a) where it is a loss made in the tax year 2008-09, in either or both of the following ways—

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- (i) in computing the person's total income for either or both of the tax years 2005-06 and 2006-07 in accordance with section 835 of ICTA, and
  - (ii) in calculating the person's net income for the tax year 2007-08 in accordance with Step 2 of the calculation in section 23 of ITA 2007 (which applies as if this paragraph were a provision listed in section 24 of that Act), or
- (b) where it is a loss made in the tax year 2009-10, in either or both of the following ways—
  - (i) in computing the person's total income for the tax year 2006-07 in accordance with section 835 of ICTA, and
  - (ii) in calculating the person's net income for either or both of the tax years 2007-08 and 2008-09 in accordance with Step 2 of the calculation in section 23 of ITA 2007 (which applies as if this paragraph were a provision listed in section 24 of that Act).
- (6) A deduction is to be made only from profits of the trade (and accordingly, in relation to the tax years 2007-08 and 2008-09, subsection (2) of section 25 of ITA 2007 has effect as if this sub-paragraph were included in subsection (3) of that section).
- (7) This sub-paragraph explains how the deductions are to be made in a case where the loss is made in the tax year 2008-09 and the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for the tax year 2007-08.

*Step 1*

Deduct the deductible amount from the profits of the trade for the tax year 2006-07.

*Step 2*

Deduct from the profits of the trade for the tax year 2005-06 so much of the deductible amount as has not been deducted under Step 1.

- (8) This sub-paragraph explains how the deductions are to be made in any other case where the loss is made in the tax year 2008-09.

*Step 1*

Deduct the deductible amount from the profits of the trade for the tax year 2007-08.

*Step 2*

Deduct from the profits of the trade for the tax year 2006-07 so much of the deductible amount as has not been deducted under Step 1.

*Step 3*

Deduct from the profits of the trade for the tax year 2005-06 so much of the deductible amount as has not been deducted under Step 1 or 2.

- (9) This sub-paragraph explains how the deductions are to be made in a case where the loss is made in the tax year 2009-10 and the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for the tax year 2008-09.

*Step 1*

Deduct the deductible amount from the profits of the trade for the tax year 2007-08.

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*Step 2*

Deduct from the profits of the trade for the tax year 2006-07 so much of the deductible amount as has not been deducted under Step 1.

- (10) This sub-paragraph explains how the deductions are to be made in any other case where the loss is made in the tax year 2009-10.

*Step 1*

Deduct the deductible amount from the profits of the trade for the tax year 2008-09.

*Step 2*

Deduct from the profits of the trade for the tax year 2007-08 so much of the deductible amount as has not been deducted under Step 1.

*Step 3*

Deduct from the profits of the trade for the tax year 2006-07 so much of the deductible amount as has not been deducted under Step 1 or 2.

- (11) The provision made by the preceding provisions means that the following sections of ITA 2007 apply in relation to relief under this paragraph as in relation to relief under section 64 of that Act—
- (a) section 66 to 70 (restrictions on relief under section 64),
  - (b) sections 74B to 74D (general restrictions on relief),
  - (c) sections 75 to 79 (restrictions on relief under section 64 and early trade losses relief in relation to capital allowances),
  - (d) section 80 (restrictions on those reliefs in relation to ring fence income), and
  - (e) section 81 (restrictions on those reliefs in relation to dealings in commodity futures).
- (12) The total amount that may be deducted in accordance with sub-paragraph (7), or in accordance with Steps 2 and 3 in sub-paragraph (8), is limited to £50,000; and the total amount that may be deducted in accordance with sub-paragraph (9), or in accordance with Steps 2 and 3 in sub-paragraph (10), is also limited to £50,000.
- 2 (1) A claim for relief under paragraph 1 must be made—
- (a) where the relief is in respect of a loss made in the tax year 2008-09, on or before the first anniversary of the normal self-assessment filing date for that tax year, and
  - (b) where the relief is in respect of a loss made in the tax year 2009-10, on or before the first anniversary of the normal self-assessment filing date for that tax year.
- (2) Paragraph 1 applies to professions and vocations as it applies to trades.
- (3) Paragraph 1 is subject to paragraph 2 of Schedule 1B to TMA 1970 (claims for loss relief involving 2 or more years).
- (4) Sections 61 to 63 of ITA 2007 (meaning of “making a loss in a tax year” etc and prohibition against double counting) have effect as if paragraph 1 were included in Chapter 2 of Part 4 of that Act.



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- (5) Subsections (1) to (3) of section 127 of that Act (UK furnished holiday lettings business treated as trade) have effect as if paragraph 1 were included in Part 4 of that Act.
- (6) The reference in paragraph 3(1) of Schedule 2 to the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (levy of Class 4 contributions with income tax) to section 64 of ITA 2007 includes paragraph 1.

#### *Corporation tax*

- 3 (1) Section 393A of ICTA (losses: set off against profits of same or earlier accounting period) has effect in relation to any loss to which this paragraph applies as if, in subsection (2) of that section, “3 years” were substituted for “twelve months” (but subject as follows).
- (2) This paragraph applies to any loss incurred by a company in a trade in a relevant accounting period (but subject to sub-paragraph (3)); and a relevant accounting period is one ending after 23 November 2008 and before 24 November 2010.
- (3) The maximum amount of loss to which this paragraph applies in the case of any company is—
  - (a) £50,000 in relation to losses incurred in relevant accounting periods ending after 23 November 2008 and before 24 November 2009, and
  - (b) £50,000 in relation to losses incurred in relevant accounting periods ending after 23 November 2009 and before 24 November 2010;and the overall limit or limits apply whether a loss is incurred by the company in only one relevant accounting period or losses are so incurred in more than one such period.
- (4) Subject to that, if in the case of the company the length of a relevant accounting period is less than one year, the maximum amount of the loss incurred in that period that may be set off under section 393A of ICTA by virtue of this paragraph is the relevant proportion of £50,000.
- (5) “The relevant proportion” is—

$$\frac{\text{RAP}}{\text{Y}}$$

where—

RAP is the number of days in the relevant accounting period, and

Y is 365.

- (6) The reference in subsection (2C) of section 393A of ICTA to so much of the loss referred to in that subsection not falling within subsection (2B) of that section as does not exceed the amount of the allowance mentioned in subsection (2C)(b) (“the subsection (2C) loss”) has effect in relation to a relevant accounting period as a reference to so much of the subsection (2C) loss as exceeds that which can be set off under section 393A of ICTA by virtue of this paragraph.

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## SCHEDULE 7

Section 26

## CONTAMINATED AND DERELICT LAND

## PART 1

## AMENDMENTS OF PART 14 OF CTA 2009

- 1 Part 14 of CTA 2009 (remediation of contaminated land) is amended as follows.
- 2 In the heading of the Part, after “CONTAMINATED” insert “ OR DERELICT ”.
- 3 (1) Section 1143 (overview of Part) is amended as follows.
- (2) In subsection (1), after “contamination” insert “ or dereliction ”.
- (3) In subsection (7), after “contaminated” insert “ or derelict ”.
- 4 (1) Section 1144 (“qualifying land remediation expenditure”) is amended as follows.
- (2) In subsection (1), for “E” substitute “ F ”.
- (3) In subsection (2), insert at the end “or a derelict state (see section 1145A)”.
- (4) In subsection (3), after “contaminated” insert “ or derelict ”.
- (5) For subsection (4) substitute—
- “ (4) Condition C is that it is—
- (a) in the case of land in a contaminated state, expenditure on relevant contaminated land remediation undertaken by the company (see section 1146), or
- (b) in the case of land in a derelict state, expenditure on relevant derelict land remediation so undertaken (see section 1146A).”
- (6) In subsection (5), for paragraph (c) (and the “or” before it) substitute—
- “ (c) incurred in respect of relevant land remediation contracted out by the company to another person with whom the company is not connected, or
- (d) qualifying expenditure on connected sub-contracted land remediation (see section 1175).”
- (7) After subsection (6) insert—
- “ (6A) Condition F is that the expenditure is not incurred on landfill tax.”
- 5 For section 1145 substitute—
- “1145 Land “in a contaminated state”**
- (1) For the purposes of this Part land is in a contaminated state if (and only if), because of something in, on or under the land, the land is in a condition such that—
- (a) relevant harm is being caused, or
- (b) there is a serious possibility that relevant harm will be caused.

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- (2) But land is not in a contaminated state by reason of the presence in, on or under it of—
  - (a) living organisms or decaying matter deriving from living organisms, air or water, or
  - (b) anything present otherwise than as a result of industrial activity.
- (3) The Treasury may by order specify circumstances in which subsection (2) is not to apply to the extent specified in the order; and an order under this subsection may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) In this section “relevant harm” means—
  - (a) death of living organisms or significant injury or damage to living organisms,
  - (b) significant pollution of controlled waters,
  - (c) a significant adverse impact on the ecosystem, or
  - (d) structural or other significant damage to buildings or other structures or interference with buildings or other structures that significantly compromises their use.

#### **1145A Land “in a derelict state”**

For the purposes of this Part land is in a derelict state if (and only if) the land—

- (a) is not in productive use, and
- (b) cannot be put into productive use without the removal of buildings or other structures.

#### **1145B Exclusion of nuclear sites**

- (1) A nuclear site is not land in a contaminated state or land in a derelict state for the purposes of this Part.
- (2) “Nuclear site” means—
  - (a) any site in respect of which a nuclear site licence is for the time being in force, or
  - (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end.
- (3) In subsection (2) “nuclear site licence”, “licensee” and “period of responsibility” have the same meaning as in the Nuclear Installations Act 1965.”

- 6 (1) Section 1146 (“relevant land remediation”) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “land remediation”, in relation to land” substitute “contaminated land remediation”, in relation to land which is in a contaminated state and in which a major interest has been”, and
    - (b) for “and B” substitute “ to C ”.
  - (3) In subsection (3)—

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(a) in paragraph (a), for “harm, or any pollution of controlled waters,” substitute “relevant harm”, and

(b) omit paragraph (b) (and the “or” before it).

(4) After that subsection insert—

“(3A) Condition C is that the activities are not—

- (a) activities of a description specified by order made by the Treasury, or
- (b) activities required by or by virtue of any enactment specified by such an order.

(3B) An order under subsection (3A) may contain incidental, supplemental, consequential and transitional provision and savings.”

(5) In subsection (5), for the words after “(and only if)” substitute “because of something in, on or under the land by virtue of which it is contaminated land, the land is in a condition such that—

- (a) significant pollution of those waters is being caused, or
- (b) there is a serious possibility that significant pollution of those waters will be caused.”

(6) In the heading, after “**relevant**” insert “**contaminated**”.

7 After that section insert—

**“1146A “Relevant derelict land remediation”**

(1) For the purposes of this Part “relevant derelict land remediation”, in relation to land which is in a derelict state and in which a major interest has been acquired by a company, means—

- (a) activities in relation to which conditions A and B are met, and
- (b) if there are such activities, relevant preparatory activity.

(2) Condition A is that the activities comprise the doing of any works, the carrying out of any operations or the taking of any steps in relation to the land in question.

(3) Condition B is that the purpose of the activities is a purpose specified by order made by the Treasury.

(4) An order under subsection (3) may contain incidental, supplemental, consequential and transitional provision and savings.

(5) For the purposes of subsection (1)(b) “relevant preparatory activity” has the same meaning as for the purposes of subsection (1)(b) of section 1146 (see subsection (4) of that section, but reading the reference to subsection (1)(a) of that section as a reference to subsection (1)(a) of this section).”

8 In the heading of Chapter 2, after “CONTAMINATED” insert “OR DERELICT”.

9 (1) Section 1147 (deduction for capital expenditure) is amended as follows.

(2) In subsection (2), after “that” insert “a major interest in”.

(3) For subsection (3) substitute—

“(3) Condition B is that—

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- (a) in the case of land in a contaminated state, the land was in a contaminated state at the time of the acquisition, and
    - (b) in the case of land in a derelict state, the land was in a derelict state throughout the period beginning with the earlier of—
      - (i) 1 April 1998, and
      - (ii) the date on which a major interest in the land was first acquired by the company or a person who was connected with the company.
  - (3A) The Treasury may by order—
    - (a) specify circumstances in which the condition in paragraph (a) of subsection (3) need not be met, or
    - (b) replace the date for the time being specified in paragraph (b)(i) of that subsection with a later date.
  - (3B) An order under subsection (3A) may contain incidental, supplemental, consequential and transitional provision and savings.”
- 10 (1) Section 1149 (additional deduction for qualifying land remediation expenditure) is amended as follows.
  - (2) In subsection (2), after “that” insert “ a major interest in ”.
  - (3) For subsection (3) substitute—

“(3) Condition B is that—

    - (a) in the case of land in a contaminated state, the land was in a contaminated state at the time of the acquisition, and
    - (b) in the case of land in a derelict state, the land was in a derelict state throughout the period beginning with the earlier of—
      - (i) 1 April 1998, and
      - (ii) the date on which a major interest in the land was first acquired by the company or a person who was connected with the company.
  - (3A) The Treasury may by order—
    - (a) specify circumstances in which the condition in paragraph (a) of subsection (3) need not be met, or
    - (b) replace the date for the time being specified in paragraph (b)(i) of that subsection with a later date.
  - (3B) An order under subsection (3A) may contain incidental, supplemental, consequential and transitional provision and savings.”
- 11 (1) Section 1150 (no relief if company responsible for contamination) is amended as follows.
  - (2) The existing provision becomes subsection (1) of that section.
  - (3) In that subsection, for “state if the land is in that” substitute “ or derelict state if the land is in a contaminated or derelict ”.
  - (4) After that subsection insert—

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- “(2) A company is not entitled to relief under this Chapter in respect of expenditure on land all or part of which is in a contaminated or derelict state if—
- (a) the land is in that state wholly or partly as a result of any thing done, or omitted to be done, by a person not within subsection (1), and
  - (b) that person, or a person connected with that person, has a relevant interest in the land.
- (3) For the purposes of subsection (2) a person has a relevant interest in land if the person—
- (a) holds any interest in, right over or licence to occupy the land (including an option to acquire any such interest, right or licence in any circumstances), or
  - (b) has disposed of any estate or interest in the land for a consideration that to any extent reflects the impact, or likely impact, on the value of the land of the remediation of its contamination or dereliction.”

(5) In the heading, insert at the end “**or dereliction or polluter has interest**”.

12 (1) Section 1161 (relief in respect of I minus E basis: enhanced expenses payable) is amended as follows.

(2) In subsection (2), after “that” insert “ a major interest in ”.

(3) For subsection (3) substitute—

“(3) Condition B is that—

    - (a) in the case of land in a contaminated state, the land was in a contaminated state at the time of the acquisition by the company of a major interest in the land, and
    - (b) in the case of land in a derelict state, the land was in a derelict state throughout the period beginning with the earlier of—
      - (i) 1 April 1998, and
      - (ii) the date on which a major interest in the land was first acquired by the company or a person who was connected with the company.

(3A) The Treasury may by order—

    - (a) specify circumstances in which the condition in paragraph (a) of subsection (3) need not be met, or
    - (b) replace the date for the time being specified in paragraph (b)(i) of that subsection with a later date.

(3B) An order under subsection (3A) may contain incidental, supplemental, consequential and transitional provision and savings.”

(4) In subsection (4)—

    - (a) for “Chapter 4” substitute “ land remediation ”, and
    - (b) omit “(see section 1162)”.

(5) Omit subsection (5).

(6) In subsection (6), omit “150% of”.

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- (7) In the heading, omit “**enhanced**”.
- (8) In the heading before the section omit “*for qualifying Chapter 4 expenditure*”.
- 13 For section 1162 substitute—
- “1162 Additional relief**
- (1) If a company is entitled to relief under section 1161 for an accounting period it is also entitled to relief under this section for the period.
- (2) For the company to obtain the relief it must make a claim.
- (3) The relief is that the company may treat 50% of the qualifying Chapter 4 expenditure as expenses payable which fall to be brought into account at Step 3 in section 76(7) of ICTA (deduction for expenses payable).
- (4) For the purposes of this Chapter “the qualifying Chapter 4 expenditure” means—
- (a) the company's qualifying land remediation expenditure for the accounting period, less
- (b) the amount (if any) which as a result of paragraph (a) of Step 1 in section 76(7) of ICTA is not to be brought into account at that step as expenses payable for the period.”
- 14 (1) Section 1163 (no relief if company responsible for contamination) is amended as follows.
- (2) The existing provision becomes subsection (1) of that section.
- (3) In that subsection—
- (a) after “1161” insert “ or 1162 ”, and
- (b) for “state if the land is in that” substitute “ or derelict state if the land is in a contaminated or derelict ”.
- (4) After that subsection insert—
- “(2) A company is not entitled to relief under this Chapter in respect of expenditure on land all or part of which is in a contaminated or derelict state if—
- (a) the land is in that state wholly or partly as a result of any thing done, or omitted to be done, by a person not within subsection (1), and
- (b) that person, or a person connected with that person, has a relevant interest in the land.
- (3) For the purposes of subsection (2) a person has a relevant interest in land if—
- (a) the person holds any interest in, right over or licence to occupy the land (including an option to acquire any such interest, right or licence in any circumstances), or
- (b) has disposed of any estate or interest in the land for a consideration that to any extent reflects the impact, or likely impact, on the value of the land of the remediation of its contamination or dereliction.”
- (5) In the heading, insert at the end “**or dereliction or polluter has interest**”.

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- 15 In section 1165(1)(a) (meaning of “qualifying life assurance business loss”), after “1161” insert “ or 1162 ”.
- 16 In section 1169(2)(c) and (3)(c) (artificially inflated claims for relief), after “1161” insert “ or 1162 ”.
- 17 (1) Section 1173 (expenditure incurred because of contamination) is amended as follows.
- (2) In subsections (1) and (2), after “contaminated” insert “ or derelict ”.
- (3) For subsection (3) substitute—
- “(3) Subsection (4) applies—
- (a) in the case of land in a contaminated state, if the main purpose of any activities is any of those specified in section 1146(3), or
- (b) in the case of land in a derelict state, if the main purpose of any activities is any of those specified in section 1146A(3).”
- (4) In the heading, insert at the end “**or dereliction**”.
- 18 Omit section 1174 (sub-contractor payments: introductory).
- 19 (1) Section 1175 (“qualifying expenditure on sub-contracted land remediation”: connected persons) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) In this section, a “sub-contractor payment” means a payment made by the company to the sub-contractor in respect of relevant land remediation contracted out by the company to the sub-contractor.”
- (3) In subsection (2), for “sub-contracted land remediation” substitute “connected sub-contracted land remediation” for the purposes of section 1144(5)”.
- (4) In subsection (3)—
- (a) in paragraph (a), after “carrying on” insert “ or arranging for carrying on ”, and
- (b) in paragraph (c) for “incurred on” substitute “ in respect of ”.
- (5) For the heading substitute “**Connected sub-contractors**”.
- 20 Omit section 1176 (“qualifying expenditure on sub-contracted land remediation”: other cases).
- 21 In section 1178 (persons having a “relevant connection” to a company)—
- (a) after “contaminated” insert “ or derelict ”, and
- (b) in paragraph (b), after “when” insert “ a major interest in ”.
- 22 After section 1178 insert—
- “1178A “Major interest in land”**
- (1) References in this Part to the acquisition of a major interest in land are to the acquisition of a freehold interest in the land or of a relevant leasehold interest in the land.
- (2) The reference in subsection (1) to the acquisition of a freehold interest in land is—



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- (a) in relation to land in England and Wales, to the acquisition of an estate in fee simple absolute (whether subsisting at law or in equity),
  - (b) in relation to land in Scotland, to the acquisition of the interest of an owner of land, and
  - (c) in relation to land in Northern Ireland, to the acquisition of any freehold estate (whether subsisting at law or in equity).
- (3) The reference in subsection (1) to the acquisition of a relevant leasehold interest in land is to the acquisition by grant or assignment (or assignment) of—
- (a) in relation to land in England and Wales, a term of years absolute (whether subsisting at law or in equity),
  - (b) in relation to land in Scotland, the tenant's right over or interest in a property subject to a lease, or
  - (c) in relation to land in Northern Ireland, any leasehold estate (whether subsisting at law or in equity),
- in relation to which the condition in subsection (4) is met.
- (4) That condition is that—
- (a) in the case of a grant, the term of years or period of the lease is at least 7 years, and
  - (b) in the case of an assignment (or assignment) the unexpired portion of the term or period is at least 7 years.”
- 23 In section 1179 (definitions), omit the definitions of “harm” and “land” and the definition of “substance” (apart from the “and” at the end).

## PART 2

### AMENDMENTS OF OTHER ENACTMENTS

#### ICTA

- 24 In section 76(7) of ICTA (expenses of insurance companies), in step 3—
- (a) for “1161” substitute “ 1162 ”,
  - (b) for “150%” substitute “ 50% additional ”, and
  - (c) after “contaminated” insert “ or derelict ”.

#### FA 1998

- 25 In Schedule 18 to FA 1998 (company tax returns etc), in the heading of Part 9B, after “CONTAMINATED” insert “ OR DERELICT ”.

#### CTA 2009

- 26 (1) Schedule 4 to CTA 2009 (index of expressions) is amended as follows.
- (2) After the entry relating to “deposit back arrangements” insert—

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“derelict state (in relation to land) (in Part 14) section 1145A.”

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(3) Omit the entries relating to “harm (in Part 14)” and “land (in Part 14)”.

(4) After the entry relating to “major interest (in Chapter 12 of Part 8)” insert—

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“major interest in land (in Part 14)                      section 1178A.”

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(5) After the entry relating to “relevant consortium creditor relationship (in Chapter 7 of Part 5)” insert—

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“relevant contaminated land remediation (in    section 1146.”  
Part 14)

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(6) After the entry relating to “relevant debits (in Part 8)” insert—

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“relevant derelict land remediation (in Part    section 1146A.”  
14)

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(7) Omit the references relating to “relevant land remediation (in Part 14)”, “sub-contractor payment (and sub-contractor) (in Chapter 6 of Part 14)” and “substance (in Part 14)”.

### PART 3

#### COMMENCEMENT

27            Any power to make orders which is conferred on the Treasury by virtue of an amendment of CTA 2009 made by this Schedule may be exercised at any time after this Act is passed; and any order made by virtue of any such amendment before 6 April 2010 may make provision having effect in relation to expenditure incurred on or after 1 April 2009.

28            Subject to that, the amendments made by this Schedule have effect in relation to expenditure incurred on or after 1 April 2009; and for this purpose no account is to be taken of section 61 of CTA 2009 (earlier expenditure treated as incurred when trade started).

### SCHEDULE 8

Section 27

#### VENTURE CAPITAL SCHEMES

##### *Enterprise investment scheme*

1            Schedule 5B to TCGA 1992 (enterprise investment scheme: re-investment) is amended as follows.

2            (1) Paragraph 1(2) (application of Schedule) is amended as follows.

(2) For paragraphs (g) and (h) substitute “and

(g) all of the money raised by the issue of the shares (other than any of them which are bonus shares) is, no later than the time mentioned

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in section 175(3) of ITA 2007, employed wholly for the purpose of that activity.”.

- (3) In the words following the paragraphs, for “conditions in paragraphs (g) and (h) above do” substitute “ condition in paragraph (g) above does ”.
- 3 (1) Paragraph 1A (failure of conditions of application) is amended as follows.
- (2) In sub-paragraph (4)—
- (a) omit “or (h)”, and
- (b) for “sub-paragraph (4A) below” substitute “ section 175(3) of ITA 2007 ”.
- (3) Omit sub-paragraph (4A).
- 4 (1) Paragraph 9 (other reconstructions and amalgamations) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(1) This paragraph applies if section 135 or 136 (company reconstructions) applies in relation to shares to which deferral relief, but not relief under Part 5 of ITA 2007 (or Chapter 3 of Part 7 of the Taxes Act), is attributable.
- (1A) Paragraphs 3 and 4 of this Schedule have effect as if section 135 or 136 did not apply in relation to the shares.”
- (3) In sub-paragraph (2), for “Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where” substitute “ Sub-paragraph (1A) does not apply if ”.
- (4) For sub-paragraph (3) substitute—
- “(3) Sub-paragraph (1A) does not apply if paragraph 8 applies in relation to the shares.”
- 5 In paragraph 16 (information), omit sub-paragraph (4A).
- 6 (1) Section 158 of ITA 2007 (form and amount of EIS relief) is amended as follows.
- (2) In subsection (4), omit—
- (a) “Subject to subsection (5),” and
- (b) “before 6 October”.
- (3) Omit subsection (5).
- 7 (1) Section 175 of that Act (use of money raised requirement) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The requirement of this section is that all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is, no later than the time mentioned in subsection (3), employed wholly for the purpose of the qualifying business activity for which it was raised.”
- (3) In subsection (2), for “requirements in subsection (1)(a) and (b) do” substitute “ requirement in subsection (1) does ”.
- (4) In subsection (3)—
- (a) for “subsection (1)(a)” substitute “ subsection (1) ”, and
- (b) for “12 months” (in both places) substitute “ two years ”.

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### *Corporate venturing scheme*

- 8 (1) Paragraph 36 of Schedule 15 to FA 2000 (corporate venturing scheme: requirement as to money raised) is amended as follows.
- (2) In sub-paragraph (1), for “At least 80%” substitute “ All ”.
- (3) Omit sub-paragraph (1A).
- (4) In sub-paragraph (1B), for “12 months” (in both places) substitute “ two years ”.
- (5) In sub-paragraph (1C), for “Sub-paragraphs (1) and (1A) are” substitute “ Sub-paragraph (1) is ”.
- (6) In sub-paragraph (5) omit “does not apply and the requirement of sub-paragraph (1A)”.

### *Venture Capital Trusts*

- 9 (1) Section 293 of ITA 2007 (use of money raised requirement) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The requirement of this section is that—
- (a) less than two years has passed since the trading time, or
- (b) at least two years has passed since the trading time and all of the money raised by the issue of the relevant holding has been employed wholly for the purposes of a relevant qualifying activity.”
- (3) Omit subsections (2) to (4).

### *Consequential repeals*

- 10 In consequence of the amendments made by paragraphs 2, 3 and 5, omit—
- (a) in FA 2001, in Schedule 15, paragraphs 26 to 28,
- (b) in FA 2004, in Schedule 18, paragraph 13(1)(f), and
- (c) in ITA 2007, in Schedule 1, paragraph 345(2)(b), (3)(a) and (13)(b).

### *Commencement*

- 11 The amendments made by paragraphs 2, 3, 5, 7, 8 and 10 have effect in relation to shares issued on or after 22 April 2009.
- 12 The amendments made by paragraph 4 have effect in relation to—
- (a) any exchange of shares to which section 135 of TCGA 1992 applies, where the new holding is issued on or after 22 April 2009, and
- (b) any arrangement within section 136(1) of that Act entered into on or after that date.
- 13 (1) The amendments made by paragraph 6 have effect as follows.
- (2) The amendments made by sub-paragraph (2) have effect in relation to shares issued in the tax year 2009-10 or a subsequent tax year.

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- (3) The amendment made by sub-paragraph (3) has effect in relation to claims made under section 158(4) of ITA 2007 in respect of shares issued in the tax year 2009-10 or a subsequent tax year.
- 14 The amendments made by paragraph 9 have effect in relation to shares or securities issued on or after 22 April 2009.

## SCHEDULE 9

Section 28

### GROUP RELIEF: PREFERENCE SHARES

#### *Amendments of Schedule 18 to ICTA*

- 1 Schedule 18 to ICTA (definitions relating to group relief) is amended as follows.
- 2 (1) Paragraph 1 is amended as follows.
- (2) In sub-paragraph (2), for “fixed-rate” substitute “ relevant ”.
- (3) In sub-paragraph (3)—
- (a) for “fixed-rate” substitute “ relevant ”,
  - (b) for paragraph (c) substitute—
    - “(c) either—
    - (i) do not carry a right to dividends, or
    - (ii) carry a right to dividends to which paragraph 1A applies; and”, and
  - (c) in paragraph (d), for “that new consideration” substitute “ the new consideration received by the company in respect of the issue of the shares ”.
- 3 After that paragraph insert—
- “1A (1) This paragraph applies to a right to dividends carried by shares in a company if—
- (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares, and
  - (b) condition A, B or C is met.
- (2) Condition A is that—
- (a) the dividends are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
  - (b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.
- (3) Condition B is that—
- (a) the dividends are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—
    - (i) a standard published rate of interest, or
    - (ii) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the

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- government, of the country or territory in whose currency  
the shares are denominated, and
- (b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.
- (4) Condition C is that condition A or B would be met but for sub-paragraph (2)(b) or (3)(b), and—
- (a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in relevant circumstances, or
- (b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in relevant circumstances.
- (5) For the purposes of sub-paragraph (4) a company reduces the amount of, or does not pay, dividends “in relevant circumstances” if—
- (a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or
- (b) it does so for the purpose of following a recommendation of a relevant regulatory body.
- (6) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of sub-paragraph (5)(a).
- (7) In sub-paragraph (5)(b) “relevant regulatory body” means—
- (a) in relation to a dividend paid by a company that is authorised for the purposes of the Financial Services and Markets Act 2000, the Financial Services Authority, and
- (b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).
- (8) In this paragraph “new consideration” has the same meaning as in section 254.”
- 4 In paragraph 5B(4)(b), for “fixed-rate” substitute “ relevant ”.

#### *Commencement*

- 5 The amendments made by this Schedule have effect for accounting periods beginning on or after 1 January 2008.

#### *Election to opt out of changes in relation to pre-existing etc shares*

- 6 If a company so elects, the amendments made by this Schedule do not have effect in relation to shares issued by the company—
- (a) before 18 December 2008, or
- (b) on or after that date under an agreement entered into before that date.
- 7 An election under paragraph 6—

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- (a) must be made by the company by being included in its company tax return for the first accounting period of the company beginning on or after 1 January 2008 (and may be included in the return originally made or by amendment), and
- (b) is irrevocable.

*Paragraph 2(7) of Schedule 25 to ICTA*

- 8 The amendments made by this Schedule do not have effect for the purposes of paragraph 2(7) of Schedule 25 to ICTA (controlled foreign companies: definition of non-voting fixed-rate preference shares).

SCHEDULE 10

Section 29

SALE OF LESSOR COMPANIES ETC: REFORMS

*Introduction*

- 1 Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.

*Paragraph 7*

- 2 (1) Paragraph 7 (provision for purposes of condition A in paragraph 6) is amended as follows.
- (2) In sub-paragraph (8)(b), for “acquires any plant or machinery directly or indirectly from a person who is connected with the company” substitute “acquired any plant or machinery in circumstances in which this paragraph applies”.
- (3) For sub-paragraph (9) substitute—
- “(9) Paragraph (b) of sub-paragraph (8) above applies if—
- (a) the relevant day falls on or after 22 March 2006,
  - (b) the plant or machinery was acquired directly or indirectly from a person who was connected with the company when the acquisition took place, and
  - (c) either the acquisition took place on or after 5 December 2005 or the person from whom the plant or machinery was so acquired was also connected with the company on that date.”

*Paragraph 13A*

- 3 After paragraph 13 insert—

*“No qualifying change of ownership where principal company's interest in consortium company unchanged*

- 13A(1) This paragraph applies if—
- (a) a company (“company A”) is owned by a consortium, and
  - (b) a relevant change in the relationship between company A and a principal company of company A occurs on any day,

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but the principal company's interest in company A remains unchanged.

- (2) For the purposes of this Schedule, there is no qualifying change of ownership in relation to company A on that day as a result of that change in that relationship.
- (3) For the purposes of this paragraph the principal company's interest in company A remains unchanged if the percentage of the ordinary share capital of company A that is beneficially owned directly or indirectly by the principal company is the same at the beginning and end of that day.
- (4) Section 838(2) and (4) to (10) of ICTA apply for construing sub-paragraph (3).”

#### *Paragraph 17*

- 4 (1) Paragraph 17 (meaning of “PM” in paragraph 16) is amended as follows.
- (2) In sub-paragraph (7)(b), for “acquires any plant or machinery directly or indirectly from a person who is connected with the company” substitute “acquired any plant or machinery in circumstances in which this paragraph applies”.
- (3) For sub-paragraph (8) substitute—
  - “(8) Paragraph (b) of sub-paragraph (7) above applies if—
    - (a) the relevant day falls on or after 22 March 2006,
    - (b) the plant or machinery was acquired directly or indirectly from a person who was connected with the company when the acquisition took place, and
    - (c) either the acquisition took place on or after 5 December 2005 or the person from whom the plant or machinery was so acquired was also connected with the company on that date.”

#### *Paragraph 23*

- 5 In paragraph 23 (leasing business carried on by company in partnership: change in company's interest in business), for sub-paragraph (6) substitute—
  - “(6) This paragraph is subject to paragraph 23A and is supplemented by paragraph 24.”

#### *Paragraph 23A*

- 6 After that paragraph insert—
  - “23A(1) Paragraph 23 does not apply where conditions A, B and C are met.
  - (2) Condition A is that at the end of the relevant day none of the companies by which the business was carried on any longer have any share in the profits or loss of the business.
  - (3) Condition B is that, in consequence of what happens on the relevant day, the disposal value of all of the plant and machinery which was used for the purposes of the business and in respect of which capital allowances have been claimed is to be brought into account under section 61 of CAA 2001.



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- (4) Condition C is that the disposal value to be brought into account in relation to all of the plant or machinery is the price which the plant or machinery would fetch in the open market on that day.”

#### Paragraph 32

- 7 (1) Paragraph 32 (leasing business carried on by a company in partnership: amount of expense) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in sub-paragraph (c), for “increases at any time on” substitute “ is greater at the end of that day than at the start of ”, and
- (b) in sub-paragraph (d), omit “at that time” (in both places).
- (3) For sub-paragraph (3) substitute—
- “(3) The appropriate percentage is—

$$\frac{\text{OCI}}{\text{PCD}}$$

where—

OCI is the increase in the other company's percentage share in the profits or losses of the business which is wholly attributable to the change in the partner company's interest in the business, and

PCD is the decrease in the partner company's percentage share in the profits or losses of the business.”

#### Paragraph 39

- 8 (1) Paragraph 39 (relief for expense otherwise giving rise to carried forward loss) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (c), insert at the end “or a later accounting period,”,
- (b) in paragraph (d), after “company” insert “ after the accounting period in which the loss is made ”, and
- (c) in paragraph (e), for “12 months beginning with” substitute “ 5 years beginning immediately after ”.
- (3) In subsection (1A)—
- (a) in paragraph (b), for “, and” substitute “ or a later accounting period, ”,
- (b) in paragraph (c), after “company” insert “ after the accounting period in which the loss is made ”, and
- (c) after that paragraph insert “and
- (d) the subsequent accounting period starts within the period of 5 years beginning with the day that is the relevant day within the meaning of paragraph 23(1) and does not start as a result of paragraph 3 or 33.”
- (4) In sub-paragraph (2)—
- (a) after “33” insert “ or this sub-paragraph ”, and

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(b) for “an expense” substitute “ giving rise to an expense of the relevant amount ”.

(5) After that sub-paragraph insert—

“(2A) The relevant amount is the amount of the loss treated as an expense increased by—

$$\frac{D}{365} \times R$$

where—

D is the number of days in the accounting period in which the loss is made, and

R is the percentage rate applicable to section 826 of ICTA under section 178 of FA 1989.”

(6) In sub-paragraph (3), after “The” insert “ amount of the ”.

(7) In sub-paragraph (4)—

(a) after “33” insert “ or this paragraph ”, and

(b) for “the expense under that paragraph” substitute “ that expense ”.

#### *Commencement*

- 9 (1) The amendments made by paragraph 8 have effect in relation to losses incurred in accounting periods ending on or after 22 April 2009.
- (2) The other amendments made by this Schedule have effect where the relevant day is on or after that date.

## SCHEDULE 11

Section 30

### TAX RELIEF FOR BUSINESS EXPENDITURE ON CARS AND MOTOR CYCLES

#### PART 1

#### CAPITAL ALLOWANCES

##### *Plant and machinery allowances for cars and motor cycles*

- 1 Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- 2 In section 38B (general exclusions from AIA qualifying expenditure), in general exclusion 2, for “81” substitute “ 268A ”.
- 3 In section 46(2) (general exclusions from first year allowances), in general exclusion 2, for “81” substitute “ 268A ”.
- 4 Omit sections 74 to 79 (cars above the cost threshold).
- 5 Omit section 81 (extended meaning of “car”) and section 82 (qualifying hire cars).

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6 In section 84 (cases in which short-life asset treatment is ruled out), in the Table, in item 3, in the first column, for “81” substitute “ 268A ”.

7 (1) Section 104A (special rate expenditure) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “the” insert “ first ”,
- (b) omit “and” at the end of paragraph (c), and
- (c) insert at the end “, and

(e) expenditure incurred on or after the second relevant date on the provision of a car that is not a main rate car.”

(3) In subsection (2), after “The” insert “ first ”.

(4) After that subsection insert—

“(3) The second relevant date is—

- (a) for corporation tax purposes, 1 April 2009, and
- (b) for income tax purposes, 6 April 2009.

(4) In this section—

“car” has the meaning given in section 268A;

“main rate car” has the meaning given in section 104AA.”

8 After that section insert—

**“104AA Meaning of “main rate car”**

(1) “Main rate car” means—

- (a) a car that is first registered before 1 March 2001,
- (b) a car that has low CO<sub>2</sub> emissions, or
- (c) a car that is electrically-propelled.

(2) For the purposes of this section a car has low CO<sub>2</sub> emissions if it meets conditions A and B.

(3) Condition A is that, when the car is first registered, it is so registered on the basis of a qualifying emissions certificate.

(4) Condition B is that the applicable CO<sub>2</sub> emissions figure in relation to the car does not exceed 160 grams per kilometre driven.

(5) The Treasury may by order amend the amount from time to time specified in subsection (4).

(6) An order under subsection (5) may contain transitional provision and savings.

(7) In this section—

“applicable CO<sub>2</sub> emissions figure” and “qualifying emissions certificate” have the meanings given in section 268C;

“car” has the meaning given in section 268A;

“electrically-propelled” has the meaning given in section 268B.”

9 After section 104E insert—

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### “104F Special rate cars: discontinued activity continued by relevant company

- (1) This section applies if—
  - (a) a company (“the taxpayer”) has incurred special rate expenditure within section 104A(1)(e) (expenditure on a car other than a main rate car) to which section 104C applies (allocation to special rate pool),
  - (b) the qualifying activity carried on by the taxpayer is permanently discontinued, and
  - (c) conditions A, B and C are met.
- (2) Condition A is that the qualifying activity carried on by the taxpayer consisted of or included (other than incidentally) making cars available to other persons.
- (3) Condition B is that, at any time in the 6 months after the taxpayer's qualifying activity is permanently discontinued, the qualifying activity of a group relief company consists of or includes (other than incidentally) making cars available to other persons.
- (4) Condition C is that the balancing allowance (“SBA”) to which the taxpayer would be entitled (but for this section) in respect of the special rate pool is greater than—

#### BC – OBA

where—

BC is the total of the balancing charges (if any) to which the taxpayer is liable for the final chargeable period in respect of any pool, and  
 OBA is the total of the balancing allowances to which the taxpayer is entitled for that period in respect of any pool other than the special rate pool.

For the purposes of this section if BC – OBA is a negative amount it is to be treated as if it were nil.

- (5) The balancing allowance to which the taxpayer is entitled in respect of the special rate pool is reduced to an amount equal to BC — OBA.
- (6) The relevant company is to be treated as having incurred qualifying expenditure within section 104A(1)(e) (“notional expenditure”), whether or not the relevant company owns cars previously owned by the taxpayer.
- (7) The amount of the notional expenditure is an amount equal to the amount by which SBA exceeds BC — OBA.
- (8) The relevant company is to be treated as having incurred the notional expenditure on the day after the end of the taxpayer's final chargeable period.
- (9) If part of the chargeable period in which the relevant company is treated as incurring expenditure under this section (“the acquisition period”) overlaps with the taxpayer's penultimate chargeable period—
  - (a) the part of the expenditure which is proportional to that part of the acquisition period is not to be taken into account in determining

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the relevant company's available qualifying expenditure for the acquisition period, but

- (b) this does not prevent that part of the expenditure being taken into account in determining the relevant company's available qualifying expenditure for any subsequent chargeable period.

(10) In this section—

“car” has the meaning given in section 268A;

“company” means any body corporate;

“group relief company” means—

- (a) a company to which group relief under Chapter 4 of Part 10 of ICTA would be available (on the making of a claim) in respect of balancing allowances surrendered by the taxpayer in the taxpayer's final chargeable period, and

- (b) a company to which such relief would be available (on the making of a claim) in respect of balancing allowances surrendered by a company within paragraph (a);

“main rate car” has the meaning given in section 104AA;

“penultimate chargeable period” means the chargeable period preceding the final chargeable period;

“the relevant company” means the group relief company mentioned in subsection (3) or, if there is more than one, the one—

- (a) nominated by the taxpayer not more than 6 months after the end of the taxpayer's final chargeable period, or
- (b) in the absence of such a nomination, nominated by Her Majesty's Revenue and Customs.”

10 After section 208 insert—

#### “208A Cars: disposal value in avoidance cases

(1) This section applies if—

- (a) a disposal value is required to be brought into account under section 61,
- (b) the disposal event is that the person ceases to own a section 206 car because of a sale or the performance of a contract, and
- (c) allowances under this Part in respect of the person's expenditure under that transaction are restricted under section 217 or 218 (anti-avoidance).

(2) A car is a section 206 car if expenditure on the provision of the car is required to be allocated to a single asset pool under that section.

(3) The disposal value to be brought into account is—

- (a) the market value of the car at the time of the disposal event, or
- (b) if less, the capital expenditure incurred, or treated as incurred, on the provision of the car by the person disposing of it.

(4) The person acquiring the car is to be treated as having incurred capital expenditure on its provision of an amount equal to the disposal value required to be brought into account under subsection (3).

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(5) In this section “car” has the meaning given in section 268A.”

11 After section 268 insert—

*“Cars etc*

### **268A Meaning of “car” and “motor cycle”**

- (1) In this Part “car” means a mechanically propelled road vehicle other than—
- (a) a motor cycle,
  - (b) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description, or
  - (c) a vehicle of a type not commonly used as a private vehicle and unsuitable for such use.
- (2) In this Part “motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.

### **268B Electrically-propelled vehicles**

For the purposes of this Part a vehicle is electrically-propelled only if—

- (a) it is propelled solely by electrical power, and
- (b) that power is derived from—
  - (i) a source external to the vehicle, or
  - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.

### **268C Terms relating to emissions**

- (1) In this Part “qualifying emissions certificate”, in relation to a vehicle, means an EC certificate of conformity, or a UK approval certificate, that specifies—
- (a) in the case of a vehicle other than a bi-fuel vehicle, a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven, or
  - (b) in the case of a bi-fuel vehicle, separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (2) For the purposes of this Part, in relation to a vehicle other than a bi-fuel vehicle, the applicable CO<sub>2</sub> emissions figure is—
- (a) where the qualifying emissions certificate specifies only one CO<sub>2</sub> emissions figure, that figure, and
  - (b) where the certificate specifies more than one CO<sub>2</sub> emissions figure, the figure specified as the CO<sub>2</sub> emissions (combined) figure.
- (3) For the purposes of this Part, in relation to a bi-fuel vehicle, the applicable CO<sub>2</sub> emissions figure is—
- (a) where the qualifying emissions certificate specifies more than one CO<sub>2</sub> emissions figure in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified, and
  - (b) in any other case, the lowest CO<sub>2</sub> figure specified by the certificate.
- (4) In this section—

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“bi-fuel”, in relation to a vehicle, means capable of being propelled by—

- (a) petrol and road fuel gas, or
- (b) diesel and road fuel gas;

“diesel” means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a member State implementing Article 6 of Council Directive 70/156/EEC, as amended;

“petrol” has the meaning given by Article 2 of Directive 98/70/EC of the European Parliament and of the Council;

“road fuel gas” has the same meaning as in section 171(1) of ITEPA 2003;

“UK approval certificate” means a certificate issued under—

- (a) section 58(1) or (4) of the Road Traffic Act 1988, or
- (b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).”

#### *Consequential amendments of CAA 2001*

12 CAA 2001 is amended as follows.

13 In section 33 (personal security), omit subsection (7).

14 (1) Section 45D (expenditure on cars with low carbon dioxide emissions) is amended as follows.

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

- “(c) the car—
  - (i) is electrically-propelled, or
  - (ii) has low CO<sub>2</sub> emissions, and”.

(3) In subsection (2), for “a car with low CO<sub>2</sub> emissions is a car which” substitute “a car has low CO<sub>2</sub> emissions if it”.

(4) In subsection (3), for the words from “an EC certificate” to the end substitute “a qualifying emissions certificate.”

(5) In subsection (4), for “in the case of” substitute “in relation to”.

(6) Omit subsections (5) and (6).

(7) In subsection (8)—

- (a) after “car” insert “is to a car within the meaning of section 268A, except that it”, and
- (b) omit paragraph (b) (and the “but” before it).

(8) Omit subsections (9) and (10).

(9) After subsection (10) insert—

“(11) In this section—

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- “applicable CO<sub>2</sub> emissions figure” and “qualifying emissions certificate” have the meanings given in section 268C;  
 “electrically-propelled” has the meaning given in section 268B.”
- 15 In section 54(3) (single asset pools), omit “section 74 (car above the cost threshold)”.
- 16 In section 55(6) (determination of entitlement or liability), after “subject to” insert “ section 104F (special rate cars: discontinued activity continued by relevant company) and ”.
- 17 In section 65(3) (the final chargeable period), for “sections 77(1) and” substitute “ section ”.
- 18 In section 66 (list of provisions about disposal values)—
- (a) omit the entry in the list relating to section 79, and
  - (b) insert at the appropriate place—
- |               |   |
|---------------|---|
| “section 208A | cars: disposal value in avoidance cases”. |
|---------------|---|
- 19 (1) In section 84 (cases in which short-life asset treatment is ruled out), the Table is amended as follows.
- (2) In item 3, for the words in the second column substitute “The car is a hire car for a disabled person (as defined by section 268D).”
  - (3) In item 4, in the second column, insert “The expenditure is incurred on the provision of a car which is a hire car for a disabled person (as defined by section 268D)”.
  - (4) In item 5, in the second column, for “within section 82(4) (cars hired out to persons receiving disability allowances etc)” substitute “ a hire car for a disabled person (as defined by section 268D) ”.
- 20 (1) Section 86 (short-life assets) is amended as follows.
- (2) In subsection (2)(b), for “main pool” substitute “ appropriate pool ”.
  - (3) After subsection (4) insert—
    - “(5) In subsection (2)(b) “appropriate pool” means—
      - (a) in the case of expenditure incurred on the provision of a car that is not a main rate car (as defined by section 104AA), the special rate pool, and
      - (b) in any other case, the main pool.”
- 21 In section 96 (expenditure on cars excluded from being long-life asset expenditure), for “car (as defined by section 81)” substitute “ car or motor cycle (as defined by section 268A) ”.
- 22 After section 268C (inserted by this Part of this Schedule) insert—

**“268D Hire cars for disabled persons**

- (1) For the purposes of this Part a car is a hire car for a disabled person if it is provided wholly or mainly for hire to, or the carriage of, disabled persons in the ordinary course of a trade.



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- (2) “Disabled person” means a person in receipt of—
- (a) a disability living allowance under—
    - (i) the Social Security Contributions and Benefits Act 1992, or
    - (ii) the Social Security Contributions and Benefits (Northern Ireland) Act 1992,because of entitlement to the mobility component,
  - (b) a mobility supplement under a scheme made under the Personal Injuries (Emergency Provisions) Act 1939,
  - (c) a mobility supplement under an Order in Council made under section 12 of the Social Security (Miscellaneous Provisions) Act 1977, or
  - (d) a payment that appears to the Treasury to be similar to those mentioned in paragraphs (a) to (c) and that is specified by order made by the Treasury.”

23 (1) Part 2 of Schedule 1 (defined expressions) is amended as follows.

(2) In the entry relating to “car (in Part 2)”, for “section 81” substitute “ section 268A ”.

(3) Insert at the appropriate places—

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“applicable CO <sub>2</sub> emissions figure (in Part 2)	section 268C”
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“electrically-propelled (in Part 2)	section 268B”
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“hire car for a disabled person (in Part 2)	section 268D”
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“motor cycle (in Part 2)	section 268A”
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“qualifying emissions certificate (in Part 2)	section 268C”.
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24 In Schedule 3 (transitionals and savings), omit paragraph 19 (cars above the cost threshold) and the headings immediately before it.

*Consequential repeal*

25 In consequence of the amendments made by this Part of this Schedule, in FA 2002, in Schedule 19, omit paragraph 6.

*Commencement and transitionals: introduction*

26 For the purposes of this Part of this Schedule—

- (a) the first relevant date is—
  - (i) for corporation tax purposes, 1 April 2009, and
  - (ii) for income tax purposes, 6 April 2009,
- (b) the second relevant date is—
  - (i) for corporation tax purposes, 1 August 2009, and
  - (ii) for income tax purposes, 6 August 2009, and
- (c) the third relevant date is—

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- (i) for corporation tax purposes, 1 April 2014, and
- (ii) for income tax purposes, 6 April 2014.

- 27 (1) For the purposes of this Part of this Schedule “new expenditure” means—
- (a) expenditure incurred on or after the first relevant date, and
  - (b) expenditure incurred before that date to which sub-paragraph (2) applies, and expenditure that is not new expenditure is “old expenditure”.
- (2) This sub-paragraph applies to expenditure if—
- (a) it is incurred under an agreement for the provision of a car entered into after 8 December 2008, and
  - (b) under that agreement the car is not required to be made available before the second relevant date.
- (3) For the purposes of sub-paragraph (2) an agreement is entered into on the date on which the following conditions are met—
- (a) there is a contract in writing for the provision of the car,
  - (b) the contract is unconditional or, if it is conditional, the conditions have been met, and
  - (c) no terms remain to be agreed.

#### *Commencement*

- 28 (1) The amendments made by this Part of this Schedule have effect in relation to new expenditure (subject to sub-paragraph (2)).
- (2) The repeal of section 79 of CAA 2001 and the amendments made by paragraphs 10 and 18 have effect in cases in which a person ceases to own a car or motor cycle if the expenditure incurred on the provision of the car or motor cycle is new expenditure.
- 29 (1) The repeal of sections 74 to 78 of CAA 2001 and the amendments made by paragraphs 15 and 17 have effect in relation to old expenditure, but only for chargeable periods beginning on or after the third relevant date.
- (2) The repeal of section 79 of CAA 2001 and the amendment made by paragraph 18(a) have effect in cases in which a person ceases to own a car or motor cycle if the expenditure incurred on the provision of the car or motor cycle is old expenditure, but only for chargeable periods beginning on or after the third relevant date.

#### *Transitionals*

- 30 (1) This paragraph applies where expenditure incurred by a person on the provision of a car or motor cycle includes both new expenditure and old expenditure.
- (2) The new expenditure and the old expenditure are to be treated as if they were incurred on the provision of separate (but identical) cars or motor cycles.
- (3) Any amount required to be brought into account in connection with a disposal event in respect of the car or motor cycle mentioned in sub-paragraph (1) is to be apportioned on a just and reasonable basis.
- 31 (1) This paragraph applies where—
- (a) old expenditure is required to be allocated to a single asset pool by section 74 of CAA 2001,

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- (b) there is unrelieved expenditure in that pool at the end of a transitional chargeable period, and
  - (c) the unrelieved expenditure is not required to be allocated to a single asset pool by any other provision of Part 2 of that Act.
- (2) The unrelieved expenditure must be carried forward to the main pool.
- (3) A “transitional chargeable period” is one that begins before the third relevant date and ends on or after the day before the third relevant date.
- 32 An order made under section 82(4)(d) of CAA 2001 (qualifying hire cars for disabled persons) before the day on which this Act is passed (and not revoked before that day) has effect as if it had also been made under section 268D(2)(d) of that Act (hire cars for disabled persons) (inserted by this Part of this Schedule).

#### *Interpretation*

- 33 In this Part of this Schedule—
- (a) “car” and “motor cycle” have the meaning given in section 268A of CAA 2001 (inserted by paragraph 11), and
  - (b) other expressions used in this Part of this Schedule and in Part 2 of CAA 2001 have the same meaning here as in that Part of that Act.

## **PART 2**

### RESTRICTIONS ON DEDUCTIONS FOR HIRE EXPENSES

#### *Income tax*

- 34 ITTOIA 2005 is amended as follows.
- 35 In section 31(1)(b) (relationship between rules prohibiting and allowing deductions), omit “or motor cycle”.
- 36 (1) Section 48 (rules restricting deductions from profits: car or motor cycle hire) is amended as follows.
- (2) In subsection (1), for the words from “or motor cycle”, in the first place, to the end substitute “which is not—
    - (a) a car that is first registered before 1 March 2001,
    - (b) a car that has low CO<sub>2</sub> emissions,
    - (c) a car that is electrically propelled, or
    - (d) a qualifying hire car.”
  - (3) In subsection (2), for the words from “multiplying” to the end substitute “ 15% ”.
  - (4) In subsection (4), for “multiplying it by the fraction in subsection (2)” substitute “ 15% ”.
  - (5) In subsection (4A)(a), (b) and (c), omit “or motor cycle”.
  - (6) Omit subsection (5).
  - (7) In the heading, omit “or motor cycle”.

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- 37 (1) Section 49 (car or motor cycle hire: supplementary) is amended as follows.
- (2) In subsection (1)—
- (a) omit “or motor cycle”,
  - (b) omit “one”,
  - (c) before paragraph (a) insert—
    - “(za) a motor cycle (within the meaning of section 185(1) of the Road Traffic Act 1988),” and
  - (d) in paragraphs (a) and (b), insert at the beginning “a vehicle”.
- (3) After that subsection insert—
- “(1A) In section 48—
- “a car that has low CO2 emissions” has the same meaning as in section 104AA of CAA 2001 (special rate expenditure: main rate car);
  - “electrically propelled” has the meaning given in section 268B of that Act.”
- (4) In subsection (2)—
- (a) omit “or motor cycle” (in each place),
  - (b) omit paragraph (c), and
  - (c) insert at the end—
    - “(d) is leased under a long-funding lease (within the meaning of section 70G of CAA 2001).”
- (5) In subsection (6), omit “and section 48”.
- (6) In the heading, omit “or motor cycle”.
- 38 Omit section 50 (hiring cars with low carbon dioxide emissions).
- 39 After that section insert—

**“50A Short-term hiring in and long-term hiring out**

- (1) Section 48 does not apply to expenses incurred by a person (“the taxpayer”) on the hiring of a car if condition A or B is met.
- (2) Condition A is that—
  - (a) the expenses are incurred in respect of the making available of the car to the taxpayer for a period (“the hire period”) of not more than 45 consecutive days, and
  - (b) if the car is made available to the taxpayer (whether by the same person or different persons) for one or more periods linked to the hire period, the hire period and the linked period or periods, taken together, consist of not more than 45 days.
- (3) Condition B is that the expenses are incurred in respect of a period (“the sub-hire period”) throughout which the taxpayer makes the car available to another person (“the customer”) and—
  - (a) the sub-hire period consists of more than 45 consecutive days, or
  - (b) if the taxpayer makes the car available to the customer throughout one or more periods linked to the sub-hire period, the sub-hire period

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- and the linked period or periods, taken together, consist of more than 45 days,  
but see subsection (4).
- (4) Condition B is not met if—
- (a) the customer is an employee of the taxpayer or of a person connected with the taxpayer, or
  - (b) during all or part of the sub-hire period (or any period linked to the sub-hire period), the customer makes any car available to an employee of the taxpayer under arrangements with the taxpayer or with a person connected with the taxpayer.
- (5) Neither condition A nor condition B is met if the car is hired under arrangements the purpose, or one of the main purposes, of which is—
- (a) to disapply or reduce the effect of section 48, or
  - (b) other avoidance of tax.
- (6) For the purposes of condition B the expenses incurred by the taxpayer on the hiring of the car must be apportioned between—
- (a) the sub-hire period, and
  - (b) the remainder of the period during which the car is made available to the taxpayer,
- according to the respective lengths of those periods.
- (7) A period of consecutive days (“the main period”) is linked to—
- (a) a period of consecutive days that ends not more than 14 days before the main period begins,
  - (b) a period of consecutive days that begins not more than 14 days after the main period ends, and
  - (c) a period of consecutive days linked to a period in paragraph (a) or (b).
- (8) For the purposes of this section, where arrangements for the hiring of a car include arrangements for the provision of a replacement car in the event that the first car is not available, the first car and any replacement car are to be treated as if they were the same car.
- (9) In this section (and section 50B) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.

#### **50B Connected persons: application of section 48**

- (1) This section applies where connected persons incur expenses on the hiring of the same car for the same period and—
- (a) section 48 would (but for this section) apply to the expenses of two or more of those persons, or
  - (b) section 48 and section 56 of CTA 2009 would (but for this section and section 58B of that Act) each apply to the expenses of at least one of those persons.

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- (2) This section only applies where one or more of the persons mentioned in subsection (1)(a) or (b) incurs the expenses under commercial arrangements (and such a person is referred to below as a “commercial lessee”).
  - (3) In relation to the expenses mentioned in subsection (1) to which section 48 would (but for this section) apply, section 48 only applies to the following—
    - (a) where there is one commercial lessee, any such expenses incurred by that lessee, and
    - (b) where there is more than one, any such expenses incurred by the first commercial lessee in the chain of arrangements for the hiring of the car for the period.
  - (4) In this section—
    - (a) references to expenses incurred by a commercial lessee include expenses incurred in that or any other capacity, and
    - (b) “commercial arrangements” means arrangements the terms of which are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm's length.”
- 40 In section 247(1) (other rules about what counts as post-cessation receipts), omit “or motor cycle”.
- 41 In section 272(2) (profits of a property business: application of trading income rules), in the entry in the Table relating to sections 48 to 50—
- (a) for “50” substitute “ 50B ”, and
  - (b) omit “or motor cycle”.
- 42 In section 274(1)(b) (relationship between rules prohibiting and allowing deductions), omit “or motor cycle”.
- 43 In section 354(2) (other rules about what counts as post-cessation receipts), omit “or motor cycle”.
- 44 In Schedule 2 (transitionals and savings), omit paragraphs 16 and 17 (and the heading before them).

#### *Corporation tax*

- 45 CTA 2009 is amended as follows.
- 46 In section 51(1)(b)(i) (relationship between rules prohibiting and allowing deductions), omit “or motor cycle”.
- 47 (1) Section 56 (rules restricting deductions from profits: car or motor cycle hire) is amended as follows.
- (2) In subsection (1), for the words from “or motor cycle”, in the first place, to the end substitute “which is not—
    - (a) a car that is first registered before 1 March 2001,
    - (b) a car that has low CO<sub>2</sub> emissions,
    - (c) a car that is electrically propelled, or
    - (d) a qualifying hire car.”
  - (3) In subsection (2), for the words from “multiplying” to the end substitute “ 15% ”.

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- (4) In subsection (4), for “multiplying it by the fraction in subsection (2)” substitute “15%”.
- (5) In subsection (5)(a), (b) and (c), omit “or motor cycle”.
- (6) Omit subsection (6).
- (7) In the heading, omit “or motor cycle”.
- 48 (1) Section 57 (car or motor cycle hire: supplementary) is amended as follows.
- (2) In subsection (1)—
- (a) omit “or motor cycle”,
  - (b) omit “one”,
  - (c) before paragraph (a) insert—
    - “(za) a motor cycle (within the meaning of section 185(1) of the Road Traffic Act 1988),” and
  - (d) in paragraphs (a) and (b), insert at the beginning “a vehicle”.
- (3) After that subsection insert—
- “(1A) In section 56—
    - “a car that has low CO<sub>2</sub> emissions” has the same meaning as in section 104AA of CAA 2001 (special rate expenditure: main rate car);
    - “electrically propelled” has the meaning given in section 268B of that Act.”
- (4) In subsection (2)—
- (a) omit “or motor cycle” (in each place),
  - (b) omit paragraph (c), and
  - (c) insert at the end—
    - “(d) is leased under a long-funding lease (within the meaning of section 70G of CAA 2001).”
- (5) In subsection (6), omit “and section 56”.
- (6) In the heading, omit “or motor cycle”.
- 49 Omit section 58 (hiring cars with low CO<sub>2</sub> emissions before 1 April 2013).
- 50 After section 58 insert—

**“58A Short-term hiring in and long-term hiring out**

- (1) Section 56 does not apply to expenses incurred by a company (“the taxpayer”) on the hiring of a car if condition A or B is met.
- (2) Condition A is that—
- (a) the expenses are incurred in respect of the making available of the car to the taxpayer for a period (“the hire period”) of not more than 45 consecutive days, and
  - (b) if the car is made available to the taxpayer (whether by the same person or different persons) for one or more periods linked to the

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hire period, the hire period and the linked period or periods, taken together, consist of not more than 45 days.

- (3) Condition B is that the expenses are incurred in respect of a period (“the sub-hire period”) throughout which the taxpayer makes the car available to another person (“the customer”) and—
- (a) the sub-hire period consists of more than 45 consecutive days, or
  - (b) if the taxpayer makes the car available to the customer throughout one or more periods linked to the sub-hire period, the sub-hire period and the linked period or periods, taken together, consist of more than 45 days,
- but see subsection (4).
- (4) Condition B is not met if—
- (a) the customer is an employee or officer of the taxpayer or of a person connected with the taxpayer, or
  - (b) during all or part of the sub-hire period (or any period linked to the sub-hire period), the customer makes any car available to an employee or officer of the taxpayer under arrangements with the taxpayer or with a person connected with the taxpayer.
- (5) Neither condition A nor condition B is met if the car is hired under arrangements the purpose, or one of the main purposes, of which is—
- (a) to disapply or reduce the effect of section 56, or
  - (b) other avoidance of tax.
- (6) For the purposes of condition B the expenses incurred by the taxpayer on the hiring of the car must be apportioned between—
- (a) the sub-hire period, and
  - (b) the remainder of the period during which the car is made available to the taxpayer,
- according to the respective lengths of those periods.
- (7) A period of consecutive days (“the main period”) is linked to—
- (a) a period of consecutive days that ends not more than 14 days before the main period begins,
  - (b) a period of consecutive days that begins not more than 14 days after the main period ends, and
  - (c) a period of consecutive days linked to a period in paragraph (a) or (b).
- (8) For the purposes of this section, where arrangements for the hiring of a car include arrangements for the provision of a replacement car in the event that the first car is not available, the first car and any replacement car are to be treated as if they were the same car.
- (9) In this section (and section 58B) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.



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### **58B Connected persons: application of section 56**

- (1) This section applies where connected persons incur expenses on the hiring of the same car for the same period and—
    - (a) section 56 would (but for this section) apply to the expenses of two or more of those persons, or
    - (b) section 56 and section 48 of ITTOIA 2005 would (but for this section and section 50B of that Act) each apply to the expenses of at least one of those persons.
  - (2) This section only applies where one or more of the persons mentioned in subsection (1)(a) or (b) incurs the expenses under commercial arrangements (and such a person is referred to below as a “commercial lessee”).
  - (3) In relation to the expenses mentioned in subsection (1) to which section 56 would (but for this section) apply, section 56 only applies to the following—
    - (a) where there is one commercial lessee, any such expenses incurred by that lessee, and
    - (b) where there is more than one, any such expenses incurred by the first commercial lessee in the chain of arrangements for the hiring of the car for the period.
  - (4) In this section—
    - (a) references to expenses incurred by a commercial lessee include expenses incurred in that or any other capacity, and
    - (b) “commercial arrangements” means arrangements the terms of which are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm's length.”
- 51 In section 191(1) (other rules about what counts as post-cessation receipts), omit “or motor cycle”.
- 52 In section 210(2) (profits of a property business: application of trading income rules), in the entry in the Table relating to sections 56 to 58—
  - (a) for “58” substitute “ 58B ”, and
  - (b) omit “or motor cycle”.
- 53 In section 214(1)(b)(i) (relationship between rules prohibiting and allowing deductions), omit “or motor cycle”.
- 54 In section 283(2) (other rules about what counts as post-cessation receipts), omit “or motor cycle”.
- 55 In section 865(3)(a) (debits for expenditure not generally deductible for tax purposes), omit “or motor cycle”.
- 56 In section 1231(3) (absence of accounts), omit “or motor cycle”.
- 57 (1) Section 1251 (car or motor cycle hire: companies with investment business) is amended as follows.
- (2) In subsection (1), for the words from “or motor cycle”, in the first place, to the end substitute “which is not—
    - (a) a car that is first registered before 1 March 2001,
    - (b) a car that has low CO<sub>2</sub> emissions,

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- (c) a car that is electrically propelled, or
  - (d) a qualifying hire car.”
- (3) In subsection (2), for the words from “multiplying” to the end substitute “ 15% ”.
- (4) In subsection (4)(b), for “multiply that amount by the fraction set out in subsection (2) above” substitute “ reduce that amount by 15% ”.
- (5) In subsection (5)(a), (b) and (c), omit “or motor cycle”.
- (6) Omit subsection (6).
- (7) In subsection (7)—
- (a) omit “or motor cycle”, and
  - (b) for “58 (hiring cars with low CO<sub>2</sub> emissions before 1 April 2013)” substitute “ 58A (short-term hiring in and long-term hiring out) ”.
- (8) After that subsection insert—
- “(8) For the purposes of section 58B of this Act and section 50B of ITTOIA 2005 (connected persons: application of restrictions), this section is to be treated as if it were part of section 56 of this Act.”
- (9) In the heading, omit “or motor cycle”.
- 58 In Schedule 2 (transitionals and savings), omit paragraphs 16 and 17 (and the heading before them).
- 59 ICTA is amended as follows.
- 60 (1) Section 76ZN (car or motor cycle hire: expenses of insurance companies) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit “or motor cycle”, and
  - (b) for paragraphs (b) and (c) substitute—
    - “(b) the car is not—
    - (i) a car that is first registered before 1 March 2001,
    - (ii) a car that has low CO<sub>2</sub> emissions (as defined in section 104AA of the Capital Allowances Act),
    - (iii) a car that is electrically propelled (as defined in section 268B of that Act), or
    - (iv) a qualifying hire car.”
- (3) After that subsection insert—
- “(1A) Subsection (2) does not apply if condition A or condition B in section 58A of CTA 2009 (short-term hiring in and long-term hiring out) is met.”
- (4) In subsection (2), for the words from “multiplying” to the end substitute “ 15% ”.
- (5) In subsection (5), for the words from “multiplying” to the end substitute “ 15% ”.
- (6) In subsection (6)(a), (b) and (c), omit “or motor cycle”.
- (7) Omit subsection (7).
- (8) In subsection (8), omit “or motor cycle” (in both places).

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- (9) After that subsection insert—
- “(9) For the purposes of section 50B of ITTOIA 2005 and section 58B of CTA 2009 (connected persons: application of restrictions), this section is to be treated as if it were part of section 56 of CTA 2009.”
- 61 Omit section 76ZO (hiring cars (but not motor cycles) with low CO<sub>2</sub> emissions before 1 April 2013).
- 62 (1) Section 578A (rules restricting deductions: car or motor cycle hire) is amended as follows.
- (2) In subsection (2), for paragraphs (a) and (b) substitute “which is not—
- (a) a car that is first registered before 1 March 2001,
- (b) a car that has low CO<sub>2</sub> emissions (as defined in section 104AA of the Capital Allowances Act),
- (c) a car that is electrically propelled (as defined in section 268B of that Act), or
- (d) a qualifying hire car.”
- (3) Omit subsections (2A) and (2B).
- (4) After subsection (2B) insert—
- “(2C) This section does not apply to the hiring of a car where condition A or condition B in section 58A of CTA 2009 (short-term hiring in and long-term hiring out) is met.”
- (5) In subsection (3), for the words from “multiplying” to the end substitute “ 15% ”.
- (6) In subsection (4), for “multiplying it by the fraction in subsection (3) above” substitute “ 15% ”.
- (7) After that subsection insert—
- “(5) For the purposes of section 50B of ITTOIA 2005 (connected persons: application of restrictions), this section is to be treated as if it were part of section 48 of that Act.”
- 63 (1) Section 578B (expenditure on car or motor cycle hire: supplementary) is amended as follows.
- (2) In subsection (1)—
- (a) omit “one”,
- (b) before paragraph (a) insert—
- “(za) a motor cycle (within the meaning of section 185(1) of the Road Traffic Act 1988),”,
- (c) in paragraphs (a) and (b), insert at the beginning “a vehicle”, and
- (d) omit the words after paragraph (b).
- (3) In subsection (2)—
- (a) omit paragraph (b), and
- (b) insert at the end—
- “(c) it is leased under a long-funding lease (within the meaning of section 70G of the Capital Allowances Act).”

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(4) In subsection (3), omit “section 578A and”.

(5) Omit subsection (4).

#### *Consequential repeals*

- 64 In consequence of the amendments made by this Part of this Schedule, omit—
- (a) in FA 2008, section 77(4)(b), and
  - (b) in CTA 2009, in Schedule 1, paragraph 45.

#### *Commencement*

- 65 For the purposes of this Part of this Schedule—
- (a) the first relevant date is—
    - (i) for corporation tax purposes, 1 April 2009, and
    - (ii) for income tax purposes, 6 April 2009, and
  - (b) the second relevant date is—
    - (i) for corporation tax purposes, 1 April 2010, and
    - (ii) for income tax purposes, 6 April 2010, and
- 66 (1) The amendments made by this Part of this Schedule have effect in relation to deductions for expenses incurred on the hiring of a car or motor cycle under an agreement under which the hire period begins on or after the first relevant date (but see paragraph 67).
- (2) For the purposes of this paragraph and paragraph 67, the hire period, in relation to an agreement, begins on the first day on which the car or motor cycle is required to be made available for use under the agreement.

#### *Election for new regime not to apply in certain cases*

- 67 (1) This paragraph applies where—
- (a) a person incurs expenses on the hiring of a car or motor cycle under an agreement entered into on or before 8 December 2008, and
  - (b) the hire period begins before the second relevant date.
- (2) If the person makes an election under this paragraph, none of the amendments made by this Part of this Schedule has effect in relation to any deduction for expenses incurred by the person on the hiring of the car or motor cycle under the agreement.
- (3) The election must be made by notice given to an officer of Revenue and Customs—
- (a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends, and
  - (b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.
- (4) “The relevant chargeable period” means the first chargeable period (as defined in section 6 of CAA 2001) in which any expenditure by the person on the provision of the car or motor cycle under the agreement was incurred.
- (5) The election is irrevocable.

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- (6) All such assessments and adjustments of assessments are to be made as are necessary to give effect to the election.
- (7) For the purpose of this paragraph, an agreement is entered into on the first date on which the following conditions are met—
  - (a) there is a contract in writing for the use of the car or motor cycle by the person,
  - (b) the contract is unconditional or, if it is conditional, the conditions have been met, and
  - (c) no terms remain to be agreed.

#### *Saving*

- 68 The repeal of section 82 of CAA 2001 (meaning of “qualifying hire car”) by Part 1 of this Schedule does not affect the continued operation of the following provisions until they are repealed by this Part of this Schedule—
- (a) section 578B(2)(b) of ICTA,
  - (b) section 49(2)(c) of ITTOIA 2005, and
  - (c) section 57(2)(c) of CTA 2009.

## SCHEDULE 12

Section 31

### REALLOCATION OF CHARGEABLE GAIN OR LOSS WITHIN A GROUP

#### *Main provisions*

- 1 In TCGA 1992, for section 171A substitute—

#### **“171A Election to reallocate gain or loss to another member of the group**

- (1) This section applies where—
  - (a) a chargeable gain or an allowable loss accrues to a company (“company A”) in respect of an asset (or would so accrue but for an election under this section),
  - (b) at the time of accrual, company A and another company (“company B”) are members of the same group, and
  - (c) had company A disposed of the asset to company B immediately before the time of accrual, section 171(1) would have applied.
- (2) In determining for the purposes of subsection (1)(c) whether subsection (1) of section 171 would have applied, it is to be assumed that subsection (1A)(b) of that section read—
  - “(b) that, at the time of the disposal, company B is resident in the United Kingdom, or carrying on a trade in the United Kingdom through a permanent establishment there.”
- (3) In this section “the time of accrual” means the time the chargeable gain or allowable loss accrues to company A (or would so accrue but for an election under this section).

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- (4) Companies A and B may make a joint election to transfer the chargeable gain or allowable loss, or such part of it as is specified in the election, from company A to company B.
- (5) An election under this section must be made—
  - (a) by notice to an officer of Revenue and Customs, and
  - (b) no later than two years after the end of the accounting period of company A in which the time of accrual falls.
- (6) An election, or two or more elections made simultaneously, is or are of no effect if, taken together with each earlier election (if any) made in respect of the same gain or loss, it or they would (apart from this subsection) have effect in relation to an amount exceeding the gain or loss.
- (7) This section does not apply in relation to a chargeable gain or allowable loss that accrues by virtue of section 179.

For provision as to the reallocation within a group of gains and losses arising on such a disposal, see section 179A.

- (8) For the effect of an election under this section, see section 171B.

#### **171B Election under section 171A: effect**

- (1) This section applies where an election is made under section 171A.
- (2) The effect of the election is that the chargeable gain or allowable loss, or such amount of it as is specified in the election, is treated as accruing not to company A but to company B.
- (3) The gain or loss treated as accruing to company B is to be taken to accrue at the time that, had the election not been made, it would have accrued to company A.
- (4) Where company B is not resident in the United Kingdom, the gain or loss treated as accruing to it is to be taken to accrue in respect of a chargeable asset held by it.
- (5) For this purpose an asset is a “chargeable asset” in relation to a company at any time if any gain accruing to the company on a disposal of the asset by the company at that time would be a chargeable gain and would by virtue of section 10B form part of its chargeable profits for corporation tax purposes.
- (6) Any payment made by company A to company B or by company B to company A, in pursuance of an agreement between them in connection with the election—
  - (a) is not to be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) is not for any purposes of the Corporation Tax Acts to be regarded as a distribution,

provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the election, as accruing to company B.

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### **171C Elections under section 171A: insurance companies**

- (1) This section applies where —
  - (a) an election is made under section 171A in relation to a gain or loss, and
  - (b) company B is an insurance company.
- (2) For the purposes of section 171A(1)(c), section 440(3) of the Taxes Act (disposals of certain assets by and to insurance companies to fall outside the rule in section 171) is to be disregarded.
- (3) Subsection (2) does not apply if—
  - (a) company A is an insurance company, and
  - (b) the gain or loss arose in respect of the disposal of an asset that, immediately before the disposal, was part of that company's long-term insurance fund.
- (4) The chargeable gain or allowable loss treated as accruing to company B as a result of the election is to be treated as arising in respect of an asset that is not part of company B's long-term insurance fund.
- (5) In this section “insurance company” and “long-term insurance fund” have the same meaning as in Chapter 1 of Part 12 of the Taxes Act (see section 431(2) of that Act).”

#### *Consequential amendments*

- 2 In section 179A of TCGA 1992 (reallocation within group of gain or loss accruing under section 179), for subsection (5) substitute—

“(5) An election, or two or more elections made simultaneously, is or are of no effect if, taken together with each earlier election (if any) made in respect of the same gain or loss, it or they would (apart from this subsection) have effect in relation to an amount exceeding the gain or loss.”
- 3 (1) Section 136(2) of FA 2006 (Real Estate Investment Trusts: availability of group reliefs) is amended as follows.
  - (2) For paragraph (a) substitute—
    - “(a) section 171 (transfer of assets within group),
    - (aa) sections 171A to 171C (reallocation of gain or loss within a group),”.
  - (3) In paragraph (b), for “reallocation or rollover of gain” substitute “degrouching: reallocation of gain or loss, or rollover of gain,”.
- 4 In consequence of the amendment made by paragraph 1, omit—
  - (a) in FA 2000, section 101,
  - (b) in FA 2001, section 77,
  - (c) in FA 2003, in Schedule 33, paragraph 17, and
  - (d) in F(No.2)A 2005, section 36.

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### *Commencement*

- 5           The amendments made by this Schedule have effect in relation to chargeable gains and allowable losses accruing on or after the day on which this Act is passed.

## SCHEDULE 13

Section 32

### CHARGEABLE GAINS IN STOCK LENDING: INSOLVENCY ETC OF BORROWER

- 1           TCGA 1992 is amended as follows.
- 2           (1) Section 263B (stock lending arrangements) is amended as follows.
- (2) In subsection (2), for “section 263C(2)” substitute “ sections 263C(2) and 263CA(3) and (5) ”.
- (3) In subsection (4)—
- (a) in paragraph (a), insert at the end “for a consideration equal to their market value at that time”,
- (b) in paragraph (b), after “at that time” insert “ for that consideration ”, and
- (c) insert at the end (not as part of paragraph (c))— “ This subsection does not apply where section 263CA (insolvency of borrower) applies. ”
- (4) In subsection (7), omit the definition of “interest”.
- 3           After section 263C (stock lending involving redemption) insert—

#### “263CA Stock lending: insolvency etc of borrower

- (1) This section applies where, in the case of any stock lending arrangement—
- (a) the borrower (B) becomes insolvent after the lender (L) has transferred the securities,
- (b) as a result of the insolvency, the requirement for B to make a transfer back to L will not be complied with as regards some or all of the securities,
- (c) collateral is used (whether directly or indirectly) to enable L to acquire securities (“replacement securities”) of the same description as the securities which will not be transferred back, and
- (d) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which B becomes insolvent (“the insolvency date”).
- (2) In accordance with section 263B(2), the transfer of the securities under the arrangement is not to be regarded as a disposal by L for the purposes of this Act (but this is subject to subsection (5)).
- (3) B is to be treated for the purposes of this Act as having acquired the securities which will not be transferred back to L; and that acquisition is to be treated—
- (a) as being made on the insolvency date, and
- (b) as being for a consideration equal to their market value on that date.
- (4) The acquisition of the replacement securities is to be treated, as regards L, as if it were a transfer back of securities in accordance with the arrangement



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(so that, in accordance with section 263B(2), that acquisition is not regarded as an acquisition by L for the purposes of this Act).

- (5) If the number of replacement securities is less than the number of securities which B is treated as having acquired, L is to be treated for the purposes of this Act as having made a disposal, at the insolvency date, of the difference (“the deemed disposal”).
- (6) The consideration for the deemed disposal is—
  - (a) where all the collateral is used to enable L to acquire replacement securities, nil, and
  - (b) where not all the collateral is so used, the difference between—
    - (i) the market value (at the insolvency date) of the number of securities which could have been acquired using the collateral, and
    - (ii) the market value (at that date) of the number of securities which were in fact so acquired.
- (7) But if L at any time receives any amount (whether arising out of B's insolvency or otherwise) in respect of B's liability to L in respect of the securities which are treated under subsection (5) as having been disposed of by L that amount is to be treated as a chargeable gain accruing at that time to L.
- (8) The liability mentioned in subsection (7) is not to be treated as giving rise to a relevant non-lending relationship for the purposes of Part 6 of CTA 2009 (relationships treated as loan relationships etc).
- (9) For the purposes of this section, B becomes insolvent—
  - (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
  - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
  - (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
  - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
  - (h) if a bank administration order takes effect under Part 3 of that Act, or
  - (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.
- (10) In this section—
  - (a) “collateral” means an amount of money or other property which—

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- (i) is provided under the arrangement (or under arrangements of which the arrangement forms part), and
  - (ii) is payable to or made available for the benefit of L for the purpose of securing the discharge of the requirement to transfer any or all of the securities back to L, and
  - (b) any expression used in this section and in section 263B has the same meaning as in that section.”
- 4 (1) The amendments made by paragraphs 2(2) and (3)(c) and 3 apply—
- (a) in any case where B becomes insolvent on or after 24 November 2008, and
  - (b) where L makes an election under this paragraph, in any case where B becomes insolvent in the period beginning on 1 September 2008 and ending on 23 November 2008.
- (2) An election under sub-paragraph (1)(b) must relate to all stock lending arrangements in which L is the lender and B is the borrower and must be made—
- (a) where L is a company (within the meaning given by section 288(1) of TCGA 1992), no later than the second anniversary of the end of the accounting period of L in which 23 November 2008 falls, and
  - (b) otherwise, no later than 31 January 2011.
- (3) Where section 263CA (inserted by paragraph 3) applies to any case which occurs before a period for which CTA 2009 has effect, the reference in subsection (8) of that section to a relevant non-lending relationship for the purposes of Part 6 of that Act is to be read as a reference to a relationship to which section 100 of FA 1996 applies.

## SCHEDULE 14

Section 34

### CORPORATION TAX TREATMENT OF COMPANY DISTRIBUTIONS

#### PART 1

##### INSERTION OF NEW PART 9A OF CTA 2009

- 1 In CTA 2009, after Part 9 insert—

#### “PART 9A

##### COMPANY DISTRIBUTIONS

#### CHAPTER 1

##### THE CHARGE TO TAX

#### **Charge to tax on distributions received**

- 931A) The charge to corporation tax on income applies to any dividend or other distribution of a company, but only if the distribution is not exempt.

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- (2) Subsection (1) does not apply in the case of a distribution of a capital nature.
- (3) For provision as to whether a distribution is exempt, see—
  - Chapter 2 (distributions received by small companies), and
  - Chapter 3 (distributions received by companies that are not small).

## CHAPTER 2

### EXEMPTION OF DISTRIBUTIONS RECEIVED BY SMALL COMPANIES

#### Exemption from charge to tax

931B A dividend or other distribution of a company that is received in an accounting period of the recipient in which the recipient is a small company is exempt if—

- (a) the payer is a resident of (and only of) the United Kingdom or a qualifying territory at the time that the distribution is received,
- (b) the distribution is not of a kind mentioned in paragraph (d) or (e) of section 209(2) of ICTA (certain non-dividend distributions),
- (c) no deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of the distribution, and
- (d) the distribution is not made as part of a tax advantage scheme.

#### Meaning of “qualifying territory”

931C(1) For the purpose of section 931B a territory is a “qualifying territory” if—

- (a) arrangements to which section 788 of ICTA applies (“double taxation relief arrangements”) have effect in relation to the territory, and
  - (b) the arrangements contain a non-discrimination provision.
- (2) The Treasury may by regulations—
- (a) provide that a territory specified in or of a description specified in the regulations that does not satisfy subsection (1)(a) or (b) is a qualifying territory for the purpose of section 931B, and
  - (b) provide that a territory so specified or described that satisfies subsection (1)(a) and (b) is not a qualifying territory for that purpose.
- (3) For the purpose of section 931B a company is a resident of a territory if, under the laws of the territory, the company is liable to tax there—
- (a) by reason of its domicile, residence or place of management, but
  - (b) not in respect only of income from sources in that territory or capital situated there.
- (4) In subsection (1) “non-discrimination provision”, in relation to double taxation relief arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or

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- (b) any requirement connected with taxation, which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (5) In subsection (4) “national”, in relation to a contracting state, includes—
  - (a) an individual possessing the nationality or citizenship of the contracting state, and
  - (b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.
- (6) Regulations under this section may—
  - (a) describe a territory by reference to the double taxation relief arrangements for the time being in force in relation to the territory,
  - (b) make different provision in relation to different descriptions of company, and
  - (c) make provision having effect in relation to accounting periods current on the day on which the regulations are made.

### CHAPTER 3

#### EXEMPTION OF DISTRIBUTIONS RECEIVED BY COMPANIES THAT ARE NOT SMALL

##### **Exemption from charge to tax**

- 931D A dividend or other distribution of a company that is received in an accounting period of the recipient in which the recipient is not a small company is exempt if—
- (a) the distribution falls into an exempt class (see sections 931E to 931Q),
  - (b) the distribution is not of a kind mentioned in paragraph (d) or (e) of section 209(2) of ICTA (certain non-dividend distributions), and
  - (c) no deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of the distribution.

##### *Exempt classes*

##### **Distributions from controlled companies**

- 931E) A dividend or other distribution falls into an exempt class if condition A or B is met.
- (2) Condition A is that the recipient controls the payer.
  - (3) Condition B is that—
    - (a) the recipient is one of two persons who, taken together, control the payer,
    - (b) the recipient is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and

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- (c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.
- (4) Section 755D of ICTA (meaning of “control” etc) applies for the purposes of this section.
- (5) As so applied, that section has effect with the omission of subsection (6)(c) and (d).

### **Distributions in respect of non-redeemable ordinary shares**

931F A dividend or other distribution falls into an exempt class if it is made in respect of a share that—

- (a) is an ordinary share, and
- (b) is not redeemable.

### **Distributions in respect of portfolio holdings**

931G A dividend or other distribution falls into an exempt class if the recipient—

- (a) holds less than 10% of the issued share capital of the payer,
- (b) is entitled to less than 10% of the profits available for distribution to holders of the issued share capital of the payer, and
- (c) would be entitled on a winding up to less than 10% of the assets of the company available for distribution to holders of the issued share capital of the payer.

(2) Where the payer has more than one class of share, references in subsection (1) to the issued share capital of the payer are to issued share capital of the same class as the share in respect of which the distribution is made.

(3) For the purposes of this section shares are not of the same class if the amounts paid up on them (otherwise than by way of premium) are different.

### **Dividends derived from transactions not designed to reduce tax**

931H A dividend falls into an exempt class if it is paid in respect of relevant profits.

(2) In this section “relevant profits” means any profits available for distribution at the time that the dividend is paid, other than profits that reflect the results of a transaction, or of one or more of a series of transactions, where—

- (a) the transaction or series of transactions achieve a reduction (other than a negligible reduction) in United Kingdom tax, and
- (b) the purpose or one of the main purposes of that transaction or series of transactions is to achieve that reduction.

(3) A dividend that falls into an exempt class otherwise than by virtue of this section is for the purposes of this section treated, so far as possible, as paid in respect of relevant profits.

(4) Any other dividend is for the purposes of this section treated, so far as possible, as paid in respect of profits other than relevant profits.

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- (5) Where by virtue of subsection (4) part of a dividend is treated as paid in respect of relevant profits and part is treated as paid in respect of profits other than relevant profits, the two parts are treated for the purposes of this Part and Part 18 of ICTA (double taxation relief) as separate dividends.

### **Dividends in respect of shares accounted for as liabilities**

- 931I A dividend falls into an exempt class if the dividend is paid in respect of a share to which, at the time of the payment, section 521C (shares accounted for as liabilities treated as loan relationships) does not apply only because the condition in subsection (1)(f) of that section is not met.

*Exempt classes: anti-avoidance*

### **Schemes involving manipulation of controlled company rules**

- 931J(1) This section applies to a dividend that would, apart from this section, fall into an exempt class by virtue of section 931E.
- (2) The dividend does not fall into an exempt class by virtue of that section if—
- (a) the dividend is paid as part of a scheme the main purpose, or one of the main purposes, of which is to secure that dividends of the payer received by the recipient fall into an exempt class by virtue of that section, and
  - (b) the following condition is met.
- (3) The condition is that the dividend is paid in respect of pre-control profits.
- (4) A dividend that falls into an exempt class otherwise than by virtue of section 931E is for the purposes of this section treated, so far as possible, as paid in respect of profits other than pre-control profits.
- (5) Any other dividend is for the purposes of this section treated, so far as possible, as paid in respect of pre-control profits.
- (6) In this section “pre-control profits” means any profits available for distribution at the time the dividend is paid that arose at a time when neither condition A nor condition B in section 931E was met.
- (7) Where—
- (a) the condition in subsection (2)(a) is met, and
  - (b) by virtue of subsection (5) part of a dividend is treated as paid in respect of pre-control profits and part is treated as paid in respect of profits other than pre-control profits,
- the two parts are treated for the purposes of this Part and Part 18 of ICTA (double taxation relief) as separate dividends.

### **Schemes involving quasi-preference or quasi-redeemable shares**

- 931K(1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class by virtue of section 931F.

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- (2) The distribution does not fall into an exempt class by virtue of that section if—
  - (a) the distribution is made as part of a scheme the main purpose, or one of the main purposes, of which is to secure that distributions of the payer received by the recipient fall into an exempt class by virtue of that section, and
  - (b) the following condition is met.
- (3) The condition is that the distribution is made in respect of a share that—
  - (a) would not be an ordinary share, or
  - (b) would be redeemable,were the rights under the scheme of each relevant person to be attached to the share.

### **Schemes involving manipulation of portfolio holdings rule**

931(1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class by virtue of section 931G.

- (2) The distribution does not fall into an exempt class by virtue of that section if—
  - (a) the distribution is made as part of a scheme the main purpose, or one of the main purposes, of which is to secure that distributions of the payer received by the recipient fall into an exempt class by virtue of that section, and
  - (b) the following condition is met.
- (3) The condition is that the distribution would not fall into an exempt class by virtue of section 931G if the reference in subsection (1) of that section to the recipient were to all relevant persons taken together.

### **Schemes in the nature of loan relationships**

931(M) This section applies to a dividend or other distribution that does not fall into an exempt class by virtue of section 931E but would, apart from this section, fall into an exempt class otherwise than by virtue of that section.

- (2) The distribution does not fall into an exempt class if—
  - (a) the distribution is made as part of a tax advantage scheme, and
  - (b) conditions A to C are met.
- (3) Condition A is that the distribution constitutes part of a return in relation to an amount that is produced by the scheme for a relevant person, or two or more relevant persons taken together.
- (4) Condition B is that the return is economically equivalent to interest.
- (5) For this purpose a return produced for a person or persons by a scheme in relation to an amount is “economically equivalent to interest” if (and only if)—
  - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,

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- (b) it is at a rate reasonably comparable to a commercial rate of interest, and
  - (c) at the time the scheme is entered into by the person or any of the persons, there is no practical likelihood that it will cease to be produced in accordance with the scheme.
- (6) Condition C is that there is a connection between the payer and the recipient for the accounting period of the payer in which the distribution is made.
- (7) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (6) as if that subsection were a provision of Part 5 to which that section is applied (but this does not affect the application of section 1316(1) (meaning of connected persons) for the purposes of any other provision of this Part).

#### **Schemes involving distributions for which deductions are given**

931(N) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

- (2) The distribution does not fall into an exempt class if—
  - (a) the distribution is made as part of a tax advantage scheme, and
  - (b) the following condition is met.
- (3) The condition is that a deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of an amount determined by reference to the distribution.

#### **Schemes involving payments for distributions**

931(O) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

- (2) The distribution does not fall into an exempt class if—
  - (a) the distribution is made as part of a tax advantage scheme, and
  - (b) the following condition is met.
- (3) The condition is that the scheme includes a payment, or the giving up of a right to income, by a relevant person where—
  - (a) the payment is made, or the right to income is given up, under a liability incurred for consideration in money or money's worth all or any of which consists of, or of the right to receive, the distribution, and
  - (b) in the case of a payment, the conditions in subsections (2) and (4) to (7) of section 1301 (restriction of deductions for annual payments) apply to the payment.

#### **Schemes involving payments not on arm's length terms**

931(P) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

- (2) The distribution does not fall into an exempt class if—
  - (a) the distribution is made as part of a tax advantage scheme, and



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- (b) the following condition is met.
- (3) The condition is that—
  - (a) the scheme includes a payment or receipt, or the giving up of a right to income, by a relevant person in respect of goods or services, and
  - (b) the amount of the payment or receipt, or the amount of income given up, differs from the amount the relevant person would have paid, received or given up in respect of those goods or services had the distribution not been made.
- (4) This section does not apply to a scheme that consists of a transaction or series of transactions in relation to which Schedule 28AA to ICTA (provision not at arms length between parties under common control) applies.

### **Schemes involving diversion of trade income**

931Q) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.

- (2) The distribution does not fall into an exempt class if—
  - (a) the distribution is made as part of a scheme entered into by the recipient and another relevant person (“C”),
  - (b) if C had received the distribution, it would be reasonable to assume that the distribution would be dealt with under Part 3 (trading income), and
  - (c) the main purpose, or one of the main purposes, of the scheme is to produce the result that the distribution is dealt with under this Part because it is received by the recipient.
- (3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person other than C is a party, C were that party to that transaction.
- (4) In this section “relevant transaction” means any of the transactions giving rise to the distribution.

## **CHAPTER 4**

### **SUPPLEMENTARY**

#### *Election that distribution should not be exempt*

### **Election that distribution should not be exempt**

931R) This section applies where, apart from this section, a distribution (“the distribution”) would be exempt.

- (2) If the recipient so elects, the distribution is not exempt.
- (3) An election under this section must be made on or before the second anniversary of the end of the accounting period in which the distribution is received.

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- (4) Subsection (5) applies where the distribution is a dividend that is treated for certain purposes of Part 18 of ICTA (double taxation relief) as two separate dividends by virtue of section 801C of that Act (separate streaming of dividend so far as representing an ADP dividend of a CFC).
- (5) If the recipient so elects—
- (a) the distribution is to be treated for the purposes of this Part as if it were an ADP dividend and a separate residual dividend as provided for in that section of that Act, and
  - (b) the ADP dividend is not exempt.
- (6) The reference in subsection (4) to section 801C of ICTA is to that section as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009 in relation to dividends paid on or after 1 July 2009 for accounting periods beginning before that day.

### *Interpretation*

#### **Meaning of “small company”**

931(S) For the purposes of this Part a company is a “small company” in an accounting period if it is in that period a micro or small enterprise, as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.

- (2) But a company is not a “small company” in an accounting period if it is at any time in that period—
- (a) an open-ended investment company,
  - (b) an authorised unit trust scheme,
  - (c) an insurance company, or
  - (d) a friendly society.

- (3) In subsection (2)—

“open-ended investment company” has the meaning given by section 236 of FISMA 2000;

“authorised unit trust scheme” means a unit trust scheme (within the meaning given by section 237 of FISMA 2000) in relation to which a order under section 243 of that Act (authorisation orders) is in force;

“insurance company” has the meaning given by section 431 of ICTA;

“friendly society” has the meaning given by section 466(2) of ICTA.

#### **Meaning of “payer”, “recipient” and “relevant person”**

931T In this Part—

“the payer”, in relation to a distribution, means the company that makes the distribution;

“the recipient”, in relation to a distribution, means the company that receives the distribution;

“a relevant person”, in relation to a distribution, means—

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- (a) the company that receives the distribution, or
- (b) any person connected with that company.

### Meaning of “ordinary share” and “redeemable”

931(U) In this Part “ordinary share” means a share that does not carry any present or future preferential right to dividends or to a company's assets on its winding up.

- (2) A share is regarded as “redeemable” for the purposes of this Part only if it is redeemable as a result of its terms of issue (or any collateral arrangements)—
  - (a) requiring redemption,
  - (b) entitling the holder to require redemption, or
  - (c) entitling the issuing company to redeem.

### Meaning of “scheme” and “tax advantage scheme”

931(V) For the purposes of this Part—

“scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

“tax advantage scheme” means a scheme the main purpose, or one of the main purposes, of which is to obtain a tax advantage (other than a negligible tax advantage).

- (2) In this section “tax advantage” has the meaning given by section 840ZA of ICTA.

### *Boundary provisions*

### Provisions which must be given priority over this Part

931(W) Any income so far as it falls within—

- (a) this Part, and
- (b) Chapter 2 of Part 3 (income taxed as trade profits),  
is dealt with under Part 3.
- (2) Any income so far as it falls within—
  - (a) this Part, and
  - (b) Chapter 3 of Part 4 (profits of property businesses) so far as the Chapter relates to a UK property business,  
is dealt with under Part 4.
- (3) Any income so far as it falls within—
  - (a) this Part, and
  - (b) Chapter 1 of Part 12 of ICTA (insurance companies),  
is dealt with under that Chapter.”

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## PART 2

### OTHER AMENDMENTS

#### *ICTA*

- 2           ICTA is amended as follows.
- 3           In section 13(7) (small companies' relief), omit “resident in the United Kingdom”.
- 4           (1) Section 505(1)(c) (charitable companies: general) is amended as follows.
- (2) After sub-paragraph (ii) insert—
- “(iizza) from tax under Part 9A of CTA 2009 (company distributions),”.
- (3) Omit sub-paragraph (iib).
- 5           (1) Section 95ZA (taxation of UK distributions received by insurance companies) is amended as follows.
- (2) In subsection (1), for “section 1285” substitute “ section 130(2) ”.
- (3) In subsection (2)(a), omit “resident in the United Kingdom”.
- 6           (1) Section 231 (tax credits for certain recipients of qualifying distributions) is amended as follows.
- (2) In subsection (1)—
- (a) omit “and section 219(4B) of the Finance Act 1994”,
- (b) for “resident in the United Kingdom makes a” substitute “ (whether resident in the United Kingdom or outside the United Kingdom) makes an exempt ”, and
- (c) for “another such company” substitute “ a company resident in the United Kingdom ”.
- (3) After subsection (1A) insert—
- “(1B) For the purposes of subsection (1) a qualifying distribution is “exempt” if it is exempt for the purposes of Part 9A of CTA 2009 (company distributions).”
- 7           In section 795 (double taxation relief: computation of income subject to foreign tax), omit subsection (3A).
- 8           (1) Section 799 (double taxation relief: computation of underlying tax in respect of a dividend) is amended as follows.
- (2) In subsection (3) (as it has effect as amended by paragraph 8 of Schedule 30 to FA 2000)—
- (a) before paragraph (a) insert—
- “(za) if the dividend is received in an accounting period of the recipient in which the recipient is not a small company, and the dividend is a relevant dividend, the profits in respect of which the dividend is paid;”,
- (b) in paragraph (a), insert at the beginning “ in a case not falling under paragraph (za), ”, and

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(c) in paragraph (c), insert at the beginning “in a case not falling under paragraph (za),”.

(3) After subsection (3) insert—

“(3A) For the purposes of subsection (3)—

- (a) “small company” has the same meaning as in Part 9A of CTA 2009 (company distributions),
- (b) “relevant dividend” means a dividend that, for the purposes of section 931H of that Act (dividends derived from transactions not designed to reduce tax), is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section), and
- (c) the profits in respect of which a dividend is paid are the profits in respect of which the dividend is treated as paid for the purposes of that section.”

9 Omit sections 806A to 806K (double taxation relief in relation to foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax).

10 In section 826 (interest on tax overpaid), omit subsection (7BC).

11 (1) Paragraph 2 of Schedule 23A (manufactured dividends on UK equities: general) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) Sub-paragraphs (1C) to (1E) apply where—

- (a) a manufactured dividend is paid by a dividend manufacturer, and
- (b) the dividend of which the manufactured dividend is representative is taxable.

(1B) For this purpose a dividend is “taxable” if—

- (a) it is received by the dividend manufacturer and the charge to corporation tax on income applies to it, or
- (b) it is received by a person other than the dividend manufacturer and the charge to corporation tax on income would have applied to it if it had been received by the dividend manufacturer.

(1C) Where the dividend manufacturer carries on a trade to which the manufactured dividend relates, and neither sub-paragraph (1D) nor (1E) applies, the manufactured dividend is to be treated as an expense of the trade.

(1D) Where the dividend manufacturer has investment business to which the manufactured dividend relates, the manufactured dividend is to be treated as expenses of management of the business for the purposes of Part 16 of CTA 2009.

(1E) Where the dividend manufacturer carries on life assurance business to which the manufactured dividend relates, the manufactured dividend is to be treated as if, to the extent that it is referable to basic life assurance and general annuity business, it were an expense payable falling to be brought into account at step 3 of section 76(7).

(1F) For the purposes of sub-paragraph (1E), the manufactured dividend is to be treated as referable to basic life assurance and general annuity business to the extent that the dividend of which it is representative—

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- (a) is received by the dividend manufacturer and is so referable by virtue of section 432A, or
  - (b) is received by a person other than the dividend manufacturer, and would have been so referable by virtue of section 432A if it had it been received by the dividend manufacturer.”
- (3) In sub-paragraph (2), omit paragraph (b) (and the “and” before it).
- (4) After sub-paragraph (3) insert—
- “(3A) In its application in relation to a manufactured dividend by virtue of sub-paragraph (2) or (3), Part 9A of CTA 2009 (company distributions) has effect subject to the following modification.
- (3B) The modification is that—
- (a) the definition of “the payer” in section 931T is to be treated as omitted, and
  - (b) references in that Part to the payer are to be treated as references to the company that pays the dividend of which the manufactured dividend is representative.”
- 12 (1) Paragraph 4 of Schedule 23A (manufactured overseas dividends) is amended as follows.
- (2) For sub-paragraph (1A) substitute—
- “(1A) Sub-paragraphs (1C) to (1E) apply where the overseas dividend of which the manufactured overseas dividend is representative is taxable.
- (1B) For this purpose an overseas dividend is “taxable” if—
- (a) it is received by the overseas dividend manufacturer and the charge to corporation tax on income applies to it, or
  - (b) it is received by a person other than the overseas dividend manufacturer and the charge to corporation tax on income would have applied to it if it had been received by the overseas dividend manufacturer.
- (1C) Where the overseas dividend manufacturer carries on a trade to which the manufactured overseas dividend relates, and neither sub-paragraph (1D) nor (1E) applies, the manufactured overseas dividend is to be treated as an expense of the trade.
- (1D) Where the overseas dividend manufacturer has investment business to which the manufactured overseas dividend relates, the manufactured overseas dividend is to be treated as expenses of management of the business for the purposes of Part 16 of CTA 2009.
- (1E) Where the overseas dividend manufacturer carries on life assurance business to which the manufactured overseas dividend relates, the manufactured overseas dividend is to be treated as if, to the extent that it is referable to basic life assurance and general annuity business, it were an expense payable falling to be brought into account at step 3 of section 76(7).
- (1F) For the purposes of sub-paragraph (1E), the manufactured overseas dividend is to be treated as referable to basic life assurance and general

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annuity business to the extent that the overseas dividend of which it is representative—

- (a) is received by the overseas dividend manufacturer and is so referable by virtue of section 432A, or
- (b) is received by a person other than the dividend manufacturer, and would have been so referable by virtue of section 432A if it had it been received by the dividend manufacturer.”

(3) After sub-paragraph (4) insert—

“(4A) In its application in relation to a manufactured overseas dividend by virtue of sub-paragraph (4), Part 9A of CTA 2009 (company distributions) has effect—

- (a) as if the manufactured overseas dividend were an overseas dividend on the overseas securities in question, and
- (b) subject to the following modification.

(4B) The modification is that—

- (a) the definition of “the payer” in section 931T is to be treated as omitted, and
- (b) references in that Part to the payer are to be treated as references to the company that pays the dividend of which the manufactured overseas dividend is representative.”

13 In paragraph 5(3)(c) of Schedule 27 (distributing funds: United Kingdom equivalent profits)—

- (a) for “section 1285” substitute “ Chapter 2 or 3 of Part 9A ”, and
- (b) omit “in like manner as if they were dividends or distributions of a company resident outside the United Kingdom”.

14 In paragraph 5 of Schedule 28AA (provision not at arm's length), after sub-paragraph (7) insert—

“(8) For the purposes of sub-paragraph (1) section 209(2)(d) (excessive interest etc treated as distribution) is to be disregarded.”

#### FA 1989

15 FA 1989 is amended as follows.

16 (1) Section 85A (life assurance: excess adjusted Case I profits) is amended as follows.

(2) In paragraph (a) of subsection (6), for “distributions received by the company in the accounting period from companies resident in the United Kingdom” substitute “ non-taxable distributions received by the company in the accounting period ”.

(3) After that subsection insert—

“(6A) In this section “non-taxable distribution” means—

- (a) a distribution that is exempt for the purposes of Part 9A of the Corporation Tax Act 2009 (company distributions), and
- (b) does not include any amount withheld from the distribution on account of tax payable under the laws of a territory outside the United Kingdom.”

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- 17 (1) Section 89 (life assurance: policy holders' share of profits) is amended as follows.
- (2) In subsection (2)(b), for “distributions received from companies resident in the United Kingdom” substitute “ non-taxable distributions received ”.
- (3) In subsection (7), after the definition of “Case I profits” insert—
- ““non-taxable distribution” has the same meaning as in section 85A.”

*FA 1994*

- 18 In section 219 of FA 1994 (taxation of profits of Lloyd's underwriters etc)—
- (a) in subsection (3), omit “Subject to subsection (4A) below,”, and
- (b) omit subsections (4), (4A) and (4C).

*FA 2006*

- 19 In Schedule 17 to FA 2006 (group REITs modifications), in paragraph 32 (non-UK resident members), omit sub-paragraph (7).

*CTA 2009*

- 20 CTA 2009 is amended as follows.
- 21 In section 1(2) (overview of Act), before the “and” at the end of paragraph (f) insert—
- “(fa) Part 9A (company distributions),”.
- 22 For section 130 (traders receiving distributions etc) substitute—

*“Insurers*

**130 Insurers receiving distributions etc**

- (1) This section applies for the purpose of calculating the trading profits of—
- (a) insurance business other than life assurance business, or
- (b) any category of such business.
- (2) A receipt that is exempt for the purposes of Part 9A (company distributions) is not brought into account in calculating the profits of the trade.”
- 23 In section 932(1) (overview of Part 10), omit paragraph (a).
- 24 Omit Chapter 2 of Part 10 (taxation of dividends from non-UK resident companies).
- 25 (1) Section 974 (charge to tax in relation to sale of foreign dividend coupons) is amended as follows.
- (2) In subsection (3)(a), after “realisation of” insert “ taxable ”.
- (3) In subsection (4), after “sale of” insert “ taxable ”.
- (4) After subsection (4) insert—
- “(4A) For the purposes of subsections (3) and (4) a dividend coupon is “taxable” if the associated dividend would not have been exempt for the purposes of Part 9A (company distributions) had it been paid to the holder of the shares.”



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- 26 In section 982(1)(a) and (2)(a) (boundary provisions for Part 10), omit “2.”.
- 27 Omit section 1285 (exemption for distributions of UK resident companies).
- 28 In section 1310(4) (orders and regulations subject to affirmative resolution procedure in House of Commons), before paragraph (a) insert—  
“(za) section 931C (meaning of “qualifying territory”),”.
- 29 In Schedule 4 (index of defined expressions), insert at the appropriate places—

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“ordinary share (in Part 9A)	section 931U”;
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“the payer (in Part 9A)	section 931T”;
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“the recipient (in Part 9A)	section 931T”;
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“redeemable (in Part 9A)	section 931U”;
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“a relevant person (in Part 9A)	section 931T”;
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“scheme (in Part 9A)	section 931V”;
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“small company (in Part 9A)	section 931S”;
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“tax advantage scheme (in Part 9A)	section 931V”.
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#### *Consequential repeals*

- 30 In consequence of the amendments made by this Schedule, omit—
- in F(No.2)A 1997, section 22(2) and (3)(a),
  - in FA 2000, in Schedule 30, paragraphs 8(4)(c), 21 and 22,
  - in FA 2001, in Schedule 27, paragraphs 1(3), 4 and 5,
  - in FA 2008, in Schedule 39, paragraph 25, and
  - in CTA 2009, in Schedule 1, paragraphs 174(4)(c), 252 to 254 and 392(4) and (5).

### **PART 3**

#### COMMENCEMENT ETC

##### *Commencement*

- 31 The amendments made by this Schedule have effect in relation to distributions paid on or after 1 July 2009 (“the commencement date”).

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### *Transitional provision*

- 32 (1) This paragraph contains transitional provision in relation to the commencement of Part 9A of CTA 2009 (as inserted by paragraph 1).
- (2) In section 931H—
- (a) a reference to a transaction that is one of a series of transactions does not include a transaction where each transaction in the series was entered into more than 12 months before the commencement date,
  - (b) a reference to any other transaction does not include a transaction entered into more than 12 months before the commencement date, and
  - (c) a reference to a dividend that falls into (or does not fall into) an exempt class otherwise than by virtue of that section is, in relation to a dividend paid before the commencement date, to a dividend that would have so fallen (or not so fallen) had that section had effect in relation to the dividend.
- (3) In section 931J—
- (a) a reference to profits available for distribution that arose at any time does not include such profits that arose in a period of account ending more than 12 months before the commencement date, and
  - (b) a reference to a dividend that falls into (or does not fall into) an exempt class otherwise than by virtue of section 931E is, in relation to a dividend paid before the commencement date, to a dividend that would have so fallen (or not so fallen) had that section had effect in relation to the dividend.

## SCHEDULE 15

Section 35

### TAX TREATMENT OF FINANCING COSTS AND INCOME

**Modifications etc. (not altering text)**

**C5** Sch. 15 modified (21.7.2009 retrospective) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 para. 36\(2\)](#)

## PART 1

### INTRODUCTION

#### *Overview*

- 1 (1) Part 2 contains provision for determining whether this Schedule applies in relation to any particular period of account of the worldwide group.
- (2) Part 3 provides for the disallowance of certain financing expenses of relevant group companies arising in a period of account of the worldwide group to which this Schedule applies.

The total of the amounts disallowed is the amount by which the tested expense amount (defined in Part 8) exceeds the available amount (defined in Part 9).

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- (3) Part 4 provides for the exemption from the charge to corporation tax of certain financing income of UK group companies where financing expenses of relevant group companies have been disallowed under Part 3.
- (4) Part 5 provides for the exemption from the charge to corporation tax of certain intra-group financing income of UK group companies where the paying company is denied a deduction for tax purposes otherwise than under this Schedule.
- (5) Part 6 contains rules connected with tax avoidance.
- (6) Part 7 defines “financing expense amounts” and “financing income amounts” of a company for a period of account of the worldwide group, which are amounts that would, apart from this Schedule, be brought into account for the purposes of corporation tax.
- (7) Part 8 defines the “tested expense amount” and the “tested income amount” of the worldwide group for a period of account of the group, which are totals deriving from the financing expense amounts and financing income amounts of certain group companies.
- (8) Part 9 defines the “available amount” for a period of account of the worldwide group, which derives from certain financing costs disclosed in the group’s consolidated financial statements.
- (9) Part 10 contains further interpretative provisions.
- (10) Part 11 contains consequential provision and provision about commencement.

## PART 2

### APPLICATION OF THIS SCHEDULE

#### *Application of Schedule*

- 2 (1) This Schedule applies to any period of account of the worldwide group for which—
  - (a) the UK net debt of the group (see paragraphs 3 and 4), exceeds
  - (b) 75% of the worldwide gross debt of the group (see paragraph 5).
- (2) But a period of account that is within sub-paragraph (1) is not a period of account to which this Schedule applies if the worldwide group is a qualifying financial services group in that period (see paragraph 7).
- (3) The Treasury may by order amend sub-paragraph (1)(b) by substituting a higher or lower percentage for the percentage for the time being specified there.
- (4) No order may be made under sub-paragraph (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (5) An order under sub-paragraph (3) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

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*UK net debt of the worldwide group for period of account of worldwide group*

- 3 (1) The reference in paragraph 2 to the “UK net debt” of the worldwide group for a period of account of the group is to the sum of the net debt amounts of each company that was a relevant group company at any time during the period.
- (2) In this paragraph “net debt amount”, in relation to a company, means the average of—
- (a) the net debt of the company as at that company's start date, and
  - (b) the net debt of the company as at that company's end date.
- For the meaning of “net debt”, see paragraph 4.
- (3) Where the amount determined in accordance with sub-paragraph (2) is less than £3 million, the net debt amount of the company is nil.
- (4) Where a company is dormant (within the meaning given by section 1169 of the Companies Act 2006) at all times in the period beginning with that company's start date and ending with that company's end date, the net debt amount of the company is nil.
- (5) The Treasury may by order amend sub-paragraph (3) by substituting a higher or lower amount for the amount for the time being specified there.
- (6) No order may be made under sub-paragraph (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (7) An order under sub-paragraph (5) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.
- (8) In this Part—
- (a) “the start date” of a company means the first day of the period of account of the worldwide group or, if later, the first day in the period on which the company was a relevant group company, and
  - (b) “the end date” of a company means the last day of the period of account of the worldwide group or, if earlier, the last day in the period on which the company was a relevant group company.

*Net debt of a company*

- 4 (1) References in paragraph 3 to the “net debt” of a company as at any date are to—
- (a) the sum of the company's relevant liabilities as at that date, less
  - (b) the sum of the company's relevant assets as at that date.
- (2) The amount determined in accordance with sub-paragraph (1) may be a negative amount.
- (3) For the purposes of this paragraph a company's “relevant liabilities” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
- (a) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),
  - (b) liabilities in respect of finance leases, or
  - (c) amounts of such other description as may be specified in regulations made by the Commissioners.

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- (4) For the purposes of this paragraph a company's "relevant assets" as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
- (a) cash and cash equivalents,
  - (b) amounts loaned (whether by way of overdraft or other short term or long term loan),
  - (c) net investments, or net cash investments, in finance leases,
  - (d) securities of Her Majesty's government or of the government of any other country or territory, or
  - (e) amounts of such other description as may be specified in regulations made by the Commissioners.
- (5) Expressions used in sub-paragraphs (3)(a) and (b) and (4)(a) to (c) have the meaning for the time being given by generally accepted accounting practice.

*Worldwide gross debt of worldwide group for period of account of worldwide group*

- 5 (1) The reference in paragraph 2 to the "worldwide gross debt" of the worldwide group for a period of account of the group is to the average of—
- (a) the sum of the relevant liabilities of the group as at the day before the first day of the period, and
  - (b) the sum of the relevant liabilities of the group as at the last day of the period.
- (2) For the purposes of this paragraph the "relevant liabilities" of the worldwide group as at any date are the amounts that are disclosed in the balance sheet of the group as at that date in respect of—
- (a) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),
  - (b) liabilities in respect of finance leases, or
  - (c) amounts of such other description as may be specified in regulations made by the Commissioners.
- (3) Expressions used in sub-paragraph (2)(a) and (b) have the meaning for the time being given by the accounting standards in accordance with which the financial statements of the group are drawn up.
- (4) For provision about references in this Schedule to financial statements of the worldwide group, and amounts disclosed in financial statements, see paragraphs 87 to 90.

*References to amounts disclosed in balance sheet of relevant group company*

- 6 (1) This paragraph applies for the purpose of construing references in paragraph 4 to amounts disclosed in the balance sheet of a relevant group company as at any date ("the relevant date").
- (2) Where the company—
- (a) is not a foreign company, and
  - (b) does not draw up a balance sheet as at the relevant date,
- the references are to the amounts that would be disclosed in a balance sheet of the company as at that date, were one drawn up in accordance with generally accepted accounting practice.

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- (3) Where the company—
- (a) is a foreign company, and
  - (b) draws up a balance sheet (“a UK permanent establishment balance sheet”) as at the relevant date in respect of the company's permanent establishment in the United Kingdom that treats the establishment as a distinct and separate enterprise,
- the references are to amounts in that balance sheet.
- (4) Where the company—
- (a) is a foreign company, and
  - (b) does not draw up a UK permanent establishment balance sheet as at the relevant date,
- the references are to the amounts that would be disclosed in a UK permanent establishment balance sheet as at that date, were one drawn up in accordance with generally accepted accounting practice.
- (5) For the purposes of this paragraph a relevant group company is a “foreign company” if it is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

#### *Qualifying financial services groups*

- 7 (1) The worldwide group is a qualifying financial services group in a period of account if the trading income condition—
- (a) is met in relation to that period, or
  - (b) is not met in relation to that period, but only because of losses incurred by the group in respect of activities that are normally reported on a net basis in financial statements prepared in accordance with international accounting standards.
- (2) The trading income condition is met in relation to a period of account if—
- (a) all or substantially all of the UK trading income of the worldwide group for that period, or
  - (b) all or substantially all of the worldwide trading income of the worldwide group for that period,
- is derived from qualifying activities (see paragraph 8).
- (3) In this Part, in relation to a period of account of the worldwide group—
- “UK trading income” means the sum of the trading income for that period of each company that was a relevant group company at any time during that period (see paragraph 12);
  - “worldwide trading income” means the trading income for that period of the worldwide group (see paragraph 13).

#### *Qualifying activities*

- 8 In this Part “qualifying activities” means—
- (a) lending activities and activities that are ancillary to lending activities (see paragraph 9),
  - (b) insurance activities and insurance-related activities (see paragraph 10), and
  - (c) relevant dealing in financial instruments (see paragraph 11).

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*Lending activities and activities ancillary to lending activities*

- 9 (1) In this Part “lending activities” means any of the following activities—
- (a) acceptance of deposits or other repayable funds;
  - (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting);
  - (c) finance leasing (as lessor);
  - (d) issuing and administering means of payment;
  - (e) provision of guarantees or commitments to provide money;
  - (f) money transmission services;
  - (g) provision of alternative finance arrangements;
  - (h) other activities carried out in connection with activities falling within any of paragraphs (a) to (g).
- (2) Activities that are ancillary to lending activities are not qualifying activities for the purposes of this Part if the income derived from the ancillary activities forms a significant part of the total of—
- (a) that income, and
  - (b) the income derived from lending activities of the worldwide group in the period of account.
- (3) In sub-paragraph (2) “income” means the gross income or net income that would be taken into account for the purposes of paragraph 7 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (4) The Commissioners may by order—
- (a) amend sub-paragraph (1), and
  - (b) make other amendments of this paragraph in consequence of any amendment of sub-paragraph (1).
- (5) In sub-paragraph (1)(h), and in the references to ancillary activities in this paragraph and paragraph 8(a), “activities” includes buying, holding, managing and selling assets.
- (6) In this paragraph “alternative finance arrangements” has the same meaning as in Chapter 6 of Part 6 of CTA 2009.

*Insurance activities and insurance related activities*

- 10 (1) In this Part “insurance activities” means—
- (a) the effecting or carrying out of contracts of insurance by a regulated insurer, and
  - (b) investment business that arises directly from activities falling within paragraph (a).
- (2) In this Part “insurance-related activities” means—
- (a) activities that are ancillary to insurance activities, and
  - (b) activities that—
    - (i) are of the same kind as activities carried out for the purposes of insurance activities,
    - (ii) are not actually carried out for those purposes, and

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(iii) would not be carried out but for insurance activities being carried out.

- (3) Sub-paragraph (2) is subject to sub-paragraph (4).
- (4) Activities that fall within sub-paragraph (2)(a) or (b) (“the relevant activities”) are not insurance-related activities if the income derived from the relevant activities forms a significant part of the total of—
- (a) that income, and
  - (b) the income derived from insurance activities of the worldwide group in the period of account.
- (5) In sub-paragraph (4) “income” means the gross income or net income that would be taken into account for the purposes of paragraph 7 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (6) In this paragraph—
- “activities” includes buying, holding, managing and selling assets;
  - “contract of insurance” has the same meaning as in Chapter 1 of Part 12 of ICTA;
  - “regulated insurer” means a member of the worldwide group that—
- (a) is authorised under the law of any territory to carry on insurance business, or
  - (b) is a member of a body or organisation that is so authorised.

*Relevant dealing in financial instruments*

- 11 (1) In this Part “financial instrument” means anything that is a financial instrument for any purpose of the FSA Handbook.
- (2) For the purposes of this Part, a dealing in a financial instrument is a “relevant dealing” if—
- (a) it is a dealing other than in the capacity of a broker, and
  - (b) profits or losses on the dealing form part of the trading profits or losses of a business.
- (3) In this paragraph “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.

*UK trading income of the worldwide group*

- 12 (1) This paragraph applies in relation to paragraph 7 for calculating the UK trading income of the worldwide group for a period of account.
- (2) The trading income for that period of a relevant group company is the aggregate of—
- (a) the gross income calculated in accordance with sub-paragraph (3), and
  - (b) the net income calculated in accordance with sub-paragraph (4).
- (3) The income referred to in sub-paragraph (2)(a) is the gross income—
- (a) arising from the activities of the relevant group company (other than net-basis activities), and
  - (b) accounted for as such under generally accepted accounting practice, without taking account of any deductions (whether for expenses or otherwise).



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- (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the relevant group company that—
  - (a) is accounted for as such under generally accepted accounting practice, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under generally accepted accounting practice.
- (5) Sub-paragraphs (3) and (4) are subject to sub-paragraph (6).
- (6) In a case where a proportion of an accounting period of a relevant group company does not fall within the period of account of the worldwide group, the gross income or net income for that accounting period of the company is to be reduced, for the purposes of this paragraph, by that proportion.
- (7) Gross income or net income is to be disregarded for the purposes of sub-paragraph (2) if the income arises in respect of an amount payable by another member of the worldwide group that is either a UK group company or a relevant group company.
- (8) In this paragraph “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with generally accepted accounting practice.

#### *Worldwide trading income of the worldwide group*

- 13 (1) This paragraph applies in relation to paragraph 7 for calculating the worldwide trading income of the worldwide group for a period of account.
  - (2) The trading income for that period of the worldwide group is the aggregate of—
    - (a) the gross income calculated in accordance with sub-paragraph (3), and
    - (b) the net income calculated in accordance with sub-paragraph (4).
  - (3) The income referred to in sub-paragraph (2)(a) is the gross income—
    - (a) arising from the activities of worldwide group (other than net-basis activities), and
    - (b) disclosed as such in the financial statements of the worldwide group, without taking account of any deductions (whether for expenses or otherwise).
  - (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the worldwide group that—
    - (a) is accounted for as such under international accounting standards, or
    - (b) would be accounted for as such if income arising from such activities were accounted for under international accounting standards.
  - (5) In this paragraph “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with international accounting standards.
  - (6) For provision about references in this Schedule to financial statements of the worldwide group, and amounts disclosed in financial statements, see paragraphs 87 to 90.

#### *Foreign currency accounting*

- 14 (1) Subject to the following provisions of this paragraph, references in this Part to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide

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group, as at any date are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent, translated by reference to the spot rate of exchange for that date.

- (2) Sub-paragraph (3) applies in relation to a period of account of the worldwide group if all the amounts disclosed in balance sheets (whether of relevant group companies, or of the worldwide group) that are relevant to a calculation under this Part in relation to that period are expressed in the same currency (“the relevant foreign currency”) and that currency is not sterling.
- (3) Where this sub-paragraph applies—
- (a) references in this Schedule to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide group, are to that amount expressed in the relevant foreign currency, and
  - (b) for the purposes of determining under paragraph 3 the net debt amount of a company, the reference in sub-paragraph (3) of that paragraph to £3 million is to be read as a reference to the relevant amount.
- (4) For this purpose “the relevant amount” means the average of—
- (a) £3 million expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's start date, and
  - (b) £3 million expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's end date.

### PART 3

#### DISALLOWANCE OF DEDUCTIONS

##### *Application of Part and meaning of “total disallowed amount”*

- 15 (1) This Part applies where, for a period of account of the worldwide group to which this Schedule applies (“the relevant period of account”)—
- (a) the tested expense amount (see Part 8), exceeds
  - (b) the available amount (see Part 9).
- (2) In this Part “the total disallowed amount” means the difference between the amounts referred to in paragraphs (a) and (b) of sub-paragraph (1).

##### *Meaning of “company to which this Part applies”*

- 16 References in this Part to a company to which this Part applies are to a company that is a relevant group company at any time during the relevant period of account.

##### *Appointment of authorised company for relevant period of account*

- 17 (1) The companies to which this Part applies may appoint one of their number to exercise functions conferred under this Part on the reporting body in relation to the relevant period of account.
- (2) An appointment under this paragraph is of no effect unless it is signed on behalf of each company to which this Part applies by the appropriate person.

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- (3) The Commissioners may by regulations make further provision about an appointment under this paragraph including, in particular, provision—
- (a) about the form and manner in which an appointment may be made,
  - (b) about how an appointment may be revoked and the form and manner of such revocation,
  - (c) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (d) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (e) imposing time limits in relation to making or revoking an appointment,
  - (f) providing that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (g) about cases where a company is not a relevant group company at all times during the relevant period of account.
- (4) In this paragraph “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Schedule.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.

*Meaning of “the reporting body”*

- 18 In this Part “the reporting body” means—
- (a) in a case in which an appointment under paragraph 17 has effect in relation to the relevant period of account, the company appointed under that paragraph, and
  - (b) in a case in which such an appointment does not have effect in relation to the relevant period of account, the companies to which this Part applies, acting jointly.

*Statement of allocated disallowances: submission*

- 19 (1) The reporting body must submit a statement (a “statement of allocated disallowances”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this paragraph must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this paragraph must comply with the requirements of paragraph 21.

*Statement of allocated disallowances: submission of revised statement*

- 20 (1) Where the reporting body has submitted a statement of allocated disallowances under paragraph 19 or this paragraph, it may submit a revised statement to HMRC.

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- (2) A statement submitted under this paragraph must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this paragraph must comply with the requirements of paragraph 21.
- (4) A statement submitted under this paragraph—
  - (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

*Statement of allocated disallowances: requirements*

- 21 (1) This paragraph applies in relation to a statement of allocated disallowances submitted under paragraph 19 or 20.
- (2) The statement must be signed—
    - (a) in a case in which an appointment under paragraph 17 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that paragraph, or
    - (b) in a case in which such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Part applies.
  - (3) The statement must show—
    - (a) the tested expense amount,
    - (b) the available amount, and
    - (c) the total disallowed amount.
  - (4) The statement must—
    - (a) list one or more companies to which this Part applies, and
    - (b) in relation to each listed company, specify one or more financing expense amounts for the relevant period of account that are to be disallowed, and give the relevant details in relation to each such amount.
  - (5) For this purpose “the relevant details”, in relation to a financing expense amount, are—
    - (a) which of conditions A, B or C in paragraph 54 is met in relation to the amount, and
    - (b) the relevant accounting period of the company in which the amount would, apart from this Schedule, be brought into account for the purposes of corporation tax.
  - (6) The sum of the amounts specified under sub-paragraph (4)(b) must equal the total disallowed amount.
  - (7) In this paragraph “the appropriate person”, in relation to a company, means—
    - (a) the proper officer of the company, or
    - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Schedule.

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- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.
- (9) For the meaning of “financing expense amount”, see Part 7.

*Statement of allocated disallowances: effect*

- 22 A financing expense amount of a company to which this Part applies that is specified in a statement of allocated disallowances under paragraph 21(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

*Company tax returns*

- 23 (1) This paragraph applies where—
- (a) a company to which this Part applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated disallowances under paragraph 20—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in sub-paragraph (1)(b)(i) or to correct the information mentioned in sub-paragraph (1)(b)(ii).

*Power to make regulations about statement of allocated disallowances*

- 24 The Commissioners may by regulations make further provision about a statement of allocated disallowances including, in particular, provision—
- (a) about the form of a statement and the manner in which it is to be submitted,
  - (b) requiring a person to give information to HMRC in connection with a statement,
  - (c) as to circumstances in which a statement that is not received by the time specified in paragraph 19(2) or 20(2) is to be treated as if it were so received, and
  - (d) as to circumstances in which a statement that does not comply with the requirements of paragraph 21 is to be treated as if it did so comply.

*Failure of reporting body to submit statement of allocated disallowances*

- 25 (1) This paragraph applies if no statement of allocated disallowances is submitted under paragraph 19 that complies with the requirements of paragraph 21.
- (2) Each company to which this Part applies that has a net financing deduction for the relevant period of account that is greater than nil must reduce the amounts that it brings into account in relevant accounting periods in respect of financing expense amounts.
- (3) The total of the reductions required to be made by a company by virtue of sub-paragraph (2) is—

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$$\frac{\text{NFD}}{\text{TEA}} \times \text{TDA}$$

where—

NFD is the net financing deduction of the company for the relevant period of account (see paragraph 70(2)),

TEA is the tested expense amount for the relevant period of account (see paragraph 70(1)), and

TDA is the total disallowed amount (see paragraph 15(2)).

- (4) The particular financing expense amounts that must be reduced, and the amounts by which they must be reduced, must be determined in accordance with regulations made by the Commissioners.
- (5) Regulations under this paragraph may, in particular, include provision—
  - (a) conferring a discretion on a company required to make reductions under this paragraph as to the particular financing expense amounts that are to be reduced,
  - (b) requiring a company required to make reductions under this paragraph to notify another relevant group company of the particular reductions made, and
  - (c) as to the times by which such notices must be sent and as to information that must accompany such notices.

*Powers to make regulations in relation to reductions required under paragraph 25*

- 26 (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under paragraph 25 to reduce the amounts that it brings into account in respect of financing expense amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under sub-paragraph (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.
- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under sub-paragraph (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under sub-paragraph (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under paragraph 25 of a financing expense amount.
- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under paragraph 25.
- (6) In this paragraph “specified” means specified in regulations under this paragraph.

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## PART 4

### EXEMPTION OF FINANCING INCOME

#### *Application of Part and meaning of “total disallowed amount”*

- 27 (1) This Part applies where, for a period of account of the worldwide group to which this Schedule applies (“the relevant period of account”)—
- (a) the tested expense amount (see Part 8), exceeds
  - (b) the available amount (see Part 9).
- (2) In this Part the “total disallowed amount” means the difference between the amounts referred to in paragraphs (a) and (b) of sub-paragraph (1).

#### *Meaning of “company to which this Part applies”*

- 28 References in this Part to a company to which this Part applies are to a company that is a UK group company at any time during the relevant period of account.

#### *Appointment of authorised company for relevant period of account*

- 29 (1) The companies to which this Part applies may appoint one of their number to exercise functions conferred under this Part on the reporting body in relation to the relevant period of account.
- (2) An appointment under this paragraph is of no effect unless it is signed on behalf of each company to which this Part applies by the appropriate person.
- (3) The Commissioners may by regulations make further provision about an appointment under this paragraph including, in particular, provision—
- (a) about the form and manner in which an appointment may be made or revoked,
  - (b) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (c) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (d) imposing time limits in relation to making or revoking an appointment,
  - (e) that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (f) about cases where a company does not meet condition A in paragraph 86, or is not a member of the worldwide group, at all times during the relevant period of account.
- (4) In this paragraph “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Schedule.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.

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*Meaning of “the reporting body”*

- 30 In this Part “the reporting body” means—
- (a) in a case in which an appointment under paragraph 29 has effect in relation to the relevant period of account, the company appointed under that paragraph, and
  - (b) in a case in which such an appointment does not have effect in relation to the relevant period of account, the companies to which this Part applies, acting jointly.

*Statement of allocated exemptions: submission*

- 31 (1) The reporting body must submit a statement (a “statement of allocated exemptions”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this paragraph must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this paragraph must comply with the requirements of paragraph 33.

*Statement of allocated exemptions: submission of revised statement*

- 32 (1) Where the reporting body has submitted a statement of allocated exemptions under paragraph 31 or this paragraph, it may submit a revised statement to HMRC.
- (2) A statement submitted under this paragraph must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this paragraph must comply with the requirements of paragraph 33.
- (4) A statement submitted under this paragraph—
- (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

*Statement of allocated exemptions: requirements*

- 33 (1) This paragraph applies in relation to a statement of allocated exemptions submitted under paragraph 31 or 32.
- (2) The statement must be signed—
- (a) in a case in which an appointment under paragraph 29 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that paragraph, or
  - (b) in a case in which such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Part applies.
- (3) The statement must show—
- (a) the tested expense amount,
  - (b) the available amount, and
  - (c) the total disallowed amount.



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- (4) The statement must—
- (a) list one or more companies to which this Part applies, and
  - (b) in relation to each listed company, specify one or more financing income amounts for the relevant period of account that are to be exempted, and give the relevant details in relation to each such amount.
- (5) For this purpose “the relevant details”, in relation to a financing income amount, are—
- (a) which of conditions A, B or C in paragraph 55 is met in relation to the amount, and
  - (b) the relevant accounting period of the company in which the amount would, apart from this Schedule, be brought into account for the purposes of corporation tax.
- (6) The sum of the amounts specified under sub-paragraph (4)(b) must not exceed the lower of—
- (a) total disallowed amount, and
  - (b) the tested income amount (see Part 8).
- (7) In this paragraph “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Schedule.
- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.
- (9) For the meaning of “financing income amount”, see Part 7.

*Statement of allocated exemptions: effect*

- 34 A financing income amount of a company to which this Part applies that is specified in a statement of allocated exemptions under paragraph 33(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

*Company tax returns*

- 35 (1) This paragraph applies where—
- (a) a company to which this Part applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated exemptions under paragraph 32—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in sub-paragraph (1)(b)(i) or to correct the information mentioned in sub-paragraph (1)(b)(ii).

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*Power to make regulations about statement of allocated exemptions*

- 36 The Commissioners may by regulations make further provision about a statement of allocated exemptions including, in particular, provision—
- (a) about the form of a statement and the manner in which it is to be submitted,
  - (b) requiring a person to give information to HMRC in connection with a statement,
  - (c) as to circumstances in which a statement that is not received by the time specified in paragraph 31(2) or 32(2) is to be treated as if it were so received, and
  - (d) as to circumstances in which a statement that does not comply with the requirements of paragraph 33 is to be treated as if it did so comply.

*Failure of reporting body to submit statement of allocated exemptions*

- 37 (1) This paragraph applies if no statement of allocated exemptions is submitted under paragraph 31 that complies with the requirements of paragraph 33.
- (2) Subject to the following provisions of this paragraph, each financing income amount for the relevant period of account of each company to which this Part applies is to be reduced to nil.
- (3) In this paragraph “unrestricted reduction” means a reduction of a financing income amount for the relevant period of account of a company to which this Part applies, determined in accordance with sub-paragraph (2).
- (4) Sub-paragraph (5) applies if—
- (a) the total of the unrestricted reductions, exceeds
  - (b) the lower of—
    - (i) the total disallowed amount, and
    - (ii) the tested income amount.
- (5) Each unrestricted reduction is to be reduced by—

$$\frac{UR}{TUR} \times X$$

where—

UR is the unrestricted reduction in question,  
TUR is the total of the unrestricted reductions, and  
X is the excess mentioned in sub-paragraph (4).

*Power to make regulations in relation to reductions required under paragraph 37*

- 38 (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under paragraph 37 to reduce the amounts that it brings into account in respect of financing income amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under sub-paragraph (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.

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- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under sub-paragraph (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under sub-paragraph (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under paragraph 37 of a financing income amount.
- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under paragraph 37.
- (6) In this paragraph “specified” means specified in regulations under this paragraph.

*Balancing payments between group companies: no charge to, or relief from, tax*

- 39 (1) This paragraph applies where—
- (a) one or more financing income amounts of a company (“company A”) for the relevant period of account are—
    - (i) by virtue of paragraph 34, not brought into account, or
    - (ii) by virtue of paragraph 37, reduced,
  - (b) one or more financing expense amounts of another company (“company B”) for the relevant period of account are—
    - (i) by virtue of paragraph 22, not brought into account, or
    - (ii) by virtue of paragraph 25, reduced,
  - (c) company A makes one or more payments (“the balancing payments”) to company B, and
  - (d) the sole or main reason for making the balancing payments is that the conditions in paragraphs (a) and (b) are met.
- (2) To the extent that the sum of the balancing payments does not exceed the amount specified in sub-paragraph (3), those payments—
- (a) are not to be taken into account in computing profits or losses of either company A or company B for the purposes of corporation tax, and
  - (b) are not to be regarded as distributions for any of the purposes of the Corporation Tax Acts.
- (3) The amount referred to in sub-paragraph (2) is the lower of—
- (a) the sum of the financing income amounts mentioned in sub-paragraph (1) (a), and
  - (b) the sum of the financing expense amounts mentioned in sub-paragraph (1) (b).

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## PART 5

### INTRA-GROUP FINANCING INCOME WHERE PAYER DENIED DEDUCTION

#### *Exemption from tax for certain financing income received from certain EEA companies*

- 40 (1) A financing income amount of a company that is a member of the worldwide group (“the recipient”) is not to be brought into account for the purposes of corporation tax if—
- (a) it arises as a result of a payment by another company that is a member of the worldwide group (“the payer”),
  - (b) the payment is received during a period of account of the worldwide group to which this Schedule applies, and
  - (c) conditions A, B and C are met.
- (2) Condition A is that, at the time the payment is received, the payer is a relevant associate of the recipient (see paragraph 41).
- (3) Condition B is that, at the time the payment is received—
- (a) the payer is tax-resident in an EEA territory (see paragraph 42), and
  - (b) the payer is liable to a tax of that territory that is chargeable by reference to profits, income or gains arising to the payer.
- (4) Condition C is that—
- (a) qualifying EEA tax relief for the payment is not available to the payer in the period in which the payment is made (“the current period”) or any previous period (see paragraph 43), and
  - (b) qualifying EEA tax relief for the payment is not available to the payer in any period after the current period (see paragraph 44).
- (5) For the meaning of “financing income amount”, see paragraph 46.

#### *Meaning of “relevant associate”*

- 41 For the purposes of this Part the payer is a “relevant associate” of the recipient if—
- (a) the payer is a parent of the recipient,
  - (b) the payer is a 75% subsidiary of the recipient, or
  - (c) the payer is a 75% subsidiary of a parent of the recipient.

#### *Meaning of “tax-resident” and “EEA territory”*

- 42 (1) For the purposes of this Part the payer is “tax-resident” in a territory if it is liable, under the law of that territory, to tax by reason of domicile, residence or place of management.
- (2) In this Part “EEA territory” means a territory outside the United Kingdom that is within the European Economic Area.

#### *Qualifying EEA tax relief for payment in the current period or a previous period*

- 43 (1) For the purposes of this Part qualifying EEA tax relief for a payment is not available to the payer in the current period or a previous period if conditions A and B are met in relation to the payment.

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- (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—
  - (a) arise to the payer in the current period or any previous period, and
  - (b) are chargeable to any tax of the United Kingdom or an EEA territory for the current period or any previous period.
- (3) Condition B is that no relief determined by reference to the payment can be given in the current period or any previous period for the purposes of any tax of the United Kingdom or an EEA territory by—
  - (a) the payment of a credit,
  - (b) the elimination or reduction of a tax liability, or
  - (c) any other means of any kind.
- (4) Conditions A and B are not met in relation to the payment unless every step is taken (whether by the payer or any other person) to secure that deductions are taken into account as mentioned in sub-paragraph (2) and reliefs are given as mentioned in sub-paragraph (3).
- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief by virtue of—
  - (a) this Schedule, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
  - (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means —
    - (i) rules that, on the passing of this Act, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
    - (ii) any rules in the same or equivalent terms.

*Qualifying EEA tax relief for payment in future period*

- 44
- (1) For the purposes of this Part qualifying EEA tax relief for a payment is not available to the payer in a period after the current period if conditions A and B are met in relation to the payment.
  - (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—
    - (a) might arise to the payer in any period after the current period, and
    - (b) would, if they did so arise, be chargeable to any tax of the United Kingdom or an EEA territory for any period after the current period.
  - (3) Condition B is that no relief determined by reference to the payment can be given in any period after the current period for the purposes of any tax of the United Kingdom or an EEA territory by—
    - (a) the payment of a credit,
    - (b) the elimination or reduction of a tax liability, or

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- (c) any other means of any kind.
- (4) The question whether a deduction can be taken into account as mentioned in sub-paragraph (2) or a relief can be given as mentioned in sub-paragraph (3), is to be determined by reference to the position immediately after the end of the current period.
- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief by virtue of—
  - (a) this Schedule, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
  - (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means—
    - (i) rules that, on the passing of this Act, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
    - (ii) any rules in the same or equivalent terms.

*References to tax of a territory*

- 45
- (1) References in this Part to a tax of the United Kingdom are to income tax or corporation tax.
  - (2) References in this Part to a tax of a territory outside the United Kingdom are to a tax chargeable under the law of that territory that—
    - (a) is charged on income and corresponds to United Kingdom income tax, or
    - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax.
  - (3) For the purposes of this paragraph a tax chargeable under the law of a territory outside the United Kingdom does not fail to correspond to income or corporation tax just because—
    - (a) it is chargeable under the law of a province, state or other part of a country, or
    - (b) it is levied by or on behalf of a municipality or other local body.

*Financing income amounts of a company*

- 46
- (1) References in this Part to a “financing income amount” of a company are (subject to sub-paragraph (6)) to any amount that meets condition A, B or C.
  - (2) Condition A is that the amount is a credit that—
    - (a) would, apart from this Part, be brought into account by the company for the purposes of corporation tax,
    - (b) would be so brought into account in respect of a loan relationship—
      - (i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or

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- (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded credit.
- (3) A credit is “excluded” if it is in respect of—
  - (a) the reversal of an impairment loss,
  - (b) an exchange gain, or
  - (c) a profit from a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Part, be brought into account by the company for the purposes of corporation tax in respect of the financing income implicit in amounts received under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Part, be brought into account by the company for the purposes of corporation tax in respect of the financing income receivable on debt factoring, or any similar transaction.
- (6) The provisions of Part 7 apply in relation to an amount that is a financing income amount of a company by virtue of meeting condition A, B or C in this paragraph as they apply in relation to an amount that is a financing income amount of a relevant group company by virtue of meeting condition A, B or C in paragraph 55.

## PART 6

### ANTI-AVOIDANCE

#### *Schemes involving manipulation of rules in Part 2*

- 47
- (1) A period of account of the worldwide group that, apart from this paragraph, is not within paragraph 2(1) is treated as within that provision if conditions A to C are met.
  - (2) Condition A is that—
    - (a) at any time before the end of the period, a scheme is entered into, and
    - (b) if the scheme had not been entered into, the period would have been within paragraph 2(1).
  - (3) Condition B is that the main purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the period is not within paragraph 2(1).
  - (4) Condition C is that the scheme is not an excluded scheme.

#### *Schemes involving manipulation of rules in Parts 3 and 4*

- 48
- (1) Where conditions A to C are met in relation to a period of account of the worldwide group (“the relevant period of account”), the tested expense amount, the tested income amount and the available amount for the period are to be calculated in accordance with paragraph 50.
  - (2) Condition A is that—
    - (a) at any time before the end of the relevant period of account, a scheme is entered into, and
    - (b) the main purpose, or one of the main purposes, of any party to the scheme on entering into it is to secure that the amount of the relevant net deduction

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(within the meaning given by paragraph 49) is lower than it would be if that amount were calculated in accordance with paragraph 50.

- (3) Condition B is that a result of the scheme is that—
- (a) the sum of the profits of UK group companies that arise in relevant accounting periods and that are chargeable to corporation tax is less than it would be if that sum were determined in accordance with paragraph 50, or
  - (b) the sum of the losses of UK group companies that arise in relevant accounting periods (other than any taken into account in calculating profits within paragraph (a)) and that are capable of being a carried-back amount or a carried-forward amount is higher than it would be if that sum were determined in accordance with paragraph 50.
- (4) Condition C is that the scheme is not an excluded scheme.
- (5) In a case where—
- (a) a profit or loss arises in an accounting period of a UK group company, and
  - (b) a proportion of that period does not fall within the relevant period of account, the profit or loss is to be reduced, for the purposes of condition B, by the same proportion.

*Meaning of “relevant net deduction”*

- 49 (1) In paragraph 48(2) the “relevant net deduction” means—
- (a) the amount by which the total disallowed amount exceeds the tested income amount, or
  - (b) if the total disallowed amount does not exceed the tested income amount, nil.
- (2) In this paragraph the “total disallowed amount” means—
- (a) the amount by which the tested expense amount exceeds the available amount, or
  - (b) if the tested expense amount does not exceed the available amount, nil.

*Calculation of amounts*

- 50 (1) References in paragraph 48 to the calculation of any amount or sum in accordance with this paragraph are to the calculation of that amount or sum on the following assumptions.
- (2) The assumptions are that—
- (a) the scheme in question was not entered into, and
  - (b) instead, anything that it is more likely than not would have been done or not done, had this Schedule not had effect in relation to the relevant period of account, was done or not done.

*Meaning of “carried-back amount” and “carried-forward amount”*

- 51 (1) In paragraph 48 “carried-back amount” means—
- (a) an amount carried back under section 393A(1)(b) of ICTA (trading losses),
  - (b) an amount carried back by virtue of a claim under section 459(1)(b) of CTA 2009 (non-trading deficits from loan relationships), or



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- (c) an amount carried back under section 389(2) of CTA 2009 (deficits of insurance companies).
- (2) In paragraph 48 “carried-forward amount” means—
- (a) an amount carried forward under section 76(12) or (13) of ICTA (certain expenses of insurance companies),
  - (b) an amount carried forward under section 392A(2) or (3) of ICTA (UK property business losses),
  - (c) an amount carried forward under section 392B(1)(b) of ICTA (overseas property business losses),
  - (d) an amount carried forward under section 393(1) of ICTA (trading losses),
  - (e) an amount carried forward under section 396(1) of ICTA (losses from miscellaneous transactions),
  - (f) an amount carried forward under section 436A(4) of ICTA (insurance companies: losses from gross roll-up business),
  - (g) an amount carried forward under section 8(1)(b) of TCGA 1992 (allowable losses),
  - (h) an amount carried forward under section 391(2) of CTA 2009 (deficits of insurance companies),
  - (i) an amount carried forward under section 457(3) of CTA 2009 (non-trading deficits from loan relationships),
  - (j) an amount carried forward under section 753(3) of CTA 2009 (non-trading loss on intangible fixed assets),
  - (k) an amount carried forward under section 925(3) of CTA 2009 (patent income: relief for expenses), or
  - (l) an amount carried forward under section 1223 of CTA 2009 (expenses of management and other amounts).

*Schemes involving manipulation of rules in Part 5*

- 52 (1) This paragraph applies to a financing income amount of a company received during a period of account of the worldwide group if—
- (a) apart from this paragraph, the financing income amount would, by virtue of paragraph 40, not be brought into account for the purposes of corporation tax, and
  - (b) conditions A to C are met.
- (2) Condition A is that, at any time before the financing income amount is received, a scheme is entered into that secures that any of the conditions in sub-paragraphs (2) to (4) of paragraph 40 (“the relevant paragraph 40 condition”) is met in relation to the amount.
- (3) Condition B is that the purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the relevant paragraph 40 condition is met.
- (4) Condition C is that the scheme is not an excluded scheme.
- (5) Where this paragraph applies to a financing income amount, the relevant paragraph 40 condition is treated as not met in relation to the amount.

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- (6) Paragraph 46 (meaning of references to a “financing income amount” of a company) applies for the purposes of this paragraph.

*Meaning of “scheme” and “excluded scheme”*

- 53 (1) For the purposes of this Part “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.
- (2) For the purposes of this Part a scheme is “excluded” if it is of a description specified in regulations made by the Commissioners.
- (3) Regulations under sub-paragraph (2) may make different provision for different purposes.

**PART 7**

“FINANCING EXPENSE AMOUNT” AND “FINANCING INCOME AMOUNT”

*The financing expense amounts of a company*

- 54 (1) References in this Schedule to a “financing expense amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.
- (2) Condition A is that the amount is a debit that—
- (a) would, apart from this Schedule, be brought into account in a relevant accounting period of the company,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded debit.
- (3) A debit is “excluded” if it is in respect of—
- (a) an impairment loss,
  - (b) an exchange loss, or
  - (c) a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Schedule, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost implicit in payments made under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Schedule, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost payable on debt factoring, or any similar transaction.
- (6) In a case where—
- (a) a debit or other amount would, apart from this Schedule, be brought into account in an accounting period, and

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(b) a proportion of that period does not fall within the period of account of the worldwide group,

the debit or other amount is to be reduced, for the purposes of this paragraph, by the same proportion.

(7) This paragraph is subject to paragraphs 57 to 68.

*The financing income amounts of a company*

55 (1) References in this Schedule (except in Part 5 and paragraph 52) to a “financing income amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.

(2) Condition A is that the amount is a credit that—

(a) would, apart from this Schedule, be brought into account in a relevant accounting period of the company,

(b) would be so brought into account in respect of a loan relationship—

(i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or

(ii) under Part 5 of that Act (other loan relationships), and

(c) is not an excluded credit.

(3) A credit is “excluded” if it is in respect of—

(a) the reversal of an impairment loss,

(b) an exchange gain, or

(c) a profit from a related transaction.

(4) Condition B is that the amount is an amount that would, apart from this Schedule, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income implicit in amounts received under finance leases.

(5) Condition C is that the amount is an amount that would, apart from this Schedule, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income receivable on debt factoring, or any similar transaction.

(6) In a case where—

(a) a credit or other amount would, apart from this Schedule, be brought into account in an accounting period, and

(b) a proportion of that period does not fall within the period of account of the worldwide group,

the credit or other amount is to be reduced, for the purposes of this paragraph, by the same proportion.

(7) This paragraph is subject to paragraphs 57 to 68.

*Interpretation of paragraphs 54 and 55*

56 In paragraphs 54 and 55 the following expressions have the same meaning as they have in Part 5 of the Corporation Tax Act 2009 (loan relationships)—

“exchange gain” and “exchange loss”;

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“impairment”;  
 “impairment loss”;  
 “related transaction”.

*Group treasury companies*

- 57 (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a group treasury company by virtue of meeting condition A, B or C in paragraph 54, or
  - (b) a financing income amount of a group treasury company by virtue of meeting condition A, B or C in paragraph 55.
- (2) The relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company, but only if that company makes an election for the purposes of this paragraph in respect of the relevant period.
- (3) An election under this paragraph must be made within 3 years after the end of the relevant period.
- (4) If two or more members of the worldwide group are group treasury companies in the relevant period, an election under this paragraph made by any of them is not valid unless each of them makes such an election in respect of the relevant period before the end of the 3 year period mentioned in sub-paragraph (3).
- (5) A company is a group treasury company in the relevant period if the following conditions are met.
- (6) The first condition is that the company is a member of the worldwide group.
- (7) The second condition is that the company undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities).
- (8) The third condition is that—
- (a) if the company is the only company to meet the first and second conditions in the relevant period, or the only other companies to meet those conditions are not UK group companies, at least 90% of the relevant income of the company for the relevant period is group treasury revenue, or
  - (b) if the company and one or more other companies each of which is a UK group company meet the first and second conditions in the relevant period, at least 90% of the aggregate relevant income of those companies for the relevant period is group treasury revenue.
- (9) For the purposes of this paragraph a company undertakes treasury activities for the worldwide group in the relevant period if, in that period, it does one or more of the following things in relation to, or on behalf of, the worldwide group or any of its members—
- (a) managing surplus deposits of money or overdrafts,
  - (b) making or receiving deposits of money,
  - (c) lending money,

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- (d) subscribing for or holding shares in another company which is a UK group company and a group treasury company,
  - (e) investing in debt securities, and
  - (f) hedging assets, liabilities, income or expenses.
- (10) For the purposes of this paragraph “group treasury revenue”, in relation to a company, means revenue—
- (a) arising from the treasury activities that the company undertakes for the worldwide group, and
  - (b) accounted for as such under generally accepted accounting practice; before any deduction (whether for expenses or otherwise).
- (11) But revenue consisting of a dividend or other distribution is not group treasury revenue unless it is a dividend or distribution from a company that is, in the relevant period—
- (a) a UK group company, and
  - (b) a group treasury company.
- (12) In this paragraph—
- “debt security” has the same meaning as in the FSA Handbook;
  - “relevant income”, in relation to a company, means income—
- (a) arising from the activities of the company, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise);
- “relevant period” means the period of account of the worldwide group to which the relevant amount relates.

#### *Real estate investment trusts*

- 58 (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company by virtue of meeting condition A in paragraph 54, or
  - (b) a financing income amount of a company by virtue of meeting condition A in paragraph 55.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if the finance arrangement is one to which section 211 of CTA 2009 does not apply by virtue of section 120(3)(a) of FA 2006.

#### *Companies engaged in oil extraction activities*

- 59 (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company by virtue of meeting condition A or condition B in paragraph 54, or
  - (b) a financing income amount of a company by virtue of meeting condition A or condition B in paragraph 55.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if the following conditions are met.

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- (3) The first condition is that the company is treated, in the accounting period in which the amount is brought into account, as carrying on a ring fence trade (see section 502 of ICTA).
- (4) The second condition is that the amount falls to be brought into account in calculating the profits of that trade for that accounting period.

*Intra-group short-term finance: financing expense*

- 60
- (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) by virtue of meeting condition A in paragraph 54.
  - (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
  - (3) Such an election may not be made unless the following conditions are met.
  - (4) The first condition is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
  - (5) The second condition is that the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group.
  - (6) An election under this paragraph may only be made—
    - (a) jointly by company A and company B, and
    - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.
  - (7) An election under this paragraph is irrevocable.
  - (8) In this paragraph “short-term loan relationship” has the meaning given in paragraph 62.

*Intra-group short-term finance: financing income*

- 61
- (1) This paragraph applies where—
    - (a) under paragraph 60, the relevant amount is treated as not being a financing expense amount of company A, and
    - (b) apart from this paragraph, the relevant amount is a financing income amount of company B by virtue of meeting condition A in paragraph 55.
  - (2) The relevant amount is treated as not being a financing income amount of company B.
  - (3) In this paragraph “company A” and “company B” have the same meanings as in paragraph 60.

*Short-term loan relationships*

- 62
- (1) For the purposes of paragraph 60 the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group (“the relevant period”) if—
    - (a) regulations made by the Commissioners provide for it to be so, or

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- (b) one or other of the following conditions is met.
- (2) The first condition is that the finance arrangement does not terminate during the relevant period and—
- (a) to the extent that the finance arrangement provides for the creation of money debt, its terms require all money debt created under it to be settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the finance arrangement is otherwise a loan relationship, its terms provide for it to terminate within 12 months of its coming into force.
- (3) The second condition is that the finance arrangement terminates during, or after the end of, the relevant period and—
- (a) to the extent that the relationship provided for the creation of money debt, all money debt created under it was settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the relationship was otherwise a loan relationship, it terminated within 12 months of its coming into force.
- (4) The Treasury may by regulations make provision about other circumstances in which the finance arrangement is to be taken not to be a short-term loan relationship as respects—
- (a) the relevant period, or
  - (b) any part or parts of the relevant period.
- (5) Regulations under sub-paragraph (4) may include provision for the finance arrangement to be taken never to have been a short-term loan relationship as respects the relevant period or the part or parts of it.
- (6) No regulations may be made under sub-paragraph (4) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.
- (7) The Commissioners may by regulations make provision (including provision conferring a discretion on the Commissioners) about circumstances in which regulations under sub-paragraph (4) are not to apply in relation to the finance arrangements.

*Stranded deficits in non-trading loan relationships: financing expense*

- 63 (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) by virtue of meeting condition A in paragraph 54.
- (2) The relevant amount is to be treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless the following conditions are met.
- (4) The first condition is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
- (5) The second condition is that company B—
- (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

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- (6) The third condition is that, under section 457 of CTA 2009, company B carries forward an amount of non-trading deficit and sets it off against non-trading profits of an accounting period that falls wholly or partly within the period of account of the worldwide group.
- (7) The fourth condition is that the amount of non-trading deficit carried forward and set off is equal to, or greater than, the relevant amount.
- (8) An election under this paragraph may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

*Stranded deficits in non-trading loan relationships: financing income*

- 64 (1) This paragraph applies where—
- (a) under paragraph 63, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this paragraph, the relevant amount is a financing income amount of company B by virtue of meeting condition A in paragraph 55.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this paragraph “company A” and “company B” have the same meanings as in paragraph 63.

*Stranded management expenses in non-trading loan relationships: financing expense*

- 65 (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) by virtue of meeting condition A in paragraph 54.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless the following conditions are met.
- (4) The first condition is that company A and the other party to the finance arrangement (“company B”) are both members of the worldwide group.
- (5) The second condition is that company B is a company with investment business (within the meaning of Part 16 of CTA 2009) and—
- (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (6) The third condition is that company B is allowed a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) in respect of an accounting period that falls wholly or partly within the period of account of the worldwide group (“the relevant period”).
- (7) The fourth condition is that the amount of the deduction allowed is equal to, or greater than, the relevant amount.



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- (8) The fifth condition is that the calculation of company B's total profits for the relevant period for the purposes of corporation tax results in a loss if company B's credit is not included in that calculation.
- (9) An election under this paragraph may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.
- (10) In this paragraph “company B's credit” means the credit to company B that arises from the debit to company A by virtue of which condition A in paragraph 54 is met.

*Stranded management expenses in non-trading loan relationships: financing income*

- 66
- (1) This paragraph applies where—
    - (a) under paragraph 65, the relevant amount is treated as not being a financing expense amount of company A, and
    - (b) apart from this paragraph, the relevant amount is a financing income amount of company B by virtue of meeting condition A in paragraph 55.
  - (2) The relevant amount is treated as not being a financing income amount of company B.
  - (3) In this paragraph “company A” and “company B” have the same meanings as in paragraph 65.

*Charities*

- 67
- (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is a financing expense amount of a company by virtue of meeting condition A, B or C in paragraph 54.
  - (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is a charity.
  - (3) In this paragraph—

“charity” means any body of persons or trust established for charitable purposes only;

“creditor” means—

    - (a) in a case where the relevant amount is a debit that meets condition A in paragraph 54, the loan creditor who receives the payment in relation to which the relevant amount arises;
    - (b) in a case where the relevant amount meets condition B or C in paragraph 54, the recipient of the payment in relation to which the relevant amount arises.

*Educational and public bodies*

- 68
- (1) This paragraph applies where, apart from this paragraph, an amount (“the relevant amount”) is a financing expense amount of a company by virtue of meeting condition A, B or C in paragraph 54.

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- (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is—
- (a) a designated educational establishment,
  - (b) a health service body,
  - (c) a local authority, or
  - (d) a person that is prescribed, or is of a description of persons prescribed, in an order made by the Commissioners for the purposes of this paragraph.
- (3) The Commissioners may not prescribe a person, or a description of persons, for the purposes of this paragraph unless they are satisfied that the person, or each of the persons within the description, has functions some or all of which are of a public nature.
- (4) In this paragraph—
- “creditor” means—
- (a) in a case where the relevant amount is a debit that meets condition A in paragraph 54, the loan creditor who receives the payment in relation to which the relevant amount arises;
  - (b) in a case where the relevant amount meets condition B or C in paragraph 54, the recipient of the payment in relation to which the relevant amount arises;
- “designated educational establishment” has the same meaning as in section 105 of CTA 2009;
- “health service body” has the same meaning as in section 519A of ICTA.

#### *Interpretation of paragraphs 57 to 68*

- 69 In paragraphs 57 to 68 “finance arrangement” means—
- (a) in the case of an amount that is a debit or credit that meets the condition in paragraph 54(2) or 55(2), the loan relationship to which the debit or credit relates;
  - (b) in the case of an amount that meets the condition in paragraph 54(4) or 55(4), the finance lease to which the amount relates;
  - (c) in the case of an amount that meets the condition in paragraph 54(5) or 55(5), the debt factoring or similar transaction to which the amount relates.

### **PART 8**

THE “TESTED EXPENSE AMOUNT” AND “TESTED INCOME AMOUNT”

#### *The tested expense amount*

- 70 (1) References in this Schedule to the “tested expense amount” for a period of account of the worldwide group are to the sum of the net financing deductions of each relevant group company.
- (2) References in this Schedule to the “net financing deduction” of a company for a period of account of the worldwide group are to—
- (a) the sum of the company's financing expense amounts for the period (see paragraph 54), less

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- (b) the sum of the company's financing income amounts for the period (see paragraph 55).
- (3) References in sub-paragraph (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a relevant group company.
- (4) Where the amount determined in accordance with sub-paragraph (2) is negative, the net financing deduction of the company for the period is nil.
- (5) Where the amount determined in accordance with sub-paragraph (2) is small (see paragraph 72), the net financing deduction of the company for the period is nil.

*The tested income amount*

- 71
- (1) References in this Schedule to the “tested income amount” for the period of account of the worldwide group are to the sum of the net financing incomes of each UK group company.
  - (2) The reference in sub-paragraph (1) to the “net financing income” of a company for a period of account of the worldwide group is to—
    - (a) the sum of the company's financing income amounts for the period (see paragraph 55), less
    - (b) the sum of the company's financing expense amounts for the period (see paragraph 54).
  - (3) References in sub-paragraph (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a UK group company.
  - (4) Where the amount determined in accordance with sub-paragraph (2) is negative, the net financing income of the company for the period is nil.
  - (5) Where the amount determined in accordance with sub-paragraph (2) is small (see paragraph 72), the net financing income of the company for the period is nil.

*Companies with net financing deduction or net financing income that is small*

- 72
- (1) An amount determined in accordance with paragraph 70(2) or 71(2) is “small” if it is less than £500,000.
  - (2) The Treasury may by order amend sub-paragraph (1) by substituting a higher or lower amount for the amount for the time being specified there.
  - (3) No order may be made under sub-paragraph (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
  - (4) An order under sub-paragraph (2) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

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## PART 9

### THE “AVAILABLE AMOUNT”

#### *The available amount*

- 73 (1) References in this Schedule to the “available amount” for a period of account of the worldwide group are to the sum of the amounts disclosed in the financial statements of the group for that period in respect of—
- (a) interest payable on amounts borrowed,
  - (b) amortisation of discounts relating to amounts borrowed,
  - (c) amortisation of premiums relating to amounts borrowed,
  - (d) amortisation of ancillary costs relating to amounts borrowed,
  - (e) the financing cost implicit in payments made under finance leases,
  - (f) the financing cost relating to debt factoring, or
  - (g) amounts of such other description as may be specified in regulations made by the Commissioners.
- (2) An amount that falls within any of paragraphs (a) to (g) of sub-paragraph (1) is to be disregarded for the purposes of that sub-paragraph to the extent that—
- (a) the amount represents a dividend payable in respect of preference shares, and
  - (b) those shares are recognised as a liability in the financial statements of the group for the period.

#### *Group members with income from oil extraction subject to particular tax treatment in UK*

- 74 (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a ring fence trade (see section 502 of ICTA).
  - (3) Condition B is that the external finance amount falls to be brought into account for the purposes of corporation tax in calculating the profits of that trade for that accounting period.
  - (4) In this paragraph “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account.

#### *Group members with income from shipping subject to particular tax treatment in UK*

- 75 (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group is, for a relevant accounting period, a tonnage tax company for the purposes of Schedule 22 to FA 2000.
  - (3) Condition B is that the external finance amount—
    - (a) is taken into account in computing relevant shipping profits of that company for that accounting period, or

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(b) comprises deductible finance costs outside the ring fence, to the extent that they are adjusted under paragraph 61 or 62 of Schedule 22 to FA 2000.

(4) In this paragraph—

“relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account;

“relevant shipping profits” has the same meaning as in Schedule 22 to FA 2000 (see Part 6 of that Schedule).

*Group members with income from property rental subject to particular tax treatment in UK*

76 (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if the following conditions are met.

(2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate business under section 113 of FA 2006 (ring-fencing of tax exempt business).

(3) Condition B is that the external finance amount falls to be brought into account in calculating the profits arising from that business in that accounting period.

(4) In this paragraph “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account.

*Meaning of accounting expressions used in this Part*

77 Subject to any provision to the contrary, expressions used in this Part have the meaning for the time being given by international accounting standards.

## PART 10

### OTHER INTERPRETATIVE PROVISIONS

*The worldwide group*

78 In this Schedule “the worldwide group” means any group of entities that—

- (a) is large, and
- (b) contains one or more relevant group companies.

*Meaning of “group”*

79 (1) Subject to sub-paragraphs (2) and (3), in this Schedule “group” has the meaning for the time being given by international accounting standards.

(2) Where a group would (apart from this sub-paragraph) contain more than one ultimate parent, each of those ultimate parents, together with its subsidiaries, is to be treated as a separate group.

(3) An entity that is a parent of the ultimate parent of a group is to be treated as not being a member of the group.

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- (4) Sub-paragraphs (2) and (3) do not apply for the purposes of paragraph 80.

*Meaning of “ultimate parent”*

- 80 (1) For the purposes of this Schedule “ultimate parent”, in relation to a group, means an entity that—
- (a) is a member of the group,
  - (b) is a corporate entity or a relevant non-corporate entity,
  - (c) is not a subsidiary (whether direct or indirect) of a corporate entity or a relevant non-corporate entity, and
  - (d) is not a collective investment scheme.
- (2) In this paragraph “collective investment scheme” has the meaning given by section 235 of FISMA 2000.

*Meaning of “corporate entity”*

- 81 (1) In this Schedule “corporate entity” means (subject to sub-paragraph (4))—
- (a) a body corporate incorporated under the laws of any part of the United Kingdom or any other country or territory, or
  - (b) any other entity that meets conditions A and B.
- (2) Condition A is that the person or persons who have an interest in the entity hold shares in the entity, or interests corresponding to shares.
- (3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
- (a) is taken by the entity or members of the entity, and
  - (b) is taken after the period in which the profits arise.
- (4) The following are not corporate entities for the purposes of this Schedule—
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.

*Meaning of “relevant non-corporate entity”*

- 82 (1) In this Schedule “relevant non-corporate entity” means an entity—
- (a) that is not a corporate entity, and
  - (b) in relation to which conditions A and B are met.
- (2) Condition A is that shares or other interests in the entity are listed on a recognised stock exchange.
- (3) Condition B is that the shares or other interests in the entity are sufficiently widely held.
- (4) For this purpose shares or other interests in an entity are “sufficiently widely held” if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.

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- (5) Section 417(1) of ICTA (meaning of participator) applies for the purposes of this paragraph.
- (6) In the application of that provision for those purposes, references to a company are to be treated as references to an entity.

*Treatment of entities stapled to corporate entities or relevant non-corporate entities*

- 83
- (1) Where a corporate entity is stapled to another entity, the two entities are treated for the purposes of this Schedule as if—
    - (a) they were one entity, and
    - (b) that one entity were a corporate entity.
  - (2) Where a relevant non-corporate entity is stapled to another entity, the two entities are treated as if—
    - (a) they were one entity, and
    - (b) that one entity were a relevant non-corporate entity.
  - (3) For the purposes of this paragraph an entity (“entity A”) is “stapled” to another (“entity B”) if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, to dispose of or to acquire shares or other interests in entity B.

*Treatment of business combinations*

- 84
- (1) This paragraph applies where two corporate entities are—
    - (a) not subsidiaries of the same entity, but
    - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.
  - (2) The two entities are treated for the purposes of this Schedule as if—
    - (a) they were one entity, and
    - (b) that one entity were a corporate entity.

*Meaning of “large” in relation to a group*

- 85
- (1) For the purposes of this Schedule a group is “large” at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
  - (2) In its application by virtue of sub-paragraph (1), the Annex has effect subject to the following qualifications.
  - (3) Where a member of the group is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b).
  - (4) Article 3 has effect with the omission of paragraph (5) (declaration in good faith where control cannot be determined etc).

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- (5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.
- (6) Article 4 has effect with the omission of—
- (a) the second sentence of paragraph (1) (data to be taken into account from date of closure of accounts),
  - (b) paragraph (2) (no change of status unless ceilings exceeded for two consecutive periods), and
  - (c) paragraph (3) (estimate in case of newly established enterprise).

*Meaning of “UK group company” and “relevant group company”*

- 86 (1) This paragraph applies for the purposes of this Schedule.
- (2) A company is a “UK group company” if—
- (a) it meets condition A, and
  - (b) it is a member of the worldwide group.
- (3) A company is a “relevant group company” if—
- (a) it meets condition A, and
  - (b) it meets condition B.
- (4) Condition A is that the company—
- (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (5) Condition B is that the company is either—
- (a) the ultimate parent of the worldwide group, or
  - (b) a relevant subsidiary of the ultimate parent of the worldwide group.
- (6) A company is a “relevant subsidiary” of the ultimate parent of the worldwide group if the company is a member of the worldwide group and—
- (a) the company is a 75% subsidiary of the ultimate parent,
  - (b) the ultimate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company, or
  - (c) the ultimate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up.
- (7) Schedule 18 to ICTA (equity holders and profits or assets available for distribution) applies in relation to sub-paragraph (6)(b) and (c) as it applies in relation to section 413(7) of that Act.

*Financial statements of the worldwide group*

- 87 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to financial statements of the worldwide group are to consolidated financial statements of the ultimate parent and its subsidiaries; and references to a balance sheet of the worldwide group are to be read accordingly.



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- (3) References to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

*Non-compliant financial statements of worldwide group*

- 88 (1) This paragraph applies where—
- (a) financial statements of the worldwide group are drawn up in respect of a period,
  - (b) those financial statements are not acceptable, and
  - (c) the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.
- (2) This Schedule (apart from this paragraph) applies as if IAS financial statements had been drawn up in respect of the period.
- (3) For the purposes of this paragraph financial statements are “acceptable” if—
- (a) they are drawn up in accordance with international accounting standards,
  - (b) they meet such conditions relating to accounting standards, or accounting principles or practice, as may be specified in regulations made by the Commissioners, or
  - (c) conditions A to C are met.
- (4) Condition A is that—
- (a) the companies whose results are included in the financial statements, and
  - (b) the companies whose results would be included in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (5) Condition B is that—
- (a) the transactions whose results are reflected in the amounts mentioned in paragraph 73(1)(a) to (g) in the financial statements, and
  - (b) the transactions whose results would be reflected in those amounts in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (6) Condition C is that the amounts mentioned in paragraph 73(1)(a) to (d) in the financial statements are calculated using the effective interest method.
- (7) In this paragraph references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

*Non-existent financial statements of worldwide group*

- 89 (1) This paragraph applies where financial statements of the worldwide group are not drawn up in respect of a period (“the relevant period”).
- (2) If the relevant period is 12 months or less, this Schedule (apart from this paragraph) applies as if IAS financial statements had been drawn up in respect of the relevant period.

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- (3) If the relevant period is more than 12 months, this Schedule (apart from this paragraph) applies as if IAS financial statements had been drawn up in respect of each period to which sub-paragraph (4) applies.
- (4) This sub-paragraph applies to a period if—
- (a) it is the first period of 12 months falling within the relevant period,
  - (b) it is a period of 12 months falling within the relevant period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or
  - (c) it is a period of less than 12 months that—
    - (i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and
    - (ii) ends at the end of the relevant period.
- (5) In this paragraph references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

*References to amounts disclosed in financial statements*

- 90 (1) References in this Schedule to amounts disclosed in financial statements include an amount comprised in an amount so disclosed.
- (2) References in this Schedule to amounts disclosed in financial statements do not include, in the case of an amount that—
- (a) is an amount mentioned in paragraph 73(1)(a) to (g), and
  - (b) has been capitalised and is accordingly included in the balance sheet comprised in the financial statements,
- any part of that amount that was included in a balance sheet comprised in financial statements for an earlier period.
- (3) References in this Schedule to amounts disclosed in financial statements do not include—
- (a) any amount disclosed in respect of a group pension scheme, or
  - (b) any amount disclosed in respect of any entity that is not a member of the group.

*Translation of amounts disclosed in financial statements into sterling*

- 91 (1) References in this Schedule (except in Part 2) to an amount disclosed in financial statements for a period are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.
- (2) The exchange rate by reference to which the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

*Expressions taking their meaning from international accounting standards*

- 92 (1) For the purposes of this Schedule the following expressions have the meaning for the time being given by international accounting standards—
- “effective interest method”;

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“entity”;  
“parent”;  
“subsidiary”.

(2) The Commissioners may by order amend this paragraph.

*Meaning of “relevant accounting period”*

93 For the purposes of this Schedule a “relevant accounting period” of a company, in relation to a period of account of the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

*Meaning of “the Commissioners” and “HMRC”*

94 In this Schedule—  
“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;  
“FSA Handbook” means the Handbook made by the Financial Services Authority under FISMA 2000;  
“HMRC” means Her Majesty's Revenue and Customs.

## PART 11

### CONSEQUENTIAL AMENDMENTS AND COMMENCEMENT

*Consequential amendments*

95 In section 98 of TMA 1970 (special returns etc), in the first column of the Table, insert at the end— “ regulations under paragraph 24, 25, 26, 36 or 38 of Schedule 15 to FA 2009. ”

96 In paragraph 5 of Schedule 28AA to ICTA (provision not at arm's length), after sub-paragraph (8) (as inserted by paragraph 14 of Schedule 14 to this Act) insert—

“(9) For the purposes of sub-paragraph (1), Schedule 15 to FA 2009 (tax treatment of financing costs and income) is to be disregarded.”

*Commencement*

97 This Schedule has effect in relation to periods of account of the worldwide group—  
(a) that begin on or after 1 January 2010, or  
(b) to which paragraph 98 applies.

*Anti-avoidance: change of period of account of worldwide group*

98 This paragraph applies to a period of account of the worldwide group (“the relevant period of account”) if—

- (a) the ultimate parent of the group changes the date to which financial statements of the group are drawn up,
- (b) as a result of the change, the relevant period of account—
  - (i) begins before 1 January 2010, and

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- (ii) includes a period that would, if the change had not been made, have fallen within a period of account beginning on or after that date, and
- (c) the main purpose, or one of the main purposes, of the ultimate parent of the group in making the change is to secure that the first period of account in relation to which this Schedule has effect does not include any period falling within the relevant period of account.

*Transitional provision*

- 99 (1) An amount that would, apart from this paragraph, meet condition A, B or C in paragraph 54 (definition of “financing expense amount”) does not meet that condition if it is a debit that, but for a relevant enactment, would be brought into account for the purposes of corporation tax in an accounting period beginning before 1 January 2010.
- (2) For this purpose the following are “relevant enactments”—
- (a) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
  - (b) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities),
  - (c) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities), and
  - (d) regulation 3A of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271) (prescribed debits and credits brought into account over prescribed period).
- (3) An amount that would, apart from this paragraph, meet condition A, B or C in paragraph 55 (definition of “financing income amount”) does not meet that condition if it is a credit that, but for the regulation mentioned in sub-paragraph (2)(d) of this paragraph, would be brought into account for the purposes of corporation tax in an accounting period beginning before 1 January 2010.

SCHEDULE 16

Section 36

CONTROLLED FOREIGN COMPANIES

**PART 1**

ABOLITION OF ACCEPTABLE DISTRIBUTION POLICY EXEMPTION

*Abolition of acceptable distribution policy exemption*

- 1 (1) ICTA is amended as follows.
- (2) In section 748(1) (cases where apportionment under section 747(3) does not apply), omit paragraph (a) (including the “or” at the end).
  - (3) In Schedule 25 (supplementary provision in relation to cases where apportionment under section 747(3) does not apply), omit Part 1 (acceptable distribution policy).

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### *Consequential amendments*

- 2 (1) ICTA is amended as follows.
  - (2) Omit section 754A (returns where it is not established whether acceptable distribution policy applies).
  - (3) In section 801 (dividends paid between related companies: relief for UK and third country taxes), omit subsections (2A)(aa), (2B), (6) and (7).
  - (4) Omit section 801C (double taxation relief: separate streaming of dividend so far as representing an ADP dividend of a CFC).
  - (5) In section 803A (foreign taxation of group as single entity), omit subsection (1A).
  - (6) In Schedule 24 (assumptions for calculating chargeable profits, creditable tax and corresponding UK tax of foreign companies), omit—
    - (a) in paragraph 1(3A), paragraph (b)(ii) (and the “and” before it) and the words “or which is an ADP exempt period” (in both places),
    - (b) paragraph 1(6),
    - (c) paragraph (b) of paragraph 2(1) (and the “or” before it),
    - (d) paragraph (b) of paragraph 4(1A) (and the “or” before it),
    - (e) paragraph 4(3A),
    - (f) in paragraph 9(1)(c), “, and is not to be assumed by virtue of paragraph 2(1) (b) above to have been resident,”, and
    - (g) paragraph (b) of paragraph 10(1) (and the “or” before it).
- 3 In paragraph 116 of Schedule 29 to FA 2002 (assumptions for calculating chargeable profits of CFCs in connection with intangible fixed assets), omit paragraph (b) of sub-paragraph (2) (and the “or” before it).
- 4 In section 870 of CTA 2009 (assumptions for calculating chargeable profits of CFCs in connection with intangible fixed assets), omit—
  - (a) paragraph (b) of subsection (3) (and the “or” before it), and
  - (b) subsection (7).
- 5 In consequence of the amendments made by paragraphs 1 to 4, omit—
  - (a) in FA 1990, section 67(3)(b) and (c),
  - (b) in FA 1994, section 134,
  - (c) in FA 1996, in Schedule 36, paragraphs 3(3), (8) and (9) and 4(2) and (3)(b),
  - (d) in FA 1998, in Schedule 17, paragraphs 10, 17(2) to (5) and 26 to 28,
  - (e) in FA 1999, section 88,
  - (f) in FA 2000, in Schedule 30, paragraph 13,
  - (g) in FA 2001, section 82,
  - (h) in FA 2005, sections 89 and 90,
  - (i) in FA 2007, in Schedule 7, paragraph 56,
  - (j) in FA 2008, section 64(4) and, in Schedule 17, paragraph 29, and
  - (k) in this Act, section 57(4).

### *Commencement*

- 6 The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies beginning on or after 1 July 2009.

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### *Periods straddling 1 July 2009*

- 7 (1) Where a controlled foreign company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July 2009, and
  - (b) ends on or after that date,
- the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that the straddling accounting period is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July 2009 and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of Chapter 4 of Part 17, and Part 18, of ICTA as separate accounting periods, and
  - (b) the company's chargeable profits for the straddling accounting period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.

### *Transitional provision*

- 8 (1) The amendments made by this Part do not affect the application of sections 801, 801C or 803A of, or Part 1 of Schedule 25 to, ICTA in relation to dividends paid on or after 1 July 2009 if they are paid for accounting periods beginning before that date.
- (2) Sub-paragraph (3) applies where a dividend of a controlled foreign company is paid during the second of the two accounting periods provided for by paragraph 7(2).
- (3) For the purposes of Part 1 of Schedule 25 to ICTA, section 799 of that Act has effect as if the reference in subsection (3)(c) to the last period for which accounts of the company were made up which ended before the dividend became payable were to the first of the two accounting periods provided for by paragraph 7(2).

### *Interpretation*

- 9 The following expressions have the same meaning for the purposes of this Part as they have for the purposes of Chapter 4 of Part 17 of ICTA—
- “accounting period”;
  - “chargeable profits”;
  - “controlled foreign company”;
  - “creditable tax”.

## **PART 2**

### AMENDMENT OF EXEMPT ACTIVITIES EXEMPTION

#### *Abolition of special rules for holding companies other than local holding companies*

- 10 (1) Part 2 of Schedule 25 to ICTA (exempt activities) is amended as follows.
- (2) In paragraph 6 (definition of exempt activities)—
- (a) in sub-paragraph (1)(c), for “(2), (3), (4) or (4A)” substitute “(2) or (3)”,
  - (b) in sub-paragraph (3)(b), omit “or superior holding companies”,

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- (c) omit sub-paragraphs (4) to (4BB),
  - (d) in sub-paragraph (5)—
    - (i) for “sub-paragraphs (3) to (4B)” substitute “ sub-paragraph (3) ”, and
    - (ii) omit “or superior holding company”,
  - (e) in sub-paragraph (5ZA), omit “or superior holding company”,
  - (f) in sub-paragraph (5ZB), omit “or superior holding company”,
  - (g) in sub-paragraph (5A), for “sub-paragraphs (3) to (4B)” substitute “ sub-paragraph (3) ”,
  - (h) omit sub-paragraph (5B),
  - (i) in sub-paragraph (5C), omit “or superior holding company”, and
  - (j) in sub-paragraph (6), for “sub-paragraphs (1) to (4BB) above” substitute “ this paragraph ”.
- (3) In paragraph 8(3) (paragraph 6(1)(b) condition), omit “or superior holding company”.
- (4) In paragraph 12 (definition of “holding company” etc)—
- (a) in sub-paragraph (1), for “paragraph 12A below and in” substitute “ in ”,
  - (b) in sub-paragraph (4), omit “or (4), as the case may be,”, and
  - (c) in sub-paragraph (5)—
    - (i) in the words before paragraph (a), for “sub-paragraphs (3) and (4)” substitute “ sub-paragraph (3) ”, and
    - (ii) in paragraph (a), omit “or superior holding company”.
- (5) Omit paragraph 12A (definition of “superior holding company” etc).
- 11 In consequence of the amendments made by paragraph 10, omit—
- (a) in FA 1998, in Schedule 17, paragraphs 30(4)(a), (5), (6) and (8), 31, 32(2) and (3)(a) and 33,
  - (b) in FA 2000, in Schedule 31, paragraph 7(2) to (7), (10) and (11), and
  - (c) in FA 2003, in Schedule 42, paragraph 2(2).

#### *Commencement*

- 12 (1) The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies beginning on or after the commencement date.
- (2) For this purpose “the commencement date” means—
- (a) in relation to a controlled foreign company other than a qualifying holding company, 1 July 2009, and
  - (b) in relation to a qualifying holding company, 1 July [F<sup>4</sup>2012].

#### **Textual Amendments**

- F4** Word in Sch. 16 para. 12(2)(b) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(2\), 14\(1\)](#)

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*Meaning of “qualifying holding company” and “exempt holding company”*

- 13 (1) In this Part “qualifying holding company” means a controlled foreign company that was an exempt holding company in relation to the last accounting period to end before 1 July 2009.
- (2) For the purposes of sub-paragraph (1) paragraphs 14 and 15 are to be disregarded.
- (3) For the purposes of this Part a company is an “exempt holding company” in relation to an accounting period if—
- (a) throughout the period the company is, within the meaning of Part 2 of Schedule 25 to ICTA, engaged in exempt activities, and
  - (b) paragraph 6(4) or (4A) of that Schedule applies to the company in relation to the period.

*Periods straddling 1 July 2009*

- 14 (1) Where a controlled foreign company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July 2009, and
  - (b) ends on or after that date,
- the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that the straddling accounting period is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July 2009 and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of Chapter 4 of Part 17 of ICTA as separate accounting periods, and
  - (b) the company's gross income for the straddling accounting period, and its chargeable profits and creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a time basis according to the respective lengths of the periods.

*Qualifying holding companies: periods straddling 1 July [F<sup>5</sup>2012]*

**Textual Amendments**

**F5** Word in Sch. 16 para. 15 heading substituted (21.7.2009 retrospective) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(c\), 14\(1\)](#)

- 15 (1) Where a qualifying holding company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July [F<sup>6</sup>2012], and
  - (b) ends on or after that date,
- the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that a straddling accounting period of a company is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July [F<sup>7</sup>2012] and that part of the straddling accounting period that falls on or after that



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date are to be treated for the purposes of Chapter 4 of Part 17 of ICTA as separate accounting periods, and

- (b) the company's gross income for the straddling accounting period, and its chargeable profits and creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a time basis according to the respective lengths of the periods.

#### Textual Amendments

- F6** Word in Sch. 16 para. 15(1)(a) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(a\)](#), 14(1)
- F7** Word in Sch. 16 para. 15(2)(a) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(b\)](#), 14(1)

#### *Qualifying holding companies: definition of “relevant accounting period”*

- 16 For the purposes of paragraph 17 an accounting period of a qualifying holding company is a “relevant accounting period” if it—
- (a) begins on or after 1 July 2009, and
- (b) ends on or before the 1 July [<sup>F8</sup>2012].

#### Textual Amendments

- F8** Word in Sch. 16 para. 16(b) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(4\)](#), 14(1)

#### *Qualifying holding companies: treatment during [<sup>F9</sup>three years before 1 July 2012]*

#### Textual Amendments

- F9** Word in Sch. 16 para. 17 substituted (21.7.2009 retrospective) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(5\)](#), 14(1)

- 17 (1) In its application in relation to a relevant accounting period of a qualifying holding company, Part 2 of Schedule 25 to ICTA has effect subject to the modifications in this paragraph.
- (2) Sub-paragraph (4) or (4A) of paragraph 6 applies to a company only if—
- (a) the condition specified in that sub-paragraph is met, and
- (b) conditions A and B are met.
- (3) Condition A is that at all material times the company was a member of a group with the same ultimate corporate parent.
- (4) For this purpose the following times are “material”—
- (a) the beginning of 9 December 2008, and
- (b) all times during the accounting period in question.
- (5) Condition B is that amount X does not exceed amount Y.

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- (6) Amount X is the amount of the company's gross income in the accounting period in question that is non-qualifying gross income.
- (7) Amount Y is (subject to sub-paragraph (8))—
- (a) where there are three reference periods in relation to the company, the greatest of the amounts of the company's non-qualifying gross income in each of those periods,
  - (b) where there are two reference periods in relation to the company, the greater of the amounts of the company's non-qualifying gross income in each of those periods,
  - (c) where there is one reference period in relation to the company, the amount of the company's non-qualifying gross income in that period, or
  - (d) where there is no reference period in relation to the company, the amount of the company's non-qualifying gross income in the period of 12 months ending with 9 December 2008.
- (8) Where the number of days in the period by reference to which amount X is determined is not the same as the number of days in the period by reference to which amount Y is determined, amount Y is to be multiplied by—

$$\frac{DX}{DY}$$

where—

DX is the number of days in the period by reference to which amount X is determined, and

DY is the number of days in the period by reference to which amount Y is determined.

- (9) In this paragraph—
- “non-qualifying gross income” means gross income that does not satisfy the test in paragraph 6(3), (4) or (4A) of Schedule 25 to ICTA;
- “a reference period”, in relation to a company, means an accounting period of the company that—
- (a) is one of the last three accounting periods of the company to end before 9 December 2008, and
  - (b) is an accounting period in relation to which the company is an exempt holding company.

*Meaning of “ultimate corporate parent” and “group” for the purposes of paragraph 17(3)*

- 18 (1) In paragraph 17(3) the “ultimate corporate parent”, in relation to a group, means a member of the group that—
- (a) is a body corporate, and
  - (b) is not a subsidiary (whether direct or indirect) of another body corporate.
- (2) A reference in this paragraph to a body corporate does not include—
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.

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- (3) In paragraph 17(3) and this paragraph “group” has the meaning for the time being given by international accounting standards.
- (4) In this paragraph “subsidiary” has the meaning for the time being given by international accounting standards.

*Reference periods: anti-avoidance*

- 19 (1) This paragraph applies where, on or after 9 December 2008, a company alters its accounting date so that any period (“period A”) that would otherwise have fallen in an accounting period ending on or after 9 December 2008 falls instead in an accounting period ending before that date.
- (2) The reference in paragraph (a) of the definition of “a reference period” in paragraph 17(9) to 9 December 2008 is to be treated as a reference to the beginning of period A.

*Interpretation*

- 20 The following expressions have the same meaning for the purposes of this Part as they have for the purposes of Chapter 4 of Part 17 of ICTA—
- “accounting period”;
  - “chargeable profits”;
  - “control”;
  - “controlled foreign company”;
  - “creditable tax”;
  - “gross income”.

**PART 3**

**REDUCTION IN CHARGEABLE PROFITS FOR CERTAIN FINANCING INCOME**

*Reduction in chargeable profits for certain financing income*

- 21 ICTA is amended as follows.
- 22 In the following provisions, after “751A” insert “ or 751AA ”
- (a) section 747(3A) and (5A) (imputation of chargeable profits and creditable tax of controlled foreign companies),
  - (b) section 749(10) (residence),
  - (c) section 749A(9) (elections and designations under section 749: supplementary provisions), and
  - (d) section 750(3)(ab) (territories with a lower level of taxation).
- 23 After section 751A insert—

**“751AA Reduction in chargeable profits for certain financing income**

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,

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- (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
  - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
  - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced by the specified amount, and
  - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits, for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
- (5) In subsection (4) “the relevant amount” means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.”
- 24 (1) Section 751B (supplementary) is amended as follows.
- (2) In the heading, for “Section 751A” substitute “ Sections 751A and 751AA ”.
- (3) In subsections (1), (2), (3) (in each place) and (5), after “751A” insert “ or 751AA ”.
- (4) In subsection (8)—
- (a) after “ “the relevant amount”” insert “—
    - (a) in the case of an appeal in respect of the refusal of an application under section 751A,” and  - (b) after “mentioned in that subsection” insert “, and
    - (b) in the case of an appeal in respect of the refusal of an application under section 751AA, has the meaning given by subsection (5) of that section.”
- (5) In subsection (10)—
- (a) after “751A” insert “ or 751AA ”, and

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(b) after “751A(1)” insert “ or 751AA(1) ”.

#### *Commencement*

- 25 (1) The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies ending on or after 1 January 2010.
- (2) For this purpose “accounting period” and “controlled foreign company” have the same meaning as they have for the purposes of Chapter 4 of Part 17 of ICTA.

### SCHEDULE 17

Section 37

#### INTERNATIONAL MOVEMENT OF CAPITAL

##### **PART 1**

###### ABOLITION OF EXISTING REGIME

- 1 In ICTA, omit—
- (a) section 765 (prior Treasury consent required for certain transactions involving movement of capital outside Europe),
  - (b) section 765A (HMRC to be given information about certain transactions involving movement of capital within Europe),
  - (c) section 766 (offence of failure to comply with section 765), and
  - (d) section 767 (interpretation).
- 2 In section 98 of TMA 1970 (special returns etc)—
- (a) omit subsection (5),
  - (b) in the first column of the Table, omit “section 765A(2)(b);”, and
  - (c) in the second column of the Table, omit “section 765A(2)(a);”.
- 3 In consequence of the amendments made by paragraphs 1 and 2, omit—
- (a) in FA 1988, section 105(6), and
  - (b) in FA 1990, section 68(1), (2) and (3)(b) to (d).

##### **PART 2**

###### REPORTING REQUIREMENT

###### *Reporting requirement*

- 4 (1) If a UK corporate parent is a reporting body at the time a reportable event takes place or a reportable transaction is carried out, it must, within 6 months of that time, make a report to an officer of Revenue and Customs.
- (2) The report must contain such information relating to the event or transaction, or persons connected with the event or transaction, as is specified in regulations made by the Commissioners.

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- (3) The purpose of the report is to enable the Commissioners to consider whether the event or transaction results, directly or indirectly, in an advantage for any person in respect of corporation tax or any other tax or duty.
- (4) In this Schedule “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

*Meaning of “reporting body”*

- 5 (1) For the purposes of this Schedule a body corporate (“body A”) is a reporting body at any time if, at that time—
  - (a) it is a UK corporate parent, and
  - (b) condition A, B, C or D is met.
- (2) Condition A is that body A is not controlled by a body corporate resident outside the United Kingdom.
- (3) Condition B is that—
  - (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”), and
  - (b) no other relevant UK body corporate is controlled by the foreign parent.
- (4) Condition C is that —
  - (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”),
  - (b) one or more other UK corporate parents are controlled by the foreign parent, and
  - (c) body A is not a party to an arrangement under paragraph 6.
- (5) Condition D is that—
  - (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”),
  - (b) one or more other UK corporate parents are controlled by the foreign parent, and
  - (c) body A is a party to an arrangement under paragraph 6 and is the nominated reporting body under that arrangement.

*Groups with more than one UK corporate parent: nomination of single reporting body*

- 6 (1) Sub-paragraph (2) applies where—
  - (a) a UK corporate parent is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”), and
  - (b) one or more other UK corporate parents are controlled by the foreign parent.
- (2) Two or more of the UK corporate parents controlled by the foreign parent may enter into an arrangement under which one of their number (“the nominated reporting body”) is nominated to exercise, on behalf of all of them, the functions conferred under this Schedule on a reporting body.
- (3) A party to an arrangement under this paragraph may withdraw from the arrangement.
- (4) The Commissioners may by regulations make provision about entering into and withdrawing from an arrangement under this paragraph.

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- (5) Regulations under sub-paragraph (4) may, in particular, include provision—
- (a) as to the form and manner in which bodies may enter into, or a body may withdraw from, an arrangement,
  - (b) requiring a person to give information to HMRC in connection with entering into or withdrawing from an arrangement, and
  - (c) as to circumstances in which a body is to be treated as having withdrawn from an arrangement.

*Meaning of “UK corporate parent”*

- 7 In this Schedule “UK corporate parent” means a body corporate that—
- (a) is resident in the United Kingdom,
  - (b) controls one or more bodies corporate that are not resident in the United Kingdom, and
  - (c) is not controlled by—
    - (i) a body corporate that is resident in the United Kingdom, or
    - (ii) two or more bodies corporate taken together each of which is resident in the United Kingdom.

*Reportable events and transactions*

- 8 (1) For the purposes of this Schedule an event or transaction is “reportable”, in relation to a reporting body, if—
- (a) it is of a value exceeding £100 million,
  - (b) it is within sub-paragraph (2), and
  - (c) it is not an excluded transaction (see paragraph 9).
- (2) An event or transaction is within this sub-paragraph if—
- (a) it is an issue of shares or debentures by a foreign subsidiary,
  - (b) it is a transfer by the reporting body, or a transfer caused or permitted by the reporting body, of shares or debentures of a foreign subsidiary in which the reporting body has an interest,
  - (c) where the reporting body is a party to an arrangement under paragraph 6, it is a transfer by another party to the arrangement, or a transfer caused or permitted by such a party, of shares or debentures of a foreign subsidiary in which that party has an interest,
  - (d) it results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership, or
  - (e) it is of a description specified in regulations made by the Commissioners.
- (3) For the purposes of sub-paragraph (2)(d) a foreign subsidiary is a “controlling partner” in a partnership if, whether alone or taken together with one or more other partners that are subsidiaries, it controls the partnership.
- (4) The Commissioners may by regulations make provision about how the value of an event or transaction is to be determined for the purposes of this paragraph.
- (5) Regulations under sub-paragraph (4) may, in particular, in the case of a transaction that is one of a series of transactions, include provision attributing to the transaction the value of other transactions in the series.

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- (6) Regulations under this paragraph may—
- (a) make provision by reference to standards or other documents issued by any person, or
  - (b) make different provision for different cases or purposes.
- (7) The Commissioners may by order amend sub-paragraph (1)(a) so as to substitute a higher amount for the amount for the time being mentioned there.

*Excluded transactions*

- 9 (1) For the purposes of this Schedule a transaction is “excluded” if—
- (a) it is carried out in the ordinary course of a trade,
  - (b) all the parties to the transaction are, at the time the transaction is carried out, resident in the same territory,
  - (c) it consists in giving to the bankers of a foreign subsidiary any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers,
  - (d) it consists in a foreign subsidiary giving to an insurance company any security for the payment of any sum due or to become due from that subsidiary to that company by reason of any transaction entered into with that subsidiary by that company in the ordinary course of that company's business by way of investment of its funds, or
  - (e) it is of a description specified in regulations made by the Commissioners.
- (2) Regulations under sub-paragraph (1)(e)—
- (a) may make provision by reference to standards or other documents issued by any person, and
  - (b) may make different provision for different cases or purposes.

*Penalty for failure to comply with reporting requirement*

- 10 In section 98 of TMA 1970 (special returns etc), in the second column of the Table, insert at the end “paragraph 4 of Schedule 17 to FA 2009.”

*Regulations and orders*

- 11 (1) Regulations and orders under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations or an order under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

*Interpretation*

- 12 (1) For the purposes of this Schedule “control”, in relation to a body corporate, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate,
- that the affairs of the body are conducted in accordance with that person's wishes.



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- (2) Where two or more persons, taken together, have the power mentioned in subparagraph (1), they are taken for the purposes of this Schedule to control the body corporate.
- (3) For the purposes of this Schedule “control” in relation to a partnership, means the right to a share of more than 50% of the assets, or of more than 50% of the income, of the partnership.
- (4) In this Schedule—
  - “foreign” means resident outside the United Kingdom;
  - “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership, and “partner” is to be read accordingly;
  - “subsidiary”, in relation to a reporting body, means a body corporate that is controlled by—
    - (a) the reporting body, or
    - (b) where the reporting body is a party to an arrangement under paragraph 6, any party to the arrangement.
- (5) Paragraph 3 of Schedule 28AA to ICTA (meaning of “transaction” and “series of transactions”) applies for the purposes of this Schedule.

### PART 3

#### COMMENCEMENT ETC

##### *Commencement*

- 13 This Schedule has effect in relation to events taking place and transactions carried out on or after 1 July 2009.

##### *Transitional provision*

- 14 (1) In its application in relation to an event taking place or a transaction carried out before 1 October 2009, paragraph 4(1) has effect as if it required any report under that provision to be made before 1 April 2010.
- (2) Any regulations under this Schedule that are made within the period of one year beginning on the day on which this Act is passed may be made so as to have effect from any time on or after 1 July 2009.

### SCHEDULE 18

Section 38

#### CORPORATION TAX: FOREIGN CURRENCY ACCOUNTING

##### *Amendments of FA 1993*

- 1 FA 1993 is amended as follows.
- 2 In section 92(2) (the basic rule: sterling to be used), insert at the end—

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“section 92D (sterling equivalents: the basic rule);

sections 92DA and 92DB (sterling equivalents: special rules where amounts carried back or forward);

sections 92DC and 92DD (adjustment of sterling amounts carried back or forward where operating currency changes).”

3 In section 92B (company operating in currency other than sterling and preparing accounts in another currency), insert at the end—

“(4) Where, for the purposes of computing the profits or losses of the company arising in an accounting period, an amount expressed in sterling is required by subsection (3) to be translated into its equivalent expressed in another currency, it must be translated by reference to the appropriate exchange rate.”

4 In section 92C (company preparing accounts in currency other than sterling), insert at the end—

“(5) Where, for the purposes of computing the profits or losses of the company arising in an accounting period, an amount expressed in sterling is required by subsection (4) to be translated into its equivalent expressed in another currency, it must be translated by reference to the appropriate exchange rate.”

5 For section 92D (translating amounts into equivalent in different currency) substitute—

**“92D Sterling equivalents: the basic rule**

- (1) This section applies where, for the purposes of computing the profits or losses of a company arising in an accounting period, a profit or loss is required by section 92B or 92C to be translated into its sterling equivalent.
- (2) The translation must be made by reference to the appropriate exchange rate.
- (3) This section is subject to sections 92DA and 92DB (special rules where translation is for the purpose of computing amounts to be carried back or carried forward to other accounting periods).

**92DA Sterling equivalents: carried-back amounts**

- (1) This section applies where, for the purpose of computing a carried-back amount in respect of a company, a loss (“the loss”) is required by section 92B or 92C to be translated into its sterling equivalent.
- (2) The translation must be made in accordance with rule 1, 2 or 3 (whichever is applicable).
- (3) Rule 1 applies if the operating currency of the company in the accounting period in which the loss arises (“the later operating currency”) is the same as the operating currency of the company in the accounting period to which the carried-back amount is to be carried back (“the earlier operating currency”).
- (4) Rule 1 is that the loss must be translated into its sterling equivalent by reference to the same rate of exchange as that at which the profit against which the carried-back amount is to be set off is required to be translated under section 92D.

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- (5) Rule 2 applies if—
  - (a) the later operating currency is not the same as the earlier operating currency, and
  - (b) the earlier operating currency is sterling.
- (6) Rule 2 is that the loss must be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the relevant accounting period.
- (7) Rule 3 applies if—
  - (a) the later operating currency is not the same as the earlier operating currency, and
  - (b) the earlier operating currency is a currency other than sterling.
- (8) Rule 3 is that the loss must be translated into its sterling equivalent by—
  - (a) being translated into the earlier operating currency by reference to the spot rate of exchange for the last day of the relevant accounting period, before
  - (b) being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-back amount is to be set off is required to be translated under section 92D.
- (9) In this section “the relevant accounting period” means the latest accounting period of the company before the accounting period in which the loss arises in which the operating currency of the company is the earlier operating currency.

#### **92DB Sterling equivalents: carried-forward amounts**

- (1) This section applies where, for the purpose of computing a carried-forward amount in respect of a company, a loss (“the loss”) is required by section 92B or 92C to be translated into its sterling equivalent.
- (2) The translation must be made in accordance with rule 1, 2 or 3 (whichever is applicable).
- (3) Rule 1 applies if the operating currency of the company in the accounting period in which the loss arises (“the earlier operating currency”) is the same as the operating currency of the company in the accounting period to which the carried-forward amount is to be carried forward (“the later operating currency”).
- (4) Rule 1 is that the loss must be translated into its sterling equivalent by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 92D.
- (5) Rule 2 applies if—
  - (a) the earlier operating currency is not the same as the later operating currency, and
  - (b) the later operating currency is sterling.

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- (6) Rule 2 is that the loss must be translated into its sterling equivalent by reference to the spot rate of exchange for the first day of the relevant accounting period.
- (7) Rule 3 applies if—
  - (a) the earlier operating currency is not the same as the later operating currency, and
  - (b) the later operating currency is a currency other than sterling.
- (8) Rule 3 is that the loss must be translated into its sterling equivalent by—
  - (a) being translated into the later operating currency by reference to the spot rate of exchange for the first day of the relevant accounting period, before
  - (b) being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 92D.
- (9) In this section “the relevant accounting period” means the earliest accounting period of the company after the accounting period in which the loss arises in which the operating currency of the company is the later operating currency.

#### **92DC Adjustment of sterling losses: carried-back amounts**

- (1) This section applies if conditions A to C are met.
- (2) Condition A is that, in accordance with generally accepted accounting practice, a company resident in the United Kingdom—
  - (a) prepares its accounts for a period of account in sterling, or
  - (b) prepares its accounts for a period of account in a currency other than sterling and in those accounts identifies sterling as its functional currency.
- (3) Condition B is that a loss of the company for the period that falls to be computed in accordance with generally accepted accounting practice for corporation tax purposes (“the loss”) is to be a carried-back amount.
- (4) Condition C is that the operating currency of the company in the accounting period to which the loss is to be carried back (“the earlier operating currency”) is a currency other than sterling.
- (5) The loss must be adjusted by—
  - (a) being translated into the earlier operating currency by reference to the spot rate of exchange for the last day of the relevant accounting period, before
  - (b) being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-back amount is to be set off is required to be translated under section 92D.
- (6) In this section “the relevant accounting period” means the latest accounting period of the company before the accounting period in which the loss arises in which the operating currency of the company is the earlier operating currency.

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### **92DD Adjustment of sterling losses: carried-forward amounts**

- (1) This section applies if conditions A to C are met.
- (2) Condition A is that, in accordance with generally accepted accounting practice, a company resident in the United Kingdom—
  - (a) prepares its accounts for a period of account in sterling, or
  - (b) prepares its accounts for a period of account in a currency other than sterling and in those accounts identifies sterling as its functional currency.
- (3) Condition B is that a loss of the company for the period that falls to be computed in accordance with generally accepted accounting practice for corporation tax purposes (“the loss”) is to be a carried-forward amount.
- (4) Condition C is that the operating currency of the company in the accounting period to which the loss is to be carried forward (“the later operating currency”) is a currency other than sterling.
- (5) The loss must be adjusted by—
  - (a) being translated into the later operating currency by reference to the spot rate of exchange for the first day of the relevant accounting period, before
  - (b) being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 92D.
- (6) In this section “the relevant accounting period” means the earliest accounting period of the company after the accounting period in which the loss arises in which the operating currency of the company is the later operating currency.

### **92DE Meaning of “carried-back amount” and “carried-forward amount”**

- (1) In sections 92DA and 92DC “carried-back amount” means—
  - (a) an amount carried back under section 393A(1)(b) of the Taxes Act 1988 (trading losses),
  - (b) an amount carried back by virtue of a claim under section 459(1)(b) of the Corporation Tax Act 2009 (non-trading deficits from loan relationships), or
  - (c) an amount carried back under section 389(2) of the Corporation Tax Act 2009 (deficits of insurance companies).
- (2) In sections 92DB and 92DD “carried-forward amount” means—
  - (a) an amount carried forward under section 76(12) or (13) of the Taxes Act 1988 (certain expenses of insurance companies),
  - (b) an amount carried forward under section 392A(2) or (3) of the Taxes Act 1988 (UK property business losses),
  - (c) an amount carried forward under section 392B(1)(b) of the Taxes Act 1988 (overseas property business losses),
  - (d) an amount carried forward under section 393(1) of the Taxes Act 1988 (trading losses),

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- (e) an amount carried forward under section 396(1) of the Taxes Act 1988 (losses from miscellaneous transactions),
  - (f) an amount carried forward under section 436A(4) of the Taxes Act 1988 (insurance companies: losses from gross roll-up business),
  - (g) an amount carried forward under section 391(2) of the Corporation Tax Act 2009 (deficits of insurance companies),
  - (h) an amount carried forward under section 457(3) of the Corporation Tax Act 2009 (non-trading deficits from loan relationships),
  - (i) an amount carried forward under section 753(3) of the Corporation Tax Act 2009 (non-trading loss on intangible fixed assets),
  - (j) an amount carried forward under section 925(3) of the Corporation Tax Act 2009 (patent income: relief for expenses), or
  - (k) an amount carried forward under section 1223 of the Corporation Tax Act 2009 (expenses of management and other amounts).
- (3) References in sections 92DB and 92DD to the profit against which a carried-forward amount is to be set off are, in the case of a carried-forward amount to which this subsection applies, to the profit in computing which the amount is deductible, disregarding the deduction.
- (4) Subsection (3) applies to a carried-forward amount that is treated as arising in an accounting period later than that in which it in fact arises, and is accordingly deductible in computing a profit for the later period.”
- 6 (1) Section 92E (meaning of “accounts”, “return of accounts” and “functional currency”) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies for the purposes of sections 92A to 92DD.”
- (3) In subsection (1), omit “in sections 92A to 92C”.
- (4) In subsection (2), for “The reference in section 92C” substitute “ A reference ”.
- (5) In subsection (3), omit “in sections 92A, 92B and 92D”.
- (6) Insert at the end—
- “(4) References to “the appropriate exchange rate”, in relation to the translation of an amount for the purposes of computing the profits or losses of a company arising in an accounting period, are to—
- (a) the average exchange rate for the accounting period, or
  - (b) where the amount to be translated relates to a single transaction, an appropriate spot rate of exchange for the transaction, or
  - (c) where the amount to be translated relates to more than one transaction, a rate of exchange derived on a just and reasonable basis from appropriate spot rates of exchange for those transactions.
- (5) References to the “operating currency” of a company in an accounting period are to the currency in which profits or losses of that company arising in that accounting period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes are required to be computed by virtue of section 92(1), 92A(2), 92B(2)(a) or 92C(3)(a).”

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- (7) For the heading substitute “**Interpretation of sections 92A to 92DD**”.

*Commencement and transitional provision*

- 7 (1) The amendments made by this Schedule have effect in relation to profits or losses (including losses that are to be carried-back amounts or carried-forward amounts) arising in accounting periods beginning on or after the commencement date.
- (2) Sub-paragraph (1) is subject to the following provisions of this Schedule.

*Sterling equivalent if amount carried back to pre-commencement accounting period*

- 8 (1) This paragraph applies where—
- (a) a loss of a company (“the loss”) is required by section 92B or 92C of FA 1993 to be translated from a currency other than sterling into its sterling equivalent,
  - (b) the translation is for the purpose of computing a loss arising in an accounting period beginning on or after the commencement date, and
  - (c) the loss is to be a carried-back amount that is to be carried back to an accounting period beginning before the commencement date.
- (2) Section 92DA of FA 1993 does not have effect in relation to the loss.
- (3) The translation must be made by reference to the appropriate exchange rate.

*Sterling equivalent if amount carried forward from earlier period*

- 9 (1) This paragraph applies where—
- (a) a loss of a company (“the loss”) is required by section 92B or 92C of FA 1993 to be translated from a currency other than sterling (“the original currency”) into its sterling equivalent,
  - (b) the translation is for the purpose of computing a loss arising in an accounting period beginning before the commencement date, and
  - (c) the loss is to be a carried-forward amount that is to be carried forward to an accounting period beginning on or after the commencement date.
- (2) The translation must be made by taking the following steps—
- Step 1:* translate the loss into its sterling equivalent by reference to the appropriate exchange rate.
- Step 2:* translate the loss (as translated under step 1) into the original currency by reference to the spot rate of exchange for the first day of the first accounting period of the company beginning on or after the commencement date.
- Step 3:* translate the loss (as translated under step 2) into its sterling equivalent in accordance with rule 1, 2 or 3 (whichever is applicable).
- (3) Rule 1 applies if the original currency and the operating currency of the company in the accounting period to which the carried-forward amount is to be carried forward (“the later operating currency”) are the same.

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- (4) Rule 1 is that the loss must be translated into its sterling equivalent by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 92D of FA 1993.
- (5) Rule 2 applies if—
- (a) the original currency is not the same as the later operating currency, and
  - (b) the later operating currency is sterling.
- (6) Rule 2 is that the loss must be translated into its sterling equivalent by reference to the spot rate of exchange for the first day of the relevant accounting period.
- (7) Rule 3 applies if—
- (a) the original currency is not the same as the later operating currency, and
  - (b) the later operating currency is a currency other than sterling.
- (8) Rule 3 is that the loss must be translated into its sterling equivalent by—
- (a) being translated into the later operating currency by reference to the spot rate of exchange for the first day of the relevant accounting period, before
  - (b) being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 92D of FA 1993.
- (9) In this paragraph “the relevant accounting period” means the earliest accounting period of the company beginning after the commencement date in which the operating currency of the company is the later operating currency.

*Adjustment of sterling loss if amount carried back to pre-commencement accounting period*

- 10 (1) This paragraph applies where—
- (a) a loss arises in an accounting period beginning on or after the commencement date,
  - (b) the loss is to be a carried-back amount that is to be carried back to an accounting period beginning before the commencement date, and
  - (c) apart from this paragraph, section 92DC of FA 1993 would require that the loss be adjusted.
- (2) Section 92DC of FA 1993 does not have effect in relation to the loss.

*Adjustment of sterling loss if amount carried forward from earlier period*

- 11 (1) This paragraph applies where—
- (a) a loss arises in an accounting period beginning before the commencement date,
  - (b) the loss is to be a carried-forward amount that is to be carried forward to an accounting period beginning on or after the commencement date,
  - (c) if section 92DD of FA 1993 had effect in relation to losses arising in the accounting period mentioned in paragraph (a), that section would require that the loss be adjusted.
- (2) Section 92DD of FA 1993 has effect in relation to the loss.
- (3) In the application of section 92DD of FA 1993 by virtue of sub-paragraph (2) that section has effect as if for subsection (6) there were substituted—



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“(6) In this section “the relevant accounting period” means the earliest accounting period of the company beginning after the commencement date in which the operating currency of the company is the later operating currency.”

#### *Interpretation*

- 12 (1) In this Schedule the following expressions have the meaning given by section 92DE or 92E of FA 1993—
- “appropriate exchange rate”;
  - “carried-back amount”;
  - “carried-forward amount”;
  - “operating currency”.
- (2) Subsections (3) and (4) of section 92DE of FA 1993 (meaning of certain references to profit against which carried-forward amount is to be set off) apply in relation to this Schedule as they apply in relation to section 92DB and 92DD of that Act.
- (3) In this Schedule “the commencement date” means 29 December 2007.

#### *Right of company to elect for different commencement and transitional provision to apply*

- 13 (1) If a company so elects, this Schedule has effect in relation to the company with the following modifications—
- (a) paragraphs 9 and 11 do not apply, and
  - (b) “the commencement date” means the day on which this Act is passed.
- (2) An election by a company under this paragraph—
- (a) must be made before the end of the period of 30 days beginning with the first day of the first accounting period of the company beginning on or after the day on which this Act is passed, and
  - (b) is irrevocable.

## SCHEDULE 19

Section 40

### INCOME TAX CREDITS FOR FOREIGN DISTRIBUTIONS

#### *ITTOIA 2005*

- 1 ITTOIA 2005 is amended as follows.
- 2 (1) Section 397A (tax credits for distributions of non-UK resident companies: UK residents and eligible non-UK residents) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) A UK resident or eligible non-UK resident receiving a relevant distribution made by a non-UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the grossed up distribution (but see subsections (3) and (6) and section 397AA).”
- (3) In subsection (3), for “(2)” substitute “(1)”.

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(4) In subsection (7), omit the definition of “minority shareholder”.

3 After section 397A insert—

**“397AA Tax credit under section 397A: conditions**

(1) Section 397A(1) only applies if condition A, B or C is met.

(2) Condition A is that—

- (a) the relevant distribution is made by a company with issued share capital, and
- (b) at the time the person receives the relevant distribution, the person is a minority shareholder in the company.

(3) Condition B is that the company that makes the relevant distribution is an offshore fund.

(4) Condition C is that—

- (a) the company that makes the relevant distribution is a resident of (and only of) a qualifying territory at the time that the relevant distribution is received, and
- (b) if the relevant distribution is one of a series of distributions made as part of a scheme—
  - (i) each company that makes a distribution in the series (a “scheme distribution”) is a resident of (and only of) a qualifying territory at the time that the scheme distribution is received, or
  - (ii) the scheme is not a tax advantage scheme.

(5) In this section—

“minority shareholder”, in relation to a company, has the meaning given in section 397C;

“offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act);

“qualifying territory” has the meaning given by or under section 397BA;

“relevant distribution” has the same meaning as in section 397A;

“scheme” includes any scheme, arrangements or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions;

“tax advantage scheme” means a scheme that, ignoring any incidental purposes, has as its only purpose or purposes either or both of the following—

- (a) to enable a person to obtain a tax credit under section 397A, and
- (b) to enable a person to obtain (in any territory) any other relief from tax on a distribution.”

4 (1) Section 397B (tax credits under section 397A: manufactured overseas dividends) is amended as follows.

(2) In subsection (2), omit “that is not an offshore fund”.

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(3) In subsection (3), after “representative” insert “;the original dividend”).

(4) After subsection (3) insert—

“(3A) Section 397AA has effect as if—

- (a) the references in subsections (2)(a), (3) and (4)(a) to the relevant distribution were to the original dividend, and
- (b) the reference in subsection (2)(b) to the company that makes the relevant distribution were to the company that makes the original dividend.”

(5) In subsection (4), in the definition of “gross amount”, for “a manufactured” substitute “an”.

5 After that section insert—

**“397BA Meaning of “qualifying territory”**

(1) For the purposes of section 397AA “qualifying territory” means—

- (a) the United Kingdom, or
- (b) a territory within subsection (2).

(2) A territory is within this subsection if—

- (a) arrangements to which section 788 of ICTA applies (“double taxation relief arrangements”) have effect in relation to the territory, and
- (b) the arrangements contain a non-discrimination provision.

(3) The Treasury may by regulations—

- (a) provide that a territory specified in or of a description specified in the regulations that does not satisfy subsection (2)(a) or (b) is a qualifying territory for the purpose of section 397AA, and
- (b) provide that a territory so specified or described that satisfies subsection (2)(a) or (b) is not a qualifying territory for that purpose.

(4) For the purposes of section 397AA a company is a resident of a territory if, under the laws of the territory, the company is liable to tax there—

- (a) by reason of its domicile, residence or place of management, but
- (b) not in respect only of income from sources in that territory or capital situated there.

(5) In subsection (2) “non-discrimination provision”, in relation to double taxation relief arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—

- (a) any taxation, or
- (b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(6) In subsection (5) “national”, in relation to a contracting state, includes—

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- (a) an individual possessing the nationality or citizenship of the contracting state, and
  - (b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.
- (7) Regulations under this section may—
- (a) describe a territory by reference to the double taxation relief arrangements for the time being in force in relation to the territory,
  - (b) make different provision in relation to different descriptions of company, and
  - (c) make provision having effect in relation to the tax year current on the day on which the regulations are made.
- (8) No regulations may be made under this section unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons.”
- 6 (1) Section 397C (meaning of “minority shareholder”) is amended as follows.
- (2) In subsection (1)—
- (a) for “397A” substitute “ 397AA ”, and
  - (b) omit “non-UK resident”.
- (3) After that subsection insert—
- “(1A) Where the company has more than one class of share, the reference in subsection (1) to the company's issued share capital is to issued share capital of the same class as the share in respect of which the distribution is made.”
- (4) Insert at the end—
- “(8) For the purposes of this section, shares are not of the same class if the amounts paid up on them (otherwise than by way of premium) are different.”
- 7 In section 398(1) (increase in amount or value of dividends where tax credit available), for “397A(2)” substitute “ 397A(1) ”.
- 8 In section 873 (orders and regulations), after subsection (3) insert—
- “(4) Further, subsection (2) does not apply if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.”

#### *Consequential amendments of other Acts*

- 9 In TMA 1970, in—
- (a) sections 8(1AA)(b) and 8A(1AA)(b) (personal return and trustee return: amount payable by way of income tax),
  - (b) section 9(1)(b) (self-assessment of amount payable by way of income tax),
  - (c) sections 12AA(1A)(b) and 12AB(5) (partnership return etc; amount payable by way of income tax), and
  - (d) sections 59A(8)(b) and 59B(2)(b) (payments of and on account of income tax),
- for “397A(2)” substitute “ 397A(1) ”
- 10 In ICTA—

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- (a) in section 824(4A)(b) (repayment supplements: individuals and others), for “397A(2)” substitute “ 397A(1) ”, and
  - (b) in section 840ZA(3)(b) (meaning of “tax advantage”), after “397(1)” insert “ or 397A(1) ”.
- 11 In section 171(2B) of FA 1993 (Lloyd's underwriters etc: taxation of profits and allowance of losses), for “397A(2)” substitute “ 397A(1) ”.
- 12 In Part 2 of Schedule 1 to ITEPA 2003 (definitions), in the entry for “tax credit”, in the second column, after “397(1)” insert “ or 397A(1) ”.
- 13 In ITA 2007—
- (a) in section 504(4)(b) (provisions that do not apply to income of unauthorised unit trusts),
  - (b) in sections 592(2), 593(2) and 594(2) (stock lending arrangements and repos), and
  - (c) in section 989 (definitions), in the definition of “tax credit”,
- for “397A(2)” substitute “ 397A(1) ”.

#### *Commencement*

- 14 (1) The amendments made by this Schedule have effect in relation to—
- (a) qualifying distributions arising on or after 22 April 2009,
  - (b) cash dividends paid over to a person under paragraph 68(4) of Schedule 2 of ITEPA 2003 on or after 22 April 2009,
  - (c) dividends treated under section 407 of ITTOIA 2005 as paid to a person on or after 22 April 2009, and
  - (d) manufactured overseas dividends that are representative of a distribution within paragraph (a), (b) or (c).
- (2) In this paragraph—
- “manufactured overseas dividend” has the same meaning as in Chapter 2 of Part 11 of ITA 2007;
  - “qualifying distribution” has the meaning given in section 989 of ITA 2007.

## SCHEDULE 20

Section 41

### LOAN RELATIONSHIPS: CONNECTED PARTIES

#### *Introduction*

- 1 Part 5 of CTA 2009 (loan relationships) is amended as follows.

#### *Section 374*

- 2 (1) Section 374 (late interest: connection between debtor and person standing in position of creditor) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), after “company” insert “ ( ”, and

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(b) insert at the end (not as part of paragraph (b))— “ and the condition in subsection (1A) is met. ”

(3) After that subsection insert—

“(1A) The condition is that C is—

- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.”

(4) Insert at the end—

“(3) For the purposes of this section—

- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

#### *Sections 375 and 376*

3 (1) Section 375 (late interest: loans to close companies by participators etc) is amended as follows.

(2) In subsection (1), insert at the end (not as part of paragraph (b))— “ and, where subsection (4A) applies, the non-qualifying territory condition is met. ”

(3) In subsections (3)(b) and (4)(b), after “resident” insert “ for tax purposes ”.

(4) After subsection (4) insert—

“(4A) This subsection applies if C is a company; and the non-qualifying territory condition is that C is—

- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.”

4 (1) Section 376 (interpretation of section 375) is amended as follows.

(2) In subsection (5), for the definition of “resident” substitute—

““resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management, and”.

(3) Insert at the end—

“(6) For the purposes of section 375, a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management.”

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### Section 377

- 5 (1) Section 377 (late interest: party to loan relationship having major interest in other party) is amended as follows.
- (2) The existing provision becomes subsection (1) of that section.
- (3) In that subsection, omit the “and” at the end of paragraph (a) and insert at the end “and  
(c) the condition in subsection (2) is met.”
- (4) After that subsection insert—
- “(2) The condition is that C is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.
- (3) For the purposes of this section—
- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

### Section 407

- 6 (1) Section 407 (postponement until redemption of debits for connected companies' deeply discounted securities) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), after “company” insert “ (“the creditor company” ,
- (b) omit the “and” at the end of paragraph (d), and
- (c) insert at the end “, and  
(f) the condition in subsection (1A) is met.”
- (3) After that subsection insert—
- “(1A) The condition is that the creditor company is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the relevant period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.”
- (4) Insert at the end—
- “(6) For the purposes of this section—
- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,

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- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

#### *Sections 409 and 410*

- 7 Section 409(1) (postponement until redemption of debits for close companies' deeply discounted securities)—
- (a) in paragraph (b), after “there is a person” insert “ ( ”, and
  - (b) insert at the end (not as part of paragraph (d))— “ and, where it applies, the non-qualifying territory condition is met. ”
- 8 (1) Section 410 (interpretation of section 409) is amended as follows.
- (2) In subsections (3)(b) and (4)(b), after “resident” insert “ for tax purposes ”.
- (3) After subsection (4) insert—
- “(4A) The non-qualifying territory condition applies if C is a company; and the non-qualifying territory condition is that C is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the relevant period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.”
- (4) In subsection (5), for the definition of “resident” substitute—
- ““resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management, and”.
- (5) After that subsection insert—
- “(5A) For the purposes of this section, a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management.”

#### *Commencement and transitional provision*

- 9 (1) The amendments made by this Schedule have effect where the actual accrual period (within the meaning of Chapter 8 of Part 5 of CTA 2009), or the relevant period (within the meaning of section 407(1) or 409(1) of that Act), begins on or after 1 April 2009.
- (2) But a company may elect that any or all of the amendments made by this Schedule do not have effect in relation to the first accounting period for which they would otherwise apply.
- (3) However, no election may be made under sub-paragraph (2) in relation to an accounting period ending after 31 March 2011.
- (4) An election under sub-paragraph (2) must be made in the corporation tax return for the accounting period in relation to which the election is to have effect.



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## SCHEDULE 21

Section 43

### FOREIGN EXCHANGE: ANTI-AVOIDANCE

#### *Loan relationships*

1 Chapter 3 of Part 5 of CTA 2009 (loan relationships: credits and debits to be taken into account) is amended as follows.

2 In section 328 (exchange gains and losses), after subsection (4) insert—

“(4A) Subsections (3) and (4) do not have effect to disapply subsection (1) in the case of an exchange gain arising in an accounting period of a company so far as—

- (a) the exchange gain arises in relation to an asset or liability representing a loan relationship of the company,
- (b) the loan relationship is part of arrangements that have a one-way exchange effect in relation to the company in the accounting period (see section 328A), and
- (c) the arrangements cause the company or any other company to gain a tax advantage (other than a negligible tax advantage).”

3 After that section insert—

#### **“328A Arrangements that have a “one-way exchange effect”**

(1) For the purposes of section 328 arrangements (“the arrangements”) have a “one-way exchange effect” in relation to a company (“company A”) in an accounting period of that company (“the relevant accounting period”) if the following two conditions are met.

(2) The first condition is that the arrangements include an option or a relevant contingent contract.

(3) The second condition is that, in relation to any day in the relevant accounting period (“the test day”)—

- (a) amount A is not equal to amount B, and
- (b) the difference between amounts A and B is not the same as it would be were those amounts calculated disregarding the matching rules.

(4) Amount A is—

- (a) the sum of the relevant exchange losses of company A, and of each company connected with company A, that arise in accounting periods of those companies that end on the test day, less
- (b) the sum of the relevant exchange gains of those companies that arise in such accounting periods.

(5) Amount B is—

- (a) the sum of the relevant exchange gains of company A, and of each company connected with company A, that would have arisen in accounting periods of those companies that end on the test day, less
- (b) the sum of the relevant exchange losses of those companies that would have arisen in such accounting periods,

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if exchange gains and losses of those companies in those accounting periods were calculated in accordance with section 328D (counterfactual currency movement assumptions).

- (6) For the purposes of subsections (4) and (5) an accounting period of company A, or of a company connected with company A, in which the test day falls and that does not end on that day is to be treated as if it did end on that day.
- (7) In this section “the matching rules” means—
  - (a) section 328(3) and (4), and
  - (b) section 606(3) and (4).

### **328B Meaning of “relevant exchange gain” and “relevant exchange loss”**

- (1) For the purposes of section 328A an exchange gain or loss of a company is “relevant” if—
  - (a) it arises in relation to—
    - (i) an asset or liability representing a loan relationship to which the company is a party, or
    - (ii) a relevant contract to which the company is a party,
  - (b) the loan relationship or relevant contract is part of the arrangements, and
  - (c) a debit or credit in respect of the exchange gain or loss is required to be brought into account by the company for the purposes of corporation tax.
- (2) For the purposes of subsection (1)(c)—
  - (a) the arrangements are to be treated as not having a one-way exchange effect in relation to the company for the purposes of section 328 or 606 (if they would otherwise have had such an effect), and
  - (b) sections 441 and 442 (loan relationships: unallowable purposes) and 690 to 692 (derivative contracts: unallowable purposes) are to be disregarded.

### **328C Meaning of “test day”**

- (1) This section makes provision for the purposes of section 328A as to whether a day in an accounting period of company A is a “test day”.
- (2) In the case of arrangements that include one or more options, a day in the accounting period is a “test day” if it is—
  - (a) a day on which such an option is exercised,
  - (b) a day on which such an option that is not exercised in the accounting period was capable of being exercised,
  - (c) a day on which company A, or a company connected with company A, ceased to be a party to such an option,
  - (d) a day on which a terms of such an option are varied, or
  - (e) the last day of the accounting period.
- (3) In the case of arrangements that include one or more relevant contingent contracts, a day in the accounting period is a “test day” if it is—
  - (a) a day on which an operative condition of such a contract is met,

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- (b) a day on which company A, or a company connected with company A, ceased to be a party to such a contract,
- (c) a day on which a terms of such a contract are varied, or
- (d) the last day of the accounting period.

### **328D Counterfactual currency movement assumptions**

- (1) This section makes provision for the purposes of section 328A(5) as to the calculation of exchange gains and losses of a company arising in an accounting period of that company.
- (2) Where the relevant foreign currency appreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead depreciates (over the same period and in relation to the same currency) by that percentage.
- (3) Where the relevant foreign currency depreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead appreciates (over the same period and in relation to the same currency) by that percentage.
- (4) For provision as to the treatment of certain options for the purposes of the calculation in cases in which subsection (2) or (3) applies, see section 328E.
- (5) Except as provided for in that section, the calculation must be made on the basis of transactions in fact entered into (and not on the basis of transactions that would have been entered into on the assumption specified in subsection (2) or (3)).
- (6) In this section “relevant foreign currency” means—
  - (a) the currency in which the loan relationships or relevant contracts in respect of which the exchange gains or losses arise are denominated, or
  - (b) where the exchange gains or losses arise in respect of loan relationships or relevant contracts denominated in more than one currency, any of them.
- (7) References in this section to the “operating currency” of a company, in relation to an accounting period, are (subject to subsection (8)) to the currency in which profits or losses of the company arising in that accounting period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes are required to be computed by virtue of section 92(1), 92A(2), 92B(2)(a) or 92C(3)(a) of FA 1993 (foreign currency accounting).
- (8) In relation to a loan relationship or relevant contract to which a company is deemed to be a party under—
  - (a) section 381(2) and (3) (loan relationships involving firms), or
  - (b) section 620(2) (relevant contracts involving firms),references in this section to the “operating currency” of the company, in relation to an accounting period, are to the currency that would be the

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operating currency of that firm in that accounting period if that firm were a company.

### **328E Counterfactual currency movement assumptions: treatment of options**

- (1) This section applies in relation to the calculation for the purposes of section 328A(5) of exchange gains and losses of a company arising in an accounting period of that company where—
  - (a) the calculation is made on the assumption specified in subsection (2) or (3) of section 328D (“the relevant assumption”), and
  - (b) an option is part of the arrangements.
- (2) Subsection (3) applies if the option is exercised on the test day.
- (3) The option is to be treated as not having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would not have been exercised on that day.
- (4) Subsection (5) applies if the option is not exercised on the test day but was exercisable on that day.
- (5) The option is to be treated as having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would have been exercised on that day.

### **328F Meaning of “option”**

- (1) In the Part 5 one-way exchange effect provisions “option” is to be construed as if section 580(2) and (3) (meaning of option) were omitted.
- (2) For the purposes of the Part 5 one-way exchange effect provisions—
  - (a) section 584 (hybrid derivatives with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, the company treats” there were substituted “ it is possible to regard ”,
  - (b) section 585 (loan relationships with embedded derivatives) is to be construed as if in subsection (1) for the words “in accordance with generally accepted accounting practice a company treats” there were substituted “ it is possible to regard ”, and
  - (c) section 586 (other contracts with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, treats” there were substituted “ it is possible to regard ”.

### **328G Meaning of “relevant contingent contract” and “operative condition”**

- (1) In the Part 5 one-way exchange effect provisions “relevant contingent contract” means a contract that meets the following two conditions.
- (2) The first condition is that company A, or a company connected with company A (“the relevant company”), is a party to the contract.
- (3) The second condition is that the contract includes a condition—

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- (a) on the meeting of which a right or liability under the contract is altered, and
  - (b) that operates (directly or indirectly) by reference to the exchange rate between the operating currency of the relevant company and another currency.
- (4) In this section “operating currency” has the same meaning as in section 328D.
- (5) In the Part 5 one-way exchange effect provisions, “operative condition” means a condition of the kind mentioned in subsection (3).

### **328H Other interpretative provisions**

- (1) In this Act “the Part 5 one-way exchange effect provisions” means sections 328A to 328G and this section.
- (2) The following provisions of this section have effect for the purposes of the Part 5 one-way exchange effect provisions.
- (3) References to arrangements include any agreements, understandings, schemes, transactions or series of transactions (whether or not legally enforceable).
- (4) The circumstances to be taken into account in determining whether a loan relationship or relevant contract is “part of” any arrangements include (in particular)—
- (a) the circumstances in which it was entered into, acquired or issued,
  - (b) the currency in which it is denominated, and
  - (c) its likely effect.
- (5) References to the currency in which a relevant contract is denominated are to the currency in which its underlying subject matter is denominated.
- (6) A currency (“currency A”) appreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, exceeds
  - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,
- and the percentage of the appreciation is the amount determined under subsection (7).
- (7) The percentage of the appreciation is—
- (a) the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (6), expressed as a percentage of the amount mentioned in that paragraph (b), or
  - (b) if lower, 100%.
- (8) A currency (“currency A”) depreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, is less than

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- (b) the value expressed in currency B of one unit of currency A at the beginning of the period,  
and the percentage of the depreciation is the difference, expressed as a percentage of the amount mentioned in paragraph (b).
- (9) References to a company connected with company A are to a company connected with company A for the relevant accounting period.
- (10) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (9).
- (11) The following provisions apply for the purposes of the Part 5 one-way exchange effect provisions—
  - sections 577 and 578 (meaning of “relevant contract” etc),
  - section 580 (meaning of “option”),
  - section 583 (meaning of “underlying subject matter”),
  - section 584 (hybrid derivatives with embedded derivatives),
  - section 585 (loan relationships with embedded derivatives), and
  - section 586 (other contracts with embedded derivatives).
- (12) See section 328A for the meaning of the following expressions—
  - “the arrangements”;
  - “company A”;
  - “the relevant accounting period”;
  - “the test day”.

#### *Derivative contracts*

- 4 Chapter 3 of Part 7 of CTA 2009 (derivative contracts: credits and debits to be brought into account) is amended as follows.
- 5 For the heading before section 606 (exchange gains and losses) substitute— “Exchange gains and losses”.
- 6 (1) Section 606 is amended as follows
  - (2) In subsection (3), for paragraph (a) (together with the “and” at the end) substitute—
    - “(a) condition A or B is met, and”.
  - (3) In subsection (4), for the words from “so much” to “currency as” substitute “an exchange gain or loss of a company so far as—
    - (a) condition A is met, and
    - (b) it”.
  - (4) After that subsection insert—
    - “(4A) Condition A is that the exchange gain or loss arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency.
    - (4B) Condition B is that the exchange gain or loss arises as a result of the translation from one currency to another of the profit or loss of part of the company's business.
    - (4C) Subsection (4D) applies where—

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- (a) condition A is met, and
- (b) the amount that is recognised in respect of the exchange gain or loss as mentioned in subsection (3)(b) (“the recognised gain or loss”) is not calculated by reference to spot rates of exchange.

(4D) Where this subsection applies—

- (a) the recognised gain or loss is to be treated for the purposes of this Part as comprising two separate exchange gains or losses, namely—
  - (i) an exchange gain or loss calculated by reference to spot rates of exchange, and
  - (ii) a residual exchange gain or loss, and
- (b) subsections (3) and (4) do not have effect in relation to the residual exchange gain or loss.”

(5) After subsection (4D) (inserted by sub-paragraph (4) above) insert—

“(4E) Subsections (3) and (4) do not have effect to disapply subsection (1) in the case of an exchange gain arising in an accounting period of a company so far as—

- (a) the exchange gain arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency,
- (b) the derivative contract is part of arrangements that have a one-way exchange effect in relation to the company in the accounting period (see section 606A), and
- (c) the arrangements cause the company or any other company to gain a tax advantage (other than a negligible tax advantage).”

7 After that section insert—

**“606A Arrangements that have a “one-way exchange effect”**

- (1) For the purposes of section 606 arrangements (“the arrangements”) have a “one-way exchange effect” in relation to a company (“company A”) in an accounting period of that company (“the relevant accounting period”) if the following two conditions are met.
- (2) The first condition is that the arrangements include an option or a relevant contingent contract.
- (3) The second condition is that, in relation to any day in the relevant accounting period (“the test day”)—
  - (a) amount A is not equal to amount B, and
  - (b) the difference between amounts A and B is not the same as it would be were those amounts calculated disregarding the matching rules.
- (4) Amount A is—
  - (a) the sum of the relevant exchange losses of company A, and of each company connected with company A, that arise in accounting periods of those companies that end on the test day, less
  - (b) the sum of the relevant exchange gains of those companies that arise in such accounting periods.
- (5) Amount B is—

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- (a) the sum of the relevant exchange gains of company A, and of each company connected with company A, that would have arisen in accounting periods of those companies that end on the test day, less
  - (b) the sum of the relevant exchange losses of those companies that would have arisen in such accounting periods,
- if exchange gains and losses of those companies in those accounting periods were calculated in accordance with section 606D (counterfactual currency movement assumptions).
- (6) For the purposes of subsections (4) and (5) an accounting period of company A, or of a company connected with company A, in which the test day falls and that does not end on that day is to be treated as if it did end on that day.
- (7) In this section “the matching rules” means—
- (a) section 328(3) and (4), and
  - (b) section 606(3) and (4).

#### **606B Meaning of “relevant exchange gain” and “relevant exchange loss”**

- (1) For the purposes of section 606A an exchange gain or loss of a company is “relevant” if—
- (a) it arises in relation to—
    - (i) an asset or liability representing a loan relationship to which the company is a party, or
    - (ii) a relevant contract to which the company is a party,
  - (b) the loan relationship or relevant contract is part of the arrangements, and
  - (c) a debit or credit in respect of the exchange gain or loss is required to be brought into account by the company for the purposes of corporation tax.
- (2) For the purposes of subsection (1)(c)—
- (a) the arrangements are to be treated as not having a one-way exchange effect in relation to the company for the purposes of section 328 or 606 (whether or not they would have such an effect apart from this subsection), and
  - (b) sections 441 and 442 (loan relationships: unallowable purposes) and 690 to 692 (derivative contracts: unallowable purposes) are to be disregarded.

#### **606C Meaning of “test day”**

- (1) This section makes provision for the purposes of section 606A as to whether a day in an accounting period of company A is a “test day”.
- (2) In the case of arrangements that include one or more options, a day in the accounting period is a “test day” if it is—
- (a) a day on which such an option is exercised,
  - (b) a day on which such an option that is not exercised in the accounting period was capable of being exercised,
  - (c) a day on which company A, or a company connected with company A, ceased to be a party to such an option,



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- (d) a day on which a terms of such an option are varied, or
  - (e) the last day of the accounting period.
- (3) In the case of arrangements that include one or more relevant contingent contracts, a day in the accounting period is a “test day” if it is—
- (a) a day on which an operative condition of such a contract is met,
  - (b) a day on which company A, or a company connected with company A, ceased to be a party to such a contract,
  - (c) a day on which a terms of such a contract are varied, or
  - (d) the last day of the accounting period.

### **606D Counterfactual currency movement assumptions**

- (1) This section makes provision for the purposes of section 606A(5) as to the calculation of exchange gains and losses of a company arising in an accounting period of that company.
- (2) Where the relevant foreign currency appreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead depreciates (over the same period and in relation to the same currency) by that percentage.
- (3) Where the relevant foreign currency depreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead appreciates (over the same period and in relation to the same currency) by that percentage.
- (4) For provision as to the treatment of certain options for the purposes of the calculation in cases in which subsection (2) or (3) applies, see section 606E.
- (5) Except as provided for in that section, the calculation must be made on the basis of transactions in fact entered into (and not on the basis of transactions that would have been entered into on the assumption specified in subsection (2) or (3)).
- (6) In this section “relevant foreign currency” means—
- (a) the currency in which the loan relationships or relevant contracts in respect of which the exchange gains or losses arise are denominated, or
  - (b) where the exchange gains or losses arise in respect of loan relationships or relevant contracts denominated in more than one currency, any of them.
- (7) References in this section to the “operating currency” of a company, in relation to an accounting period, are (subject to subsection (8)) to the currency in which profits or losses of the company arising in that accounting period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes are required to be computed by virtue of section 92(1), 92A(2), 92B(2)(a) or 92C(3)(a) of FA 1993 (foreign currency accounting).

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- (8) In relation to a loan relationship or relevant contract to which a company is deemed to be a party under—
- (a) section 381(2) and (3) (loan relationships involving firms), or
  - (b) section 620(2) (relevant contracts involving firms),
- references in this section to the “operating currency” of the company, in relation to an accounting period, are to the currency that would be the operating currency of that firm in that accounting period if that firm were a company.

#### **606E Counterfactual currency movement assumptions: treatment of options**

- (1) This section applies in relation to the calculation for the purposes of section 606A(5) of exchange gains and losses of a company arising in an accounting period of that company where—
- (a) the calculation is made on the assumption specified in subsection (2) or (3) of section 606D (“the relevant assumption”), and
  - (b) an option is part of the arrangements.
- (2) Subsection (3) applies if the option is exercised on the test day.
- (3) The option is to be treated as not having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would not have been exercised on that day.
- (4) Subsection (5) applies if the option is not exercised on the test day but was exercisable on that day.
- (5) The option is to be treated as having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would have been exercised on that day.

#### **606F Meaning of “option”**

- (1) In the Part 7 one-way exchange effect provisions “option” is to be construed as if section 580(2) and (3) (meaning of option) were omitted.
- (2) For the purposes of the Part 7 one-way exchange effect provisions—
- (a) section 584 (hybrid derivatives with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, the company treats” there were substituted “ it is possible to regard ”,
  - (b) section 585 (loan relationships with embedded derivatives) is to be construed as if in subsection (1) for the words “in accordance with generally accepted accounting practice a company treats” there were substituted “ it is possible to regard ”, and
  - (c) section 586 (other contracts with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, treats” there were substituted “ it is possible to regard ”.

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### **606G Meaning of “relevant contingent contract” and “operative condition”**

- (1) In the Part 7 one-way exchange effect provisions “relevant contingent contract” means a contract that meets the following two conditions.
- (2) The first condition is that company A, or a company connected with company A (“the relevant company”), is a party to the contract.
- (3) The second condition is that the contract includes a condition—
  - (a) on the meeting of which a right or liability under the contract is altered, and
  - (b) that operates (directly or indirectly) by reference to the exchange rate between the operating currency of the relevant company and another currency.
- (4) In this section “operating currency” has the same meaning as in section 606D.
- (5) In the Part 7 one-way exchange effect provisions “operative condition” means a condition of the kind mentioned in subsection (3).

### **606H Other interpretative provisions**

- (1) In this Act “the Part 7 one-way exchange effect provisions” means sections 606A to 606G and this section.
- (2) The following provisions of this section have effect for the purposes of the Part 7 one-way exchange effect provisions.
- (3) References to arrangements include any agreements, understandings, schemes, transactions or series of transactions (whether or not legally enforceable).
- (4) The circumstances to be taken into account in determining whether a loan relationship or relevant contract is “part of” any arrangements include (in particular)—
  - (a) the circumstances in which it was entered into, acquired or issued,
  - (b) the currency in which it is denominated, and
  - (c) its likely effect.
- (5) References to the currency in which a relevant contract is denominated are to the currency in which its underlying subject matter is denominated.
- (6) A currency (“currency A”) appreciates relative to another currency (“currency B”) over a period if—
  - (a) the value expressed in currency B of one unit of currency A at the end of the period, exceeds
  - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,and the percentage of the appreciation is the amount determined under subsection (7).
- (7) The percentage of the appreciation is—

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- (a) the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (6), expressed as a percentage of the amount mentioned in that paragraph (b), or
  - (b) if lower, 100%.
- (8) A currency (“currency A”) depreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, is less than
  - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,
- and the percentage of the depreciation is the difference, expressed as a percentage of the amount mentioned in paragraph (b).
- (9) References in this section to a company connected with company A are to a company connected with company A for the relevant accounting period.
- (10) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (9).
- (11) “Tax advantage” has the meaning given by section 840ZA of ICTA.
- (12) See section 606A for the meaning of the following expressions—
- “the arrangements”;
  - “company A”;
  - “the relevant accounting period”;
  - “the test day”.
- 8 Immediately before section 607 (pre-contract or abortive expenses) insert— “Miscellaneous”.

#### *Interpretation*

- 9 In Schedule 4 to CTA 2009 (index of defined expressions), insert at the appropriate places—

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“the Part 5 one-way exchange effect      section 328H(1)”;  
provisions

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“the Part 7 one-way exchange effect      section 606H(1)”.  
provisions

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#### *Consequential revocation*

- 10 The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2006 (S.I. 2006/843) are revoked.

#### *Commencement*

- 11 (1) The amendments made by this Schedule have effect—
- (a) in relation to exchange gains and losses arising in accounting periods beginning on or after 22 April 2009, and

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- (b) subject to the following provisions of this paragraph, in relation to exchange gains and losses arising in straddling accounting periods.
- (2) In this paragraph “straddling accounting period” means an accounting period that—
  - (a) begins before 22 April 2009, and
  - (b) ends on or after that date.
- (3) An exchange gain or loss that arises in a straddling accounting period in relation to—
  - (a) an asset or liability representing a loan relationship, or
  - (b) a derivative contract,is to be treated for the purposes of this paragraph as if it were made up of two amounts.
- (4) Those two amounts are the exchange gains or losses that would arise in relation to the loan relationship or derivative contract in—
  - (a) that part of the period that falls before 22 April 2009, and
  - (b) that part of the period that falls on or after that date,if those parts were separate accounting periods.
- (5) The amendments made by this Schedule have effect, in relation to an exchange gain or loss of the kind mentioned in sub-paragraph (3), as if the gain or loss were the amount determined in relation to it under sub-paragraph (4)(b).

## SCHEDULE 22

Section 44

### OFFSHORE FUNDS

#### PART 1

#### MEANING OF “OFFSHORE FUND”

##### *FA 2008*

- 1 FA 2008 is amended as follows.
- 2 Before section 41 (tax treatment of participants in offshore funds) insert—

#### **Meaning of “offshore fund”**

“40A(1) This section and sections 40B to 40G have effect for this group of sections.

- (2) “Offshore fund” means—
  - (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
  - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
  - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom (but see subsection (3)).

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- (3) Subsection (2)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (4) “This group of sections” means this section and sections 40B to 42A.
- (5) References to participants in arrangements (or a fund) are to persons taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise (and references to participation in arrangements or a fund, however expressed, are to be read accordingly).
- (6) In this section—
  - “body corporate” does not include a limited liability partnership;
  - “co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.

### **Meaning of “mutual fund” etc**

- 40B (1) “Mutual fund” means arrangements with respect to property of any description, including money, that meet conditions A to C, subject to—
- (a) sections 40C and 40D, and
  - (b) the exceptions made by or under sections 40E to 40G.
- (2) Condition A is that the purpose or effect of the arrangements is to enable the participants—
- (a) to participate in the acquisition, holding, management or disposal of the property, or
  - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) Condition B is that the participants do not have day-to-day control of the management of the property.
- (4) For the purpose of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (5) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
- (a) the net asset value of the property that is the subject of the arrangements, or
  - (b) an index of any description.
- (6) The Treasury may by regulations amend condition C.

### **Umbrella arrangements**

- 40C (1) In the case of umbrella arrangements—
- (a) each part of the umbrella arrangements is to be treated as separate arrangements (subject to section 40D), and

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- (b) the umbrella arrangements are to be disregarded.
- (2) “Umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (3) References to a part of umbrella arrangements are to the arrangements relating to a separate pool.

### **Arrangements comprising more than one class of interest**

- 40D(1) Where there is more than one class of interest in arrangements (the “main arrangements”)—
- (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and
  - (b) the main arrangements are to be disregarded.
- (2) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

### **Meaning of “mutual fund”: exceptions**

- 40E (1) Arrangements are not a mutual fund if—
- (a) under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in condition C in section 40B only in the event of the winding up, dissolution or termination of the arrangements, and
  - (b) condition X or Y is met.
- (2) Condition X is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (3) Condition Y is that—
- (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements, and
  - (b) condition Y1, Y2 or Y3 is met.
- (4) Condition Y1 is that none of the assets that are the subject of the arrangements are relevant income-producing assets.
- (5) Condition Y2 is that, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (6) Condition Y3 is that—
- (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
  - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.

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- (7) Condition Y is not met if the arrangements are designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (8) For the purposes of this section, the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

### **Meaning of “relevant income-producing assets”**

- 40F (1) “Relevant income-producing assets” means assets that produce income on which, if they were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (subject to the following provisions of this section).
- (2) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—
    - (a) the asset (taking account of the hedging), or
    - (b) any product of the hedging arrangements.
  - (3) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets.

### **Meaning of “mutual fund”: powers to vary exceptions**

- 40G(1) The Treasury may by regulations amend or repeal any provision of section 40E or 40F.
- (2) The Treasury may by regulations provide that arrangements are not a mutual fund—
    - (a) in specified circumstances, or
    - (b) if they are of a specified description.
  - (3) Regulations under this section may include provision having effect in relation to the tax year and accounting periods current on the day on which the regulations are made.”

- 3 (1) Section 41 (tax treatment of participants in offshore funds) is amended as follows.
  - (2) In subsection (2), omit the definition of “offshore fund” (and the “and” before it).
  - (3) Omit subsections (3) to (9).
- 4 (1) Section 42 (regulations under section 41: supplementary) is amended as follows.
  - (2) In subsection (2), for paragraphs (a) and (b) substitute—
    - “(a) an offshore fund comprising a part of umbrella arrangements, and
    - (b) an offshore fund comprising arrangements relating to a class of interest in other arrangements (see section 40D).”
  - (3) In subsection (3), for the words from “may” to the end substitute “, in particular—



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- (a) repeal Chapter 5 of Part 17 of ICTA (offshore funds), and
- (b) make provision consequential on the repeal of provisions of that Chapter.”

(4) In subsection (4)(e), insert at the end “and savings”.

(5) For subsection (5) substitute—

“(5) Regulations under section 41 may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.”

(6) In subsection (6), for “and “offshore fund” have” substitute “ has ”.

5 After that section insert—

**“42A Regulations: procedure**

- (1) Regulations under this group of sections are to be made by statutory instrument.
- (2) The following regulations may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons—
  - (a) regulations under section 40B(6),
  - (b) regulations under section 40G(1), and
  - (c) the first regulations under section 41(1).
- (3) A statutory instrument containing any other regulations under this group of sections is subject to annulment in pursuance of a resolution of the House of Commons, unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

*Restriction on regulation-making power under section 41 of FA 2008*

- 6 (1) Regulations under section 41 of FA 2008 may not make provision about the treatment of a person in respect of any rights in an affected offshore fund that are acquired by the person—
- (a) before 1 December 2009, or
  - (b) in accordance with sub-paragraph (2),
- (but see sub-paragraph (4)).
- (2) Rights are acquired in accordance with this sub-paragraph if—
- (a) the rights are acquired by the participant in accordance with a legally enforceable agreement in writing that was entered into by the participant before 30 April 2009,
  - (b) if the agreement was conditional, the conditions are satisfied before that date, and
  - (c) the agreement is not varied on or after that date.
- (3) Rights of a person in a fund are rights in an affected offshore fund if—
- (a) the fund is an offshore fund within the meaning of section 40A of FA 2008, but

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- (b) on the date on which the person acquired them, the fund was not an offshore fund within the meaning of Chapter 5 of Part 17 of ICTA.
- (4) Sub-paragraph (1) does not prevent regulations under section 41 of FA 2008 making—
- (a) provision for a person to elect to be treated in accordance with the regulations in respect of rights referred to in that sub-paragraph, or
  - (b) provision that does not increase the person's liability to tax in respect of such rights.

## PART 2

### APPLICATION OF TCGA 1992 TO OFFSHORE FUNDS

#### *TCGA 1992*

- 7 TCGA 1992 is amended as follows.
- 8 In Chapter 3 of Part 3 (collective investment schemes), insert at the end—

#### **Application of Act to certain offshore funds**

- “103A(1) This Act applies in relation to a relevant offshore fund as if—
- (a) the fund were a company, and
  - (b) the rights of the participants in the fund were shares in the company.
- (2) An offshore fund is a relevant offshore fund if—
- (a) it is not constituted by a company, and
  - (b) it is not a unit trust scheme (see section 99).
- (3) In this section “offshore fund” and “participant”, in relation to a fund, have the meanings given in section 40A of the Finance Act 2008.”
- 9 Accordingly, in the title of Part 3 and in the title of Chapter 3 of that Part, insert at the end “etc”.
- 10 In section 288(1) (interpretation), in the definition of “company”, for “section 99” substitute “ sections 99 and 103A ”.

#### *Consequential provision*

- 11 (1) In TMA 1970, in—
- (a) section 25(9) (issuing houses, stockbrokers, auctioneers, etc), and
  - (b) section 28(2) (non-resident companies and trusts),
- after “sections 99” insert “ , 103A ”.
- (2) In section 842(4) of ICTA (investment trusts), after “sections 99” insert “ , 103A ”.
- (3) In ITTOIA 2005—
- (a) in section 149(4) (taxation of amounts taken to reserves), at the end of paragraph (b) (before the “and”) insert—

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- “(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,” and
- (b) in section 150(8) (conversion etc of securities held as circulating capital), after paragraph (c) insert—
  - “(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,”.
- (4) In section 834(5) of the Companies Act 2006 (investment company: condition as to holdings in other companies), in the definition of “company” and “shares”, after “sections 99” insert “ , 103A ”.
- (5) In section 332 of ITA 2007 (venture capital trusts: minor definitions), in the definition of “company”—
  - (a) for “section 99” substitute “ sections 99 and 103A ”, and
  - (b) after “schemes” insert “ and certain offshore funds ”.

*Commencement: general*

- 12 (1) The amendments made by this Part of this Schedule have effect in relation to the acquisition, holding and disposal of rights in a relevant offshore fund on or after the commencement day, subject to paragraphs 13 and 15.
- (2) In this paragraph and paragraphs 15 to 18 “the commencement day” means—
- (a) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to capital gains tax, 1 December 2009, and
  - (b) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to corporation tax, such day as the Treasury may by order appoint.

*Commencement: certain consequential amendments*

- 13 (1) The amendment made by sub-paragraph (1)(a) of paragraph 11 comes into force on 1 December 2009 (and has effect as if section 103A of TCGA 1992 had effect from that date in relation to the issue, placing, acquisition, holding and disposal of rights in relevant offshore funds by any person).
- (2) The amendments made by sub-paragraphs (2), (4) and (5) of paragraph 11 come into force in accordance with an order made by the Treasury.

*Commencement orders*

- 14 (1) An order under paragraph 12(2)(b) or 13(2)—
- (a) may make different provision for different cases or different purposes, and
  - (b) may include transitional provision and savings.
- (2) Section 828(3) of ICTA, section 287(3) of TCGA 1992 and section 1014(4) of ITA 2007 (orders etc subject to annulment) do not apply in relation to such an order.

*Election modifying commencement*

- 15 (1) This paragraph applies if a person makes an election—

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- (a) for capital gains tax purposes, in respect of a relevant tax year, or
  - (b) for corporation tax purposes, in respect of a relevant accounting period.
- (2) The amendments made by this Part of this Schedule (other than the amendments made by paragraph 11(1)(a), (2), (4) and (5)) have effect, and are to be treated as always having had effect, in relation to the acquisition, holding and disposal by the person of rights in a relevant offshore fund on or after the first day of that tax year or accounting period (“the election day”).
- (3) Sub-paragraph (4) applies if, in respect of any time on or after the election day but before the commencement day, the relevant offshore fund was not certified as a distributing fund under Part 3 of Schedule 27 to ICTA (distributing funds: certification procedure).
- (4) The acquisition, holding or disposal by the person of rights in the fund at that time is to be treated as the acquisition, holding or disposal of rights in an offshore fund that is so certified.
- (5) In this paragraph and paragraph 16—  
“relevant accounting period” means an accounting period beginning on or after 1 April 2003 but before the day appointed under paragraph 12(2)(b);  
“relevant tax year” means the tax year 2003-04 and any subsequent tax year up to and including the tax year 2009-2010.

#### *Making an election*

- 16 (1) An election under paragraph 15 must be made—
- (a) for capital gains tax purposes, by being included in a relevant return under TMA 1970, and
  - (b) for corporation tax purposes, by being included in a relevant company tax return.
- (2) A return under TMA 1970 is relevant if it is for—
- (a) the tax year in respect of which the election is made, or
  - (b) a subsequent relevant tax year.
- (3) A company tax return is relevant if it is for—
- (a) the accounting period in respect of which the election is made, or
  - (b) a subsequent relevant accounting period.
- (4) The references in sub-paragraph (1) to an election being included in a return include an election being included by virtue of an amendment of the return.
- (5) An election under paragraph 15 is irrevocable.

#### *Giving effect to elections*

- 17 If, in order to give effect to an election under paragraph 15, any adjustments are required, whether by the discharge or repayment of tax, the making of assessments or otherwise—
- (a) the adjustments must be made, and
  - (b) any time limit for making the adjustments is to be disregarded.

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### *Modification of acquisition cost*

- 18 (1) This paragraph applies where a participant in a relevant offshore fund—
- (a) holds rights in a relevant offshore fund immediately before the effective date, and
  - (b) disposes of those rights on or after that date.
- (2) For the purposes of TCGA 1992 the participant is to be treated as if the acquisition cost for those rights were the pre-commencement acquisition cost.
- (3) “The effective date” means—
- (a) if the participant has made an election under paragraph 15, the election day, or
  - (b) otherwise, the commencement day.
- (4) “Acquisition cost” means the total of the consideration, costs and expenditure described in section 38(1)(a) and (b) of TCGA 1992 (acquisition and disposal costs etc).
- (5) “Pre-commencement acquisition cost” means the total of the consideration, costs and expenditure that would have been allowable as a deduction under section 38(1) (a) and (b) of TCGA 1992 if the participant had disposed of the rights immediately before the effective date.

## SCHEDULE 23

Section 46

### INSURANCE COMPANIES

#### *Transfer from non technical account not to be receipt*

- 1 (1) In section 83 of FA 1989 (receipts to be taken into account), after subsection (2) insert—
- “(2AZA) No amount shown as transfer from non technical account in line 32 of Form 58 in respect of the whole of the company's long-term business in the periodical return for a period of account is to be taken into account as a receipt of the period of account.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to periods of account ending on or after 22 April 2009.
- (3) But, in relation to a period of account of a company beginning before that date, that amendment has effect only insofar as the amount shown as transfer from non technical account in line 32 of Form 58 covering the whole of the company's long-term business in the periodical return for the period of account is attributable to transfers made on or after that date.

#### *No deduction for capital allocations to with-profits policy holders*

- 2 (1) In section 82 of FA 1989 (calculation of profits), after subsection (2) insert—
- “(2A) But amounts are not allowed as such a deduction if they—

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- (a) are allocated to holders of policies under which they are eligible to participate in surplus,
  - (b) are of a capital nature, and
  - (c) are not funded from amounts brought into account as part of total income in line 19 of the revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) in respect of the whole of the company's long-term business.
- (2B) For the purposes of subsection (2A) above payments made in connection with the reattribution of inherited estate are to be regarded as being of a capital nature.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to amounts allocated on or after 22 April 2009 to holders of policies under which they are eligible to participate in surplus.

*Limits on loss relief for addition to non-profit funds*

- 3 (1) In ICTA, after section 434A insert—

**“434AZA Reduced loss relief for additions to non-profit funds**

- (1) Where this section applies in the case of a company carrying on life assurance business, relief allowable under section 393A or Chapter 4 of Part 10 in respect of losses incurred by the company in the life assurance business in an accounting period is reduced in accordance with section 434AZB.
- (2) This section applies in the case of a company where—
  - (a) there has been a relevant addition to one or more non-profit funds in a period of account ending no later than the accounting period (“the relevant period of account”) (see subsection (3)),
  - (b) the company is not a non-profit company in relation to the relevant period of account and has not elected under subsection (9) of section 83YA of the Finance Act 1989 to be treated for the purposes of that section as if it were, and
  - (c) condition A or B is met,
 and, if the relevant period of account is not the period of account ending with the accounting period (“the current period of account”), condition C is also met.
- (3) For the purposes of subsection (2), there is a relevant addition to a non-profit fund in the relevant period of account if an amount is shown as a transfer from non-technical account in line 32 of the Form 58 of the non-profit fund in the periodical return for that period of account.
- (4) Condition A is that there is a relevant book value election in relation to assets of a non-profit fund of the company.
- (5) For the purposes of subsection (4), there is a relevant book value election in relation to assets of a non-profit fund if an amount is shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account.

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- (6) Condition B is that the company is party to arrangements the main purpose, or one of the main purposes, of which is to reduce the relevant admissible value of assets of a non-profit fund of the company, other than any structural assets.
- (7) For the purposes of subsection (6) (and section 434AZB), the “relevant admissible value” means the value reflected in line 89 of Form 13 of the periodical return for the current period of account.
- (8) Condition C is that the surplus arising since the last valuation shown in line 34 of the Form 58 of the non-profit fund, or any of the non-profit funds, in relation to which condition A or B is met in the periodical return for the current period of account is a negative amount.

#### **434AZB Additions to non-profit funds: amount of loss reduction**

- (1) The amount of the relief allowable as mentioned in section 434AZA(1) is reduced by whichever of the following is the least—
  - (a) the amount of the loss,
  - (b) the amount specified in subsection (2), and
  - (c) the amount specified in subsection (4).
- (2) The amount mentioned in subsection (1)(b) is—
  - (a) where only condition A in section 434AZA is met, the relevant amount relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant amounts relating to them,
  - (b) where only condition B is met, the amount of the relevant reduction relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant reductions relating to them, and
  - (c) where both condition A and condition B are met, the aggregate of the amounts in paragraphs (a) and (b).
- (3) In subsection (2)—
  - (a) “relevant amount”, in relation to a non-profit fund, means the amount shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account (as reduced by any amount which has had effect to reduce relief for losses for a previous accounting period), and
  - (b) “relevant reduction”, in relation to a non-profit fund, means the reduction of the relevant admissible value of assets of the non-profit fund (other than structural assets) which is attributable to the arrangements (as so reduced).
- (4) The amount mentioned in subsection (1)(c) is—
  - (a) if the relevant period of account is the current period of account, the amount referred to in section 434AZA(3) in the case of the non-profit fund, or of each of the non-profit funds, to which there has been a relevant addition in the relevant period of account, and

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- (b) otherwise, so much of the amount shown in line 31 of the Form 58 of the non-profit fund or non-profit funds in the periodical return for the current period of account as is attributable to the amount so referred to.

#### **434AZC Sections 434AZA and 434AZB: supplementary**

- (1) For the purposes of sections 434AZA and 434AZB, a non-profit fund required to support a with-profits fund is to be treated as not being a non-profit fund.
- (2) Sections 434AZA and 434AZB apply to a non-profit part of a with-profits fund as if references to something shown in the Form 14 or Form 58 of the non-profit fund in a periodical return were to what would be so shown if there were a Form 14 or Form 58 of the non-profit part of the with-profits fund in the periodical return.
- (3) In sections 434AZA and 434AZB—  
“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and  
“structural assets” has the same meaning as in section 83XA of the Finance Act 1989 (see subsection (3) of that section and any regulations made under it).”
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009 unless—
- (a) to the extent that section 434AZA would otherwise apply because condition A in that section is met in relation to a non-profit fund, the relevant addition to the non-profit fund was made before that date, or
- (b) to the extent that section 434AZA would otherwise apply because condition B in that section is so met, the relevant addition to the non-profit fund and the arrangements were both made before that date.

#### *FAFTS and contingent loans*

- 4 (1) In paragraph 4(5) of Schedule 17 to FA 2008 (financing-arrangement-funded transfers: companies with unrepaid contingent loan liabilities before first period of account beginning on or after 1 January 2008), in the definition of “R”, after “(7)(a) of that section” insert “ in respect of amounts brought into account as transfers to non-technical account for periods of account beginning on or after 1 January 2008 ”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to periods of account beginning on or after 1 January 2008.

#### *Apportionment: foreign business assets*

- 5 (1) Section 432E of ICTA (section 432B apportionment: participating funds) is amended as follows.
- (2) In subsection (3)(a), omit “and foreign business assets”.
- (3) In subsection (4), in the definition of “A”, omit “and foreign business assets”.



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- (4) In subsection (4A), omit “or foreign business assets”.
- 6 In consequence of the amendments made by paragraph 5, omit—
- (a) paragraph 19(4)(a) and (6) of Schedule 7 to FA 2007, and
  - (b) paragraph 10(3)(c) of Schedule 17 to FA 2008.
- 7 (1) The amendments made by paragraphs 5 and 6 have effect in relation to periods of account beginning on or after 1 January 2009 and ending on or after 22 April 2009.
- (2) But an insurance company may, in its company tax return for—
- (a) an accounting period beginning on or after 1 January 2008 but before 1 January 2009, or
  - (b) an accounting period beginning on or after 1 January 2009 and ending before 22 April 2009,
- elect that the amendments made by paragraphs 5 and 6 have effect in relation to that accounting period.

*Value shifting attributable to transfer of business*

- 8 (1) In section 32(1) of TCGA 1992 (value shifting: disposals within group followed by disposal of shares), after “171(1)” insert “ or 211 ”.
- (2) The amendment made by sub-paragraph (1) has effect for determining whether section 30 of TCGA 1992 has effect as respects a disposal on or after 22 April 2009.

SCHEDULE 24

Section 48

DISGUISED INTEREST

*Amendments of Part 6 of CTA 2009*

- 1 Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.
- 2 (1) Section 477(2) (overview of Part 6) is amended as follows.
- (2) After paragraph (a) insert—
- “(aa) Chapter 2A (disguised interest),”.
- (3) For paragraph (f) substitute—
- “(f) Chapter 6A (shares accounted for as liabilities),”.
- 3 After Chapter 2 insert—

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## “CHAPTER 2A

### DISGUISED INTEREST

#### Overview

486A) This Chapter provides for Part 5 to apply in relation to returns which are economically equivalent to interest (see section 486B).

- (2) For exclusions from this Chapter, see—
- (a) section 486C (return otherwise taxable),
  - (b) section 486D (arrangement having no tax avoidance purpose), and
  - (c) section 486E (excluded shares).

#### Disguised interest to be regarded as profit from loan relationship

486B) Where a company is party to an arrangement which produces for the company a return in relation to any amount which is economically equivalent to interest, Part 5 applies as if the return were a profit arising to the company from a loan relationship.

- (2) For the purposes of this Chapter a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (3) In subsection (2)(c) “the relevant time” means the time when the company becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the company.
- (4) The credits and debits to be brought into account for the purposes of Part 5 in respect of the return must be determined on an amortised cost basis of accounting.
- (5) But if any of the return is not recognised in determining the company's profit or loss for any period it is to be treated as recognised using an amortised cost basis of accounting.
- (6) Where two or more persons are party to an arrangement which produces a return such as is mentioned in subsection (1)—
- (a) for the persons (when taken together), but
  - (b) not for either (or any) of them individually,

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this section applies as if there were a profit arising to such (if any) of them as are companies from a loan relationship of so much of the return as is just and reasonable.

- (7) The only amounts which may be brought into account for corporation tax purposes in relation to a return such as is mentioned in subsection (1) in the case of any company are those which are brought into account in accordance with this section (but see section 486C).
- (8) In subsection (4) “credits” and “debits” include exchange gains and losses arising as a result of translating at different times the carrying value of the return or the amount by reference to which the return falls to be produced.
- (9) In this Chapter “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), other than one which constitutes a finance lease (within the meaning given by section 219 of CAA 2001).

#### **Exclusion where return otherwise taxable**

486(I) This Chapter does not apply to an arrangement which produces a return for a company if or to the extent that the return—

- (a) is charged to corporation tax as income of the company or brought into account as income of the company for corporation tax purposes no later than the time when amounts are brought into account in relation to the return in accordance with section 486B,
  - (b) arises from anything that would produce credits or debits in relation to the company under Part 7 (derivative contracts) or Part 8 (intangible fixed assets) but for any exception relating to particular credits or debits, or
  - (c) arises from anything that would produce credits or debits in relation to the company under Part 5 apart from this Chapter but for any exception relating to particular credits or debits.
- (2) Subsection (1)(b) does not disapply this Chapter in the case of a return in relation to which section 641 (derivative contracts taxed on chargeable gains basis) applies.

#### **Exclusion where arrangement has no tax avoidance purpose**

486(D) This Chapter does not apply in relation to a return produced by an arrangement to which a company is a party unless it is reasonable to assume that the main purpose, or one of the main purposes, of the company being a party to the arrangement is to obtain a relevant tax advantage.

- (2) But a company for which a return is produced by an arrangement to which this Chapter would otherwise be prevented from applying by subsection (1) may elect that this Chapter is to apply in relation to the return.
- (3) An election under subsection (2)—
  - (a) may not be made by a company if section 486B applies to the company in relation to the return in accordance with subsection (6) of that section,

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- (b) must be made no later than the time when the arrangement begins to produce a return for the company, and
  - (c) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return (or any part of it) is produced in a way which means that its treatment for corporation tax purposes is more advantageous to the company than it would be if it were—
- (a) charged to corporation tax as income of the company, or
  - (b) brought into account as income of the company for corporation tax purposes,
- at the time when amounts would be brought into account in relation to the return in accordance with section 486B.
- (5) Nothing in this section applies in relation to a company for an accounting period if the company is an excluded controlled foreign company.
- (6) For this purpose a company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
  - (b) are not so apportioned because of section 748(1) of that Act.

### **Excluded shares**

- 486E) This Chapter does not apply in relation to an accounting period (“the relevant accounting period”) of a company (“the holding company”) for which an arrangement produces a return for the company if the arrangement involves only relevant shares held by the company throughout the relevant period.
- (2) In this section “the relevant period” means the period—
- (a) beginning with the later of—
    - (i) the time when the holding company becomes party to the arrangement, and
    - (ii) the time when the arrangement begins to produce a return for the company, and
  - (b) ending with the earliest of—
    - (i) the end of the relevant accounting period,
    - (ii) the time when the holding company ceases to be party to the arrangement, and
    - (iii) the time when the arrangement ceases to produce a return for the company.
- (3) For the purposes of this section an arrangement “involves only” relevant shares if (and only if) the return produced reflects only an increase in the fair value of the shares.
- (4) For the purposes of subsection (3)—
- (a) “fair value”, in relation to relevant shares held by the holding company, means an amount which the company would obtain from

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- a knowledgeable and willing purchaser of the shares dealing at arm's length, and
- (b) there is an increase in the fair value of shares even if the increase is realised by the payment of a distribution in respect of the shares.
- (5) In this section “relevant shares” means shares which, throughout the relevant period, are—
- (a) fully paid-up shares of a relevant company, or
- (b) shares of a company, other than a relevant company, which would be accounted for as a liability by the company in which they are shares in accordance with generally accepted accounting practice and which produce for the holding company a return in relation to any amount which is economically equivalent to interest (as to which see Chapter 6A).
- (6) For the purposes of subsection (5)(a) shares are fully paid-up if there are no actual or contingent obligations—
- (a) to meet unpaid calls on the shares, or
- (b) to make a contribution to the capital of the company in which they are shares that could affect the value of the shares.
- (7) For the purposes of subsection (5) a company is “a relevant company” if—
- (a) it and the holding company are connected companies,
- (b) it is a relevant joint venture company, or
- (c) it is a relevant controlled foreign company.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (7)(a).
- (9) For the purposes of subsection (7)(b) a company is a relevant joint venture company if—
- (a) the holding company is one of two persons who, taken together, control it,
- (b) the holding company is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and
- (c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.
- (10) Section 755D of ICTA (meaning of “control” etc) applies for the purposes of subsection (9)(a) as for those of Chapter 4 of Part 17 of that Act (controlled foreign companies), except that no rights and powers are attributed to a person by subsection (6)(c) or (d) of that section.
- (11) For the purposes of subsection (7)(c) a company is a relevant controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned to the holding company for the relevant accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
- (b) are not so apportioned because of section 748(1) or (3) of that Act.
- (12) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this section.”

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4 After Chapter 6 insert—

## “CHAPTER 6A

### SHARES ACCOUNTED FOR AS LIABILITIES

#### Introduction to Chapter

- 521A) This Chapter contains rules for Part 5 (and the other provisions of the Corporation Tax Acts) to apply in some cases as if at some times in the accounting period of a company (“A”) which holds shares of a certain kind in another company (“B”) the shares were rights under a creditor relationship of A.
- (2) See, in particular—
- (a) section 521B (application of Part 5 to some shares as rights under creditor relationship), and
  - (b) section 521C (which describes the shares to which the rules apply).
- (3) In this Chapter references to the investing company are to A and references to the issuing company are to B.
- (4) For the purposes of this Chapter, the definition of “share” in section 476(1) only applies so far as it provides that “share” does not include a share in a building society.
- (5) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this Chapter.
- (6) See section 116B of TCGA 1992 for the effect for chargeable gains purposes of shares beginning or ceasing to be shares to which section 521C applies.

#### Application of Part 5 to certain shares as rights under creditor relationship

- 521B) This section applies in relation to the times in a company's accounting period when—
- (a) the company holds a share in another company, and
  - (b) section 521C (shares accounted for as liabilities) applies to the share.
- (2) Part 5 (and the other provisions of the Corporation Tax Acts) apply as if at those times—
- (a) the share were rights under a creditor relationship of the investing company, and
  - (b) any distribution in respect of the share were not a distribution (and accordingly is within Part 5).
- (3) Where Part 5 applies in relation to the investing company in accordance with subsection (2) it so applies as if the issuing company stood in the position of debtor as respects the debt in question.
- (4) No debits are to be brought into account by the investing company as respects the share but this does not affect debits to be brought into account in respect of exchange gains or losses.

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- (5) Subsection (2)(b) does not affect the operation of Part 1 of Schedule 25 of ICTA (controlled foreign companies: acceptable distribution policy) (including as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009).
- (6) In this Chapter references to “the share” are to the share mentioned in subsection (1).

### **Shares accounted for as liabilities**

521C(1) This section applies to the share if—

- (a) the share would be accounted for by the issuing company as a liability in accordance with generally accepted accounting practice,
  - (b) the share produces for the investing company a return in relation to any amount which is economically equivalent to interest,
  - (c) the issuing company and the investing company are not connected companies,
  - (d) the condition in subsection (4) is met,
  - (e) the share is not an excepted share (see section 521D), and
  - (f) the investing company holds the share for an unallowable purpose (see section 521E).
- (2) For the purposes of this section a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
    - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
    - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
    - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
  - (3) In subsection (2)(c) “the relevant time” means the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company.
  - (4) The condition mentioned in subsection (1)(d) is that the share does not fall to be treated for the accounting period in question as if it were rights under a creditor relationship of the investing company because of section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights).
  - (5) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

### **Excepted shares**

521D(1) A share is an excepted share for the purposes of section 521C if it is—

- (a) a qualifying publicly-issued share (see subsection (2)), or
- (b) a share which mirrors a public issue (see subsections (3) and (4)).

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- (2) A share is a “qualifying publicly-issued share” if—
- (a) it was issued by a company as part of an issue of shares to persons not connected with the company, and
  - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.
- (3) The first case where shares (“the mirroring shares”) mirror a public issue is where—
- (a) a company (“company A”) issues shares (“the public issue”) to persons not connected with the company,
  - (b) within 7 days of that issue, one or more other companies (“companies BB”) issue the mirroring shares to company A on the same terms as the public issue or substantially the same terms,
  - (c) company A and companies BB are associated companies (see subsection (5)), and
  - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue.
- (4) The second case where shares (“the second level mirroring shares”) mirror a public issue is where, in the circumstances of the first case—
- (a) within 7 days of the public issue, one or more other companies (“companies CC”) issue the second level mirroring shares to one or more of companies BB on the same terms as the public issue or substantially the same terms,
  - (b) company A, companies BB and companies CC are associated companies (see subsection (5)), and
  - (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue.
- (5) For the purposes of subsections (3) and (4) companies are associated companies if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3) (a) of that Act).

### **Unallowable purpose**

- 521E) For the purposes of section 521C, the investing company holds the share for an unallowable purpose if the main purpose, or one of the main purposes for which the company holds the share is to obtain a relevant tax advantage.
- (2) But the investing company may elect that this Chapter is to apply in relation to the share even though it would otherwise be prevented from applying by subsection (1)(f) of that section.
- (3) An election under subsection (2)—
- (a) must be made no later than the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company, and
  - (b) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return produced by the share (or any part of it) is received in a way that means



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that its treatment for corporation tax purpose is more advantageous to the investing company than it would be if it were—

- (a) charged to corporation tax as income of the investing company, or
- (b) brought into account as income of the investing company for corporation tax purposes,

at the time when amounts would be brought into account in relation to the return in accordance with section 521B.

- (5) Nothing in this section applies in relation to the investing company for an accounting period if it is an excluded controlled foreign company.
- (6) For this purpose the investing company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
  - (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
  - (b) are not so apportioned because of section 748(1) of that Act.

#### **Shares becoming or ceasing to be shares to which section 521B applies**

521F(1) This section applies if at any time section 521B begins or ceases to apply in the case of a share held by the investing company.

- (2) The investing company is treated for the purposes of Part 5—
  - (a) as having disposed of the share immediately before that time for consideration of an amount equal to the notional carrying value of the share at that time, and
  - (b) as having immediately reacquired it for consideration of the same amount.
- (3) In subsection (2) “notional carrying value”, in relation to the share, means the amount which would have been its carrying value in the accounts of the investing company if a period of account had ended immediately before section 521B began or ceased to apply in the case of the share and the investing company.
- (4) For the purposes of subsection (3) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317).”

#### *Amendments and repeals*

- 5 (1) Section 116B of TCGA 1992 (shares beginning or ceasing to be shares to which section 523 of CTA 2009 applies) is amended as follows.
  - (2) In subsection (1) and the heading, for “522” substitute “ 521B ”.
  - (3) In subsection (1)(b), for “its fair value” substitute “ the notional carrying value of the share ”.
  - (4) In subsection (2), for the definition of “fair value” substitute—

““notional carrying value” has the same meaning as in subsection (2) of section 521F of CTA 2009 (see subsection (3) of that section).”
  - (5) In that subsection, in the definition of “investing company”—

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- (a) for “7” substitute “ 6A ”, and
- (b) for “with guaranteed returns) (see section 522(3))” substitute “ accounted for as liabilities) (see section 521A(3) ”.
- 6 In section 26 of F(No.2)A 2005 (tax arbitrage), for subsection (10) substitute—
- “(10) This subsection applies to an amount that is brought into account by virtue of Chapter 2A or 6A of Part 6 of CTA 2009 (shares treated as loan relationships).”
- 7 (1) Schedule 4 to CTA 2009 (index of expressions) is amended as follows.
- (2) After the entry relating to “approved, approval (in relation to a share incentive plan) (in Chapter 1 of Part 11)” insert—
- 
- “arrangement (in Chapter 2A of Part 6) section 486B(9)”.
- 
- (3) Omit the entry relating to “the associated transactions condition (in Chapter 7 of Part 6)”.
- (4) After the entry relating to “effective 51% subsidiary (in Part 8)” insert—
- 
- “economically equivalent to interest (in section 486B(2)).  
Chapter 2A of Part 6)
- 
- (5) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute—
- 
- “the investing company (in Chapter 6A of section 521A(3)).  
Part 6)
- 
- (6) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute—
- 
- “the issuing company (in Chapter 6A of Part section 521A(3)).  
6)
- 
- (7) Omit the entries relating to “the increasing value condition (in Chapter 7 of Part 6)” and “the redemption return condition (in Chapter 7 of Part 6)”.
- (8) In the entry relating to “share (in Part 5 and in Part 6 except for Chapter 7 of that Part)”, for “7” substitute “ 6A ”.
- (9) For the entries relating to “share (in Chapter 7 of Part 6)” and “the share (in Chapter 7 of Part 6) substitute—
- 
- “share (in Chapter 6A of Part 6) section 521A(4)  
the share (in Chapter 6A of Part 6) section 521B(6)”.

### Repeals

- 8 In consequence of the amendments made by this Schedule, omit—
- (a) in ICTA—
- (i) section 736C (deemed interest: cash collateral under stock lending arrangement), and

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- (ii) section 736D (quasi-stock lending arrangements and quasi-cash collateral),
  - (b) in FA 2004, sections 131 to 133 (companies in partnership), and
  - (c) in CTA 2009—
    - (i) Chapter 7 of Part 6 (shares with guaranteed returns etc),
    - (ii) Chapter 8 of that Part (returns from partnerships), and
    - (iii) section 547 (repo under arrangement designed to produce quasi-interest: tax avoidance).
- 9 Omit the following provisions (which relate to the provisions repealed by paragraph 8)—
  - (a) in ICTA, sections 736B(4) and 807A(2B),
  - (b) in TCGA 1992, section 171(3A),
  - (c) in F(No.2)A 2005, in Schedule 7, paragraphs 5 and 9,
  - (d) in FA 2006, in Schedule 6, paragraphs 3 and 4,
  - (e) in ITA 2007, in Schedule 1, paragraphs 172 and 373, and
  - (f) in CTA 2009, in Schedule 1, paragraphs 215 and 571.
- 10 In section 542(2) of CTA 2009 (introduction to Chapter 10 of Part 6), for “547” substitute “ 546 ”.

#### *Commencement*

- 11 The amendments made by paragraphs 2(2) and 3 have effect in relation to any arrangement which produces for a company a return which is economically equivalent to interest if the company becomes a party to the arrangement on or after 22 April 2009.
- 12 The amendments (and repeals) made by paragraphs 2(3) and 4 to 10 come into force on 22 April 2009.
- 13 (1) This paragraph applies where any of the provisions repealed by paragraph 8 applies in relation to anything done by a company before 22 April 2009 which amounts to becoming party to an arrangement (within the meaning given by section 486B(9) of CTA 2009).
  - (2) The company is to be treated for the purposes of Chapter 2A of Part 6 of CTA 2009 as having become a party to the arrangement on that date.
  - (3) But this paragraph does not apply in circumstances in which paragraph 15 does.
- 14 (1) This paragraph applies where Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009.
  - (2) Section 116B(1) of TCGA 1992 is to be treated as applying as if section 523 of CTA 2009 ceased to apply in relation to the share on that date.
  - (3) But this paragraph does not apply if paragraph 15 applies in relation to the share and the company.
- 15 (1) This paragraph applies where—
  - (a) Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009 by reason of the redemption return condition being met (see section 529 of that Act) (or would so apply but for the share not being designed to produce a return which equates in

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- substance to the return on an investment of money at a commercial rate of interest), and
- (b) section 521B of CTA 2009 applies in relation to the share and the company on 22 April 2009.
- (2) Part 5 of CTA 2009 applies as if the company had acquired the share on 22 April 2009 for an amount equal to the notional carrying value of the share on that date.
- (3) In sub-paragraph (2) “notional carrying value” has the same meaning as in section 521F(2) of CTA 2009 (see subsection (3) of that section).
- (4) Section 521F of CTA 2009 does not apply by virtue of the coming into force of section 521B of that Act.
- 16 An election under—
- (a) section 486D(2) of CTA 2009, or
- (b) section 521E(2) of that Act,
- relating to a return which begins to be produced before 1 August 2009 can be made at any time before that date but only in relation to any return produced on or after the day on which the election is made.

## SCHEDULE 25

Section 49

### TRANSFERS OF INCOME STREAMS

#### PART 1

##### COMPANY TRANSFERORS

##### *Application of Part*

- 1 (1) This Part applies where—
- (a) a company within the charge to corporation tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see sub-paragraph (2)), and
- (b) (subject to sub-paragraph (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
- (a) which (but for the transfer) would be charged to corporation tax as income of the transferor, or
- (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of corporation tax.
- (3) Despite paragraph (b) of sub-paragraph (1), this Part applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Paragraph 2 makes provision as to the consequences of this Part applying.

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- (5) For exclusions from this Part, see—
  - (a) paragraph 3 (amount otherwise taxed), and
  - (b) paragraph 4 (transfer by way of security).
- (6) Paragraph 5 makes special provision about transfers of partnership shares.
- (7) Paragraph 6 contains supplementary provisions.

*Value of transferred income stream treated as income*

- 2 (1) The relevant amount (see sub-paragraph (2)) is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts—
  - (a) would have been chargeable to corporation tax, or
  - (b) would have been brought into account in calculating any profits for the purposes of corporation tax,but for the transfer of the right to relevant receipts.
- (2) The relevant amount is—
  - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
  - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under sub-paragraph (1) is to be treated as arising—
  - (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
  - (b) otherwise, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (4) But if at any time it becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by sub-paragraph (3) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

*Exception: amount otherwise taxed*

- 3 This Part does not apply if and to the extent that the income under paragraph 2(1) is (apart from this Part)—
  - (a) charged to tax as income of the transferor,
  - (b) brought into account as income in calculating the profits of the transferor, or
  - (c) brought into account under CAA 2001.

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*Exception: transfer by way of security*

- 4 This Part does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner.

*Partnership shares*

- 5 (1) For the purposes of this Part a transfer of a right to relevant receipts consisting of the reduction in the transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.
- (2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.
- (3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to corporation tax or income tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.

*Interpretation*

- 6 (1) For the purposes of this Part—
- (a) the grant or surrender (or renunciation) of a lease of land is to be regarded as a transfer of the land,
  - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence, and
  - (c) the grant or disposal of an interest in intellectual property (within the meaning of section 712(3) of CTA 2009) which constitutes a pre-2002 asset (within the meaning of section 881 of that Act) is to be regarded as a transfer of that intellectual property.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Part—
- (a) references to a transfer include sale, exchange, gift and assignment (or assignment) and any other arrangement which equates in substance to a transfer, and
  - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignment), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Part applies.

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## PART 2

### NON-CORPORATE TRANSFERORS

7 In ITA 2007, after section 809 insert—

#### “CHAPTER 5A

#### TRANSFERS OF INCOME STREAMS

##### **809AZA Application of Chapter**

- (1) This Chapter applies where—
  - (a) a person within the charge to income tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and
  - (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
  - (a) which (but for the transfer) would be charged to income tax as income of the transferor, or
  - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of income tax.
- (3) Despite paragraph (b) of subsection (1), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Section 809AZB makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see—
  - (a) section 809AZC (amount otherwise taxed),
  - (b) section 809AZD (certain annuities), and
  - (c) section 809AZE (transfer by way of security).
- (6) Section 809AZF makes special provision about transfers of partnership shares.
- (7) Section 809AZG contains supplementary provisions.

##### **809AZB Value of transferred income stream treated as income**

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—
  - (a) would have been chargeable to income tax, or
  - (b) would have been brought into account in calculating any profits for the purposes of income tax,

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but for the transfer of the right to relevant receipts.

- (2) The relevant amount is—
- (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
  - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under subsection (1) is to be treated as arising in the chargeable period of the transferor in which the transfer takes place.
- (4) But subsection (5) applies if (apart from the transfer) any of the relevant receipts—
- (a) would have been brought into account in accordance with Part 2 or 3 of ITTOIA 2005 (trading income and property income) in calculating any profits for the purposes of income tax, and
  - (b) in accordance with generally accepted accounting practice, would have been recognised otherwise than wholly in the chargeable period in which the transfer takes place.
- (5) If this subsection applies, the income under subsection (1) is to be treated as arising—
- (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
  - (b) otherwise, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (6) But if in a case where the transferor is a company it at any time becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (5) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

#### **809AZC Exception: amount otherwise taxed**

This Chapter does not apply if and to the extent that the income under section 809AZB(1) is (apart from this Chapter)—

- (a) charged to tax as income of the transferor,
- (b) brought into account in calculating the profits of the transferor, or
- (c) brought into account under CAA 2001.

#### **809AZD Exception: certain annuities**

This Chapter does not apply to a transfer of a right to—



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- (a) annual payments under a life annuity as defined in section 473(2) of ITTOIA 2005, or
- (b) annual payments under an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).

#### **809AZE Exception: transfer by way of security**

This Chapter does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner.

#### **809AZF Partnership shares**

- (1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in a transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.
- (2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.
- (3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to income tax or corporation tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.

#### **809AZG Interpretation**

- (1) For the purposes of this Chapter—
  - (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land, and
  - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Chapter—
  - (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and
  - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.”

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### PART 3

#### COMPANY TRANSFEREES

- 8 (1) Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.
- (2) In section 477(2) (overview of Part 6), after paragraph (aa) (inserted by Schedule 24) insert—
- “(ab) Chapter 2B (transferred income streams),”.
- (3) After Chapter 2A (inserted by Schedule 24) insert—

#### “CHAPTER 2B

#### TRANSFERRED INCOME STREAMS

##### Introduction to Chapter

- 486(F) This Chapter provides for Part 5 to apply in relation to a company to which an income stream transfer is made (“the transferee”).
- (2) An “income stream transfer” is a transfer by a person (“the transferor”) to which either of the following provisions applies—
- (a) Part 1 of Schedule 25 to FA 2009 (transfers of income streams by companies), or
  - (b) Chapter 5A of Part 13 of ITA 2007 (transfers of income streams by individuals).

##### Consideration to be treated as loan relationship

- 486(G) For the purposes of this Part—
- (a) the consideration for the transfer of the right to relevant receipts is to be treated as a money debt which is owed to the transferee by the person by whom the relevant receipts fall to be paid, and
  - (b) the transfer is to be treated as a transaction for the lending of money from which that debt is treated as arising.
- (2) For the meaning of “relevant receipts” see paragraph 1(2) of Schedule 25 to FA 2009 or section 809AZA(2) of ITA 2007.”

### PART 4

#### CONSEQUENTIAL AMENDMENTS AND REPEALS

- 9 (1) In ICTA, omit—
- (a) section 730 (transfers of rights to receive distributions in respect of shares),
  - (b) section 775A (transfers of rights to receive annual payments),
  - (c) section 785A (rent factoring of leases of plant or machinery), and
  - (d) in section 786 (transactions associated with loans or credit)—

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- (i) in subsection (5), “assigns,” “(without a sale or transfer of the property)” and “assigned,”
- (ii) in subsection (5ZA), “assigned,” and
- (iii) in subsection (5A), “assigned.”

(2) In ITTOIA 2005, omit—

- (a) in Chapter 11 of Part 4 (transactions in deposits)—
  - (i) in section 551(2), the words after “of it”, and
  - (ii) in section 552(1), paragraph (e) and the “and” before it, and
- (b) Chapter 13 of Part 4 (sales of foreign dividend coupons).

(3) Omit the following provisions (which relate to the provisions repealed by subparagraphs (1) and (2))—

- (a) in TMA 1970, in section 98, in column 1 of the Table, the entry relating to section 730(8) of ICTA,
- (b) in ICTA, in section 774E(1), the second sentence,
- (c) in FA 1996, in Schedule 7, paragraph 23,
- (d) in FA 2004, section 135,
- (e) in ITTOIA 2005, in Schedule 1, paragraph 300,
- (f) in F(No.2)A 2005, in Schedule 7, paragraphs 2 and 4,
- (g) in FA 2006, in Schedule 6, paragraph 7,
- (h) in ITA 2007—
  - (i) in section 1016, in Part 3 of the table, the entry relating to section 730(4) of ICTA, and
  - (ii) in Schedule 1, paragraphs 183 and 545, and
- (i) in CTA 2009, in Schedule 1, paragraphs 214 and 230.

(4) In section 785ZB(3) of ICTA, for “has the same meaning as in section 785A” substitute “ includes an underlease, sublease, tenancy or licence and an agreement for any of those things ”.

(5) In section 2(13) of ITA 2007, omit the “and” at the end of paragraph (d) and insert at the end “or

- (f) transfers of income streams (Chapter 5A).”

(6) Schedule 4 to that Act (index of defined expressions) is amended as follows.

(7) After the entry relating to “transfer (in Chapter 2 of Part 13)” insert—

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“transfer (in Chapter 5A of Part 13)	Section 809AZF(3)”.
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(8) After the entry relating to “transferor (in Part 12)” insert—

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“transfer taking place (in Chapter 5A of Part 13)	Section 809AZF(3)”.
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## PART 5

### COMMENCEMENT

- 10 This Schedule has effect in relation to transfers on or after 22 April 2009.

## SCHEDULE 26

Section 50

### CERTIFICATION OF SAYE SAVINGS ARRANGEMENTS

- 1 Chapter 4 of Part 6 of ITTOIA 2005 (SAYE interest) is amended as follows.

#### *Transfer of certain functions from Treasury to HMRC*

- 2 (1) Section 705 (certification of arrangements) is amended as follows.
- (2) In subsections (1) and (2), for “Treasury” (in each place) substitute “Commissioners”.
- (3) After subsection (4) insert—
- “(5) In this Chapter “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.”
- 3 In section 706(1) and (2) (withdrawal and variation of certifications etc), for “Treasury” substitute “Commissioners”.
- 4 In section 707(1) (authorisation of providers), for “Treasury” substitute “Commissioners”.
- 5 (1) Section 708 (withdrawal and variation of authorisations) is amended as follows.
- (2) In subsections (1) and (2), for “Treasury” substitute “Commissioners”.
- (3) In subsection (4), for “Treasury of its” substitute “Commissioners of their”.

#### *Removal of requirement that notice be sent by post*

- 6 In the following provisions omit “by post”—
- (a) section 706(2)(b) (notification of withdrawal and variation of certifications etc), and
- (b) section 708(2)(b) (notification of withdrawal and variation of authorisations).

#### *Reduction of notice period for withdrawals and variations*

- 7 In section 706(2)(b) (notification of withdrawal and variation of certifications etc), for “28 days” substitute “15 days”.

#### *Power to provide for withdrawals and variations not to affect certain contracts*

- 8 In section 706(3) (transitional provision for withdrawals and variations of certifications), for the words from “the operation of” to the end substitute—
- “(a) the operation of the arrangement concerned before that date,

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- (b) contracts made under that arrangement before that date, or
- (c) where the notice so provides, contracts which are of a description specified in the notice and are made under that arrangement after that date.”

## SCHEDULE 27

Section 51

### REMITTANCE BASIS

#### PART 1

##### AMENDMENTS OF ITA 2007

- 1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- 2 In section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply), after subsection (5) insert—
  - “(5A) The references to income tax in subsection (5) do not include income tax under section 424 (gift aid).”
- 3 (1) Section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000) is amended as follows.
  - (2) In subsection (1), insert at the end (not as part of paragraph (c))— “ unless condition A or condition B is met. ”
  - (3) After that subsection insert—
    - “(1A) Condition A is that the individual is not domiciled in the United Kingdom in that year and conditions A to F in section 828B are met.
    - (1B) Condition B is that the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for that year.”
- 4 (1) Section 809E (application of remittance basis without claim: other cases) is amended as follows.
  - (2) In subsection (1), for paragraph (c) substitute—
    - “(c) for that year the individual either has no UK income or gains or has no UK income and gains other than taxed investment income not exceeding £100.”
  - (3) In that subsection, insert at the end (not as part of paragraph (e))— “ unless the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for that year. ”
  - (4) After subsection (2) insert—
    - “(2A) For the purposes of subsection (1)(c) “taxed investment income” means UK income or gains consisting of payments within section 946 from which a sum representing income tax has been deducted.”

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- 5 In section 809H (claim for remittance basis by long-term UK resident: charge), after subsection (5) insert—
- “(5A) The references to income tax in subsection (5) do not include income tax under section 424 (gift aid).”
- 6 (1) Section 809L (meaning of “remitted to the United Kingdom”) is amended as follows.
- (2) Omit subsection (8).
- (3) In subsection (9), for “income or chargeable gains are used in respect of a debt include cases where income or chargeable gains are” substitute “property (including income or chargeable gains) is used in respect of a debt include cases where the property is”.
- 7 (1) Section 809M (meaning of “relevant person” for purposes of sections 809L, 809N and 809O) is amended as follows.
- (2) In subsection (2)(e), insert at the end “or a company which is a 51% subsidiary of such a close company”.
- (3) In subsection (3), after paragraph (c) insert—
- “(ca) “participator”, in relation to a close company, means a person who is a participator in relation to the company for the purposes of section 419 of ICTA (see sections 417(1) and 419(7) of that Act),
- (cb) “51% subsidiary” has the same meaning as in the Corporation Tax Acts (see section 838 of ICTA).”
- 8 In section 809P (amount remitted), insert at the end—
- “(13) If the property forms part of a set only part of which is in the United Kingdom, the amount remitted is such portion of what it would have been had the complete set been brought to, or received or used in, the United Kingdom when the part was as is just and reasonable (having regard to the part of the set which is there).”
- 9 (1) Section 809T (foreign chargeable gains accruing on disposals made other than for full consideration) is amended as follows.
- (2) In subsection (1)(b), after “amount” insert “ at least ”.
- (3) In the heading, for “**other**” substitute “ **otherwise** ”.
- 10 (1) Section 809X (property which is exempt property) is amended as follows.
- (2) In subsection (4), omit “that derive from relevant foreign income”.
- (3) In subsection (5), omit “of any description that derives from relevant foreign income”.
- 11 (1) Section 809Z5 (notional remitted amount) is amended as follows.
- (2) In subsection (1), omit “of income”.
- (3) Omit subsections (2) and (3).

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## PART 2

### AMENDMENTS OF OTHER ACTS

#### *TCGA 1992*

- 12 In section 14A(3)(b) of TCGA 1992 (section 13: non-UK domiciled individuals), after “amount” insert “ at least ”.

#### *ITTOIA 2005*

- 13 In section 648 of ITTOIA 2005 (income arising under a settlement), for subsections (2) to (5) substitute—

“(2) But if, in a tax year, the settlor is not UK resident, references in this Chapter to income arising under a settlement do not include income arising under the settlement in that tax year in respect of which the settlor, if actually entitled to it, would not be chargeable to income tax by deduction or otherwise because of not being UK resident.

(3) And if, for a tax year, section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the settlor, references in this Chapter to income arising under a settlement include in relation to any relevant foreign income arising under the settlement in that tax year only such of it as is remitted to the United Kingdom (in that tax year or any subsequent tax year) in circumstances such that, if the settlor remitted it, the settlor would be chargeable to income tax.

(4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

(5) Where subsection (3) applies the remitted income is treated for the purposes of this Chapter as arising under the settlement in the tax year in which it is remitted.”

#### *FA 2008*

- 14 In paragraph 86 of Schedule 7 to FA 2008 (remittance basis: transitional provisions), after sub-paragraph (4) insert—

“(4A) For the purposes of sub-paragraph (4), section 648(2) to (5) of ITTOIA 2005 (and corresponding earlier enactments) do not apply (so that relevant foreign income which arose under a settlement in the tax year 2007-08 or any earlier tax year is to be treated as income for the tax year in which it arose).”

## PART 3

### COMMENCEMENT

- 15 (1) The amendments made by paragraphs 2 to 5, 10, 11(2) and 14 have effect for the tax year 2008-09 and subsequent tax years.
- (2) The other amendments made by this Schedule come into force on 22 April 2009.

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## SCHEDULE 28

Section 53

## TAXABLE BENEFITS: CARS

*Introduction*

1 Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars) is amended as follows.

*Abolition of “price cap”*

2 (1) Section 121(1) (method of calculating cash equivalent of benefit of car) is amended as follows.

(2) In step 3, insert at the end— “ The resulting amount is the interim sum. ”

(3) Omit step 4 (interim sum to be £80,000 if step 3 amount exceeds £80,000).

3 In section 145(5) (modifications of provisions where car temporarily replaced), for “step 4” substitute “ step 3 ”.

4 In section 147(1) and (2) (classic cars), for “amount carried forward from” substitute “ interim sum calculated under ”.

5 In section 170(1) (Treasury orders increasing various amounts), omit paragraph (a) (amount in step 4 of section 121(1)).

*Cars with CO<sub>2</sub> emissions figures: the appropriate percentage*

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

## “TABLE

<i>Tax year</i>	<i>Lower threshold (in g/km)</i>
2009-10	135
2010-11	130
2011-12 and subsequent tax years	125”.

*Electrically propelled cars: the appropriate percentage*

7 In section 140(3)(a) (appropriate percentage for electrically propelled cars), for “15%” substitute “ 9% ”.

8 In section 142 (special provision for cars registered before 1998)—

(a) in subsection (3) (cars without internal combustion engine with reciprocating pistons), for the words after “year is” substitute “ 32% ”, and

(b) omit subsection (4) (definition of electrically propelled car).

*Consequential repeal*

9 In consequence of the amendment made by paragraph 6, in FA 2008, omit section 47(1).



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### Commencement

- 10 (1) The amendments made by paragraphs 6 and 9 have effect for the tax year 2009-10 and subsequent tax years.
- (2) The other amendments made by this Schedule have effect for the tax year 2011-12 and subsequent tax years.

## SCHEDULE 29

Section 58

### MANUFACTURED OVERSEAS DIVIDENDS

#### Repos

- 1 (1) Schedule 23A to ICTA (manufactured dividends and interest) is amended as follows.
- (2) In paragraph 4, in sub-paragraph (4)—
- (a) in paragraph (a), for “the amount deducted under section 922(2) of ITA 2007 or (as the case may be)” substitute “ the relevant amount in relation to the amount deducted under section 922(2) of ITA 2007 or the whole of the amount ”,
  - (b) in paragraph (b), for “the amount so deducted or” substitute “ the relevant amount in relation to the amount so deducted or the whole of the amount ”, and
  - (c) insert at the end— “ For the meaning of references in this paragraph to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007, see paragraph 4A. ”
- (3) After that paragraph insert—
- “4A (1) A reference in paragraph 4(4)(a) or (b) to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007 is—
- (a) where the deduction is made in respect of a manufactured overseas dividend that is treated as paid under paragraph 13(1) of Schedule 13 to FA 2007 (sale and repurchase of securities), to amount A, and
  - (b) otherwise, to the amount deducted under section 922(2) of ITA 2007.
- (2) Amount A is—
- (a) in a case to which sub-paragraph (3) applies, the amount deducted under section 922(2) of ITA 2007,
  - (b) in a case to which sub-paragraph (4) applies—
    - (i) the amount deducted under section 922(2) of ITA 2007, less
    - (ii) the excess mentioned in that sub-paragraph, and
  - (c) in any other case, nil.
- (3) This sub-paragraph applies to a case in which—
- (a) an amount is actually paid by way of manufactured overseas dividend,
  - (b) the amount so paid equals the relevant net amount, and

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- (c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.
- (4) This sub-paragraph applies to a case in which—
  - (a) an amount is actually paid by way of manufactured overseas dividend,
  - (b) the amount so paid exceeds the relevant net amount, and
  - (c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.
- (5) In this paragraph “the repurchase price” of the securities means the price at which the payer of the manufactured overseas dividend is entitled or obliged to sell the securities, or similar securities, to the recipient of the manufactured overseas dividend.
- (6) In this paragraph “the securities” means the securities in respect of which the overseas dividend of which the manufactured overseas dividend is representative is paid.
- (7) In this paragraph “the relevant net amount” means—
  - (a) the gross amount of the overseas dividend of which the manufactured overseas dividend is representative, less
  - (b) the amount deducted under section 922(2) of ITA 2007.”

#### *Stock lending*

- 2 (1) Section 736B of ICTA (deemed manufactured payments in the case of stock lending arrangements) is amended as follows.
- (2) In subsection (2), for “subsection (2A)” substitute “ subsections (2A) and (2B) ”.
- (3) After subsection (2A) insert—
  - “(2B) In its application by virtue of subsection (2), paragraph 4(4) of Schedule 23A has effect as if—
    - (a) in paragraph (a), the words from “but paid after” to the end were omitted, and
    - (b) paragraph (b) were omitted.”

#### *Commencement*

- 3 (1) The amendments made by paragraph 1 have effect in relation to overseas dividends paid on or after 22 April 2009.
- (2) The amendments made by paragraph 2 have effect in relation to interest on securities paid on or after 22 April 2009.
- (3) In this paragraph—
  - “interest” has the same meaning as in section 736B of ICTA;
  - “overseas dividend” has the same meaning as in Schedule 23A to ICTA.

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## SCHEDULE 30

Section 61

### FINANCIAL ARRANGEMENTS AVOIDANCE

*Interest payments: arrangements appearing very likely to produce post-tax advantage*

1 (1) In ITA 2007, after section 384 insert—

**“384A Restriction on relief where arrangements minimise risk to borrower**

- (1) Relief is not to be given under this Chapter for interest paid by a person on a loan if—
  - (a) the loan is made to the person (“the borrower”) as part of arrangements which appear very likely to produce a post-tax advantage, and
  - (b) the arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements.
- (2) Arrangements “appear very likely” to produce a post-tax advantage if (and only if) it would be reasonable to assume from either or both of—
  - (a) the likely effect of the arrangements, and
  - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected,that there is no risk, or only an insignificant risk, that they will not produce a post-tax advantage.
- (3) “Produce a post-tax advantage” means give rise to a sum or sums—
  - (a) payable to the borrower or a person connected with the borrower, or
  - (b) payable to any other person for the benefit of the borrower or a person connected with the borrower,of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is equal to or greater than the relevant amount.
- (4) “The relevant amount” is the aggregate of—
  - (a) the amount required to meet the borrower's obligations in respect of the loan, and
  - (b) any amount which is used by the borrower in the same way as that which entitles the borrower to relief under this Chapter in respect of the loan and is not money lent to the borrower under any loan.
- (5) If, with a view to securing that the condition in subsection (1)(a) is not met, the arrangements make provision for securing that, in all or any circumstances in which they do not produce a post-tax advantage, they will produce a broadly compensatory amount, the arrangements are to be regarded for the purposes of subsection (2) as making provision for securing the production of a post-tax advantage in those circumstances.
- (6) “Produce a broadly compensatory amount” means give rise to a sum or sums payable as mentioned in subsection (3) of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is not significantly less than the relevant amount.

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- (7) For the purposes of subsections (3) and (6) causing the value of an asset to be obtainable, directly or indirectly, by a person is to be treated as equivalent to giving rise to a sum payable to the person of an amount equal to that value.
- (8) To make the appropriate tax adjustments for the purpose of subsection (3) or (6)—
- (a) if A exceeds B, deduct the amount of the excess from the amount (or aggregate amount), and
  - (b) if B exceeds A, add the amount of the excess to the amount (or aggregate amount).
- (9) For the purposes of subsection (8)—
- A is the amount of any income tax, any capital gains tax and any tax under the law of a territory outside the United Kingdom to which the borrower is liable in consequence of the arrangements, and
- B is the amount by which the borrower's liability to income tax and capital gains tax is (or apart from subsection (1) would be) reduced in consequence of the arrangements.
- (10) Arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements if (and only if) it would be reasonable to assume from either or both of—
- (a) the likely effect of the arrangements, and
  - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected,
- that the arrangements, or any parts of the arrangements, are designed to do so.
- (11) In this section “arrangements” means arrangements consisting of any number of agreements, understandings, schemes, transactions or other arrangements (whether or not legally enforceable); but in subsections (1) (a), (2), (5) and (9) the references to arrangements also include any related transactions.
- (12) In subsection (11) “related transactions” means transactions in the case of which it is reasonable to assume from either or both of—
- (a) the likely effect of the transactions, and
  - (b) the circumstances in which the transactions are entered into or effected,
- that the transactions would not have been entered into or effected independently of the arrangements.
- (13) Transactions are not prevented from being related transactions just because the transactions—
- (a) are not between the same parties, or
  - (b) are not between parties to the arrangements.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to interest paid on or after 19 March 2009.

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*Amounts not fully recognised for accounting purposes*

- 2 (1) Section 311 of CTA 2009 (loan relationships: amounts not fully recognised for accounting purposes) is amended as follows.
- (2) In subsection (2), for paragraphs (b) and (c) substitute—
- “(b) condition A, B or C is met, and
  - (c) an amount is not fully recognised for the period in respect of the creditor relationship as a result of the application of generally accepted accounting practice in relation to the creditor relationship and the debtor relationship, contribution or securities referred to in the condition that is met.”
- (3) In subsection (3)(b), after “to the” insert “ creditor relationship and the debtor ”.
- (4) In paragraph (b) of subsection (4), after “to the” insert “ creditor relationship and the relevant capital ”.
- (5) After that subsection insert—
- “(4A) Condition C is that—
  - (a) the company has issued securities that form part of its capital for the period, and
  - (b) an amount is not fully recognised for the period in respect of the securities as a result of the application of generally accepted accounting practice in relation to the creditor relationship and the securities.”
- (6) In subsection (6)—
- (a) for “or a relevant capital contribution to it” substitute “ , a contribution to it or securities issued by it ”, and
  - (b) for “or contribution” (in both places) substitute “ , contribution or securities ”.
- (7) In section 317(5) of CTA 2009 (carrying value), before paragraph (a) insert—
- “(za) sections 311 and 312 (amounts not fully recognised for accounting purposes),”.
- (8) The amendments made by this paragraph have effect in relation to periods of account beginning on or after 22 April 2009.
- (9) But for the purposes of sub-paragraph (8) a period of account beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate periods of account.
- 3 (1) In CTA 2009, after section 599 insert—
- “599A Amounts not fully recognised for accounting purposes: introduction**
- (1) Section 599B applies for the purpose of determining the credits and debits which a company is to bring into account for a period for the purposes of this Part in the following case.
  - (2) The case is where—

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- (a) the company is, or is treated as, a party to a derivative contract in the period,
  - (b) condition A or B is met, and
  - (c) an amount is not fully recognised for the period in respect of the contract as a result of the application of generally accepted accounting practice in relation to the contract and the contribution or securities referred to in the condition that is met.
- (3) Condition A is that—
- (a) an amount (a “relevant capital contribution”) has at any time been contributed to the company which forms part of its capital for the period, and
  - (b) an amount is not fully recognised for the period in respect of the relevant capital contribution as a result of the application of generally accepted accounting practice in relation to the derivative contract and the relevant contribution.
- (4) It does not matter for the purposes of subsection (3) whether the contribution forms part of the company's share capital or other capital for the period.
- (5) Condition B is that—
- (a) the company has issued securities that form part of its capital for the period, and
  - (b) an amount is not fully recognised for the period in respect of the securities as a result of the application of generally accepted accounting practice in relation to the derivative contract and the securities.
- (6) For the purposes of this section an amount is not fully recognised for a period in respect of a contract of a company, a contribution to it or securities issued by it if—
- (a) no amount in respect of the contract, contribution or securities is recognised in determining its profit or loss for the period, or
  - (b) an amount is so recognised in respect of only part of the contract, contribution or securities.

### **599B Determination of credits and debits where amounts not fully recognised**

- (1) In determining the credits and debits which a company is to bring into account for the period referred to in section 599A(1) for the purposes of this Part in respect of the derivative contract mentioned in section 599A(2), the assumption in subsection (2) is to be made.
  - (2) The assumption is that an amount in respect of the whole of the contract in question is recognised in determining the company's profit or loss for the period.
  - (3) The credits and debits which are to be brought into account for the purposes of this Part by the company in respect of the contract are to be determined on the basis of fair value accounting.”
- (2) In section 702(3) of CTA 2009 (carrying value), before paragraph (c) insert—

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“(ca) sections 599A and 599B (amounts not fully recognised for accounting purposes),”.

- (3) The amendments made by this paragraph have effect in relation to periods of account beginning on or after 22 April 2009.
- (4) But for the purposes of sub-paragraph (3) a period of account beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate periods of account.

*Loan relationships involving connected debtor and creditor where debits exceed credits*

- 4 (1) Section 418 of CTA 2009 (loan relationships treated differently by connected debtor and creditor) is amended as follows.
  - (2) In subsection (1)(b), for “A, B and C” substitute “ A and B ”.
  - (3) For subsections (2) to (4) substitute—
    - “(2) Condition A is that the rights under the loan relationship include provision by virtue of which the creditor company—
      - (a) is or may become entitled, or
      - (b) is or may be required,to acquire (whether by conversion or exchange or otherwise) any shares in any company.
    - (3) Condition B is that—
      - (a) the debits brought into account by the debtor under this Part in respect of the loan relationship for any accounting period, exceed
      - (b) the credits brought into account (otherwise than as a result of this section) by the creditor in respect of the loan relationship for the corresponding accounting period or periods of the creditor.”
  - (4) After subsection (6) insert—
    - “(6A) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor's rights under the loan relationship to another person—
      - (a) under a repo or stock lending arrangement, or
      - (b) under a transaction which is treated as not involving any disposal as a result of section 26 of TCGA 1992 (mortgages and charges not to be treated as disposals).
    - (6B) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor's rights under the loan relationship to another person if the disposal was made with the relevant avoidance intention.
    - (6C) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account for the purposes of this Part.”
- (5) In subsection (7), for “Section 419 supplements” substitute “ Sections 418A and 419 supplement ”.

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- (6) In the heading, for “**treated differently by connected debtor and creditor**” substitute “**involving connected debtor and creditor where debits exceed credits**”.
- (7) After section 418 insert—

**“418A Cases involving host contract**

- (1) This section applies where the debtor or the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as divided between—
- (a) rights and liabilities under a loan relationship (“the host contract”), and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (2) Where the debtor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(a) were to the host contract.
- (3) Where the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(b) were to the host contract.
- (4) In this section “the debtor” and “the creditor” have the same meaning as in section 418.”
- (8) The amendments made by this paragraph have effect in relation to debits and credits arising on or after 22 April 2009.

*Credits and debits for manufactured interest*

- 5 (1) In section 540(3) of CTA 2009 (manufactured interest treated as interest under loan relationship), insert at the end “and the credits and debits to be brought into account in respect of manufactured interest for any period are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice (but subject to the provisions of Part 5, including, in particular, section 307(3) and to paragraph 7A of Schedule 23A to ICTA).”
- (2) In section 97(2) of FA 1996 (equivalent provision for accounting periods ending before 1 April 2009), insert at the end “and the credits and debits to be brought into account in respect of manufactured interest for any period are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice (but subject to the provisions of this Chapter (including, in particular, section 84(1)) and to paragraph 7A of Schedule 23A to the Taxes Act 1988).”
- (3) The amendments made by this paragraph have effect in relation to manufactured interest whenever paid, apart from payments treated under section 737A(5) of ICTA as made before 27 January 2009.



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## SCHEDULE 31

Section 63

### SALE OF LESSOR COMPANIES ETC: ANTI-AVOIDANCE

#### *Introduction*

1 Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.

#### *Paragraph 6*

2 In paragraph 6(3) (meaning of “business of leasing plant or machinery”: condition A), for “accounting value of the plant or machinery owned by the relevant company on the relevant day” substitute “relevant plant or machinery value”.

#### *Paragraph 7*

3 (1) Paragraph 7 (provision for purposes of condition A) is amended as follows.

(2) For sub-paragraphs (2) and (3) substitute—

“(2) The relevant plant or machinery value is the aggregate of the amounts in sub-paragraph (3), but subject to paragraph 7A.

(3) The amounts are—

- (a) the amounts (if any) which would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and
- (b) the amounts (if any) which would be shown in the appropriate balance sheet of the relevant company drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery.

(3A) For the purposes of sub-paragraph (3)(b) plant or machinery is “relevant transferred plant or machinery” if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.”

(3) In sub-paragraph (4), for “this purpose” substitute “the purposes of this paragraph”.

(4) In sub-paragraph (8)(a), omit “as at the start of the relevant day”.

(5) Insert at the end—

“(10) References in this Part of this Schedule to an associated company are to a company which is an associated company of the relevant company on the relevant day (as to which, see paragraph 9).”

#### *Paragraph 7A*

4 After paragraph 7 insert—

“7A (1) Where this paragraph applies in relation to any plant or machinery—

- (a) any amount included in the aggregate mentioned in paragraph 7(2) in respect of the plant or machinery is to be deducted from that aggregate, and

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- (b) the market value of the plant or machinery as at the relevant day is to be added to that aggregate (or, if that aggregate is nil, is to constitute the relevant plant or machinery value).
- (2) This paragraph applies in relation to plant or machinery if condition A or B is met.
- (3) Condition A is that—
  - (a) the plant or machinery falls within sub-paragraph (4) at the start of the relevant day, or
  - (b) the plant or machinery falls within that sub-paragraph at the end of the relevant day, having been acquired by the relevant company from an associated company on that day.
- (4) Plant or machinery falls within this sub-paragraph if the relevant company—
  - (a) is the lessee of the plant or machinery under a long funding finance lease, or
  - (b) is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).
- (5) Condition B is that—
  - (a) the relevant company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or
  - (b) the relevant company is the lessee of the plant or machinery under such a lease at the end of the relevant day and the plant or machinery was acquired by the relevant company from an associated company on that day.”

#### *Paragraph 17*

- 5 (1) Paragraph 17 (meaning of “PM” in paragraph 16) is amended as follows.
- (2) In sub-paragraph (1)—
  - (a) after “paragraph” insert “ and paragraph 17A ”, and
  - (b) for paragraph (a) substitute—
    - “(a) on the provision of which the company has not incurred qualifying expenditure for the purposes of Part 2 of CAA 2001,
    - (aa) of which the company is the lessor under a long funding lease, or”.
- (3) For sub-paragraph (2) substitute—
  - “(2) For the purposes of paragraph 16 “PM” is the aggregate of the amounts in sub-paragraph (2A), but subject to paragraph 17A.
- (2A) The amounts are—
  - (a) the amounts (if any) which would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and
  - (b) the amounts (if any) which would be shown in the appropriate balance sheet of the relevant company drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery.

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(2B) For the purposes of sub-paragraph (2A)(b) plant or machinery is “relevant transferred plant or machinery” if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.”

(4) In sub-paragraph (3), for “this purpose” substitute “ the purposes of this paragraph ”.

(5) In sub-paragraph (7)(a), omit “as at the start of the relevant day”.

#### *Paragraph 17A*

6 After paragraph 17 insert—

“17A(1) Where this paragraph applies in relation to any plant or machinery—

- (a) any amount included in the aggregate mentioned in paragraph 17(2) in respect of the plant or machinery is to be deducted from that aggregate, and
- (b) the market value of the plant or machinery as at the relevant day is to be added to that aggregate (or, if that aggregate is nil, is to constitute PM).

(2) This paragraph applies in relation to plant or machinery if condition A or B is met.

(3) Condition A is that—

- (a) the plant or machinery falls within sub-paragraph (4) at the start of the relevant day, or
- (b) the plant or machinery falls within that sub-paragraph at the end of the relevant day, having been acquired by the relevant company from an associated company on that day.

(4) Plant or machinery falls within this sub-paragraph if the relevant company—

- (a) is the lessee of the plant or machinery under a long funding finance lease, or
- (b) is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).

(5) Condition B is that—

- (a) the relevant company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or
- (b) the relevant company is the lessee of the plant or machinery under such a lease at the end of the relevant day and the plant or machinery was acquired by the relevant company from an associated company on that day.”

#### *Paragraph 22*

7 In paragraph 22(2) (migration), for “owned by the company” substitute “ in respect of which an amount would be shown in a balance sheet of the company drawn up immediately before the relevant day in accordance with generally accepted accounting practice ”.

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#### Paragraph 40

- 8 Omit paragraph 40 (relationship of Schedule with section 228K of CAA 2001).

#### Paragraph 41

- 9 In paragraph 41 (definitions), after sub-paragraph (5) insert—  
“(5A) “Long funding finance lease”, “long funding lease” and “long funding operating lease” have the same meaning as in Part 2 of CAA 2001 (see section 70YI of that Act).”

#### Paragraph 42

- 10 In paragraph 42 (index), in the table, after the entry relating to “fixture” insert—

“long funding finance lease	paragraph 41
long funding lease	paragraph 41
long funding operating lease	paragraph 41”.

#### Consequential repeal

- 11 In FA 2007, in Schedule 6, omit paragraph 2(3).

#### Commencement

- 12 The amendments made by this Schedule have effect where the relevant day is on or after 13 November 2008.

### SCHEDULE 32

Section 64

#### LEASES OF PLANT OR MACHINERY

##### *Disposal values: commencement of long funding finance leases*

- 1 (1) Section 61 of CAA 2001 (disposal events and disposal values) is amended as follows.  
(2) In the Table in subsection (2), for item 5A substitute—

“5A. Commencement of the term of a long funding finance lease of the plant or machinery.	The greater of— (a) the market value of the plant or machinery at the commencement of the term of the lease, and (b) the qualifying lease payments.”
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- (3) After subsection (5) insert—

“(5A) In item 5A of the Table “qualifying lease payments” means the minimum payments under the lease (including any initial payment), excluding the following—

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- (a) so much of any payment as, under generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment in respect of the lease,
- (b) so much of any payment as represents charges for services, and
- (c) so much of any payment as represents qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor.”

(4) Omit subsections (6) to (9).

2 Accordingly, in FA 2008, in Schedule 20, omit paragraph 4.

3 (1) Section 25A of TCGA 1992 (long funding leases of plant or machinery: deemed disposals) is amended as follows.

(2) In subsection (2)(a), for “the value described in subsection (4)(a) or (b)” substitute “the relevant disposal value”.

(3) For subsections (4) to (4D) substitute—

“(4) “Relevant disposal value” means—

- (a) in relation to a long funding finance lease, the disposal value described in item 5A of the table in section 61(2) of the Capital Allowances Act (disposal values), and
- (b) in relation to a long funding operating lease, the disposal value described in item 5B of that table.”

(4) In subsection (5), omit “ “market value”, ”.

4 Accordingly, in FA 2008, in Schedule 20, omit paragraph 5.

5 (1) The amendments made by paragraphs 1 and 2 have effect in relation to leases whose inception is on or after 13 November 2008.

(2) The amendments made by paragraphs 3 and 4 have effect in relation to leases whose inception is on or after 22 April 2009.

*Disposal values: termination etc of long funding leases*

6 In section 66 of CAA 2001 (list of provisions outside Chapter 5 of Part 2 of that Act about disposal values), in the list, insert at the appropriate place—

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“section 70E	long funding leases: disposal events and disposal values”.
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7 (1) Section 70E of CAA 2001 (long funding leases: disposal events and disposal values) is amended as follows.

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

“(c) a relevant event occurs.”

(3) After that subsection insert—

“(1A) A relevant event occurs if—

- (a) the lease terminates,
- (b) the plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity, or

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(c) the qualifying activity is permanently discontinued.”

(4) In subsection (2)(a), for “termination of the lease” substitute “ relevant event ”.

(5) For subsections (3) to (8) substitute—

“(2A) The amount of the disposal value is—

$$(QE - QA) + R$$

where—

QE is the person's qualifying expenditure on the provision of the plant or machinery,

QA is the qualifying amount (see subsections (2B) to (2E)), and

R is any relevant rebate (see subsections (2F) and (2G)).

(2B) In the case of a long funding operating lease, “the qualifying amount” means the aggregate amount of the reductions made under section 502K of ICTA or section 148I of ITTOIA 2005 for periods of account in which the person was the lessee.

(2C) In the case of a long funding finance lease, “the qualifying amount” means the aggregate of—

(a) the payments made to the lessor by the person under the lease (including any initial payment), and

(b) the payments made to the lessor by the person under a guarantee of any residual amount (as defined in section 70YE),

subject to subsection (2D).

(2D) The following are excluded from the “qualifying amount” under subsection (2C)—

(a) so much of any payment as, in accordance with generally accepted accounting practice, falls (or would fall) to be shown in the person's accounts as finance charges in respect of the lease,

(b) so much of any payment as represents charges for services, and

(c) so much of any payment as represents qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor.

(2E) In the case of a long funding finance lease that is not a transaction at arm's length, “the qualifying amount” includes only so much of the amounts described in subsection (2C) as would reasonably be expected to have been paid if the lease had been such a transaction.

(2F) “Relevant rebate” means—

(a) in a case falling within subsection (1A)(a), any amount calculated by reference to the termination value that is payable for the benefit (directly or indirectly) of the person or another person connected with that person, or

(b) in a case falling within subsection (1A)(b) or (c), any such amount that would have been so payable if, when the relevant event occurred, the lease had terminated and the plant or machinery had been sold for its market value at that time.

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(2G) In the case of a lease that is not a transaction at arm's length, “relevant rebate” includes any amount that would reasonably be expected to have fallen within subsection (2F) if the lease had been such a transaction.

(2H) The amount of the disposal value brought into account under this section cannot be less than nil.”

(6) In subsection (9), for “termination of the lease” substitute “ relevant event ”.

8 The amendments made by paragraphs 6 and 7 have effect in relation to cases where the relevant event occurs on or after 13 November 2008.

#### *Capital receipts treated as income*

9 (1) Section 785C of ICTA (plant and machinery leases: capital receipts to be treated as income: interpretation) is amended as follows.

(2) In subsection (6), for “subsection (9)” substitute “ subsections (9) and (9A) ”.

(3) In subsection (9)—

- (a) in paragraph (a), insert at the end “or”, and
- (b) omit paragraph (c) (and the “or” before it).

(4) After subsection (9) insert—

“(9A) Where—

- (a) a capital payment is an initial payment under a long-funding lease, and
- (b) under section 61 of the Capital Allowances Act (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account, the capital payment is only “relevant” to the extent that it exceeds the disposal value.”

(9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of the Capital Allowances Act.”

10 (1) Section 809ZB of ITA 2007 (plant and machinery leases: capital receipts to be treated as income: interpretation) is amended as follows.

(2) In subsection (6), for “subsection (9)” substitute “ subsections (9) and (9A) ”.

(3) In subsection (9)—

- (a) in paragraph (a), insert at the end “or”, and
- (b) omit paragraph (c) (and the “or” before it).

(4) After subsection (9) insert—

“(9A) Where—

- (a) a capital payment is an initial payment under a long-funding lease, and
- (b) under section 61 of CAA 2001 (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account,

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the capital payment is only “relevant” to the extent that it exceeds the disposal value.”

(9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of CAA 2001.”

- 11 (1) The amendments made by paragraphs 9 and 10 have effect in relation to payments made under leases whose inception is on or after 13 November 2008 (subject to subparagraph (2)).
- (2) In relation to payments made under leases whose inception is before 22 April 2009, section 785C(9A) of ICTA and section 809ZB(9A) of ITA 2007 (inserted by this Schedule) have effect as if, for the words following paragraph (b), there were substituted “ the capital payment is not “relevant” .

*Transfer and long funding leaseback: restrictions on lessee's allowances*

- 12 In section 51A(10) of CAA 2001 (annual investment allowances), insert at the appropriate place— “ section 70DA(2) (transfer and long funding leaseback: no annual investment allowance for lessee), ”.
- 13 In section 52(5) of CAA 2001 (first-year allowances), insert at the appropriate place — “ section 70DA(2) (transfer and long funding leaseback: no first-year allowance for lessee), ”.
- 14 In section 57(3) of CAA 2001 (available qualifying expenditure), insert at the appropriate place— “ section 70DA (transfer and long funding leaseback); ”.
- 15 In CAA 2001, after section 70D insert—

**“70DA Transfer and long funding leaseback: restrictions on lessee's allowances**

- (1) This section applies where—
- (a) a person (“S”) transfers plant or machinery to another person (“B”),
  - (b) at any time after the date of the transfer, the plant or machinery is available to be used by S, or a person (other than B) who is connected with S (“CS”), under a plant or machinery lease, and
  - (c) that lease is a long funding lease.
- (2) No annual investment allowance or first-year allowance is to be made in respect of the expenditure of S or CS under the lease.
- (3) The amount, if any, by which E exceeds D is to be left out of account in determining the available qualifying expenditure of S or CS.
- (4) E is the capital expenditure of S or CS on the provision of the plant or machinery under the long funding lease.
- (5) If S is required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), D is that disposal value.
- (6) Otherwise, D is whichever of the following is the smallest—
- (a) the market value of the plant or machinery;



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- (b) if S incurred capital expenditure on the provision of the plant or machinery before the transfer referred to in subsection (1)(a), the amount of that expenditure;
  - (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery before that transfer, the amount of that expenditure.
- (7) Section 70Y(3) applies to references in this section to a transfer of plant or machinery by a person.
- (8) For the purposes of this section a transfer involving the grant of a lease takes place on the commencement of the term of the lease.”
- 16 In section 70H of CAA 2001 (lessee: requirement for tax return treating lease as long funding lease), after subsection (1B) insert—
- “(1C) In a case in which paragraphs (a) and (b) of subsection (1) of section 70DA (leaseback of plant or machinery) are satisfied, subsection (1) of this section does not apply to the lease referred to in section 70DA(1)(b).”
- 17 The amendments made by paragraphs 12 to 16 have effect in relation to cases where the commencement of the term of the lease referred to in subsection (1)(b) of section 70DA of CAA 2001 is on or after 13 November 2008.

*Transfer followed by hire-purchase etc: restrictions on hirer's allowances*

- 18 In section 51A(10) of CAA 2001 (annual investment allowances), after “218A” insert “, 229A(2) ”.
- 19 In section 52(5) of CAA 2001 (first-year allowances), after “217” insert “, 229A(2) ”.
- 20 In section 57(3) of CAA 2001 (available qualifying expenditure), after “228(2)” insert “, 229A ”.
- 21 In CAA 2001, after section 229 insert—

**“229A Transfer followed by hire-purchase etc: restrictions on hirer's allowances**

- (1) This section applies where—
- (a) a person (“S”) transfers plant or machinery to another person (“B”),
  - (b) at any time after the date of the transfer, the plant or machinery is available to be used by S, or a person (other than B) who is connected with S (“CS”),
  - (c) it is available to be so used under a contract which provides that S or CS is to or may become the owner of the plant or machinery on the performance of the contract, and
  - (d) S or CS incurs capital expenditure on the provision of the plant or machinery under that contract.
- (2) No annual investment allowance or first-year allowance is to be made in respect of the expenditure of S or CS under the contract.
- (3) The amount, if any, by which E exceeds D is to be left out of account in determining the available qualifying expenditure of S or CS.

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- (4) E is the capital expenditure of S or CS on the provision of the plant or machinery under the contract referred to in subsection (1)(c).
- (5) If S is required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), D is that disposal value.
- (6) Otherwise, D is whichever of the following is the smallest—
  - (a) the market value of the plant or machinery;
  - (b) if S incurred capital expenditure on the provision of the plant or machinery before the transfer referred to in subsection (1)(a), the amount of that expenditure;
  - (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery before that transfer, the amount of that expenditure.
- (7) Sections 214 and 215 do not apply in relation to the contract referred to in subsection (1)(c).
- (8) Section 70Y(3) applies to references in this section to a transfer of plant or machinery by a person.
- (9) For the purposes of this section a transfer involving the grant of a lease takes place on the commencement of the term of the lease.”

22 The amendments made by paragraphs 18 to 21 have effect in relation to cases where the contract referred to in subsection (1)(c) of section 229A of CAA 2001 is entered into on or after 13 November 2008.

#### *Finance leaseback*

23 In section 216(1)(b)(i) of CAA 2001 (sale and leaseback etc), after “S” insert “ or by a person (other than B) who is connected with S ”.

24 In section 221(1)(b)(i) of CAA 2001 (meaning of “sale and finance leaseback”), for “a qualifying activity carried on by S” substitute “an activity carried on by S or by a person (other than B) who is connected with S, ”.

25 The amendment made by paragraph 23 has effect—

- (a) where the date of the transaction referred to in section 216(1)(a) of CAA 2001 is on or after 22 April 2009, and
- (b) for the purposes of section 227 of that Act (which applies section 216(1)(b) of that Act), where the date of the transaction referred to in section 227(1)(a) is on or after 22 April 2009.

26 The amendment made by paragraph 24 has effect—

- (a) where the date of the transaction referred to in section 221(1)(a) of CAA 2001 is on or after 22 April 2009, and
- (b) for the purposes of section 228A of that Act (which applies section 221(1)(b) of that Act), where the date of the transaction referred to in section 228A(2)(a) is on or after 22 April 2009.

#### *Interpretation*

27 In this Schedule “commencement” and “inception” have the meaning given in section 70YI(1) of CAA 2001.

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## SCHEDULE 33

Section 65

### LONG FUNDING LEASES OF FILMS

1 In ICTA, after section 502GC insert—

**“502GD Cases where ss 502B to 502G do not apply: films**

(1) If a company is or has been a lessor under a long funding lease of a film, sections 502B to 502G do not apply in respect of the lease.

(2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).”

2 In ITTOIA 2005, after section 148FC insert—

**“148FD Cases where ss 148A to 148F do not apply: films**

(1) If a person is or has been a lessor under a long funding lease of a film, sections 148A to 148F do not apply in respect of the lease.

(2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).”

3 The amendments made by paragraphs 1 and 2 have effect where the inception of the long funding lease is on or after 13 November 2008 (“the relevant date”).

4 Paragraphs 5 to 8 apply in respect of a long funding finance lease of a film—

- (a) whose inception is before the relevant date, and
- (b) which has not terminated before that date.

5 (1) Section 502B of ICTA or section 148A of ITTOIA 2005 (rental earnings) does not apply to a period of account within sub-paragraph (2).

(2) A period of account is within this sub-paragraph if—

- (a) it begins on or after the relevant date, and
- (b) no rentals due (wholly or partly) in respect of any part of the period of account were due under the lease before the relevant date.

6 (1) For the purpose of calculating the profits of the lessor under the lease for a period of account—

- (a) that ends on or after the relevant date, and
- (b) that is not within paragraph 5(2),

treat the lessor as receiving for that period of account income attributable to the lease of an amount equal to the relevant amount (in addition to any amount brought into account under section 502B(2) of ICTA or section 148A(2) of ITTOIA 2005).

(2) The “relevant amount” is an amount equal to so much of the rentals as—

- (a) become due on or after the relevant date, and
- (b) are due wholly or partly in respect of the period of account,

as would not reasonably be regarded as reflected in the rental earnings for that period of account.

(3) If any rental is paid for a period (“the rental period”) which—

- (a) begins before the relevant date, or

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- (b) is not wholly within the period of account,  
for the purposes of sub-paragraph (2) treat the amount of that rental as equal to the amount apportioned (on a time basis) in respect of so much of the rental period as falls on or after the relevant date and within the period of account.
- 7 Section 502C of ICTA or section 148B of ITTOIA 2005 (exceptional items) does not apply in relation to any profit or loss arising on or after the relevant date.
- 8 (1) If section 502D of ICTA or section 148C of ITTOIA 2005 (lessor making termination payment) applies in respect of the termination of the lease on or after the relevant date, a deduction is allowed (in calculating the profits of the lessor) in respect of any sum calculated by reference to the termination value paid to the lessee.
- (2) The amount of the deduction is (if it would otherwise exceed that amount) limited to the total amount brought into account in respect of the lease by virtue of paragraph 5 or 6.
- 9 For the purposes of paragraphs 3 to 8—
- (a) “film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act),
- (b) “rental earnings” has the same meaning as in section 502B of ICTA or section 148A of ITTOIA 2005, and
- (c) Chapter 6A of Part 2 of CAA 2001 (interpretation of provisions about long funding leases) applies.

## SCHEDULE 34

Section 66

### REAL ESTATE INVESTMENT TRUSTS

#### *Introduction*

- 1 Part 4 of FA 2006 (Real Estate Investment Trusts) is amended as follows.

#### *Property rental business*

- 2 (1) In section 104 (property rental business), insert at the end—
- “(3) For the purposes of section 104(1) ignore the effect of section 42 of CTA 2009 (which provides for receipts and expenses in connection with tied premises to be treated as part of a trade and not as part of a property business).”
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009.

#### *Conditions for company*

- 3 (1) Section 106 (conditions for company) is amended as follows.
- (2) In subsection (2), insert at the end “ (subject to section 109 and regulations under section 116) ”.
- (3) In subsection (7)(a)(ii)—

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- (a) for “fixed-rate” substitute “ relevant ”, and
- (b) omit “(within the meaning of paragraph 2 of Schedule 25 to ICTA (acceptable distribution policy))”.

(4) After subsection (7) insert—

“(7A) For the purposes of Condition 5—

- (a) “relevant preference share” means a share which is a “relevant preference share” for the purposes of Schedule 18 to ICTA (group relief) or would be but for the fact that it carries a right of conversion into shares or securities in the company, and
- (b) a share is “non-voting” if it carries no right to vote at a general meeting of the company or if it carries a right to vote which is contingent on the non-payment of a dividend and which has not become exercisable.”

(5) The amendment made by sub-paragraph (2) is to be treated as always having had effect.

(6) The amendments made by sub-paragraphs (3) and (4) have effect in relation to accounting periods ending on or after 22 April 2009.

#### *Conditions for balance of business*

- 4 (1) In section 108(3)(a) (conditions for balance of business), for “if it is property involved in the relevant property rental business within the meaning given by section 107(6)(a),” substitute “ if it would be shown as an asset if separate accounts were produced for C (tax-exempt), ”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009.

#### *Entry notice: conditions for company*

- 5 (1) Section 109 (entry notice) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Subsection (2B) applies where a company—
- (a) does not expect to satisfy Condition 3 of section 106 on the first day of an accounting period, but
  - (b) reasonably expects to satisfy that Condition throughout the rest of the accounting period.
- (2B) Where this subsection applies—
- (a) subsection (2)(c) does not apply, but
  - (b) the notice under subsection (1) must be accompanied by a statement by the company containing the assertions specified in subsection (2C).
- (2C) Those assertions are—
- (a) that Conditions 1, 2, 4, 5 and 6 of section 106 are reasonably expected to be satisfied in respect of the company throughout the specified accounting period, and

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- (b) that Condition 3 of section 106 is reasonably expected to be satisfied in respect of the company for at least a part of the first day of the specified accounting period, and throughout the remainder of that period.”
- (3) In subsection (3), omit “by reason only that its shares have not been listed and dealt with on a recognised stock exchange within the preceding 12 months,”.
- (4) In subsection (5)—
  - (a) after “Conditions 1, 2,” insert “ 3, ” and
  - (b) omit paragraph (b) (but not the “and” at the end).
- (5) Insert at the end—
 

“(6) A company may take advantage both of subsections (2A) to (2C) and of subsections (3) to (5) (in which case the assertion under subsection (2C)(a) should omit reference to Condition 4 and the assertion under subsection (5) (a) should omit reference to Condition 3.”
- (6) The amendments made by this paragraph have effect in relation to accounting periods beginning on or after 22 April 2009.

*Profit: financing-cost ratio*

- 6 (1) In section 115 (profit: financing-cost ratio), after subsection (3) insert—
- “(3A) The Commissioners for Her Majesty's Revenue and Customs may waive a charge in respect of an accounting period where they think that—
- (a) the company was in severe financial difficulties at a time in the accounting period,
  - (b) the result of the sum specified in subsection (2) is less than 1.25 in respect of the accounting period because of circumstances that arose unexpectedly, and
  - (c) in those circumstances, the company could not reasonably have taken action to avoid the result being less than 1.25.
- (3B) The regulations may specify criteria to be applied by the Commissioners in determining whether to waive a charge.”
- (2) The Commissioners may waive a charge in respect of accounting periods ending before the day on which this Act is passed.

*Funds awaiting re-investment*

- 7 (1) In section 118(5) (funds awaiting re-investment), after “one or more periods of” insert “ (in aggregate) ”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009.

*Connected persons*

- 8 (1) Before section 137 (miscellaneous: insurance companies) insert—

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### Connected persons

“136A) If they consider it expedient in the public interest the Treasury may make regulations about the application of this Part to activities or situations which involve, or arise in connection with, a relationship between a REIT company and another person.

(2) In subsection (1) “REIT company” means—

- (a) a company to which this Part applies, and
- (b) a member of a group to which this Part applies (a “REIT group”).

(3) The regulations may, in particular—

- (a) treat a specified person, or a person in specified circumstances, as forming part of a REIT group for specified purposes;
- (b) provide for a specified provision which applies in respect of members of a REIT group also to apply, with or without modifications, in respect of a specified person or a person in specified circumstances.

(4) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.”

(2) Regulations under section 136A (inserted by sub-paragraph (1)) may make provision in relation to accounting periods ending on or after the date on which the regulations are made.

## SCHEDULE 35

Section 72

### PENSIONS: SPECIAL ANNUAL ALLOWANCE CHARGE

#### Modifications etc. (not altering text)

- C6 Sch. 35 applied (with modifications) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Application to Members of Currently-Relieved Non-UK Pension Schemes\) Order 2009 \(S.I. 2009/2031\)](#), arts. 1(1), **2-10**

#### *Special annual allowance charge*

- 1 (1) A charge to income tax, to be known as the special annual allowance charge, arises where—
- (a) the total adjusted pension input amount for a tax year in the case of a high-income individual who is a member of one or more registered pension schemes, exceeds
  - (b) the amount of the special annual allowance.

(2) The individual is a high-income individual if the individual's relevant income for the tax year is £150,000 or more.

Paragraph 2 makes provision for calculating the individual's relevant income.

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- (3) Paragraphs 3 to 16 explain what is the total adjusted pension input amount.
- (4) The special annual allowance is £20,000 (but subject to paragraph 17).
- (5) But if, in calculating the total adjusted pension input amount of the individual for the tax year, a deduction is made in respect of—
- (a) protected pension input amounts (see paragraphs 7 to 14), or
  - (b) a pre-22 April 2009 pension input amount that is such an amount by virtue of paragraph 16(3),
- (or both) the special annual allowance is £20,000 less the amount of the deduction or, if the deduction is £20,000 or more, is nil.
- (6) The person liable to the special annual allowance charge is the individual.
- (7) The individual is liable to the special annual allowance charge whether or not—
- (a) the individual, and
  - (b) the scheme administrator of the pension scheme or schemes concerned,
- are UK resident, ordinarily UK resident or domiciled in the United Kingdom.
- (8) The special annual allowance charge is a charge at the [<sup>F10</sup>appropriate rate] in respect of the amount by which—
- (a) the total adjusted pension input amount, exceeds
  - (b) the amount of the special annual allowance.
- [<sup>F11</sup>For this purpose “the appropriate rate” is—
- (a) 0% in relation to so much (if any) of the chargeable amount as, when added to the reduced net income amount, does not exceed the basic rate limit,
  - (b) 20% in relation to so much (if any) of the chargeable amount, as when so added, exceeds the basic rate limit but does not exceed the higher rate limit, and
  - (c) 30% in relation to so much (if any) of the chargeable amount as, when so added, exceeds the higher rate limit.
- In this sub-paragraph—
- “chargeable amount” means the amount in respect of which the special annual allowance charge is charged, and
- “the reduced net income amount” means the amount after taking step 3 in section 23 of ITA 2007 in the case of the individual for the tax year.]
- (9) But where—
- (a) the individual's total pension input amount under section 229 of FA 2004 (annual allowance charge) for the tax year, exceeds
  - (b) the amount of the annual allowance for the tax year (see section 228 of that Act and orders made under it),
- the amount in respect of which the special annual allowance charge is charged is reduced by the amount of the excess.
- (10) In calculating the individual's liability to income tax for the tax year the amount of any income tax to which the individual is liable under this section is to be added at Step 7 of the calculation in section 23 of ITA 2007 (which applies as if this Schedule were a provision listed in section 30 of that Act).



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- (11) The amount in respect of which the special annual allowance charge is charged is not to be treated as income for any purpose of the Tax Acts.

#### Textual Amendments

- F10** Words in Sch. 35 para. 1(8) substituted (with effect in accordance with art. 1 of the amending S.I.) by [Special Annual Allowance Charge \(Variation of Rate\) Order 2010 \(S.I. 2010/572\)](#), **art. 2**
- F11** Words in Sch. 35 para. 1(8) inserted (with effect in accordance with art. 1 of the amending S.I.) by [Special Annual Allowance Charge \(Variation of Rate\) Order 2010 \(S.I. 2010/572\)](#), **art. 2**

#### *Calculation of relevant income*

- 2 (1) To find the individual's relevant income for the tax year take the following steps—

##### *Step 1*

Identify the individual's total income.

##### *Step 2*

Add the amount of any deductions made from any employment income of the individual for the tax year under section 193(2) of FA 2004 or made under Chapter 2 of Part 5 of ITEPA 2003 in accordance with paragraph 51 of Schedule 36 to FA 2004.

##### *Step 3*

Deduct the amount of any relief under the provisions listed in section 24 of ITA 2007, other than sections 193(4) and 194(1) of FA 2004, to which the individual is entitled for the tax year.

##### *Step 4*

Deduct the aggregate amount of any relevant contributions, but subject to a maximum of £20,000.

##### *Step 5*

Add any amount by which what would otherwise be general earnings or specific employment income of the individual for the tax year has been reduced by a post-22 April 2009 salary sacrifice scheme.

##### *Step 6*

If in the tax year the individual makes, or is treated under section 426 of ITA 2007 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid), deduct the grossed up amount of the gift (that is, the amount of the gift grossed up by reference to the basic rate for the tax year).

The result is the individual's relevant income for the tax year unless the result is less than £150,000 and the following provisions provide that the individual's relevant income is to be a different amount.

- (2) If the amount arrived at under sub-paragraph (1) is less than £150,000, take the steps in that sub-paragraph in relation to—
- the tax year before the tax year concerned, and
  - the tax year before that.

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If the result is £150,000 or more for either or both of those earlier tax years the individual's relevant income for the tax year is to be assumed to be £150,000.

- (3) If there is a scheme the main purpose, or one of the main purposes, of which is to secure that the individual's relevant income for the tax year is less than £150,000, it is to be assumed to be £150,000.
- (4) In step 4 in sub-paragraph (1) “relevant contributions” are—
- (a) contributions which are relievable pension contributions in relation to the individual and are paid in the tax year,
  - (b) contributions in respect of which the individual is entitled to a tax reduction under section 788 of ICTA and which are paid in the tax year, and
  - (c) contributions paid by the individual for which a deduction is given under Chapter 2 of Part 5 of ITEPA 2003 for the tax year in accordance with paragraph 51 of Schedule 36 to FA 2004.
- (5) In step 5 in sub-paragraph (1) “a post-22 April 2009 salary sacrifice scheme” is a scheme made on or after 22 April 2009 in pursuance of which—
- (a) the individual gives up the right to receive general earnings or specific employment income, and
  - (b) an employer of the individual or any other person agrees to pay contributions (or additional contributions) to a pension scheme in respect of the individual or otherwise to secure an increase in the amount of benefits to which the individual or any person who is a dependant of, or is connected with, the individual is actually or prospectively entitled under a pension scheme.
- (6) Section 993 of ITA 2007 (meaning of “connected” person) applies for the purposes of sub-paragraph (5).

*Total adjusted pension input amount: general*

- 3 (1) The total adjusted pension input amount is to be calculated as follows.
- (2) Arrive at an amount in the same way as the total pension input amount would be arrived at for the purposes of the annual allowance charge in accordance with sections 229 to 237 of FA 2004 (assuming that it were necessary to arrive at it for that purpose) but subject to—
- (a) the modifications of those sections specified in paragraphs 4 and 5, and
  - (b) where paragraph 6 applies, the provisions of that paragraph.
- (3) Then reduce the amount so arrived at by the aggregate of—
- (a) any protected pension input amounts (see paragraphs 7 to 14), and
  - (b) any relevant refunded amounts (see paragraph 15),
- and, if the tax year is the tax year 2009-10, any pre-22 April 2009 pension input amount (see paragraph 16).

*Total adjusted pension input amount: modifications of sections 229 to 237 of FA 2004*

- 4 (1) Section 229(3) of FA 2004 (no pension input amount for year in which individual becomes entitled to all benefits under arrangement or dies) has effect for arriving at an amount under paragraph 3(2) in relation to an arrangement only if condition A or B is met.

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- (2) Condition A is that—
- (a) the arrangement is a defined benefits arrangement under a pension scheme,
  - (b) at the time when the individual becomes entitled to all the benefits that may be provided to the individual under the arrangement or dies, there are at least 20 persons in respect of whom defined benefits arrangements subsist under the pension scheme under which benefits are accruing or scheme pensions are being paid, and
  - (c) the individual's becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.
- (3) Condition B is that—
- (a) the arrangement is under an occupational pension scheme, a public service pension scheme or a group personal pension scheme,
  - (b) the individual's entitlement to the benefits mentioned in section 229(3)(a) of FA 2004 arises only because the ill-health condition is satisfied, and
  - (c) the individual's becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.
- 5 (1) Sections 230(1), 233(1) and 234(1) of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “the pension input period of the arrangement that ends in” were omitted.
- (2) Sections 230 to 237 of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “tax year” were substituted for “pension input period” in all other places.

*Total adjusted pension input amount: modification in cases of avoidance scheme*

- 6 (1) This paragraph applies if there is a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge by reducing the amount arrived at in accordance with paragraph 3(2) in relation to an arrangement under a pension scheme for the tax year (or for reducing that amount and the amount so arrived at for other tax years).
- (2) If the amount calculated under sub-paragraph (3) exceeds that arrived at in accordance with paragraph 3(2) in relation to the arrangement for the tax year, the amount so calculated is to be treated as if it were the amount so arrived at.
- (3) The amount is calculated by deducting—
- (a) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the beginning of the tax year, from
  - (b) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the end of the tax year.

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- (4) That calculation is to be made on the assumptions that—
  - (a) the benefits are capable of assignment (or assignment),
  - (b) the assignment (or assignment) is by a transaction between parties at arm's length, and
  - (c) any power to reduce entitlement to the benefits does not exist.
- (5) If the arrangement ceases to exist during the tax year, the reference in sub-paragraph (3)(b) to the end of the tax year is to the time immediately before it ceases to exist.
- (6) Section 236 of FA 2004 applies for adjusting the amount in sub-paragraph (3) (b) as for adjusting the closing value of an individual's rights as calculated under section 234(5) of that Act (but as if references to the pension input period were to the tax year and whether or not the arrangement is a defined benefits arrangement).

*Protected pension input amounts: general*

- 7 (1) The following paragraphs make provision for protected pension input amounts in respect of arrangements under registered pension schemes—
  - (a) paragraph 8 makes provision about existing defined benefits arrangements,
  - (b) paragraph 9 makes provision about existing cash balance arrangements,
  - (c) paragraph 10 makes provision about other existing money purchase arrangements under occupational pension schemes and public service pension schemes,
  - (d) paragraph 11 makes provision about other existing money purchase arrangements under other schemes,
  - (e) paragraph 12 makes provision about existing hybrid arrangements, and
  - (f) paragraph 13 makes provision about new and re-activated arrangements.
- (2) Paragraph 14 makes anti-avoidance provision in relation to all the varieties of arrangements covered by paragraphs 8 to 13.

*Protected pension input amounts: existing defined benefits arrangements*

- 8 (1) This paragraph applies in respect of a defined benefits arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme.
- (2) If the individual pays relevant added years contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant added years contributions are contributions paid—
  - (a) with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual,
  - (b) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
  - (c) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant

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- end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
- (d) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant added years contributions it is a protected pension input amount if—
- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and
- (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.
- (5) If there is a material change in the rules of the pension scheme under which such benefits are calculated under the arrangement in that period, the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount to the extent that it is not attributable to that change.
- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme.
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement.

*Protected pension input amounts: existing cash balance arrangements*

- 9 (1) This paragraph applies in respect of a cash balance arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme.
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid—
- (a) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
- (b) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
- (c) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.

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- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant additional voluntary contributions it is a protected pension input amount if—
- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 until the relevant end date, and
  - (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.
- (5) If there is a material change in the rules of the pension scheme under which such benefits are calculated under the arrangement in that period, the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount to the extent that it is not attributable to that change.
- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme.
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement.

*Protected pension input amounts: other existing money purchase arrangements under occupational and public service pension schemes*

- 10 (1) This paragraph applies in respect of a money purchase arrangement, other than a cash balance arrangement, if the arrangement is under an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme.
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid—
- (a) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
  - (b) on a quarterly or more frequent basis during the period beginning with that date of (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
  - (c) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in subparagraph (5) if the individual has been an active member of the pension scheme

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by reference to the arrangement since before 22 April 2009 and until the relevant end date.

- (5) That amount is a protected pension input amount to the extent that it is attributable to contributions paid—
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
  - (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.
- (6) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

*Protected pension input amounts: other existing money  
purchase arrangements under other pension schemes*

- 11 (1) This paragraph applies in respect of a money purchase arrangement, other than a cash balance arrangement, if—
- (a) the arrangement is under a scheme other than an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme, and
  - (b) the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to contributions paid—
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
  - (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before that date.
- (3) If the individual—
- (a) was not an active member of the pension scheme by reference to the arrangement immediately before 22 April 2009, but
  - (b) a written application to become such an active member was received by or on behalf of the scheme administrator of the pension scheme before noon on 22 April,
- the references to before 22 April 2009 (and to that date) in sub-paragraphs (1)(b) and (2) are to the date on which the individual became such an active member pursuant to the application.
- (4) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

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*Protected pension input amounts: existing hybrid arrangements*

- 12 (1) This paragraph applies in respect of a hybrid arrangement under a pension scheme if any one or more of paragraphs 8 to 11 would be applicable in relation to it.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount if and to the extent of the greater or greatest amount that it would be if the arrangement were an arrangement under whichever (if any) of paragraphs 8 to 11 are applicable in relation to it.
- (3) Paragraph 8 is applicable in relation to it as in relation to a defined benefits arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits.
- (4) Paragraph 9 is applicable in relation to it as in relation to a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are cash balance benefits.
- (5) Paragraph 10 or 11 is applicable in relation to it as in relation to a money purchase arrangement other than a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits.

*Protected pension input amounts: new and re-activated arrangements*

- 13 (1) This paragraph applies in respect of an arrangement if—
- (a) the arrangement is made or re-activated on or after 22 April 2009,
  - (b) the arrangement—
    - (i) is under an occupational pension scheme or forms part of a group personal pension scheme and (in either case) relates to an employment of the individual, or
    - (ii) is a public service pension scheme,
  - (c) there is no material change in the rules of the pension scheme under which benefits are calculated under the arrangement in the relevant period or any such material change in the relevant period affects at least 50 active members of the pension scheme, and
  - (d) throughout the relevant period there are at least 20 persons in respect of whom arrangements subsist under the pension scheme under which benefits are accruing on the same basis as those under the arrangement.
- (2) If the arrangement falls within sub-paragraph (1)(b)(i), this paragraph does not apply in respect of it if—
- (a) the provision of benefits under it is not part of the normal pattern of pension provision made by the person who is the employer in relation to the employment of the individual for the employees of the employer generally, or
  - (b) the persons mentioned in sub-paragraph (1)(d) are not employees of that person.
- (3) “The relevant period” is the period—
- (a) beginning when the arrangement is made or re-activated, and
  - (b) ending at the same time as the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.



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- (4) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount except to the extent that it is attributable to the payment of added years contributions or additional voluntary contributions.
- (5) “Added years contributions” are contributions paid with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual.
- (6) An arrangement relates to an employment of the individual if—
  - (a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or
  - (b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.
- (7) An arrangement is “re-activated” if the individual, having ceased to be an active member of the pension scheme by reference to the arrangement, again becomes such a member.

*Protected pension input amounts: anti-avoidance*

- 14 No amount is a protected pension input amount by virtue of any of paragraphs 8 to 13 if the individual is during the tax year a party to a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.

*Relevant refunded amounts*

- 15 (1) The amount arrived at under paragraph 3(2) in relation to an arrangement is a relevant refunded amount to the extent that it does not exceed the amount of a contributions refund lump sum paid to the individual (or the personal representatives of the individual).
- (2) A lump sum is a contributions refund lump sum if—
  - (a) it is paid to the individual by a pension scheme in respect of an arrangement,
  - (b) it is not a lump sum of any of the descriptions listed in section 166(1) of FA 2004,
  - (c) it is paid during the period of one year beginning immediately after the end of the tax year,
  - (d) its amount does not exceed the adjusted contributions amount for the tax year, and
  - (e) the individual is a high-income individual for the tax year.
- (3) The adjusted contributions amount for the tax year is the amount of any relevant relievable pension contributions less any relevant deductions.
- (4) “Relevant relievable pension contributions” are contributions which—
  - (a) are relievable pension contributions in relation to the individual, and
  - (b) are paid to the pension scheme under the arrangement in the tax year,but subject as follows.

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- (5) If the pension scheme is an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme, contributions are relevant relievable pension contributions only if they—
  - (a) are additional voluntary contributions, and
  - (b) are not relevant additional voluntary contributions within the meaning of paragraph 9(3) or 10(3).
- (6) If the pension scheme is not an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme—
  - (a) contributions are not relevant relievable pension contributions if they fall within paragraph 11(2), and
  - (b) if the tax year is the tax year 2009-10, contributions paid before 22 April 2009 are not relevant relievable pension contributions if they were paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis.
- (7) “Relevant deductions” are—
  - (a) the amount of any previous contributions refund lump sum previously paid by the pension scheme since the end of the tax year in respect of the arrangement,
  - (b) the amount of any pension debit to which the rights of the individual under the arrangement became subject in the tax year,
  - (c) where during the tax year there was a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under any other pension scheme that is a registered pension scheme or a qualifying recognised overseas pension scheme, the amount of any sums, and the market value of any assets, transferred, and
  - (d) the amount crystallised by any benefit crystallisation events which occurred in relation to the individual and the arrangement in the tax year.

*Pre-22 April 2009 pension input amount*

- 16 (1) This paragraph makes provision for the extent (if any) to which the amount arrived at under paragraph 3(2) in relation to an arrangement is a pre-22 April 2009 pension input amount.
- (2) In relation to a defined benefits arrangement or cash balance arrangement, a pre-22 April 2009 pension input amount is such proportion of what would otherwise be the amount arrived at under paragraph 3(2) as, on a just and reasonable apportionment, relates to the period beginning with 6 April 2009 and ending with 21 April 2009.
  - (3) In relation to a money purchase arrangement that is not a cash balance arrangement, a pre-22 April 2009 pension input amount is so much of the amount of the contributions within section 233 of FA 2004 as are paid in the period beginning with 6 April 2009 and ending with 21 April 2009, other than any contributions paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis.
  - (4) In relation to a hybrid arrangement, a pre-22 April 2009 pension input amount is the greater or greatest of the amounts under the sub-paragraph or sub-paragraphs applicable in relation to it.
  - (5) For this purpose—

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- (a) sub-paragraph (2) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits or cash balance benefits, and
- (b) sub-paragraph (3) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits.

#### *Increased special annual allowance*

- 17 (1) This paragraph has effect where the mean of the infrequent money purchase contributions amount for the tax years 2006-07, 2007-08 and 2008-09 (“the relevant mean”) exceeds £20,000.
- (2) Where the relevant mean is less than £30,000, this Schedule has effect as if the references in paragraph 1(4) and (5) to £20,000 were instead to the relevant mean.
- (3) Where the relevant mean is £30,000 or more, this Schedule has effect as if those references were instead to £30,000.
- (4) The “infrequent money purchase contributions amount” for a tax year is the aggregate of any relevant contributions paid in the tax year—
- (a) under money purchase arrangements, other than cash balance arrangements, under registered pension schemes, and
  - (b) less frequently than on a quarterly basis;
- (and so is nil if no such contributions were so paid).
- (5) But if the infrequent money purchase contributions amount for a tax year would otherwise be greater than the annual allowance for the tax year, it is to be taken to be the annual allowance for the tax year.
- (6) “Relevant contributions” means contributions which are—
- (a) relievable pension contributions by or on behalf of the individual, or
  - (b) contributions paid by an employer of the individual in respect of the individual.

#### *Taxation of contributions refund lump sums*

- 18 Part 4 of FA 2004 applies in relation to a contributions refund lump sum as if it were a short service refund lump sum in excess of the limit specified in section 205(4) (a) of that Act (so that it is not an unauthorised payment and is liable to tax at the rate chargeable on a short service refund lump sum).

#### *Power to amend*

- 19 (1) The Treasury may by order made by statutory instrument amend paragraph 1(8) so as to vary the rate of the special annual allowance charge.
- (2) An order under sub-paragraph (1) may make provision for there to be different rates in different circumstances.
- (3) The Treasury may by order made by statutory instrument amend paragraphs 2 to 18.
- (4) An order under sub-paragraph (3) may make provision having effect in relation to times before it is made if it does not increase any person's liability to tax.

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- (5) No order may be made under sub-paragraph (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (6) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.

*Currently-relieved non-UK pension schemes*

- 20 (1) The Treasury may by order made by statutory instrument make provision for this Schedule to apply in relation to individuals who—
- (a) are or have been members of currently-relieved non-UK pension schemes, or
  - (b) have been members of overseas pension schemes that were not currently-relieved non-UK pension schemes,
- subject to such modifications as are specified in the order.
- (2) An order under sub-paragraph (1) may—
- (a) include provision having effect in relation to times before it is made,
  - (b) confer discretion on the Commissioners for Her Majesty's Revenue and Customs or officers of Revenue and Customs, and
  - (c) make different provision for different cases.
- (3) A statutory instrument containing an order under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.

*Tax years to which Schedule applies*

- 21 (1) This Schedule has effect for the tax year 2009-10 and subsequent tax years (with the result that paragraph 18 has effect for the tax year 2010-11 and subsequent tax years).
- (2) But the Treasury may by order make provision for this Schedule to cease to have effect after the tax year specified in the order (but so that paragraph 18 continues to have effect for the following tax year).

*Minor amendment*

- 22 In paragraph 49 of Schedule 36 to FA 2004 (annual allowance charge: enhanced protection), insert at the end—
- “(3) This paragraph does not apply for the purposes of the special annual allowance charge.”

*Interpretation*

- 23 (1) In this Schedule—
- “group personal pension scheme” means arrangements administered on a group basis under a personal pension scheme which are available to employees of the same employer or of employers which are members of the same group of companies;
- “personal pension scheme” means a pension scheme that is neither an occupational pension scheme nor a public service pension scheme;

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“scheme” (otherwise than in the expression “pension scheme”) includes any arrangement, agreement, understanding, transaction or series of transactions (whether or not legally enforceable).

- (2) For the purposes of the definition of “group personal pension scheme” a company and all of its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on; and for this purpose “75% subsidiary” has the meaning given by section 838 of ICTA.
- (3) Expressions used in this Schedule and in any provisions of Part 4 of FA 2004 have the same meaning in this Schedule as they have in the provisions of that Part in which they are used.

## SCHEDULE 36

Section 76

### VAT: PLACE OF SUPPLY OF SERVICES ETC

#### PART 1

##### AMENDMENTS COMING INTO FORCE IN 2010

- 1 VATA 1994 is amended as follows.
- 2 In section 6(14A) (time of supply), omit “In relation to any services of a description specified in an order under section 7(11),”.
- 3 (1) Section 7 (place of supply) is amended as follows.
  - (2) In subsection (1), omit “or services”.
  - (3) Omit subsection (10).
  - (4) In subsection (11), omit “or services” (in each place).
  - (5) In the heading, insert at the end “ of goods ”.
- 4 After that section insert—

#### “7A Place of supply of services

- (1) This section applies for determining, for the purposes of this Act, the country in which services are supplied.
- (2) A supply of services is to be treated as made—
  - (a) in a case in which the person to whom the services are supplied is a relevant business person, in the country in which the recipient belongs, and
  - (b) otherwise, in the country in which the supplier belongs.
- (3) The place of supply of a right to services is the same as that in which the supply of the services would be treated as made if made by the supplier of the right to the recipient of the right (whether or not the right is exercised); and for this purpose a right to services includes any right, option or priority

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with respect to the supply of services and an interest deriving from a right to services.

(4) For the purposes of this Act a person is a relevant business person in relation to a supply of services if the person—

- (a) is a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC,
- (b) is registered under this Act,
- (c) is identified for the purposes of VAT in accordance with the law of a member State other than the United Kingdom, or
- (d) is registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to value added tax,

and the services are received by the person otherwise than wholly for private purposes.

(5) Subsection (2) has effect subject to Schedule 4A.

(6) The Treasury may by order—

- (a) amend subsection (4),
- (b) amend Schedule 4A, or
- (c) otherwise make provision for exceptions from either or both of the paragraphs of subsection (2).

(7) An order under subsection (6) may include incidental, supplemental, consequential and transitional provision.”

5 (1) Section 8 (reverse charge on supplies received from abroad) is amended as follows.

(2) For subsections (1) and (2) substitute—

“(1) Where services are supplied by a person who belongs in a country other than the United Kingdom in circumstances in which this subsection applies, this Act has effect as if (instead of there being a supply of the services by that person)—

- (a) there were a supply of the services by the recipient in the United Kingdom in the course or furtherance of a business carried on by the recipient, and
- (b) that supply were a taxable supply.

(2) Subsection (1) above applies if—

- (a) the recipient is a relevant business person who belongs in the United Kingdom, and
- (b) the place of supply of the services is inside the United Kingdom, and, where the supply of the services is one to which any paragraph of Part 1 or 2 of Schedule 4A applies, the recipient is registered under this Act.”

(3) After subsection (4) insert—

“(4A) Subsection (1) does not apply to services of any of the descriptions specified in Schedule 9.”

(4) In subsection (5), for “add to, or vary, Schedule 5” substitute “amend subsection (4A) by altering the descriptions of services specified in that subsection”.

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- (5) Omit subsection (6).
  - (6) In subsection (7)—
    - (a) for “add to or vary Schedule 5” substitute “ amend subsection (4A) ”, and
    - (b) for “addition to or variation of that Schedule” substitute “ amendment of that subsection ”.
  - (7) In subsection (8)—
    - (a) for “addition to or variation of that Schedule” substitute “ amendment of subsection (4A) ”, and
    - (b) for “the Schedule” substitute “ that subsection ”.
- 6 For section 9 substitute—

**“9 Place where supplier or recipient of services belongs**

- (1) This section has effect for determining for the purposes of section 7A (or Schedule 4A) or section 8, in relation to any supply of services, whether a person who is the supplier or recipient belongs in one country or another.
  - (2) A person who is a relevant business person is to be treated as belonging in the relevant country.
  - (3) In subsection (2) “the relevant country” means—
    - (a) if the person has a business establishment, or some other fixed establishment, in a country (and none in any other country), that country,
    - (b) if the person has a business establishment, or some other fixed establishment or establishments, in more than one country, the country in which the relevant establishment is, and
    - (c) otherwise, the country in which the person's usual place of residence is.
  - (4) In subsection (3)(b) “relevant establishment” means whichever of the person's business establishment, or other fixed establishments, is most directly concerned with the supply.
  - (5) A person who is not a relevant business person is to be treated as belonging in the country in which the person's usual place of residence is.
  - (6) In this section “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.”
- 7 (1) Section 43 (groups of companies) is amended as follows.
- (2) In subsection (2A)—
    - (a) in paragraph (a), for “falling within Schedule 5” substitute “ to which section 7A(2)(a) applies made ”, and
    - (b) in paragraph (c)—
      - (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and
      - (ii) insert at the end “and section 7A(2)(a) applied to the supply”.
  - (3) In subsection (2D)—
    - (a) in paragraph (c)—

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- (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and
  - (ii) insert at the end “ and section 7A(2)(a) applied to the supply ”, and
  - (b) in the words after the paragraphs, for “falling within that Schedule,” substitute “ to which section 7A(2)(a) applies, ”.
- (4) In subsection (2E)(b), for “there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that Schedule,” substitute “ there is a supply to which section 7A(2)(a) applies of services which, if used by the transferor for making such a supply, ”.
- 8 (1) Section 96 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “regulations” insert—
- ““relevant business person” has the meaning given by section 7A(4);”.
- (3) In subsection (8), omit “(subject to any provision made under section 8(6))”.
- 9 Section 97(4)(a) (orders subject to requirement of Parliamentary approval after making), after “5(4)” insert “ , 7A(6) ”.
- 10 Section 97A(1) (place of supply orders: transitional provision), for “on or after 17th March 1998 under section 7(11)” substitute “ under section 7A(6) ”.
- 11 After Schedule 4 insert—

“SCHEDULE  
4A

Section 7A

PLACE OF SUPPLY OF SERVICES: SPECIAL RULES

**PART 1**

GENERAL EXCEPTIONS

*Services relating to land*

- 1 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the land in connection with which the supply is made is situated.
- (2) This paragraph applies to—
- (a) the grant, assignment or surrender of any interest in or right over land,
  - (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land,
  - (c) the grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation, seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities),
  - (d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation



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- in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering,
- (e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and
  - (f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.
- (3) In sub-paragraph (2)(c) “holiday accommodation” includes any accommodation in a building, hut (including a beach hut or chalet), caravan, houseboat or tent which is advertised or held out as holiday accommodation or as suitable for holiday or leisure use.
- (4) In sub-paragraph (2)(d) “similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by, or held out as being suitable for use by, visitors or travellers.

#### *Passenger transport*

- 2 (1) A supply of services consisting of the transportation of passengers (or of any luggage or motor vehicles accompanying passengers) is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each.
- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if—
- (a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
  - (b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points.
- (3) For the purposes of sub-paragraph (1) a pleasure cruise is to be regarded as the transportation of passengers (so that services provided as part of a pleasure cruise are to be treated as supplied in the same place as the transportation of the passengers).
- (4) In sub-paragraph (3) “pleasure cruise” includes a cruise wholly or partly for education or training.

#### *Hiring of means of transport*

- 3 (1) A supply of services consisting of the short-term hiring of a means of transport is to be treated as made in the country in which the means of transport is actually put at the disposal of the person by whom it is hired.
- But this is subject to sub-paragraphs (3) and (4).

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- (2) For the purposes of this Schedule the hiring of a means of transport is “short-term” if it is hired for a continuous period not exceeding—
- (a) if the means of transport is a vessel, 90 days, and
  - (b) otherwise, 30 days.
- (3) Where—
- (a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country.
- (4) Where—
- (a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom.

*Cultural, educational and entertainment services etc*

- 4 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out.
- (2) This paragraph applies to the provision of—
- (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and
  - (b) ancillary services relating to such activities, including services of organisers of such activities.

*Restaurant and catering services: general*

- 5 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out.
- (2) This paragraph applies to the provision of restaurant services and the provision of catering services, other than the provision of services to which paragraph 6 applies.

*EC on-board restaurant and catering services*

- 6 (1) A supply of services consisting of
- (a) the provision of restaurant services, or
  - (b) the provision of catering services,
- on board a ship, aircraft or train in connection with the transportation of passengers during an intra-EC passenger transport operation is to be treated as made in the country in which the relevant point of departure is located.

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- (2) An intra-EC passenger transport operation is a passenger transport operation which, or so much of a passenger transport operation as,—
  - (a) has as the first place at which passengers can embark a place which is within the EC,
  - (b) has as the last place at which passengers who embarked in a member State can disembark a place which is within the EC, and
  - (c) does not include a stop at a place which is not within the EC and at which passengers can embark or passengers who embarked in a member State can disembark.
- (3) “Relevant point of departure”, in relation to an intra-EC passenger transport operation, is the first place in the intra-EC passenger transport operation at which passengers can embark.
- (4) A place is within the EC if it is within any member State.
- (5) For the purposes of this paragraph the return stage of a return passenger transport operation is to be regarded as a separate passenger transport operation; and for this purpose—
  - (a) a return passenger transport operation is one which takes place in more than one country but is expected to end in the country in which it begins, and
  - (b) the return stage of a return passenger transport operation is the part of it which ends in the country in which it began and begins with the last stop at a place at which there has not been a previous stop during it.

#### *Hiring of goods*

- 7 (1) Where—
  - (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,the supply is to be treated to that extent as made in that country.
- (2) Where—
  - (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,the supply is to be treated to that extent as made in the United Kingdom.

#### *Telecommunication and broadcasting services*

- 8 (1) This paragraph applies to a supply of services consisting of the provision of—
  - (a) telecommunication services, or
  - (b) radio or television broadcasting services.

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- (2) In this Schedule “telecommunication services” means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including—
- (a) the related transfer or assignment of the right to use capacity for such transmission, emission or reception, and
  - (b) the provision of access to global information networks.
- (3) Where—
- (a) a supply of services to which this paragraph applies would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country.
- (4) Where—
- (a) a supply of services to which this paragraph applies would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom.

## PART 2

### EXCEPTIONS RELATING TO SUPPLIES MADE TO RELEVANT BUSINESS PERSON

#### *Electronically-supplied services*

- 9 (1) Where—
- (a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country.
- (2) Where—
- (a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom.
- (3) Examples of what are electronically supplied services for the purposes of this Schedule include—
- (a) website supply, web-hosting and distance maintenance of programmes and equipment,
  - (b) the supply of software and the updating of software,

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- (c) the supply of images, text and information, and the making available of databases,
  - (d) the supply of music, films and games (including games of chance and gambling games),
  - (e) the supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events), and
  - (f) the supply of distance teaching.
- (4) But where the supplier of a service and the supplier's customer communicate via electronic mail, this does not of itself mean that the service provided is an electronically supplied service for the purposes of this Schedule.

### PART 3

#### EXCEPTIONS RELATING TO SUPPLIES NOT MADE TO RELEVANT BUSINESS PERSON

##### *Intermediaries*

- 10 (1) A supply of services to which this paragraph applies is to be treated as made in the same country as the supply to which it relates.
- (2) This paragraph applies to a supply to a person who is not a relevant business person consisting of the making of arrangements for a supply by or to another person or of any other activity intended to facilitate the making of such a supply.

##### *Transport of goods: general*

- 11 (1) A supply of services to a person who is not a relevant business person consisting of the transportation of goods is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each.
- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if—
- (a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
  - (b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points.
- (3) This paragraph does not apply to a transportation of goods beginning in one member State and ending in another (see paragraph 12).

##### *Intra-Community transport of goods*

- 12 A supply of services to a person who is not a relevant business person consisting of the transportation of goods which begins in one member State

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and ends in another is to be treated as made in the member State in which the transportation begins.

*Ancillary transport services*

- 13 (1) A supply to a person who is not a relevant business person of ancillary transport services is to be treated as made where the services are physically performed.
- (2) “Ancillary transport services” means loading, unloading handling and similar activities.

*Valuation services etc*

- 14 A supply to a person who is not a relevant business person of services consisting of the valuation of, or carrying out of work on, goods is to be treated as made where the services are physically performed.

*Electronic services*

- 15 A supply consisting of the provision by a person who belongs in a country which is not a member State (other than the Isle of Man) of electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)) to a person (“the recipient”) who—
- (a) is not a relevant business person, and
  - (b) belongs in a member State,
- is to be treated as made in the country in which the recipient belongs.

*Other services provided to recipient belonging outside EC*

- 16 (1) A supply consisting of the provision to a person (“the recipient”) who—
- (a) is not a relevant business person, and
  - (b) belongs in a country which is not a member State (other than the Isle of Man),
- of services to which this paragraph applies is to be treated as made in the country in which the recipient belongs.
- (2) This paragraph applies to—
- (a) transfers and assignments of copyright, patents, licences, trademarks and similar rights,
  - (b) the acceptance of any obligation to refrain from pursuing or exercising (in whole or in part) any business activity or any rights within paragraph (a),
  - (c) advertising services,
  - (d) services of consultants, engineers, consultancy bureaux, lawyers, accountants, and similar services, data processing and provision of information, other than any services relating to land,
  - (e) banking, financial and insurance services (including reinsurance), other than the provision of safe deposit facilities,

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- (f) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services,
  - (g) the supply of staff,
  - (h) the letting on hire of goods other than means of transport,
  - (i) telecommunication services (as to the meaning of which see paragraph 8(2)),
  - (j) radio and television broadcasting services, and
  - (k) electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)).”
- 12 Omit Schedule 5 (services supplied where received).
- 13 In Article 5 of the Value Added Tax (Tour Operators) Order 1987 (S.I. 1987/1806)
- 
- (a) omit paragraph (1), and
  - (b) in paragraph (2) after “treated” insert “ for the purposes of this Act ”, and treat that article as made under section 7A(6)(c) of VATA 1994 (inserted by paragraph 4).
- 14 (1) The powers contained in section 7A(6) of VATA 1994 (inserted by paragraph 4) may be exercised at any time on or after the day on which this Act is passed.
- (2) The amendments made by paragraph 7 come into force on 1 January 2010; but the references in section 43 of VATA 1994 (as amended by that paragraph) to a supply to which section 7A(2) of that Act applies includes a supply of services falling within paragraphs 1 to 8 of Schedule 5 made before that date.
- (3) Subject to that, the amendments made by this Part have effect in relation to supplies made on or after 1 January 2010.

## PART 2

### AMENDMENTS COMING INTO FORCE IN 2011

#### *Admission to cultural, educational and entertainment activities etc*

- 15 (1) Schedule 4A to VATA 1994 (inserted by paragraph 11) is amended as follows.
- (2) Omit paragraph 4.
- (3) After paragraph 9 insert—

#### *“Admission to cultural, educational and entertainment activities etc*

- 9A (1) A supply to a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the events in question actually take place.
- (2) This paragraph applies to the provision of—
- (a) services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events (including fairs and exhibitions), and

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(b) ancillary services relating to admission to such events.”

(4) After paragraph 14 insert—

*“Cultural, educational and entertainment services etc*

14A(1) A supply to a person who is not a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the activities concerned actually take place.

(2) This paragraph applies to the provision of—

- (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and
- (b) ancillary services relating to such activities, including services of organisers of such activities.”

16 The amendments made by this Part have effect in relation to supplies made on or after 1 January 2011.

### PART 3

#### AMENDMENTS COMING INTO FORCE IN 2013

17 In Schedule 4A to VATA 1994 (inserted by paragraph 11), after paragraph 13 insert—

*“Long-term hiring of means of transport*

13A (1) A supply to a person who is not a relevant business person (“the recipient”) of services consisting of the long-term hiring of a means of transport is to be treated as made in the country in which the recipient belongs.

But this is subject to sub-paragraph (2) and paragraph 3(3) and (4).

(2) A supply to a person who is not a relevant business person (“the recipient”) of services consisting of the long-term hiring of a pleasure boat which is actually put at the disposal of the recipient at the supplier's business establishment, or some other fixed establishment of the supplier, is to be treated as made in the country where the pleasure boat is actually put at the disposal of the recipient.

(3) For the purposes of this Schedule, the hiring of a means of transport is “long-term” if it is not short-term (as to the meaning of which see paragraph 3(2)).”

18 The amendment made by this Part has effect in relation to supplies made on or after 1 January 2013.



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## PART 4

### TRANSITIONAL PROVISIONS

- 19 (1) This paragraph applies where—
- (a) amendments made by this Schedule provide for a supply of services to be treated as made in the United Kingdom,
  - (b) the supply would not have fallen to be so treated apart from the amendments, and
  - (c) the services are treated under the law of a member State other than the United Kingdom as supplied in that member State before the commencement date.
- (2) The supply is not to be treated as made in the United Kingdom.
- (3) “The commencement date” means the date specified by this Schedule as that on or after which a supply must be made if it is to be treated as made in the United Kingdom by virtue of the amendments.

## SCHEDULE 37

Section 83

### STOCK LENDING: STAMP TAXES IN THE EVENT OF INSOLVENCY

## PART 1

### STAMP DUTY

- 1 FA 1986 is amended as follows.

**Modifications etc. (not altering text)**

C7 The provisions of Sch. 37 cease to have effect in accordance with s. 83(3)

- 2 In Part 3 (stamp duty), after section 80C insert—

**“80D Repurchases and stock lending: replacement stock on insolvency**

- (1) This section applies where—
- (a) A and B have entered into an arrangement falling within section 80C(1),
  - (b) the conditions in subsection (2A) or (3) of that section are met,
  - (c) stock is transferred to A or A's nominee, and
  - (d) the conditions in subsection (2) below are met.
- (2) The conditions in this subsection are that—
- (a) A and B are not connected persons within the meaning of section 839 of the Taxes Act 1988,
  - (b) after B has transferred stock under the arrangement, A or B becomes insolvent,

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- (c) it becomes apparent (whether before or after the insolvency occurs) that, as a result of the insolvency, stock will not be transferred to B or B's nominee in accordance with the arrangement,
  - (d) the party who does not become insolvent (“the solvent party”) or the solvent party's nominee acquires replacement stock, and
  - (e) the replacement stock is acquired before the end of the period of 30 days beginning with the day on which the insolvency occurs (“the insolvency date”).
- (3) Where collateral is provided under the arrangement (or under arrangements of which that arrangement forms part), stamp duty is not chargeable on any instrument transferring to the solvent party or the solvent party's nominee—
- (a) replacement stock acquired using the collateral (whether directly or indirectly), or
  - (b) where the solvent party uses the whole of the value of the collateral to acquire replacement stock, any further replacement stock.
- (4) Where no collateral is provided as mentioned in subsection (3), stamp duty is not chargeable on any instrument transferring replacement stock to the solvent party or the solvent party's nominee.
- (5) Subsections (3) and (4) may apply as regards more than one instrument (and where those subsections apply as regards more than one instrument, the instruments may be executed by different persons).
- (6) But those subsections apply only as regards replacement stock up to the amount of stock which will not be transferred as a result of the insolvency.
- (7) An instrument on which stamp duty is not chargeable by virtue only of subsection (3) or (4) is not to be deemed to be duly stamped unless it has been stamped with a stamp denoting that it is not chargeable with any duty.
- (8) Despite section 122(1) of the Stamp Act 1891, the stamp mentioned in subsection (7) may be a stamp of such kind as the Commissioners for Her Majesty's Revenue and Customs may prescribe.
- (9) For the purposes of this section a person becomes insolvent—
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
  - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
  - (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
  - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,

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- (h) if a bank administration order takes effect under Part 3 of that Act, or
- (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(10) In this section—

“collateral” means an amount of money or other property which is payable to, or made available for the benefit of, a party to an arrangement or that party's nominee for the purpose of securing the discharge of the requirement to transfer stock to that party or the nominee;

“replacement stock”, in the event of a party to an arrangement becoming insolvent, is stock of the same kind as the stock which will not be transferred to the other party or that party's nominee as a result of the insolvency.”

**Modifications etc. (not altering text)**

**C8** The provisions of Sch. 37 cease to have effect in accordance with s. 83(3)

- 3 (1) In consequence of the amendment made by paragraph 2, section 88(1C) (disregard of certain instruments falling within section 80C(1)) is amended as follows.
- (2) At the beginning of the words after paragraph (c) insert “ then, if section 80D does not apply, ”.

**Modifications etc. (not altering text)**

**C9** The provisions of Sch. 37 cease to have effect in accordance with s. 83(3)

## PART 2

### STAMP DUTY RESERVE TAX

- 4 Part 4 of FA 1986 (stamp duty reserve tax) is amended as follows.

**Modifications etc. (not altering text)**

**C10** The provisions of Sch. 37 cease to have effect in accordance with s. 83(3)

- 5 After section 89AA insert—

#### “89AB Section 87: exception for repurchases and stock lending in case of insolvency

(1) This section applies where—

- (a) P and Q have entered into an arrangement falling within section 89AA(1),
- (b) the only reason that the conditions in subsection (2A) or (3) of that section are not met is that chargeable securities of the same kind and

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- amount as those transferred to P or P's nominee are not transferred to Q or Q's nominee, and
- (c) the conditions in subsection (2) below are met.
- (2) The conditions in this subsection are that—
- (a) P and Q are not connected persons within the meaning of section 839 of the Taxes Act 1988,
  - (b) after Q has transferred securities under the arrangement, either P or Q becomes insolvent,
  - (c) it becomes apparent (whether before or after the insolvency occurs) that, as a result of the insolvency, securities will not be transferred to Q or Q's nominee in accordance with the arrangement.
- (3) Section 87 does not apply as regards an agreement to transfer chargeable securities to P or P's nominee, or Q or Q's nominee, in accordance with the arrangement.
- (4) Subsections (5) and (6) apply if—
- (a) the party who does not become insolvent (“the solvent party”) or the solvent party's nominee acquires replacement securities, and
  - (b) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which the insolvency occurs (“the insolvency date”).
- (5) Where collateral is provided under the arrangement (or under arrangements of which that arrangement forms part), section 87 does not apply as regards any agreement to transfer to the solvent party or the solvent party's nominee—
- (a) replacement securities acquired using the collateral (whether directly or indirectly), or
  - (b) where the solvent party uses the whole of the value of the collateral to acquire replacement securities, any further replacement securities.
- (6) Where no collateral is provided as mentioned in subsection (5), section 87 does not apply as regards any agreement to transfer replacement securities to the solvent party or the solvent party's nominee.
- (7) Subsections (5) and (6) may apply as regards more than one agreement (and where those subsections apply as regards more than one agreement, the agreements may be with different persons).
- (8) But those subsections apply only as regards replacement securities up to the amount of securities which will not be transferred as a result of the insolvency.
- (9) For the purposes of this section a person becomes insolvent—
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,

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- (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
- (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
- (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
- (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
- (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
- (h) if a bank administration order takes effect under Part 3 of that Act, or
- (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(10) In this section—

“collateral” means an amount of money or other property which is payable to, or made available for the benefit of, a party to an arrangement or that party's nominee for the purpose of securing the discharge of the requirement to transfer securities to that party or the nominee;

“replacement securities”, in the event of a party to an arrangement becoming insolvent, are chargeable securities of the same kind as the securities which will not be transferred to the other party or that party's nominee as a result of the insolvency.”

**Modifications etc. (not altering text)**

**C11** The provisions of Sch. 37 cease to have effect in accordance with s. 83(3)

SCHEDULE 38

Section 84

CAPITAL ALLOWANCES FOR OIL DECOMMISSIONING EXPENDITURE

- 1 CAA 2001 is amended as follows.
- 2 (1) Section 163 (meaning of “general decommissioning expenditure”) is amended as follows.
- (2) In subsection (1), for “(3) and (4)” substitute “ (3) to (4) ”.
- (3) After subsection (3) insert—
- “(3A) The expenditure must have been incurred wholly or substantially in complying with—
- (a) an approved abandonment programme,
  - (b) a condition to which the approval of an abandonment programme is subject, or

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- (c) a condition imposed by the Secretary of State, or an agreement made with the Secretary of State—
- (i) before the approval of an abandonment programme, and
- (ii) in relation to the decommissioning of the plant or machinery.”
- (4) In subsection (5)(b), insert at the beginning “ “abandonment programme”, “approval” and “approved” (in relation to an abandonment programme),”.
- 3 (1) Section 164 (general decommissioning expenditure incurred before cessation of ring fence trade) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) A person (“R”) carrying on a ring fence trade may elect to have a special allowance made to R for a chargeable period (the “relevant chargeable period”) if conditions A and B are met.
- (1A) Condition A is that one or more of these paragraphs applies—
- (a) R incurs general decommissioning expenditure in the relevant chargeable period in respect of decommissioning carried out in that period;
- (b) R incurs general decommissioning expenditure in the relevant chargeable period in respect of decommissioning carried out in a previous chargeable period;
- (c) R incurred general decommissioning expenditure in a previous chargeable period in respect of decommissioning that has not been carried out until the relevant chargeable period.
- (1B) Condition B is that the plant or machinery concerned has been brought into use for the purposes of the ring fence trade.”
- (3) In subsection (2)(a), for the words from “the chargeable period” to the end substitute “ the relevant chargeable period, and ”.
- (4) In subsection (3)—
- (a) in paragraph (a), omit the “and” at the end, and
- (b) after that paragraph insert—
- “(aa) the chargeable period in which the expenditure was incurred,
- (ab) the decommissioning to which the expenditure relates,
- (ac) the chargeable period in which the decommissioning was carried out, and”.
- (5) In subsection (4)(a), for the words from “the chargeable period” to the end substitute “ the relevant chargeable period, and ”.
- (6) In subsection (5), for the words from “a chargeable period” to the end substitute “ the relevant chargeable period is equal to the amount of the general decommissioning expenditure to which the election relates. ”
- (7) After that subsection insert—
- “(5A) But subsection (5) is subject to subsections (5B) and (6).

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(5B) If an amount of general decommissioning expenditure to which the election relates is disproportionate to the relevant decommissioning carried out in the specified decommissioning period then, for the purposes of this section, the election is to be taken to specify only the allowable expenditure.

(5C) The application of subsection (5B) to an amount of general decommissioning expenditure does not prevent a person from making an election under this section for a subsequent chargeable period specifying the non-allowable expenditure.

(5D) In subsections (5B) and (5C)—

“allowable expenditure”, in relation to general decommissioning expenditure, means the amount of the expenditure that is proportionate to the relevant decommissioning carried out in the specified decommissioning period;

“non-allowable expenditure”, in relation to general decommissioning expenditure, means so much of that expenditure as is not allowable expenditure;

“relevant decommissioning”, in relation to general decommissioning expenditure, means the decommissioning to which the expenditure relates;

“specified decommissioning period”, in relation to relevant decommissioning, means the chargeable period specified in the election as the period in which the decommissioning was carried out;

“specified expenditure period”, in relation to general decommissioning expenditure, means the chargeable period specified in the election as the period in which the expenditure was incurred.”

4 (1) Section 165 (general decommissioning expenditure after ceasing ring fence trade) is amended as follows.

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

“(b) the decommissioning condition is met in relation to a notional accounting period, and”.

(3) After that subsection insert—

“(1A) The decommissioning condition is met in relation to a notional accounting period (the “relevant period”) if one or more of these paragraphs applies—

(a) the former trader incurs general decommissioning expenditure in the relevant period in respect of decommissioning carried out in that period,

(b) the former trader incurs general decommissioning expenditure in the relevant period in respect of decommissioning carried out in—

(i) a previous notional accounting period, or

(ii) a chargeable period falling before the first notional accounting period, and

(c) the former trader incurred general decommissioning expenditure in—

(i) a previous notional accounting period, or

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(ii) a chargeable period falling before the first notional accounting period,  
in respect of decommissioning that has not been carried out until the relevant period.

(1B) “Notional accounting period” means each of the following periods—

- (a) the period that—
  - (i) begins with the day following the last day on which the former trader carried on the ring fence trade, and
  - (ii) ends with the day on which the first termination event subsequently occurs, and
- (b) each period that—
  - (i) begins with the day following the last day of a period determined under paragraph (a) or this paragraph, and
  - (ii) ends with the day on which the first termination event subsequently occurs;

but there are to be no notional accounting periods after the end of the post-cessation period.

(1C) “Termination event”, in relation to a notional accounting period, means each of the following—

- (a) the end of the period of 12 months beginning with the first day of the notional accounting period,
- (b) the occurrence of an accounting date of the former trader or, if there is a period for which the former trader does not make up accounts, the end of that period (but see subsections (6A) and (6B)), and
- (c) the end of the post-cessation period.”

(4) In subsection (3)—

- (a) after “applies” insert “ in relation to a notional accounting period ”, and
- (b) in paragraph (a), after “relevant decommissioning cost” insert “ for that period, or the aggregate of all the relevant decommissioning costs for that period, ”.

(5) In subsection (4), for the definition of “the relevant decommissioning cost” substitute—

““relevant decommissioning cost”, for a notional accounting period, means the amount by which general decommissioning expenditure falling within paragraph (a), (b) or (c) of subsection (1A) in relation to that period exceeds any amounts received before or during that period for the remains of any plant or machinery on whose demolition any of the general decommissioning expenditure was incurred.”

(6) After subsection (4A) insert—

“(4B) If an amount of general decommissioning expenditure is disproportionate to the relevant decommissioning carried out in the decommissioning period then, for the purposes of this section, only the allowable expenditure is to be taken to have been incurred in the expenditure period.

(4C) The application of subsection (4B) to an amount of general decommissioning expenditure does not prevent the non-allowable expenditure from being



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taken into account under this section in relation to a subsequent notional accounting period.

(4D) In subsections (4B) and (4C)—

“allowable expenditure”, in relation to general decommissioning expenditure, means the amount of the expenditure that is proportionate to the relevant decommissioning carried out in the decommissioning period;

“decommissioning period”, in relation to relevant decommissioning, means the notional accounting period or chargeable period in which the decommissioning was carried out;

“expenditure period”, in relation to general decommissioning expenditure, means the notional accounting period or chargeable period in which the expenditure was incurred;

“non-allowable expenditure”, in relation to general decommissioning expenditure, means so much of that expenditure as is not allowable expenditure;

“relevant decommissioning”, in relation to general decommissioning expenditure, means the decommissioning to which the expenditure relates.”

(7) After subsection (6) insert—

“(6A) If the former trader—

- (a) carries on more than one trade,
- (b) makes up accounts of any of them to different dates, and
- (c) does not make up general accounts for the whole of the company's activities,

subsection (1C)(b) applies with reference to the accounting date of such one of the trades as the former trader may determine.

(6B) If the Commissioners for Her Majesty's Revenue and Customs are of the opinion, on reasonable grounds, that a date determined by the former trader for the purposes of subsection (6A) is inappropriate, the Commissioners may by notice direct that the accounting date of such other of the trades referred to in that subsection as appears to the Commissioners to be appropriate is to be used instead.”

5 The amendments made by this Schedule have effect in relation to expenditure incurred on or after 22 April 2009.

## SCHEDULE 39

Section 85

### PRT: BLENDED OIL

1 Part 5 of FA 1987 (oil taxation) is amended as follows.

2 For section 63 substitute—

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### “63 Blends of oil from two or more fields

- (1) This section applies if, at any time before its disposal or relevant appropriation, oil won from an oil field (“the relevant field”) in a chargeable period (“the relevant period”) is mixed with oil won from one or more other oil fields.
- (2) A relevant participator's share of oil won from the relevant field in the relevant period is to be taken to be the amount of the blended oil that it is just and reasonable (for the purposes of the oil taxation legislation) to allocate to the participator in respect of the relevant period.
- (3) In making the allocation regard must be had (in particular) to the quantity and quality of the oil derived from each of the originating fields.
- (4) If the participators in the originating fields select a method for making the allocation, that method is to be used to determine that allocation.
- (5) But that is subject to Schedule 12.
- (6) If the participators in the originating fields fail to select a method for making the allocation, HMRC may select a method.
- (7) In a case where only some oil won from the relevant field in the relevant period is, before its disposal or relevant appropriation, mixed with oil won from one or more other fields, subsection (2) has effect for the purpose of determining the amount of the blended oil that is to be taken to be included in a relevant participator's share of oil won from the relevant field.
- (8) Schedule 12 contains provision supplementing this section.
- (9) In this section and Schedule 12—
  - “blended oil” means oil that consists of oil from two or more oil fields that has been mixed;
  - “foreign field” means an area which is a foreign field for the purposes of section 12 of the Oil Taxation Act 1983;
  - “oil” includes any substance which would be oil if the enactments mentioned in section 1(1) of the principal Act extended to a foreign field;
  - “oil field” includes a foreign field;
  - “oil taxation legislation” means Part 1 of the principal Act and any enactment construed as one with that Part;
  - “originating fields”, in relation to any blended oil, means the oil fields from which oil which has been mixed as mentioned in subsection (1);
  - “relevant participator” means a person who is a participator in the relevant field at any time in the relevant period.”

3 (1) Schedule 12 (supplementary provisions as to blended oil) is amended as follows.

(2) For paragraphs 1 and 2 (and the headings before them) substitute—

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### *“Interpretation*

- 1 (1) In this Schedule—
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “method of allocation” means a method for making an allocation of blended oil for the purposes of section 63 that has been selected by the participators in the originating fields (including such a method that has been amended in accordance with this Schedule).
- (2) In this Schedule a reference to a suitable method of allocation is a reference to a method which secures that allocation of blended oil is just and reasonable (for the purposes of the oil taxation legislation).

### *Method of allocation not suitable*

- 2 (1) This paragraph applies if it appears to HMRC that—
  - (a) a method of allocation that has been used in respect of a chargeable period was not suitable, or
  - (b) a method of allocation that is proposed to be used in respect of a chargeable period would not be suitable.
- (2) HMRC may give notice to each of the participators in the originating fields—
  - (a) informing the participators of what appears to HMRC to be the case, and
  - (b) proposing amendments to the method of allocation.
- (3) If HMRC give notice, the allocation of the blended oil for the purposes of section 63 in respect of the chargeable period is to be redetermined, or determined, using the method of allocation as amended in accordance with the notice.
- (4) Sub-paragraph (3) is subject to—
  - (a) the following provisions of this Schedule,
  - (b) any subsequent notice given under this paragraph, and
  - (c) any amendment to the method of allocation made by the participators in the originating fields.”
- (3) In paragraph 3(1)—
  - (a) for “the Board” (in each place) substitute “ HMRC ”, and
  - (b) for “paragraph 2(a)” substitute “ paragraph 2(2) ”.
- (4) In paragraph 3(2), for “the Board” (in each place) substitute “ HMRC ”.
- (5) After paragraph 3(2) insert—
  - “(3) If the method of allocation is amended in accordance with this paragraph, the allocation of the blended oil for the purposes of section 63 in respect of the chargeable period is to be redetermined, or determined, using the method of allocation as so amended.
  - (4) Sub-paragraph (3) is subject to—
    - (a) any subsequent notice given under this paragraph, and

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(b) any amendment to the method of allocation made by the participators in the originating fields.”

(6) Omit paragraph 4.

4 The amendments made by this Schedule have effect in relation to chargeable periods beginning after 30 June 2009.

## SCHEDULE 40

Section 86

### OIL: CHARGEABLE GAINS

#### PART 1

##### LICENCE SWAPS

1 TCGA 1992 is amended as follows.

2 In section 35(3) (assets held on 31 March 1982, including assets held on 6 April 1965)—

(a) in paragraph (c), omit the “or” at the end, and

(b) after that paragraph insert—

“(ca) where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal, or”.

3 In section 55 (assets owned on 31 March 1982 or acquired on a no gain/no loss disposal), after subsection (5) insert—

“(5A) For the purposes of subsection (5), a disposal is also a no gain/no loss disposal if it is one on which, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal; but, in such a case, subsection (6)(b) below does not apply.”

4 In section 175(2C)(b) (replacement of business assets by members of a group), after “applies” insert “ or is one where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal ”.

5 After section 195 insert—

#### “195A Oil licence swaps

(1) Sections 195B to 195E apply for the purposes of corporation tax on chargeable gains.

(2) In those sections—

“licence-consideration swap” means a case where conditions A, B, C and D are met;

“mixed-consideration swap” means a case where conditions A, B, C and E are met.

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- (3) Condition A is that a company (“company A”) disposes of one or more UK licences to another company (“company B”), by way of a bargain at arm's length (“disposal A”).
- (4) Condition B is that company B disposes of one or more UK licences to company A, by way of a bargain at arm's length (“disposal B”).
- (5) Condition C is that either or both of the following paragraphs applies—
  - (a) the licence, or at least one of the licences, comprised in disposal A relates to a developed area;
  - (b) the licence, or at least one of the licences, comprised in disposal B relates to a developed area.
- (6) Condition D is that both—
  - (a) disposal A is the only consideration given for disposal B, and
  - (b) disposal B is the only consideration given for disposal A.
- (7) Condition E is that either—
  - (a) disposal A is the only consideration given for disposal B, or
  - (b) disposal B is the only consideration given for disposal A,(and accordingly one of the disposals is part of the consideration given for the other disposal).
- (8) In this section and sections 195B to 196 a reference to disposal of a UK licence includes—
  - (a) a disposal of an interest in a UK licence, and
  - (b) a disposal of a UK licence, or an interest in a UK licence, only so far as the licence relates to part of the licensed area.

### **195B Licence-consideration swap**

- (1) This section applies to a licence-consideration swap.
- (2) Each company participating in the swap is to be treated as follows.
- (3) As regards the licence, or each licence, which the company disposes of, the company is to be treated as if it had disposed of that licence for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the company.
- (4) In a case where the company acquires only one licence, the company is to be treated as if it had acquired the licence for a consideration of the same amount as the deemed disposal consideration.
- (5) In a case where the company acquires two or more licences, as regards each licence acquired, the company is to be treated as if it had acquired that licence for a consideration of—

$$DDC \times \frac{A}{TA}$$

where—

DDC is the deemed disposal consideration,

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A is the value of the licence acquired, and  
TA is total value of all the licences acquired.

- (6) In this section “deemed disposal consideration”, in relation to a company participating in the swap, means—
- (a) the amount of the consideration for which the company is, under subsection (3), treated as having disposed of its licence (if the company disposes of only one licence), or
  - (b) the aggregate of all such amounts (if the company disposes of two or more licences).

### **195C Company that receives mixed consideration: N exceeds C**

- (1) This section applies to a mixed-consideration swap if—
- (a) the no gain/no loss amount (“N”) of the company that receives the mixed consideration (“company R”), exceeds
  - (b) the amount of non-licence consideration (“C”) which company R receives.
- (2) In a case where company R acquires only one licence, company R is to be treated as if it had acquired the licence for a consideration of—

$$N - C$$

- (3) In a case where company R acquires two or more licences, as regards each licence acquired, company R is to be treated as if it had acquired the licence for a consideration of—

$$(N - C) \times \frac{A}{TA}$$

where—

A is the value of the licence acquired, and  
TA is total value of all the licences acquired.

- (4) The disposal by company R of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues.
- (5) But (despite subsection (4)), the disposal by company R is not a no gain/no loss disposal for the purposes of section 56.
- (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company G”) subsequently disposes of the licence, company R's acquisition of the licence is to be treated as company G's acquisition of it.
- (7) In this section the reference to the no gain/no loss amount of company R is a reference to—
- (a) in a case where company R disposes of only one licence, company R's no gain/no loss amount in relation to that disposal, or

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- (b) in a case where company R disposes of two or more licences, the aggregate of company R's no gain/no loss amounts in relation to all of those disposals.

#### **195D Company that receives mixed consideration: N does not exceed C**

- (1) This section applies to a mixed-consideration swap if—
- (a) the no gain/no loss amount (“N”) of the company that receives the mixed consideration (“company R”) does not exceed
- (b) the amount of non-licence consideration (“C”) which company R receives.
- (2) As regards the licence, or each licence, which company R acquires, company R is to be treated as if it had acquired the licence for nil consideration.
- (3) In a case where company R disposes of only one licence, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—

$$C - N$$

- (4) In a case where company R disposes of two or more licences, as regards each licence disposed of, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—

$$(C - N) \times \frac{D}{TD}$$

where—

D is the value of the licence disposed of, and  
TD is total value of all the licences disposed of.

#### **195E Company that gives mixed consideration**

- (1) This section applies to a mixed-consideration swap—
- (a) whatever the no gain/no loss amount (“N”) of the company that gives the mixed consideration (“company G”), and
- (b) whatever the amount of the non-licence consideration (“C”) which company G gives.
- (2) In a case where company G acquires only one licence, company G is to be treated as if it had acquired the licence for a consideration of—

$$N + C$$

- (3) In a case where company G acquires two or more licences, as regards each licence acquired, company G is to be treated as if it had acquired the licence for a consideration of—

$$(N + C) \times \frac{A}{TA}$$

where—

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A is the value of the licence acquired, and  
TA is total value of all the licences acquired.

- (4) The disposal by company G of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues.
  - (5) But (despite subsection (4)), the disposal by company G is not a no gain/no loss disposal for the purposes of section 56.
  - (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company R”) subsequently disposes of the licence, company G’s acquisition of the licence is to be treated as company R’s acquisition of it.
  - (7) In this section the reference to the no gain/no loss amount of company G is a reference to—
    - (a) in a case where company G disposes of only one licence, company G’s no gain/no loss amount in relation to that disposal, or
    - (b) in a case where company G disposes of two or more licences, the aggregate of company G’s no gain/no loss amounts in relation to all of those disposals.”
- 6 (1) Section 196 (interpretation of sections 194 and 195) is amended as follows.
- (2) In the heading, for “**and 195**” substitute “ to 195E ”.
  - (3) In subsection (1), after “section 194” insert “ and this section ”.
  - (4) After subsection (1A) insert—
 

“(1B) In sections 195A to 195E, a reference to a UK licence that relates to a developed area is a reference to any UK licence apart from one that relates to an undeveloped area.”
  - (5) In subsection (2), for “and (1A)” substitute “ to (1B) ”.
  - (6) In subsection (3), after “(1)” insert “ or (1B) ”.
  - (7) In subsection (5)—
    - (a) for “and 195” substitute “ to 195E ”,
    - (b) after the definition of “licence” insert—
 

““licence-consideration swap” has the meaning given in section 195A(2);”, and
    - (c) after the definition of “licensee” insert—
 

““mixed consideration” means consideration that consists partly of disposal of a UK licence;

“mixed-consideration swap” has the meaning given in section 195A(2);

“no gain/no loss amount”, in relation to a company that disposes of a UK licence, means the amount that would be taken to be the consideration for the disposal if section 56(2) applied to the disposal;



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“non-licence consideration” means consideration that does not consist of disposal of a UK licence, as determined at the time the swap arrangements are entered into;

“swap arrangements”, in relation to a licence-consideration swap or a mixed-consideration swap, means the arrangements under which the swap takes place.”

(8) After subsection (5A) insert—

“(5B) In any of sections 195B to 195E, a reference to the value of a licence comprised in disposal A or disposal B (see section 195A) is a reference to the value of the licence as determined under the swap arrangements at the time the swap arrangements are entered into.”

7 In Schedule 3 (assets held on 31 March 1982), in paragraph 1(2) (meaning of no gain/no loss disposal), after “provisions” insert “ or any of sections 195B, 195C or 195E ”.

8 The amendments made by this Part have effect in relation to disposals made on or after 22 April 2009.

## PART 2

### REINVESTMENT OF RING FENCE ASSETS

#### *Amendment of TCGA 1992*

9 TCGA 1992 is amended as follows.

#### *Roll-over relief*

10 In section 198 (replacement of business assets used in connection with oil fields), for subsection (3) substitute—

“(3) Where—

(a) section 152 or 153 applies in relation to any of the consideration on a material disposal, and

(b) the asset which constitutes the new assets for the purposes of that section is a depreciating asset,

section 154(2)(b) is to have effect as if the reference to a trade carried on by the claimant were a reference solely to the claimant's ring fence trade.”

#### *Alternative to roll-over relief*

11 In section 198 (replacement of business assets used in connection with oil fields), after subsection (2) insert—

“(2A) But subsection (1) is subject to section 198A(3)(a).”

12 After that section insert—

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### **“198A Ring fence reinvestment: whole consideration reinvested**

- (1) This section applies if a person (“P”) makes a disposal and acquisition which—
  - (a) is a ring fence reinvestment, and
  - (b) qualifies for roll-over relief.
- (2) P may make a claim under this section in relation to the disposal and acquisition.
- (3) If P makes a claim under this section—
  - (a) section 152 does not apply to any of the disposal consideration, and
  - (b) any gain accruing to P on the disposal is not a chargeable gain.
- (4) In this section “disposal consideration” means the whole of the consideration obtained on the disposal made by P.

### **198B Ring fence reinvestment: part of consideration reinvested**

- (1) This section applies if a person (“P”) makes a disposal and acquisition which—
  - (a) is a ring fence reinvestment, and
  - (b) qualifies for section 153 relief.
- (2) P may make a claim under this section in relation to the disposal and acquisition.
- (3) If P makes a claim under this section—
  - (a) section 153(1)(a) applies in relation to P and the disposal, but
  - (b) section 153(1)(b) does not apply to P and the acquisition.

### **198C Provisional application of sections 198A and 198B**

- (1) This section applies where a person (“P”) carrying on a ring fence trade who for a consideration disposes of, or of an interest in, any assets (“the old assets”) declares, in P’s return for the chargeable period in which the disposal takes place—
  - (a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”),
  - (b) that the acquisition will take place as mentioned in section 152(3),
  - (c) that the disposal and acquisition will be a ring fence reinvestment,
  - (d) that P intends to make a claim under section 198A or 198B in relation to the disposal and acquisition, and
  - (e) that P has not made, and will not make, a declaration under section 153A in relation to the disposal and acquisition.
- (2) Until the declaration ceases to have effect, section 198A or 198B applies as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration ceases to have effect as follows—

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- (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 198A or 198B, on the day on which it is so withdrawn or superseded, and
  - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
  - (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made.
- (5) If—
  - (a) P makes a declaration under this section, and
  - (b) the disposal and acquisition is not a ring fence reinvestment, but qualifies for roll-over relief or section 153 relief,on P making a claim, the declaration is to have effect as also a declaration under section 153A.
- (6) In this section “the relevant day” means—
  - (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place, and
  - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.
- (7) Section 152(6), (10) and (11) apply for the purposes of this section as they apply for the purposes of section 152.

#### **198D No double claims**

- (1) If P makes a claim under section 198A or 198B, no other relevant claim may be made in respect of the relevant acquisition.
- (2) P may make a claim under section 198A or 198B (“the new claim”), if P has previously made a claim under section 152 or 153 (“the previous claim”) in respect of the relevant acquisition.
- (3) But P may make the new claim only if the previous claim is withdrawn at or before the time the new claim is made.
- (4) If the new claim is made in accordance with subsections (2) and (3), all necessary adjustments—
  - (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made.
- (5) In this section—

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“relevant acquisition” means the acquisition of the new assets that is comprised in the disposal and acquisition to which a claim under section 198A or 198B or declaration under section 198C relates;

“relevant claim” means a claim under section 152, 153, 198A or 198B.

### **198E Ring fence reinvestments and disposal consideration**

- (1) This section applies for the purposes of sections 198A to 198G.
- (2) A disposal and acquisition is a ring fence reinvestment if—
  - (a) the disposal was—
    - (i) a material disposal, or
    - (ii) a disposal of a UK licence which relates to an undeveloped area,
  - (b) the old assets were used only for the purposes of P's ring fence trade,
  - (c) the new assets are taken into use, and used only, for the purposes of one or more of the following trades—
    - (i) P's ring fence trade;
    - (ii) if P is a member of a group of companies (within the meaning given in section 170), a ring fence trade of another member of that group, and
  - (d) the new assets are oil assets.
- (3) If the disposal consists of—
  - (a) disposal of a licence to which section 195D(3) applies, or
  - (b) disposal of two or more licences to which section 195D(4) applies,
 the consideration for the disposal is to be taken to be the whole of the non-licence consideration obtained on the disposal (which is referred to as “C” in section 195D).
- (4) Accordingly, in sections 198A to 198G (including section 198A(4)), any reference to the consideration obtained on the disposal has effect subject to subsection (3).
- (5) Each of the following is an “oil asset” for the purposes of this section—
  - (a) an interest in oil to be won from an oil field,
  - (b) an asset used in connection with an oil field,
  - (c) a structure which is to be placed on the seabed of the United Kingdom continental shelf,
  - (d) an asset used wholly in the winning of oil, or in the measuring of oil won, in the United Kingdom otherwise than from an oil field,
  - (e) an asset used for the initial treatment or storage of oil in the United Kingdom,
  - (f) an asset used for the transportation of oil from an oil field to the United Kingdom, and
  - (g) a UK licence which relates to an undeveloped area.
- (6) Section 12 of the Oil Taxation Act 1975 (interpretation of Part 1 of that Act) applies for the interpretation of subsection (5)(a) to (f).

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- (7) Expressions used in this section and in section 152 have the same meanings in this section as in section 152.
- (8) In this section a reference to a UK licence which relates to an undeveloped area has the same meaning as in section 194 (see section 196).
- (9) In this section—
  - “material disposal” has the meaning given in section 197;
  - “ring fence trade” has the meaning given in section 198.

### **198F Qualification for roll-over relief**

- (1) This section applies for the purposes of sections 198A and 198B and section 198G.
- (2) A disposal and acquisition qualifies for roll-over relief if—
  - (a) the consideration for the disposal is applied in an acquisition as mentioned in section 152(1), and
  - (b) section 152(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made.
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for roll-over relief.
- (4) Section 152(8) is to be disregarded.
- (5) Section 198A is to be disregarded.
- (6) Subject to subsections (4) to (5), all the circumstances are to be taken into account, including section 153(1) and section 198(1) and (2).

### **198G Qualification for section 153 relief**

- (1) This section applies for the purposes of sections 198B and 198C.
- (2) A disposal and acquisition qualifies for section 153 relief if—
  - (a) section 153(1) applies to part of the amount or value of the consideration for the disposal,
  - (b) section 153(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made, and
  - (c) the disposal and acquisition would qualify for roll-over relief but for the disapplication of section 152(1) by section 153(1).
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for section 153 relief.
- (4) Section 153(2) has effect subject to section 198F(4) and (5).
- (5) Section 198B is to be disregarded.
- (6) Subject to subsections (4) and (5), all the circumstances are to be taken into account, including section 198(1).”

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- 13 The amendments made by this Part have effect in relation to disposals made on or after 22 April 2009 (whether the acquisition in which the consideration is reinvested takes place before, on or after that date).

## SCHEDULE 41

Section 87

### OIL ASSETS PUT TO OTHER USES

#### PART 1

##### PETROLEUM REVENUE TAX

###### *Allowance of decommissioning and restoration expenditure*

- 1 (1) Section 3 of OTA 1975 (allowance of expenditure) is amended as follows.
- (2) In subsection (1C)(b), for “in connection with the field” substitute “ for a qualifying purpose ”.
- (3) In subsection (1D), for “in connection with the field” substitute “ for a qualifying purpose ”.
- (4) After that subsection insert—
- “(1DA) In subsections (1C) and (1D) a reference to use for a qualifying purpose is a reference to—
- (a) use in connection with the taxable field mentioned in subsection (1C), and
  - (b) other use in—
    - (i) the United Kingdom,
    - (ii) the territorial sea of the United Kingdom, or
    - (iii) a designated area,
 except use wholly or partly for an ineligible oil purpose.
- (1DB) In subsection (1DA)(b) the reference to use for an ineligible oil purpose is a reference to—
- (a) use in connection with an oil field other than the taxable field mentioned in subsection (1C), and
  - (b) use for any other purpose (apart from a purpose falling within section 3(1)(b)) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988.
- (1DC) In subsections (1DA) and (1DB) a reference to use in connection with a taxable field or other oil field includes use giving rise to receipts which, for the purposes of the Oil Taxation Act 1983, are tariff receipts.”

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*Amounts which are not chargeable tariff receipts*

- 2 (1) Section 6 of OTA 1983 (amounts which are not chargeable tariff receipts) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (b), insert at the end “or”, and
  - (b) after that paragraph insert—
    - “(c) is referable to other use of an asset, except use wholly or partly for an oil purpose,”.
- (3) After that subsection insert—
- “(4A) In this section the reference to use of an asset for an oil purpose is a reference to—
- (a) use in connection with an oil field, and
  - (b) use for any other purpose (apart from a purpose falling within section 3(1)(b) of the principal Act) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988.
- (4B) In subsection (4A) the reference to use in connection with an oil field includes use giving rise to receipts which, for the purposes of this Act, are tariff receipts.”

*No reduction of allowable expenditure*

- 3 (1) Paragraph 8 of Schedule 1 to OTA 1983 (allowable expenditure: use of new asset otherwise than in connection with taxable field) is amended as follows.
- (2) In sub-paragraph (1)(a) and (b), for “in connection with a taxable field” substitute “for a qualifying purpose”.
- (3) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (1) a reference to use for a qualifying purpose is a reference to—
- (a) use in connection with a taxable field, and
  - (b) other use in—
    - (i) the United Kingdom,
    - (ii) the territorial sea of the United Kingdom, or
    - (iii) a designated area,except use wholly or partly for an ineligible oil purpose.
- (2B) In this Act a reference to use of an asset for an ineligible oil purpose is a reference to—
- (a) use in connection with an oil field that is not a taxable field, and
  - (b) use for any other purpose (apart from a purpose falling within section 3(1)(b) of the principal Act) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988.

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(2C) In sub-paragraphs (2A) and (2B) a reference to use in connection with a taxable field or other oil field includes use giving rise to receipts which, for the purposes of this Act, are tariff receipts.”

*Commencement*

- 4 The amendments made by this Part have effect in relation to chargeable periods beginning after 30 June 2009.

**PART 2**

CAPITAL ALLOWANCES

*General decommissioning expenditure*

- 5 (1) Section 163 of CAA 2001 (meaning of “general decommissioning expenditure”) is amended as follows.
- (2) In subsection (3)(a), after “use” insert “ wholly or partly ”.
- (3) In subsection (4ZA), for paragraphs (a) and (b) substitute—
- “(a) was not brought into use wholly for qualifying purposes, or  
 (b) has, at any time since it was brought into use, not been used wholly for qualifying purposes.”
- (4) In subsection (4ZC), for “the purposes of the ring fence trade” substitute “ qualifying purposes ”.
- (5) After subsection (4C) insert—
- “(4D) In this section a reference to use for qualifying purposes is a reference to—
- (a) use for the purposes of any ring fence trade of any person, or  
 (b) other use in—
- (i) the United Kingdom,  
 (ii) the territorial sea of the United Kingdom, or  
 (iii) an area designated under section 1(7) of the Continental Shelf Act 1964,
- except use wholly or partly in connection with an oil field (within the meaning given by section 12(2) of the Oil Taxation Act 1975).”
- 6 In section 165(4A) of CAA 2001 (general decommissioning expenditure after ceasing ring fence trade), for “abandonment expenditure” substitute “ general decommissioning expenditure ”.

*Commencement*

- 7 (1) The amendments made by paragraph 5 have effect in relation to expenditure incurred on or after 22 April 2009.
- (2) The amendment made by paragraph 6 has effect in relation to ring fence trades that cease to be carried on or after 12 March 2008.





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- (a) in the definition of “current participator”, after “paragraph (a),” insert “(aa),”, and
  - (b) in paragraph (b) of the definition of “former participator”, after “paragraph (a),” insert “(aa),”.
- 4 The amendments made by this Part have effect in relation to persons who cease to be licensees because of cessation events occurring in chargeable periods that begin after 30 June 2009.

## PART 2

### AREAS TREATED AS CONTINUING TO BE OIL FIELDS

- 5 OTA 1975 is amended as follows.
- 6 In section 12(1) (interpretation of Part 1), in the definition of “oil field”, after “this Act” insert “ (which also includes provision about areas that are to be treated as continuing to be oil fields) ”.
- 7 (1) Schedule 1 (determination of oil fields) is amended as follows.
- (2) Before paragraph 1 insert— “ Areas that are oil fields ”
  - (3) After paragraph 5 insert—

#### *“Areas treated as continuing to be oil fields*

- 6 (1) This paragraph applies if an area has ceased to be—
- (a) an oil field within the meaning of paragraph 1(1), or
  - (b) part of such an oil field.
- (2) The area is to be treated as continuing to be—
- (a) the oil field, or
  - (b) the part of the oil field,
- that it actually was.
- (3) Accordingly, whilst the area is treated in accordance with sub-paragraph (2), any reference to an oil field is to include a reference to the area.
- (4) Sub-paragraph (2) ceases to apply to the area—
- (a) in accordance with sub-paragraph (5), and
  - (b) if or to the extent that it has not ceased to apply in accordance with sub-paragraph (5), in accordance with sub-paragraph (6).
- (5) Sub-paragraph (2) ceases to apply to the area if, or to the extent that, it again becomes—
- (a) an oil field within the meaning of paragraph 1(1), or
  - (b) part of such an oil field.
- (6) Sub-paragraph (2) ceases to apply to the area at the end of the second chargeable period that falls after the chargeable period in which the area is decommissioned.
- 7 (1) A relevant area is decommissioned for the purposes of paragraph 6 if all qualifying assets of the relevant area are decommissioned.

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- (2) If, and to the extent that, a UK offshore decommissioning regime applies to qualifying assets of the relevant area, those assets are decommissioned if—
  - (a) the Secretary of State has approved one or more abandonment programmes under the regime in relation to those assets, and
  - (b) those programmes have been carried out to the satisfaction of the Secretary of State.
- (3) If, and to the extent that, a UK offshore decommissioning regime does not apply to qualifying assets of the relevant area, those assets are decommissioned if the Board are satisfied that they have been decommissioned.
- (4) For the purposes of sub-paragraph (3) the Board must have regard to any obligations to decommission the qualifying assets which arise under the law applicable to the relevant area (whether the law of any part of the United Kingdom or of any other state or territory), including any obligations imposed by an authority having functions under that law in respect of such decommissioning.
- (5) If sub-paragraph (3) applies (to any extent) to any qualifying assets, the Board must give the responsible person notice of any decision the Board make under that sub-paragraph.
- (6) The responsible person may appeal against such a decision by notice in writing given to the Board within three months of the responsible person receiving the notice under sub-paragraph (5).
- (7) An appeal under sub-paragraph (6) may, before it is notified to the tribunal, be abandoned by notice in writing given to the Board by the responsible person.
- (8) The provisions of paragraphs 14A to 14I of Schedule 2 apply to appeals under sub-paragraph (6) subject to any necessary modifications.
- (9) In this paragraph—
  - “qualifying assets” means assets that are qualifying assets within the meaning of OTA 1983;
  - “relevant area” means an area that is treated as being an oil field, or part of an oil field, under paragraph 6;
  - “UK offshore decommissioning regime” means—
    - (a) Part 4 of the Petroleum Act 1998, and
    - (b) Part 1 of the Petroleum Act 1987.”

8 The amendments made by this Part have effect in relation to areas that cease to be oil fields, or parts of oil fields, in chargeable periods that begin after 30 June 2009.

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## SCHEDULE 43

Section 89

### PRT: ABOLITION OF PROVISIONAL EXPENDITURE ALLOWANCE

#### *Interpretation*

- 1        In this Schedule—
- “future chargeable period” means a chargeable period beginning after 30 June 2009;
- “provisional expenditure allowance” means an amount calculated under section 2(9)(a) of OTA 1975.

#### *Abolition of allowance*

- 2        No provisional expenditure allowance is to be calculated in respect of a future chargeable period.

#### *Amendments consequential on abolition*

- 3        (1) Section 2 of OTA 1975 (assessable profits and allowable losses) is amended as follows.
- (2) For subsection (8) substitute—
- “(8) The amount (if any) to be debited or credited to the participator for the period in respect of expenditure is the sum of the amounts mentioned in subsection (9) below.”
- (3) Omit subsections (9)(a), (10) and (11).
- (4) In Schedule 17 to FA 1980 (transfers of interests in oil fields), omit paragraph 11 (and the heading before it).
- (5) This paragraph has effect in relation to future chargeable periods.
- (6) But this paragraph is subject to paragraph 4.

#### *Savings*

- 4        (1) This paragraph applies if provisional expenditure allowance has been calculated in respect of a pre-abolition chargeable period (“the relevant allowance”).
- (2) The saved provisions continue to have effect in future chargeable periods in relation to the relevant allowance and the relevant participator as if those provisions had not been amended by paragraph 3.
- (3) In this paragraph—
- “pre-abolition chargeable period” means a chargeable period that begins before 30 June 2009;
- “relevant participator” means the participator in respect of which the relevant allowance has been calculated;
- “the saved provisions” means—
- (a) section 2(8) and (10) of OTA 1975, and
- (b) paragraph 11 of Schedule 17 to FA 1980.

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## SCHEDULE 44

Section 90

### SUPPLEMENTARY CHARGE: REDUCTION FOR CERTAIN NEW OIL FIELDS

#### PART 1

##### REDUCTION OF ADJUSTED RING FENCE PROFITS

- 1 (1) A company's adjusted ring fence profits for an accounting period are to be reduced by the amount of the company's pool of field allowances for that accounting period (see Part 2).
- (2) But, if the profits are less than the amount of the pool, the profits are to be reduced to nil.

#### PART 2

##### POOL OF FIELD ALLOWANCES

###### *Company's pool of field allowances*

- 2 A company's pool of field allowances for an accounting period (“the relevant accounting period”) is—

###### *Carrying part of pool of field allowances into following period*

- 3 (1) This paragraph applies if—
- (a) a company has a pool of field allowances for an accounting period (“accounting period 1”), and
  - (b) the company's adjusted ring fence profits for accounting period 1 are reduced to nil in accordance with paragraph 1(2).
- (2) A part of the company's pool of field allowances for accounting period 1 is to be carried into the following accounting period (“accounting period 2”).
- (3) The part to be carried into accounting period 2 is—

###### **F – P**

where—

F is the amount of the company's pool of field allowances for accounting period 1, and

P is the amount of the adjusted ring fence profits for accounting period 1.

###### *Carrying whole of pool of field allowances into following period*

- 4 (1) This paragraph applies if a company—
- (a) has a pool of field allowances for an accounting period, but
  - (b) has no adjusted ring fence profits for the accounting period.
- (2) The whole of the company's pool of field allowances for the accounting period is to be carried into the following accounting period.

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### PART 3

#### FIELD ALLOWANCE: WHEN HELD AND UNACTIVATED AMOUNT

##### *Initial licensee to hold a field allowance*

- 5 (1) A company that is an initial licensee in a new oil field is to hold a field allowance for that field as from the beginning of the authorisation day.
- (2) The amount of the field allowance which the licensee is to hold at that time is—

$$T \times S$$

where—

T is the amount of the total field allowance for the field (see paragraph 24), and S is the share of the equity in the field which the initial licensee has at the beginning of the authorisation day.

##### *Holding a field allowance on acquisition of equity share*

- 6 For provision about holding a field allowance by virtue of the acquisition of a share of the equity in a new oil field, see paragraph 15(2).

##### *Unactivated amount of a field allowance*

- 7 (1) This paragraph applies if a company holds a field allowance for a new oil field by virtue of paragraph 5 or 15(2).
- (2) The unactivated amount of that allowance at a particular time (“the relevant time”) is—

$$(R + E) - (A + D)$$

where—

R is the amount of the field allowance which the company held before the relevant time by virtue of paragraph 5 or 15(2),

E is the total amount of the field allowance received before the relevant time by virtue of paragraph 15(1) (company already holding field allowance acquires equity share),

A is the total amount of the field allowance activated in respect of—

(a) accounting periods ending before the relevant time, or

(b) reference periods ending before the relevant time, and

D is the total amount of reductions in the field allowance made before the relevant time by virtue of paragraph 14 (company disposes of equity share).

- (3) A company ceases to hold a field allowance for a new oil field if the unactivated amount of that allowance falls to nil.

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## PART 4

### NO CHANGE IN EQUITY SHARE: ACTIVATION OF ALLOWANCE

#### *Introduction*

- 8 (1) This Part applies to a company in respect of a new oil field and an accounting period if the following conditions are met.
- (2) Condition A is that the company is a licensee in the field for the whole of the accounting period.
- (3) Condition B is that the company's share of the equity in the field is the same during the whole of the accounting period.
- (4) Condition C is that the company holds an unactivated amount of field allowance for the field at the beginning of the accounting period.
- (5) Condition D is that the company has relevant income from the new oil field in the accounting period.

#### *Activation of field allowance*

- 9 (1) An amount of the company's field allowance for the new oil field is to be activated in respect of the accounting period.
- (2) The amount of the field allowance to be activated is the smallest of the following amounts—
- (a) the relevant activation limit,
- (b) the company's relevant income from the field in the accounting period, and
- (c) the unactivated amount of the field allowance which the company holds at the beginning of the accounting period.
- (3) The relevant activation limit is—

$$\frac{T}{5} \times E \times \frac{N}{365}$$

where—

T is the amount of the total field allowance for the field (see paragraph 24),  
E is the company's share of the equity in the field during the accounting period, and  
N is the number of days in the accounting period.

## PART 5

### CHANGE IN EQUITY SHARE: ACTIVATION OF ALLOWANCE

#### *Introduction*

- 10 (1) This Part applies to a company in respect of a new oil field and an accounting period if the following conditions are met.

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- (2) Condition A is that the company is a licensee in the field for the whole, or for part, of the accounting period.
- (3) Condition B is that the company's share of the equity in the field is different at different times during the accounting period.
- (4) Condition C is that the company holds an unactivated amount of field allowance for the field at any time during the accounting period.
- (5) Condition D is that the company has relevant income from the field in the accounting period.
- (6) In a case where a company has three or more different shares of the equity in a new oil field during a particular day, this Part (in particular provisions relating to the beginning or end of a day) has effect subject to the necessary modifications.

#### *Reference periods*

- 11 (1) For the purposes of this Part, the accounting period, or (if the company is not a licensee for the whole of the accounting period) the part or parts of the accounting period for which the company is a licensee, is to be divided into reference periods.
- (2) A reference period is a period of consecutive days that meets the following conditions.
- (3) Condition A is that, at the beginning of each day in the period, the company is a licensee in the new oil field.
- (4) Condition B is that, at the beginning of each day in the period, the company's share of the equity in the field is the same.
- (5) Condition C is that, at the beginning of the first day of the period, the company holds an unactivated amount of field allowance for the field.
- (6) Condition D is that each day in the period falls within the accounting period.

#### *Activation of field allowance*

- 12 (1) An amount of the company's field allowance for the new oil field is to be activated in respect of each reference period.
- (2) The amount of the field allowance to be activated is the smallest of the following amounts—
  - (a) the relevant activation limit,
  - (b) the company's relevant income from the field in the reference period, and
  - (c) the unactivated amount of the field allowance which the company holds at the beginning of the reference period.
- (3) The relevant activation limit is—

$$\frac{T}{5} \times E \times \frac{R}{365}$$

where—

T is the amount of the total field allowance for the field (see paragraph 24),



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E is the company's share of the equity in the field during the reference period, and  
R is the number of days in the reference period.

(4) The company's relevant income from the field in the reference period is—

$$I \times \frac{R}{L}$$

where—

I is the company's relevant income from the field in the whole of the accounting period,

R is the number of days in the reference period, and

L is the number of days in the accounting period for which the company is a licensee in the new oil field.

## PART 6

### CHANGE IN EQUITY SHARE: TRANSFER OF FIELD ALLOWANCE

#### *Introduction*

- 13 (1) This Part applies if the following conditions are met.
- (2) Condition A is that a company that is a licensee in a new oil field (“the transferor”) disposes of the whole or a part of its share of the equity in the new oil field (and in this Part each of those to which a share of the equity is disposed of is referred to as “a transferee”).
- (3) Condition B is that, immediately before the disposal, the transferor holds an unactivated amount of field allowance for the new oil field.
- (4) Sub-paragraph (5) applies when—
- (a) determining (for the purposes of this paragraph) whether a transferor holds an unactivated amount of field allowance immediately before the disposal (“the relevant time”), and
- (b) determining (for the purposes of paragraph 14) the unactivated amount of field allowance which a transferor holds at the relevant time;
- but it applies only if an amount of field allowance for the new oil field (“the relevant amount”) has, by virtue of paragraph 12, been activated in respect of the reference period that ends because of the disposal.
- (5) When making the determination, the relevant amount of the field allowance must be treated as having been activated at a time before the relevant time.
- (6) In a case where a company has three or more different shares of the equity in a new oil field during a particular day, this Part (in particular provisions relating to the beginning or end of a day) has effect subject to the necessary modifications.

#### *Reduction of field allowance if equity disposed of*

- 14 (1) The unactivated amount of the field allowance for the new oil field which the transferor holds immediately before the disposal is to be reduced by the following amount—

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$$F \times \frac{E1 - E2}{E1}$$

where—

F is the unactivated amount of the field allowance which the transferor holds immediately before the disposal,

E1 is the transferor's share of the equity in the new oil field immediately before the disposal, and

E2 is the transferor's share of the equity in the new oil field immediately after the disposal.

- (2) This paragraph has effect at the end of the day on which the disposal takes place.

*Acquisition of field allowance if equity acquired*

- 15 (1) If a transferee holds a field allowance for the new oil field immediately before the disposal, the unactivated amount of the field allowance is to be increased by the amount calculated in accordance with sub-paragraph (4).
- (2) If a transferee does not hold a field allowance for the new oil field immediately before the disposal, the transferee is to hold a field allowance for the new oil field.
- (3) The amount of the field allowance which the transferee is to hold is calculated in accordance with sub-paragraph (4).
- (4) The amount referred to in sub-paragraphs (1) and (3) is—

$$R \times \frac{E3}{E1 - E2}$$

where—

R is the amount of the reduction determined in accordance with paragraph 14,

E3 is the share of the equity in the new oil field that the transferee has acquired from the transferor, and

E1 and E2 are the same as in paragraph 14.

- (5) This paragraph has effect at the end of the day on which the disposal takes place.

**PART 7**

MISCELLANEOUS

*Adjustments*

- 16 If there is any alteration in a company's adjusted ring fence profits for an accounting period after this Schedule has had effect in relation to the profits, any necessary adjustments to the operation of this Schedule (whether in relation to the profits or otherwise) are to be made (including any necessary adjustments to the effect of Part 1 on the profits or to the calculation of the company's pool of field allowances for a subsequent accounting period).

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### *Orders*

- 17 (1) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the oil fields that are qualifying oil fields for the purposes of this Schedule.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the amount of the total field allowance for any description of new oil field (whether or not provision has been made under sub-paragraph (1) about that description of new oil field).
- (3) An order under this paragraph may, in particular, amend any or all of paragraphs 20 to 24.
- (4) An order under this paragraph is to be made by statutory instrument.
- (5) No order may be made under this paragraph unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

## **PART 8**

### INTERPRETATION

#### *New oil fields*

- 18 In this Schedule “new oil field” means an oil field—
- (a) which is a qualifying oil field, and
  - (b) whose development is authorised at any time on or after 22 April 2009.

#### *Authorising development*

- 19 (1) In this Schedule a reference to authorisation of development of an oil field is a reference to a national authority—
- (a) granting a licensee consent for development for the field,
  - (b) serving on a licensee a programme of development for the field, or
  - (c) approving a programme of development for the field.
- (2) In this paragraph—
- “consent for development”, in relation to an oil field, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area;
  - “development”, in relation to an oil field, means winning oil from the field otherwise than in the course of searching for oil or drilling wells;
  - “national authority” means—
    - (a) the Secretary of State, or
    - (b) a Northern Ireland Department.

#### *Qualifying oil fields*

- 20 In this Schedule “qualifying oil field” means an oil field that is, on the authorisation day—

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- (a) a small oil field,
- (b) an ultra heavy oil field, or
- (c) an ultra high pressure/high temperature oil field.

*Small oil field*

- 21 (1) In this Schedule “small oil field” means an oil field which has reserves of oil of 3,500,000 tonnes or less.
- (2) For the purposes of this paragraph and paragraph 24(2)—
- (a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day;
  - (b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne.

*Ultra heavy oil field*

- 22 (1) In this Schedule “ultra heavy oil field” means an oil field with oil at—
- (a) an API gravity below 18 degrees, and
  - (b) a viscosity of more than 50 centipoise at reservoir temperature and pressure.
- (2) For that purpose API gravity, in relation to oil, is the amount determined by the following calculation—

$$\frac{141.5}{G} - 131.5$$

where G is the specific gravity of the oil at 15.56 degrees celsius.

*Ultra high pressure/high temperature oil field*

- 23 In this Schedule “ultra high pressure/high temperature oil field” means an oil field with oil at—
- (a) a pressure of more than 1034 bar in the reservoir formation, and
  - (b) a temperature of more than 176.67 degrees celsius in the reservoir formation.

*Total field allowance for new oil field*

- 24 (1) For the purposes of this Schedule the total field allowance for a new oil field is—
- (a) in the case of a small oil field, the amount determined in accordance with sub-paragraph (2),
  - (b) in the case of an ultra heavy oil field, £800,000,000, and
  - (c) in the case of an ultra high pressure/high temperature oil field, £800,000,000.
- (2) The total field allowance for a small oil field is—
- (a) if the oil field has reserves of oil of 2,750,000 tonnes or less, £75,000,000, and
  - (b) in any other case (where the oil field has reserves of more than 2,750,000 tonnes but not more than 3,500,000 tonnes), the following amount—

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$$£75,000,000 \times \frac{3,500,000 - X}{3,500,000 - 2,750,000}$$

where X is the amount of the reserves of oil (in tonnes) which the oil field has.

#### *Other interpretation*

25 In this Schedule—

“adjusted ring fence profits”, in relation to a company and an accounting period, means the adjusted ring fence profits that would (if this Schedule were ignored) be taken into account in calculating the supplementary charge on the company under section 501A of ICTA for the accounting period;

“authorisation day”, in relation to a new oil field, means the day when development of the field is authorised;

“initial licensee”, in relation to a new oil field, means a company that is licensee in the field on the authorisation day.

“licensee” has the same meaning as in Part 1 of OTA 1975;

“oil” has the same meaning as in Part 1 of OTA 1975;

“oil field” has the same meaning as in Part 1 of OTA 1975;

“relevant income”, in relation to a new oil field and an accounting period of a company, means production income of the company from any oil extraction activities carried on in the field that is taken into account in calculating the company's adjusted ring fence profits for the accounting period.

## SCHEDULE 45

Section 91

### OIL: MISCELLANEOUS AMENDMENTS

#### *OTA 1975*

- 1 (1) OTA 1975 is amended as follows.
- (2) Omit paragraphs 9 and 10 of Schedule 3 (election to have amounts mentioned in section 2(9)(b) and (c) spread).
- (3) In consequence of the omission of paragraph 9 of Schedule 3, omit section 9(4).
- (4) Omit paragraph 3 of Schedule 4 (allowable expenditure incurred before 13 November 1974).
- (5) The repeals made by this paragraph have effect in relation to chargeable periods beginning after 30 June 2009.

#### *OTA 1983*

- 2 (1) OTA 1983 is amended as follows.
- (2) Omit section 9(3) and paragraph 3 of Schedule 3 (receipts from contracts made before 8 May 1982).

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- (3) In consequence of the omission of subsection (3) of section 9—
  - (a) in subsection (2) of that section, for “subsections (3) and (4)” substitute “subsection (4)”, and
  - (b) in subsection (4)(b) of that section, for “subsections (1) to (3)” substitute “subsections (1) and (2)”.
- (4) Omit sections 13 and 14 and Schedule 5 (transitional provision for expenditure incurred on or before 31 December 1983).

*FA 1993*

- 3 (1) Schedule 20A to FA 1993 (as inserted by Part 1 of Schedule 33 to FA 2008) is renumbered as Schedule 20B to that Act.
- (2) In the following provisions, for “Schedule 20A” substitute “Schedule 20B”
  - (a) section 6(1A) of OTA 1975,
  - (b) paragraph 15(9A) of Schedule 17 to FA 1980, and
  - (c) section 185(1ZA)(b) of FA 1993.

*ICTA*

- 4 (1) In section 502(3A) of ICTA (interpretation of Chapter 5 of Part 12), omit the words from “but” to the end.
- (2) The repeal made by this paragraph has effect on and after 22 April 2009.

SCHEDULE 46

Section 93

DUTIES OF SENIOR ACCOUNTING OFFICERS OF QUALIFYING COMPANIES

*Main duty of senior accounting officer*

- 1 (1) The senior accounting officer of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements.
- (2) The senior accounting officer of a qualifying company must, in particular, take reasonable steps—
  - (a) to monitor the accounting arrangements of the company, and
  - (b) to identify any respects in which those arrangements are not appropriate tax accounting arrangements.

*Certificate for Commissioners*

- 2 (1) The senior accounting officer of a qualifying company must provide the Commissioners with a certificate for each financial year of the company.
- (2) The certificate must—
  - (a) state whether the company had appropriate tax accounting arrangements throughout the financial year, and

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- (b) if it did not, give an explanation of the respects in which the accounting arrangements of the company were not appropriate tax accounting arrangements.
- (3) The certificate must be provided—
- (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and
  - (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed).
- (4) A certificate may relate to more than one qualifying company.

*Notifying Commissioners of name of senior accounting officer*

- 3
- (1) For each financial year a qualifying company must ensure that the Commissioners are notified of the name of each person who was its senior accounting officer at any time during the year.
- (2) The notification must be given—
- (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and
  - (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed for providing the certificate for the financial year under paragraph 2).
- (3) A notification may relate to more than one qualifying company.

*Penalty for failure to comply with main duty*

- 4
- (1) This paragraph applies if a senior accounting officer fails to comply with paragraph 1 at any time in a financial year.
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) A person is not liable to more than one penalty under this paragraph in respect of the same company and the same financial year.

*Penalties for failure to provide certificate etc*

- 5
- (1) This paragraph applies if a senior accounting officer—
- (a) fails to provide a certificate in accordance with paragraph 2, or
  - (b) provides a certificate in accordance with that paragraph that contains a careless or deliberate inaccuracy.
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) For the purposes of this Schedule, an inaccuracy is careless if the inaccuracy is due to a failure by the senior accounting officer to take reasonable care.
- (4) An inaccuracy in a certificate that was neither careless nor deliberate when the certificate was given is to be treated as careless if the senior accounting officer—
- (a) discovered the inaccuracy some time later, and

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- (b) did not take reasonable steps to inform HMRC.

*More than one senior accounting officer*

- 6 (1) This paragraph applies if the identity of the senior accounting officer of a company changes.
- (2) If (but for this sub-paragraph) more than one person would be liable to a penalty under paragraph 4 in respect of a financial year of the company, only the one who became the senior accounting officer latest in the year is liable to such a penalty.
- (3) If a person who is or has been the senior accounting officer of the company complies, or purports to comply, with paragraph 2 in respect of a financial year, no other person is liable to a penalty under paragraph 5 in respect of that company and that financial year.
- (4) A person who is replaced as the senior accounting officer of the company before the last day for compliance with paragraph 2 in respect of a financial year is not liable to a penalty under paragraph 5(1)(a) for failing to comply with that paragraph in respect of that company and that financial year.

*Penalty for failure to notify Commissioners of name of senior accounting officer*

- 7 A qualifying company is liable to a penalty of £5,000 if, for a financial year, the Commissioners are not notified of the name or names of its senior accounting officer or officers in accordance with paragraph 3.

*Reasonable excuse*

- 8 (1) Liability to a penalty for a failure to comply with this Schedule does not arise if the senior accounting officer or qualifying company satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
- (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure, and
- (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Assessment of penalties*

- 9 (1) Where a senior accounting officer or a qualifying company becomes liable for a penalty under this Schedule—
- (a) HMRC may assess the penalty, and
- (b) if they do so, they must notify the officer or company liable for the penalty.
- (2) An assessment of a penalty under this Schedule for a failure in respect of a financial year, or an inaccuracy in a certificate for a financial year, may not be made—



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- (a) more than 6 months after the failure or inaccuracy first comes to the attention of an officer of Revenue and Customs, or
  - (b) more than 6 years after the end of the period for filing the company's accounts for the financial year.
- (3) HMRC may not assess a person who is the senior accounting officer of a company (“C”) as liable to a penalty under paragraph 4 or 5 for a financial year (“the relevant financial year”) if—
- (a) at any time in the relevant financial year the person was the senior accounting officer of another company that was a member of the same group as C, and
  - (b) HMRC has assessed the person as liable, as the senior accounting officer of the other company, to a penalty under that paragraph for a financial year that ends on a day in the relevant financial year.
- (4) HMRC may not assess a company (“C”) as liable to a penalty under paragraph 7 for a financial year (“the relevant financial year”) if—
- (a) C was a member of a group at the end of that year, and
  - (b) HMRC has assessed another company that was a member of the same group as C at that time as liable to a penalty under that paragraph—
    - (i) for its financial year ending on the same day as the relevant financial year, or
    - (ii) if its financial year does not end on that day, for its financial year ending last before that day.

#### *Appeal*

- 10 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.
- (2) Notice of an appeal must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, and
  - (c) to HMRC.
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) Subject to this paragraph and paragraph 11, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

#### *Enforcement of penalties*

- 11 (1) A penalty under this Schedule must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, or
  - (b) if a notice of appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

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- (2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

*Power to change amount of penalties*

- 12 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 4, 5 and 7 such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1), in relation to a specified sum, “relevant date” means—
- (a) the date on which this Act is passed, and
  - (b) in relation to that sum, each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to—
- (a) a failure that occurs in respect of a financial year of a company that begins before the date on which they come into force, or
  - (b) an inaccuracy in a certificate that was provided to HMRC in respect of such a financial year.

*Application of provisions of TMA 1970*

- 13 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and
  - (c) section 115 (delivery and service of documents).

*Meaning of “appropriate tax accounting arrangements”*

- 14 (1) “Appropriate tax accounting arrangements” means accounting arrangements that enable the company's relevant liabilities to be calculated accurately in all material respects.
- (2) “Accounting arrangements” includes arrangements for keeping accounting records.
- (3) “Relevant liabilities”, in relation to a company, means liabilities in respect of—
- (a) corporation tax (including any amount assessable or chargeable as if it were corporation tax),
  - (b) value added tax,
  - (c) amounts for which the company is accountable under PAYE regulations,
  - (d) insurance premium tax,
  - (e) stamp duty land tax,
  - (f) stamp duty reserve tax,
  - (g) petroleum revenue tax,
  - (h) customs duties, and
  - (i) excise duties.

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### *Meaning of “qualifying company”*

- 15 (1) A company is a qualifying company in relation to a financial year if the qualification test was satisfied in the previous financial year (subject to any regulations under subparagraph (8)).
- (2) The qualification test is that the company satisfied either or both of the following requirements—
- |                                 |                        |
|---------------------------------|------------------------|
| 1. Relevant turnover            | More than £200 million |
| 2. Relevant balance sheet total | More than £2 billion.  |
- (3) If the company was not a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the company's turnover, and
- (b) “relevant balance sheet total” means the company's balance sheet total.
- (4) If the company was a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the aggregate turnover of the company (“C”) and any other company that was a member of the same group as C at the end of C's previous financial year, and
- (b) “relevant balance sheet total” means the aggregate balance sheet totals of C and any such company.
- (5) If the financial year of a company that was a member of the same group as C does not end on the same day as C's previous financial year, the figures for that company that are to be included in the aggregate figures are the figures for that company's financial year ending last before the end of C's previous financial year.
- (6) “Turnover”, in relation to a company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act).
- (7) “Balance sheet total”, in relation to a company and a financial year, means the aggregate of the amounts shown as assets in the company's balance sheet as at the end of the financial year.
- (8) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule.

### *Meaning of “senior accounting officer”*

- 16 (1) “Senior accounting officer”, in relation to a company that is not a member of a group, means the director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.
- (2) “Senior accounting officer”, in relation to a company that is a member of a group, means the group director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.
- (3) “Group director or officer”, in relation to a company, means a director or officer of the company or of a relevant body that is a member of the same group as the company.
- (4) A person may be the senior accounting officer of more than one company.

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### *Regulations*

- 17 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

### *Other definitions*

- 18 (1) In this Schedule—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006) but does not include a company that is an open-ended investment company (within the meaning of section 468A of ICTA) or an investment trust (within the meaning of section 842 of ICTA);
- “financial year”, in relation to a company, has the same meaning as in the Companies Act 2006 (see section 390 of that Act);
- “HMRC” means Her Majesty’s Revenue and Customs;
- “period for filing”, in relation to accounts, has the same meaning as in the Companies Acts (see section 442 of the Companies Act 2006);
- “relevant body” means a company or other body corporate but does not include a limited liability partnership;
- “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.
- (2) For the purposes of this Schedule—
- (a) a relevant body is a member of a group if—
- (i) another relevant body is its 51 per cent subsidiary, or
- (ii) it is a 51 per cent subsidiary of another relevant body, and
- (b) two relevant bodies are members of the same group if—
- (i) one is a 51 per cent subsidiary of the other, or
- (ii) both are 51 per cent subsidiaries of a third relevant body.
- (3) Section 838 of ICTA (meaning of “51 per cent subsidiary”) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (subject to the modification in sub-paragraph (4)).
- (4) It applies as if references in that section to a body corporate were to a relevant body.

## SCHEDULE 47

Section 95

### AMENDMENT OF INFORMATION AND INSPECTION POWERS

- 1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- 2 (1) Paragraph 3 (approval etc of taxpayer notices and third party notices) is amended as follows.
- (2) After sub-paragraph (2) insert—

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- “(2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).”
- (3) In sub-paragraph (3)(c), after “is” insert “ to be ”.
- 3 (1) Paragraph 5 (power to obtain information and documents about persons whose identity is not known) is amended as follows.
- (2) After sub-paragraph (3) insert—
- “(3A) An application for approval under this paragraph may be made without notice.”
- (3) In sub-paragraph (4), for “give its approval for the purpose of” substitute “ approve the giving of a notice under ”.
- 4 In paragraph 6 (notices), insert at the end—
- “(4) A decision of the tribunal under paragraph 3, 4 or 5 is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).”
- 5 (1) Paragraph 10 (power to inspect business premises etc) is amended as follows.
- (2) In sub-paragraph (3), in the definition of “business assets”, for “, excluding documents” substitute “ (but see sub-paragraph (4)) ”.
- (3) After that sub-paragraph insert—
- “(4) For the purposes of this Schedule, “business assets” does not include documents, other than—
- (a) documents that are trading stock for the purposes of Chapter 11A of Part 2 of ITTOIA 2005 (see section 172A of that Act), and
- (b) documents that are plant for the purposes of Part 2 of CAA 2001.”
- 6 (1) Paragraph 11 (power to inspect premises used in connection with taxable supplies etc) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (a), after “supplied” insert “ or documents relating to such goods ”,
- (b) in paragraph (b), after “acquired” insert “ or documents relating to such goods ”, and
- (c) in paragraph (c), after “as” insert “ or in connection with ”.
- (3) In sub-paragraph (2)(c), for “such goods” substitute “ the supply of goods under taxable supplies, the acquisition of goods from other member States under taxable acquisitions or fiscal warehousing ”.
- (4) In sub-paragraph (4)—
- (a) for “sub-paragraph (1)” substitute “ this paragraph ”, and
- (b) for “in that sub-paragraph” substitute “ here ”.
- 7 In paragraph 12(5) (carrying out inspections)—
- (a) for “with the approval of” substitute “ in respect of an inspection approved by ”, and

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- (b) for “it is given with that approval” substitute “ the inspection has been so approved ”.
- 8 (1) Paragraph 13 (approval of inspections) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) An application for approval under this paragraph may be made without notice.”
- (3) Insert at the end—
- “(3) A decision of the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).”
- 9 (1) Paragraph 21 (taxpayer notices) is amended as follows.
- (2) In sub-paragraph (6), after “that” (in the first place) insert “ , as regards the person, ”.
- (3) In sub-paragraph (7), for “that” (in the third place) substitute “ the ”.
- (4) In sub-paragraph (8)—
- (a) after “repayments” insert “ of tax or withholding of income ”, and
- (b) after “64(2)” insert “ or (2A) ”.
- (5) After sub-paragraph (8) insert—
- “(9) In this paragraph references to the person who made the return are only to that person in the capacity in which the return was made.”
- 10 (1) Paragraph 35 (special cases: groups of undertakings) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) for “paragraph 2” substitute “—
- (a) paragraph 2(2)”, and
- (b) insert at the end “, and
- (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the parent undertaking.”
- (3) For sub-paragraph (4) substitute—
- “(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—
- (a) paragraph 2(2) only requires the notice to state this, and
- (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement.
- (4A) In relation to such a notice—
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3) (e) do not apply,
- (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
- (c) paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the

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- notice names the subsidiary undertakings to which it relates, to each of those undertakings),
- (d) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
  - (e) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.”
- (4) In sub-paragraph (5), for the words after “the notice” substitute “—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the parent undertaking may not appeal against a requirement in the notice to produce any document that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings.”
- (5) Omit sub-paragraph (6).
- 11 (1) Paragraph 37 (special cases: partnerships) is amended as follows.
- (2) For sub-paragraph (2) substitute—
- “(2) Where, in respect of a chargeable period, any of the partners has—
- (a) made a tax return under section 12AA of TMA 1970 (partnership returns), or
  - (b) made a claim or election in accordance with section 42(6)(b) of TMA 1970 (partnership claims and elections),
- paragraph 21 (restrictions where taxpayer has made tax return) has effect as if that return, claim or election had been made by each of the partners.”
- (3) In sub-paragraph (3)—
- (a) omit “to any person (other than one of the partners)”,
  - (b) for “paragraph 2” substitute “—
    - (a) paragraph 2(2)”, and
  - (c) insert at the end “, and
    - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the partnership.”
- (4) In sub-paragraph (4)—
- (a) after “notice” insert “ given to a person other than one of the partners ”, and
  - (b) in paragraph (b), for “each of the partners” substitute “ any of the partners in the partnership ”.
- (5) For sub-paragraph (5) substitute—
- “(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)
  - (e) do not apply,

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- (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
  - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
  - (d) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.”
- (6) In sub-paragraph (6), for the words after “the notice” substitute “—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the partner to whom the notice is given may not appeal against a requirement in the notice to produce any document that forms part of that partner's statutory records.”
- (7) Omit sub-paragraph (7).
- 12 After paragraph 37 insert—

*“Information in connection with herd basis election*

- 37A(1) This paragraph applies to a taxpayer notice given to a person carrying on a trade in relation to which a herd basis election is made if the notice refers only to information or documents that relate to—
- (a) the animals kept for the purposes of the trade, or
  - (b) the products of those animals.
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
- (3) “Herd basis election” means an election under Chapter 8 of Part 2 of ITTOIA 2005 or Chapter 8 of Part 3 of CTA 2009.

*Information from persons liable to counteraction of tax advantage*

- 37B(1) This paragraph applies to a taxpayer notice given to a person if—
- (a) it appears to an officer of Revenue and Customs that a counteraction provision may apply to the person by reason of one or more transactions, and
  - (b) the notice refers only to information or documents relating to the transaction (or, if there are two or more transactions, any of them).
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
- (3) “Counteraction provision” means—
- (a) section 703 of ICTA (company liable to counteraction of corporation tax advantage), or
  - (b) section 684 of ITA 2007 (person liable to counteraction of income tax advantage).”

- 13 (1) Paragraph 39 (standard penalties) is amended as follows.



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- (2) In sub-paragraph (2), for “A person to whom this paragraph applies” substitute “The person”.
- (3) In the heading—
- (a) omit “*Standard*”, and
- (b) insert at the end “*for failure to comply or obstruction*”.
- 14 In the heading before paragraph 40 (daily default penalties), insert at the end “*for failure to comply or obstruction*”
- 15 After that paragraph insert—

*“Penalties for inaccurate information and documents*

- 40A(1) This paragraph applies if—
- (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
- (b) condition A or B is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person—
- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform HMRC.
- (5) The person is liable to a penalty not exceeding £3,000.
- (6) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.”

- 16 (1) Paragraph 41 (power to change amount of penalties) is amended as follows.
- (2) In sub-paragraph (1), for “and 40(2)” substitute “, 40(2) and 40A(5)”.
- (3) In sub-paragraph (2)—
- (a) after “(1)” insert “, in relation to a specified sum, ”, and
- (b) in paragraph (b), insert at the end “in relation to that sum”.
- (4) In sub-paragraph (3)—
- (a) after “to” insert “—
- (a)”,  
and
- (b) insert at the end “, or
- (b) an inaccuracy in any information or document provided to HMRC before that date.”
- (5) Accordingly, in the heading omit “*standard and daily default*”.
- 17 (1) Paragraph 46 (assessment of penalty) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “or 40” substitute “, 40 or 40A ”,

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- (b) omit “HMRC may”,
  - (c) at the beginning of paragraph (a), insert “ HMRC may ”, and
  - (d) at the beginning of paragraph (b), insert “ if they do so, they must ”.
- (3) In sub-paragraph (2), for “within 12 months of the relevant date” substitute “ within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to sub-paragraph (3) ”.
- (4) For sub-paragraph (3) substitute—
- “(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the latest of the following—
- (a) the date on which the person became liable to the penalty,
  - (b) the end of the period in which notice of an appeal against the information notice could have been given, and
  - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 40A must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.”

(5) Accordingly, in the heading omit “*standard penalty or daily default*”.

18 (1) Paragraph 47 (right to appeal) is amended as follows.

(2) In paragraph (a), for “or 40” substitute “ , 40 or 40A ”.

(3) Accordingly, in the heading, omit “*standard penalty or daily default*”.

19 In the heading before paragraph 48 (procedure on appeal), omit “*standard penalty or daily default*”.

20 (1) Paragraph 49 (enforcement) is amended as follows.

(2) In sub-paragraph (1), for “or 40” substitute “ , 40 or 40A ”.

(3) In sub-paragraph (2), for “or 40” substitute “ , 40 or 40A ”.

(4) Accordingly, in the heading, omit “*standard penalty or daily default*”.

21 (1) Paragraph 63 (tax) is amended as follows.

(2) In sub-paragraph (3)—

    - (a) omit the “and” at the end of paragraph (a), and
    - (b) for the words following paragraph (b) substitute “, and
    - (c) amounts listed in sub-paragraph (3A).”

(3) After that sub-paragraph insert—

“(3A) Those amounts are—

    - (a) any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT), and

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- (b) any amount that is treated as VAT by virtue of regulations under section 54 of VATA 1994 (farmers etc).”
- 22 (1) Paragraph 64 (tax position) is amended as follows.
- (2) In sub-paragraph (1)(c), after “with” insert “ the person's liability to pay ”.
- (3) After sub-paragraph (2) insert—
- “(2A) References in this Schedule to a person's tax position also include, where appropriate, a reference to the person's position as regards the withholding by the person of another person's PAYE income (as defined in section 683 of ITEPA 2003).”

## SCHEDULE 48

Section 96

### EXTENSION OF INFORMATION AND INSPECTION POWERS

- 1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- 2 In paragraph 5(4)(b) (power to obtain information and documents about persons whose identity is not known), for the words from “, VATA 1994” to the end substitute “ or any other enactment relating to UK tax ”.
- 3 After paragraph 10 insert—
- “Power to inspect business premises etc of involved third parties*
- 10A(1) An officer of Revenue and Customs may enter business premises of an involved third party (see paragraph 61A) and inspect—
- (a) the premises,
- (b) business assets that are on the premises, and
- (c) relevant documents that are on the premises,
- if the inspection is reasonably required by the officer for the purpose of checking the position of any person or class of persons as regards a relevant tax.
- (2) The powers under this paragraph may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the officer.
- (3) The powers under this paragraph do not include power to enter or inspect any part of the premises that is used solely as a dwelling.
- (4) In relation to an involved third party, “relevant documents” and “relevant tax” are defined in paragraph 61A.”
- 4 (1) Paragraph 12 (carrying out inspections) is amended as follows.
- (2) In sub-paragraph (1), for “this Part of this Schedule” substitute “ paragraph 10, 10A or 11 ”.
- (3) Accordingly, in the heading, insert at the end “*under paragraph 10, 10A or 11*”.
- 5 After that paragraph insert—

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*“Powers to inspect property for valuation etc*

- 12A(1) An officer of Revenue and Customs may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person's position as regards income tax or corporation tax.
- (2) An officer of Revenue and Customs may enter premises and inspect—
- (a) the premises, and
  - (b) any other property on the premises,
- for the purpose of valuing, measuring or determining the character of the premises or property.
- (3) Sub-paragraph (2) only applies if the valuation, measurement or determination is reasonably required for the purpose of checking any person's position as regards—
- (a) capital gains tax,
  - (b) corporation tax in respect of chargeable gains,
  - (c) inheritance tax,
  - (d) stamp duty land tax, or
  - (e) stamp duty reserve tax.
- (4) A person who the officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

*Carrying out inspections under paragraph 12A*

- 12B(1) An inspection under paragraph 12A may be carried out only if condition A or B is satisfied.
- (2) Condition A is that—
- (a) the inspection is carried out at a time agreed to by a relevant person, and
  - (b) the relevant person has been given notice in writing of the agreed time of the inspection.
- (3) “Relevant person” means—
- (a) the occupier of the premises, or
  - (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.
- (4) Condition B is that—
- (a) the inspection has been approved by the tribunal, and
  - (b) any relevant person specified by the tribunal has been given at least 7 days' notice in writing of the time of the inspection.
- (5) A notice under sub-paragraph (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.

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- (6) If a notice is given under this paragraph in respect of an inspection approved by the tribunal (see paragraph 13), it must state that the inspection has been so approved.
- (7) An officer of Revenue and Customs seeking to carry out an inspection under paragraph 12A must produce evidence of authority to carry out the inspection if asked to do so by—
- (a) the occupier of the premises, or
  - (b) any other person who appears to the officer to be in charge of the premises or property.”
- 6 (1) Paragraph 13 (approval of tribunal) is amended as follows.
- (2) In sub-paragraph (1), insert at the end “(and for the effect of obtaining such approval see paragraph 39 (penalties))”.
- (3) In sub-paragraph (1A) (inserted by Schedule 47), insert at the end “ (except as required under sub-paragraph (2A)) ”.
- (4) In sub-paragraph (2), after “an inspection” insert “ under paragraph 10, 10A or 11 ”.
- (5) After that sub-paragraph insert—
- “(2A) The tribunal may not approve an inspection under paragraph 12A unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
  - (b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the officer of Revenue and Customs about that inspection,
  - (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
  - (d) the tribunal has been given a summary of any representations made, and
  - (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.
- (2B) Paragraph (c) of sub-paragraph (2A) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.”
- 7 In paragraph 17(b) (power to record information), after “premises,” insert “ property, goods, ”.
- 8 (1) Paragraph 21 (restrictions on giving taxpayer notices) is amended as follows.
- (2) In sub-paragraph (7), for “VAT position” substitute “ position as regards any tax other than income tax, capital gains tax or corporation tax ”.
- (3) In the heading, insert at the end “*following tax return*”.
- 9 After that paragraph insert—

*“Taxpayer notices following land transaction return*

- 21A(1) Where a person has delivered a land transaction return under section 76 of FA 2003 (returns for purposes of stamp duty land tax) in respect of a transaction,

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a taxpayer notice may not be given for the purpose of checking that person's stamp duty land tax position in relation to that transaction.

- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.
- (3) Condition A is that a notice of enquiry has been given in respect of—
  - (a) the return, or
  - (b) a claim (or an amendment of a claim) made by the person in connection with the transaction,
 and the enquiry has not been completed.
- (4) In sub-paragraph (3) “notice of enquiry” means a notice under paragraph 12 of Schedule 10, or paragraph 7 of Schedule 11A, to FA 2003.
- (5) Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that—
  - (a) an amount that ought to have been assessed to stamp duty land tax in respect of the transaction may not have been assessed,
  - (b) an assessment to stamp duty land tax in respect of the transaction may be or have become insufficient, or
  - (c) relief from stamp duty land tax in respect of the transaction may be or have become excessive.
- (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's position as regards a tax other than stamp duty land tax.”

10 In paragraph 28 (restrictions on inspection of business documents), and in the heading before that paragraph, omit “*business*”.

11 After paragraph 34 insert—

*“Involved third parties*

- 34A(1) This paragraph applies to a third party notice or a notice under paragraph 5 if—
- (a) it is given to an involved third party (see paragraph 61A),
  - (b) it is given for the purpose of checking the position of a person, or a class of persons, as regards the relevant tax, and
  - (c) it refers only to relevant information or relevant documents.
- (2) In relation to such a third party notice—
    - (a) paragraph 3(1) (approval etc of third party notices) does not apply,
    - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply, and
    - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds.
  - (3) In relation to such a notice under paragraph 5—
    - (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, an authorised officer of Revenue and Customs to obtain the approval of the tribunal, and

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- (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds.
- (4) The involved third party may not appeal against a requirement in the notice to provide any information, or produce any document, that forms part of the involved third party's statutory records.
- (5) In relation to an involved third party, “relevant documents”, “relevant information” and “relevant tax” are defined in paragraph 61A.

*Registered pension schemes etc*

- 34B (1) This paragraph applies to a third party notice or a notice under paragraph 5 if it refers only to information or documents that relate to any pensions matter.
- (2) “Pensions matter” means any matter relating to—
    - (a) a registered pension scheme,
    - (b) an annuity purchased with sums or assets held for the purposes of a registered pension scheme or a pre-2006 pension scheme, or
    - (c) an employer-financed retirement benefits scheme.
  - (3) In relation to such a third party notice—
    - (a) paragraph 3(1) (approval etc of third party notices) does not apply,
    - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply, and
    - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds.
  - (4) In relation to such a notice under paragraph 5—
    - (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, an authorised officer of Revenue and Customs to obtain the approval of the tribunal, and
    - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds.
  - (5) A person may not appeal against a requirement in the notice to provide any information, or produce any document, that forms part of any person's statutory records.
  - (6) Where the notice relates to a matter within sub-paragraph (2)(a) or (b), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the scheme administrator in relation to the pension scheme.
  - (7) Where the notice relates to a matter within sub-paragraph (2)(c), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the responsible person in relation to the employer-financed retirement benefits scheme.
  - (8) Sub-paragraphs (6) and (7) do not apply if the notice is given to a person who, in relation to the scheme or annuity to which the notice relates, is a prescribed description of person.

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*Registered pension schemes etc: interpretation*

34C In paragraph 34B—

“employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act);

“pension scheme” has the same meaning as in Part 4 of FA 2004;

“pre-2006 pension scheme” means a scheme that, at or in respect of any time before 6 April 2006, was—

- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
- (b) a former approved superannuation fund (as defined in paragraph 1(3) of Schedule 36 to FA 2004),
- (c) a relevant statutory scheme (as defined in section 611A of ICTA) or a pension scheme treated as if it were such a scheme, or
- (d) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA;

“prescribed” means prescribed by regulations made by the Commissioners;

“registered pension scheme” means a pension scheme that is or has been a registered pension scheme within the meaning of Part 4 of FA 2004 or in relation to which an application for registration under that Part of that Act has been made;

“responsible person”, in relation to an employer-financed retirement benefits scheme, has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act);

“scheme administrator”, in relation to a pension scheme, has the same meaning as in Part 4 of FA 2004 (see section 270 of that Act).”

12 In paragraph 35 (special cases: groups of undertakings), in sub-paragraph (4A)(c) (inserted by Schedule 47)—

- (a) for “paragraph 21” substitute “ paragraphs 21 and 21A ”, and
- (b) for “applies” substitute “ apply ”.

13 In paragraph 37 (special cases: partnerships), after sub-paragraph (2) insert—

“(2A) Where, in respect of a transaction entered into as purchaser by or on behalf of the members of the partnership, any of the partners has—

- (a) delivered a land transaction return under Part 4 of FA 2003 (stamp duty land tax), or
- (b) made a claim under that Part of that Act,

paragraph 21A (restrictions where taxpayer has delivered land transaction return) has effect as if that return had been delivered, or that claim had been made, by each of the partners.”

14 After paragraph 61 insert—

*“Involved third parties*

61A(1) In this Schedule “involved third party” means a person described in the first column of the Table below.



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(2) In this Schedule, in relation to an involved third party, “relevant information”, “relevant document” and “relevant tax” have the meaning given in the corresponding entries in that Table.

	<b><i>Involved third party</i></b>	<b><i>Relevant information and relevant documents</i></b>	<b><i>Relevant tax</i></b>
1.	A body approved by an officer of Revenue and Customs for the purpose of paying donations within the meaning of Part 12 of ITEPA 2003 (donations to charity: payroll giving) (see section 714 of that Act)	Information and documents relating to the donations	Income tax
2.	A plan manager (see section 696 of ITTOIA 2005 (managers of individual investment plans))	Information and documents relating to the plan, including investments which are or have been held under the plan	Income tax
3.	An account provider in relation to a child trust fund (as defined in section 3 of the Child Trust Funds Act 2004)	Information and documents relating to the fund, including investments which are or have been held under the fund	Income tax
4.	A person who is or has been registered as a managing agent at Lloyd's in relation to a syndicate of underwriting members of Lloyd's	Information and documents relating to, and to the activities of, the syndicate	Income tax Capital gains tax Corporation tax
5.	A person involved (in any capacity) in an insurance business (as defined for the purposes of Part 3 of FA 1994)	Information and documents relating to contracts of insurance entered into in the course of the business	Insurance premium tax

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- |     |   |  |                        |
|-----|---|--|------------------------|
| 6.  | A person who makes arrangements for persons to enter into contracts of insurance  | Information and documents relating to the contracts  | Insurance premium tax  |
| 7.  | A person who—<br>(a) is concerned in a business that is not an insurance business (as defined for the purposes of Part 3 of FA 1994), and<br>(b) has been involved in the entry into a contract of insurance providing cover for any matter associated with that business   | Information and documents relating to the contracts  | Insurance premium tax  |
| 8.  | A person who, in relation to a charge to stamp duty reserve tax on an agreement, transfer, issue, appropriation or surrender, is an accountable person (as defined in regulation 2 of the Stamp Duty Reserve Tax Regulations S.I. 1986/1711 (as amended from time to time)) | Information and documents relating to the agreement, transfer, issue, appropriation or surrender | Stamp duty reserve tax |
| 9.  | A responsible person in relation to an oil field (as defined for the purposes of Part 1 of OTA 1975)  | Information and documents relating to the oil field  | Petroleum revenue tax  |
| 10. | A person involved (in any capacity)   | Information and documents relating   | Aggregates levy        |

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- |     |  |   |                     |
|-----|--|---|---------------------|
|     | in subjecting aggregate to exploitation in the United Kingdom (as defined for the purposes of Part 2 of FA 2001) or in connected activities                      | to matters in which the person is or has been involved                                    |                     |
| 11. | A person involved (in any capacity) in making or receiving taxable commodities (as defined for the purposes of Schedule 6 to FA 2000) or in connected activities | Information and documents relating to matters in which the person is or has been involved | Climate change levy |
| 12. | A person involved (in any capacity) with any landfill disposal (as defined for the purposes of Part 3 of FA 1996)  | Information and documents relating to the disposal  | Landfill tax”.      |
- 
- 15 (1) Paragraph 62 (meaning of “statutory records”) is amended as follows.
- (2) In sub-paragraph (1), for paragraph (b) substitute—  
“(b) any other enactment relating to a tax.”
- (3) In sub-paragraph (2)(b), for “VATA 1994 or any other enactment relating to value added tax” substitute “ any other enactment relating to a tax ”.

## SCHEDULE 49

Section 97

### POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

#### *Requirement for contact details for debtor*

- 1 (1) This Schedule applies where—
- a sum is payable by a person (“the debtor”) to the Commissioners under or by virtue of an enactment or under a contract settlement,
  - an officer of Revenue and Customs reasonably requires contact details for the debtor for the purpose of collecting that sum,
  - the officer has reasonable grounds to believe that a person (“the third party”) has any such details, and
  - the condition in sub-paragraph (2) is met.
- (2) That condition is that—

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- (a) the third party is a company, a local authority or a local authority association, or
  - (b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.
- (3) This Schedule does not apply if—
- (a) the third party is a charity and obtained the details in the course of providing services free of charge, or
  - (b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.

#### *Power to obtain details*

- 2 (1) An officer of Revenue and Customs may by notice in writing require the third party to provide the details.
- (2) The notice must name the debtor.

#### *Complying with notices*

- 3 If a notice is given to the third party under this Schedule, the third party must provide the details—
- (a) within such period, and
  - (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.

#### *Right to appeal*

- 4 (1) The third party may appeal against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.
- (2) Paragraph 32 of Schedule 36 to FA 2008 (procedure on appeal to tribunal) applies to an appeal under this paragraph as it applies to an appeal relating to a notice under that Schedule.

#### *Penalty*

- 5 (1) This paragraph applies if the third party fails to comply with the notice.
- (2) The third party is liable to a penalty of £300.
- (3) Paragraphs 44 to 49 and 52 of Schedule 36 to FA 2008 (assessment and enforcement of penalties etc) apply in relation to a penalty under this paragraph as they apply in relation to a penalty under paragraph 39(1)(a) of that Schedule (and references in those provisions to an information notice include a notice under this Schedule).

#### *Power to change amount of penalty*

- 6 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sum for the time being specified in paragraph 5 such other sum as appears to them to be justified by the change.

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- (2) In sub-paragraph (1) “relevant date” means—
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to any failure which began before the date on which they come into force.
- (4) Regulations made by the Treasury under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

#### *Application of provisions of TMA 1970*

- 7 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and
  - (c) section 115 (delivery and service of documents).

#### *General interpretation*

- 8 In this Schedule—
- “business” includes—
    - (a) a profession, and
    - (b) a property business;
  - “charity” means a company, body of persons or trust established for charitable purposes only;
  - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
  - “contact details”, in relation to a person, means the person's address and any other information about how the person may be contacted;
  - “contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment;
  - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978);
  - “local authority” has the meaning given in section 999 of ITA 2007;
  - “local authority association” has the meaning given in section 1000 of that Act;
  - “property business” has the same meaning as in ITTOIA 2005 (see section 263(6) of that Act).

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## SCHEDULE 50

Section 98

## RECORD-KEEPING

*Insurance premium tax*

1 (1) Paragraph 1 of Schedule 7 to FA 1994 (insurance premium tax: records) is amended as follows.

(2) In sub-paragraph (3)—

(a) after “may” insert “—

(a)”,

and

(b) insert at the end—

“(b) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations, and

(c) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate.”

(3) For sub-paragraphs (4) to (6) substitute—

“(4) A duty under the regulations to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners.”

2 In consequence of the amendment made by paragraph 1(3), in the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, in Schedule 4, omit paragraph 89(4)(a).

*Stamp duty land tax*

3 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

4 Schedule 10 (stamp duty land tax: returns, enquiries, assessments and appeals) is amended in accordance with paragraphs 5 to 7.

5 (1) Paragraph 9 (duty to keep and preserve records) is amended as follows.

(2) In sub-paragraph (2), for “for six years after the effective date of the transaction and until any later” substitute “until the end of the later of the relevant day and the ”.

(3) After that sub-paragraph insert—

“(2A) “The relevant day” means—

(a) the sixth anniversary of the effective date of the transaction, or

(b) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).”

(4) After sub-paragraph (3) insert—

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- “(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
  - (b) provide that those records include supporting documents so specified.
- (5) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice).
- (6) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”
- 6 For paragraph 10 (preservation of information instead of original records) substitute—
- “10 The duty under paragraph 9 to preserve records may be satisfied—
- (a) by preserving them in any form and by any means, or
  - (b) by preserving the information contained in them in any form and by any means,
- subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty's Revenue and Customs.”
- 7 Accordingly, in the heading before paragraph 10, for “*instead of original records*” substitute “*etc*”.
- 8 Schedule 11 (record-keeping where transaction is not notifiable) is amended in accordance with paragraphs 9 to 11.
- 9 (1) Paragraph 4 (duty to keep and preserve records) is amended as follows.
- (2) In sub-paragraph (2), for “for six years after the effective date of the transaction” substitute “until the end of—
- (a) the sixth anniversary of the effective date of the transaction, or
  - (b) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).”
- (3) After sub-paragraph (3) insert—
- “(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
  - (b) provide that those records include supporting documents so specified.
- (5) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice).

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- (6) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”
- 10 For paragraph 5 (preservation of information instead of original records) substitute—
- “5 The duty under paragraph 4 to preserve records may be satisfied—
- (a) by preserving them in any form and by any means, or
  - (b) by preserving the information contained in them in any form and by any means,
- subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty's Revenue and Customs.”
- 11 Accordingly, in the heading before paragraph 5, for “*instead of original records*” substitute “*etc*”.
- 12 Schedule 11A (claims not included in returns) is amended in accordance with paragraphs 13 and 14.
- 13 (1) Paragraph 3 (duty to keep and preserve records) is amended as follows.
- (2) Omit sub-paragraphs (3) and (4).
  - (3) After sub-paragraph (4) insert—
    - “(4A) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
      - (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
      - (b) provide that those records include supporting documents so specified.
    - (4B) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice).
    - (4C) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”
- 14 After that paragraph insert—
- “Preservation of information etc*
- 3A The duty under paragraph 3 to preserve records may be satisfied—
- (a) by preserving them in any form and by any means, or
  - (b) by preserving the information contained in them in any form and by any means,
- subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty's Revenue and Customs.”



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### *Aggregates levy*

15 Schedule 7 to FA 2001 (aggregates levy: information and evidence etc) is amended as follows.

16 (1) Paragraph 2 (records) is amended as follows.

(2) For sub-paragraphs (4) and (5) substitute—

“(4) A duty under regulations under this paragraph to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners.”

(3) In sub-paragraph (9), omit “approval or” and “given or”.

17 Omit paragraph 3 (evidence of records that are required to be preserved).

### *Climate change levy*

18 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

19 (1) Paragraph 125 (records) is amended as follows.

(2) For sub-paragraphs (4) and (5) substitute—

“(4) A duty under regulations under this paragraph to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners.”

(3) In sub-paragraph (9), omit “approval or” and “given or”.

20 Omit paragraph 126 (evidence of records that are required to be preserved).

### *Landfill tax*

21 In paragraph 2 of Schedule 5 to FA 1996 (landfill tax: records), for sub-paragraphs (4) to (7) substitute—

“(4) A duty under regulations under this paragraph to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners.”

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## SCHEDULE 51

Section 99

## TIME LIMITS FOR ASSESSMENTS, CLAIMS ETC

*Insurance premium tax*

- 1 Schedule 7 to FA 1994 (insurance premium tax) is amended as follows.
- 2 In paragraph 8(4) (recovery of overpaid tax), for “three years” substitute “4 years”.
- 3 In paragraph 22(9) (interest payable by Commissioners), for “three years” substitute “4 years”.
- 4 (1) Paragraph 26 (assessments: time limits) is amended as follows.
- (2) In sub-paragraph (1), for the words from “three years after”, in the first place, to the end substitute “4 years after the relevant event”.
- (3) After that sub-paragraph insert—
- “(1A) In this paragraph “the relevant event”, in relation to an assessment, means—
- (a) the end of the accounting period concerned, or
- (b) in the case of an assessment under paragraph 25 of an amount due by way of a penalty other than a penalty referred to in paragraph 25(2), the event giving rise to the penalty.”
- (4) In sub-paragraph (3), for “sub-paragraph (1)” substitute “sub-paragraph (1A)”.
- (5) For sub-paragraph (4) substitute—
- “(4) An assessment of an amount due from a person in a case involving a loss of tax—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 53(1) or (2) or 53AA(1) or (3),
- may be made at any time not more than 20 years after the relevant event.
- (5) In sub-paragraph (4)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”

*Inheritance tax*

- 5 IHTA 1984 is amended as follows.
- 6 In section 131 (transfers within 7 years before death: the relief), after subsection (2) insert—
- “(2ZA) A claim under subsection (2)(b) must be made not more than 4 years after the transferor's death.”
- 7 In section 146(2)(a) (Inheritance (Provision for Family and Dependents) Act 1975), after “claim for the purpose” insert “not more than 4 years after the date on which the order is made”.
- 8 In section 150 (voidable transfers), insert at the end—

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- “(3) A claim under this section must be made not more than 4 years after the claimant knew, or ought reasonably to have known, that the relevant transfer has been set aside.”
- 9 In section 179 (sale of shares etc from deceased's estate: the relief), after subsection (2) insert—
- “(2A) A claim under this Chapter must be made not more than 4 years after the end of the period mentioned in subsection (1)(a).”
- 10 In section 191 (sale of land from deceased's estate: the relief), after subsection (1) insert—
- “(1A) A claim under this Chapter must be made not more than 4 years after the end of the period mentioned in subsection (1)(a).”
- 11 (1) Section 240 (underpayments) is amended as follows.
- (2) In subsection (2), for “six years” substitute “ 4 years ”.
- (3) For subsection (3) substitute—
- “(3) Subsection (2) has effect subject to subsections (4) and (5).
- (4) Proceedings in a case involving a loss of tax brought about carelessly by a person liable for the tax (or a person acting on behalf of such a person) may be brought at any time not more than 6 years after the later of the dates in subsection (2)(a) and (b).
- (5) Proceedings in a case involving a loss of tax brought about deliberately by a person liable for the tax (or a person acting on behalf of such a person) may be brought at any time not more than 20 years after the later of those dates.
- (6) Subsection (7) applies to any case not falling within subsection (2) where too little tax has been paid in respect of a chargeable transfer, provided that the case does not involve a loss of tax brought about deliberately by a person liable for the tax (or a person acting on behalf of such a person).
- (7) Where this subsection applies—
- (a) no proceedings are to be brought for the recovery of the tax after the end of the period of 20 years beginning with the date on which the chargeable transfer was made, and
- (b) at the end of that period any liability for the tax and any Inland Revenue charge for that tax is extinguished.
- (8) In relation to cases of tax chargeable under Chapter 3 of Part 3 of this Act (apart from section 79), the references in subsections (4), (5) and (6) to a person liable for the tax are to be treated as including references to a person who is the settlor in relation to the settlement.”
- 12 After that section insert—

**“240A Underpayments: supplementary**

- (1) This section applies for the purposes of section 240.

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(2) A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss.

(3) Where—

- (a) information is provided to Her Majesty's Revenue and Customs,
- (b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
- (c) that person fails to take reasonable steps to inform Her Majesty's Revenue and Customs,

any loss of tax brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(4) References to a loss of tax brought about deliberately by a person include a loss of tax brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”

13 In section 241(1) (overpayments), for “six years” substitute “ 4 years ”.

#### *Stamp duty land tax*

14 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

15 (1) Schedule 10 (returns, enquiries, assessments and appeals) is amended as follows.

- (2) In paragraph 25(3) (determination of tax chargeable if no return delivered), for “six years” substitute “ 4 years ”.
- (3) In paragraph 27(2)(a) (determination superseded by actual self-assessment), for “six years” substitute “ 4 years ”.
- (4) Paragraph 31 (time limit for assessment) is amended in accordance with sub-paragraphs (5) to (8).
- (5) In sub-paragraph (1), for “six years” substitute “ 4 years ”.
- (6) For sub-paragraph (2) substitute—

“(2) An assessment of a person to tax in a case involving a loss of tax brought about carelessly by the purchaser or a related person may be made at any time not more than 6 years after the effective date of the transaction to which it relates (subject to sub-paragraph (2A)).

(2A) An assessment of a person to tax in a case involving a loss of tax—

- (a) brought about deliberately by the purchaser or a related person,
- (b) attributable to a failure by the person to comply with an obligation under section 76(1) or paragraph 3(3)(a), 4(3)(a) or 8(3)(a) of Schedule 17A, or
- (c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty's Revenue and Customs),

may be made at any time not more than 20 years after the effective date of the transaction to which it relates.”

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- (7) In sub-paragraph (4)(a), for “three years” substitute “ 4 years ”.
- (8) After sub-paragraph (5) insert—
- “(6) In this paragraph “related person”, in relation to a purchaser, means—
- (a) a person acting on behalf of the purchaser, or
  - (b) a person who was a partner of the purchaser at the relevant time.”
- (9) After paragraph 31 insert—

*“Losses brought about carelessly or deliberately*

- 31A(1) This paragraph applies for the purposes of paragraph 31.
- (2) A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss.
- (3) Where—
- (a) information is provided to Her Majesty's Revenue and Customs,
  - (b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
  - (c) that person fails to take reasonable steps to inform Her Majesty's Revenue and Customs,
- any loss of tax brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.
- (4) References to a loss of tax brought about deliberately by a person include a loss of tax brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”

- (10) In paragraph 34(2) (relief in case of mistake in return), for “six years” substitute “ 4 years ”.
- 16 (1) Paragraph 8 of Schedule 14 (time limit for determination of penalties) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) for “six years” substitute “ 4 years ”, and
  - (b) after “began to be incurred” insert “ (“the relevant date”) ”.
- (3) In sub-paragraph (3), insert at the end “(subject to any of the following provisions of this paragraph allowing a longer period)”.
- (4) After sub-paragraph (4) insert—
- “(4A) Where a person is liable to a penalty in a case involving a loss of tax brought about carelessly by the person (or by another person acting on that person's behalf), the penalty may be determined, or the proceedings may be brought, at any time not more than 6 years after the relevant date (subject to sub-paragraphs (4B) and (5)).
- (4B) Where a person is liable to a penalty in a case involving a loss of tax—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf),

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- (b) attributable to a failure by the person to comply with an obligation under section 76(1) or paragraph 3(3)(a), 4(3)(a) or 8(3)(a) of Schedule 17A, or
- (c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty's Revenue and Customs),

the penalty may be determined, or the proceedings may be brought, at any time not more than 20 years after the relevant date.

- (4C) Paragraph 31A of Schedule 10 (losses brought about carelessly or deliberately) applies for the purpose of this paragraph.”

*Petroleum revenue tax*

17 OTA 1975 is amended as follows.

18 (1) The Table in paragraph 1(1) of Schedule 2 (applying provisions of TMA 1970 in relation to management and collection of petroleum revenue tax) is amended as follows.

- (2) In the entry relating to section 33 of TMA 1970, in the second column, for the entry relating to subsection (1) substitute “In subsection (1), for “year of assessment” substitute “chargeable period”.”

- (3) Omit the entries relating to sections 34 and 36 of TMA 1970.

19 In paragraph 10 of Schedule 2 (assessments to tax and determinations of loss etc), after sub-paragraph (1) insert—

“(1A) An assessment under sub-paragraph (1) may be made at any time not more than 4 years after the end of the chargeable period to which it relates (subject to paragraphs 12A and 12B).”

20 (1) Paragraph 12 of Schedule 2 (further assessments and determinations) is amended as follows.

- (2) After sub-paragraph (1) insert—

“(1A) An assessment (or an amendment of an assessment) under sub-paragraph (1) may be made at any time not more than 4 years after the end of the chargeable period to which the assessment relates (subject to sub-paragraph (1B) and paragraphs 12A and 12B).

(1B) The time limits in sub-paragraph (1A) and paragraphs 12A and 12B do not apply to an amendment of an assessment where the amendment is made in consequence (directly or indirectly) of—

- (a) the granting of relief under section 7(2) or (3) to any participator for allowable losses accruing in any chargeable period, or
- (b) a notice of variation served under paragraph 9 of Schedule 5 on any responsible person in respect of a claim for any claim period.”

- (3) In sub-paragraph (2)—

- (a) omit “(notwithstanding anything in section 34 of the Taxes Management Act 1970 (ordinary time limit for assessment))”,
- (b) for “six years” substitute “4 years”, and

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- (c) insert at the end “(subject to paragraphs 12A and 12B)”.
- 21 In paragraph 12A(1) of Schedule 2 (time limit for assessment following extension of time for delivery of return), for “five years” substitute “ 4 years ”.
- 22 In that Schedule, after paragraph 12A insert—
- “12B (1) In a case involving a relevant situation brought about carelessly by a participator (or a person acting on behalf of a participator), an assessment (or an amendment of an assessment) under this Schedule on the participator may be made at any time not more than 6 years after the end of the relevant chargeable period (subject to sub-paragraph (2)).
- (2) In a case involving a relevant situation brought about deliberately by a participator (or a person acting on behalf of a participator), an assessment (or an amendment of an assessment) on the participator may be made at any time not more than 20 years after the end of the relevant chargeable period.
- (3) “Relevant situation” means a situation in which—
- (a) there is a loss of tax,
- (b) the assessable profit charged to tax by or stated in an assessment for a chargeable period ought to be or to have been larger,
- (c) the allowable loss stated in an assessment or a determination of loss for a chargeable period ought to be or to have been smaller, or
- (d) an assessment to tax should have been made for a chargeable period but was not made.
- (4) “Relevant chargeable period” means—
- (a) in the case of a further assessment under paragraph 12(2), the chargeable period in which the excessive allowable loss accrued, and
- (b) in any other case, the chargeable period to which the assessment relates.
- (5) Where the participator carried on a trade or business with one or more other persons at any time in the chargeable period for which the assessment under sub-paragraph (1) or (2) is made, an assessment to tax in respect of the profits of that trade or business may also be made on any of the participator's partners.
- (6) In determining the amount of the tax to be charged on a person for a chargeable period in an assessment in a case mentioned in sub-paragraph (1) or (2) (including an assessment under sub-paragraph (5)), effect must be given to any relief or allowance to which that person would have been entitled for that period if a valid claim or application had been made.
- (7) Sub-paragraph (6) only applies if the person on whom the assessment is made so requires.
- (8) Subsections (5) to (7) of section 118 of the Taxes Management Act 1970 (losses and situations brought about carelessly or deliberately) apply for the purposes of this paragraph as they apply for the purposes of that Act.

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- (9) In subsection (6)(b) of that section (as it applies for the purposes of this paragraph), the reference to the person who provides the information has effect as if it included any person who becomes the responsible person for the oil field after the information is provided.”
- 23 (1) Paragraph 2 of Schedule 5 (allowance of expenditure other than abortive exploration expenditure: claim period) is amended as follows.
- (2) In sub-paragraph (1), for “six years” substitute “ 4 years ”.
- (3) In sub-paragraph (7)—
- (a) in paragraph (c), for “four years” substitute “ 2 years ”, and
- (b) in the words after that paragraph, for “six years” substitute “ 4 years ”.
- 24 (1) Paragraph 9 of Schedule 5 (allowance of expenditure other than abortive exploration expenditure: notice of variation) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit the words from “, within” to “field,”,
- (b) for “in the notice” substitute “ in a notice of a decision under paragraph 3 above given to the responsible person for an oil field ”, and
- (c) for “that period” substitute “ the permitted period ”.
- (3) Omit sub-paragraphs (1A) to (1C) and (2A).
- (4) After sub-paragraph (2A) insert—
- “(2B) In this paragraph “permitted period” means the period of 4 years beginning with the date on which the notice of the decision under paragraph 3 was given (but see sub-paragraph (2C)).
- (2C) Where the relevant amount was overstated in the notice of decision as a result of an inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) in connection with the claim—
- (a) if the inaccuracy was careless, the permitted period is extended to 6 years, and
- (b) if the inaccuracy was deliberate, the permitted period is extended to 20 years.”
- (5) Omit sub-paragraph (11).
- (6) Insert at the end—
- “(12) For the purposes of this section, an inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) is careless if it is due to a failure by the person to take reasonable care.
- (13) An inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) is to be treated as careless if—
- (a) the responsible person, the person who acted on behalf of the responsible person or any person who becomes the responsible



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- person for the oil field after the statement or declaration is made discovers the inaccuracy some time after it is made, and
- (b) that person fails to take reasonable steps to inform Her Majesty's Revenue and Customs.”
- 25 (1) Schedule 6 (allowance of expenditure (other than abortive exploration expenditure) on claim by participator) is amended as follows.
- (2) In paragraph 1(2) (claim period), for “six years” substitute “ 4 years ”.
- (3) In paragraph 2 (applying provisions of Schedule 5), in the Table, in the entry relating to paragraph 9 of Schedule 5, omit the words in the second column.
- 26 In paragraph 1(3) of Schedule 7 (allowance of abortive exploration expenditure), in the Table, in the entry relating to paragraph 9 of Schedule 5, in the second column omit—
- (a) the words “In sub-paragraph (1C) omit paragraph (c)” and “omit sub-paragraph (2A)”, and
- (b) the words from “and in sub-paragraph (11)” to the end.

#### *Aggregates levy*

- 27 Part 2 of FA 2001 (aggregates levy) is amended as follows.
- 28 In section 32(1) (repayments of overpaid aggregates levy), for “three years” substitute “ 4 years ”.
- 29 (1) Paragraph 4 of Schedule 5 (time limits for assessments) is amended as follows.
- (2) In sub-paragraph (1)(b), for “three years” substitute “ 4 years ”.
- (3) For sub-paragraph (3) substitute—
- “(3) An assessment of an amount due from a person in a case involving a loss of aggregates levy—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 24(2) or paragraph 1 of Schedule 4,
- may be made at any time not more than 20 years after the end of the accounting period to which it relates (subject to sub-paragraph (4)).
- (3A) In sub-paragraph (3)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (4)—
- (a) in paragraph (a), for “three years” substitute “ 4 years ”, and
- (b) omit paragraph (b) (and the “and” before it).
- 30 In paragraph 2(10) of Schedule 8 (interest payable by Commissioners), for “three years” substitute “ 4 years ”.
- 31 (1) Paragraph 4 of Schedule 10 (time limits on penalty assessments) is amended as follows.

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- (2) In sub-paragraph (1), for “three years” substitute “ 4 years ”.
- (3) For sub-paragraph (2) substitute—
- “(2) An assessment of a person to a civil penalty in a case involving a loss of aggregates levy—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 24(2) or paragraph 1 of Schedule 4,
- may be made at any time not more than 20 years after the conduct to which the penalty relates (subject to sub-paragraph (3)).
- (2A) In sub-paragraph (2)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (3)—
- (a) in paragraph (a), for “three years” substitute “ 4 years ”, and
- (b) omit paragraph (b) (and the “and” before it).

#### *Climate change levy*

- 32 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 33 In paragraph 64(1) (repayments of overpaid climate change levy), for “three years” substitute “ 4 years ”.
- 34 In paragraph 66(10) (interest payable by the Commissioners), for “three years” substitute “ 4 years ”.
- 35 (1) Paragraph 80 (time limits for assessments) is amended as follows.
- (2) In sub-paragraph (1)(b), for “three years” substitute “ 4 years ”.
- (3) For sub-paragraph (3) substitute—
- “(3) An assessment of an amount due from a person in a case involving a loss of levy—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
- (b) attributable to a failure by the person to comply with an obligation under paragraph 53 or 55,
- may be made at any time not more than 20 years after the end of the accounting period to which it relates (subject to sub-paragraph (4)).
- (3A) In sub-paragraph (3)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (4)—
- (a) in paragraph (a), for “three years” substitute “ 4 years ”, and
- (b) omit paragraph (b) (and the “and” before it).

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- 36 (1) Paragraph 108 (time limits on penalty assessments) is amended as follows.
- (2) In sub-paragraph (1), for “three years” substitute “ 4 years ”.
- (3) For sub-paragraph (2) substitute—
- “(2) An assessment of a person to a penalty in a case involving a loss of levy—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
- (b) attributable to a failure by the person to comply with an obligation under paragraph 53 or 55,
- may be made at any time not more than 20 years after the conduct to which the penalty relates (subject to sub-paragraph (3)).
- (2A) In sub-paragraph (2)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (3)—
- (a) in paragraph (a), for “three years” substitute “ 4 years ”, and
- (b) omit paragraph (b) (and the “and” before it).

#### *Landfill tax*

- 37 Schedule 5 to FA 1996 (landfill tax) is amended as follows.
- 38 In paragraph 14(4) (recovery of overpaid tax), for “three years” substitute “ 4 years ”.
- 39 In paragraph 29(8) (interest payable by Commissioners), for “three years” substitute “ 4 years ”.
- 40 (1) Paragraph 33 (assessments: time limits) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “three years” (in the first place) substitute “ 4 years ”, and
- (b) for the words from “the end of” to the end substitute “ the relevant event ”.
- (3) After that sub-paragraph insert—
- “(1A) In this paragraph “the relevant event”, in relation to an assessment, means—
- (a) the end of the accounting period concerned, or
- (b) in the case of an assessment under paragraph 32 of an amount due by way of a penalty other than a penalty referred to in paragraph 32(2), the event giving rise to the penalty.”
- (4) In sub-paragraph (3), for “sub-paragraph (1)” substitute “ sub-paragraph (1A) ”.
- (5) For sub-paragraph (4) substitute—
- “(4) An assessment of an amount due from a person in a case involving a loss of tax—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or

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- (b) attributable to a failure by the person to comply with an obligation under section 47(2) or (3),  
may be made at any time not more than 20 years after the relevant event (subject to sub-paragraph (5)).
- (4A) In sub-paragraph (4)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.”
- (6) In sub-paragraph (5)—
- (a) in paragraph (a), for “three years” substitute “ 4 years ”, and
- (b) omit paragraph (b) (and the “and” before it).

*Minor and consequential provision*

- 41 In section 36 of TMA 1970 (loss of tax brought about carelessly or deliberately etc), in subsections (2) and (3), for “for the purpose” substitute “ in a case ”.
- 42 In Schedule 39 to FA 2008, omit paragraph 66 (saving for provisions of TMA 1970 as applied by OTA 1975).
- 43 In consequence of the amendments made by this Schedule, omit—
- (a) in FA 1990, section 122, and
- (b) in FA 1997, in Schedule 5, paragraph 6(2)(b) and (c).

SCHEDULE 52

Section 100

RECOVERY OF OVERPAID TAX ETC

**PART 1**

INCOME TAX AND CAPITAL GAINS TAX

*Claims for recovery of overpaid tax etc*

- 1 In TMA 1970, for sections 33 and 33A substitute—

**“33 Recovery of overpaid tax etc**

Schedule 1AB contains provision for and in connection with claims for the recovery of overpaid income tax and capital gains tax.”

- 2 After Schedule 1AA to that Act insert—

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“SCHEDULE  
1A

Section 33

RECOVERY OF OVERPAID TAX ETC

*Claim for relief for overpaid tax etc*

- 1 (1) This paragraph applies where—
  - (a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or
  - (b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.
- (2) The person may make a claim to the Commissioners for repayment or discharge of the amount.
- (3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.
- (4) Paragraphs 3 to 7 (and sections 42 to 43C and Schedule 1A) make further provision about making and giving effect to claims under this Schedule.
- (5) Paragraph 8 makes provision about the application of this Schedule to amounts paid under contract settlements.
- (6) The Commissioners are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—
  - (a) by this Schedule and Schedule 1A (following a claim under this paragraph), or
  - (b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.
- (7) For the purposes of this Schedule an amount paid by one person on behalf of another is treated as paid by the other person.

*Cases in which Commissioners not liable to give effect to claim*

- 2 (1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 4(5)).
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—
  - (a) a mistake in a claim, election or notice,
  - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,
  - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or
  - (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.

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- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains.
- (4) Case C is where the claimant—
  - (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew, or ought reasonably to have known, before the end of that period that such relief was available.
- (5) Case D is where the claim is made on grounds that—
  - (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
  - (b) have been put to Her Majesty's Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 (settling of appeals by agreement)).
- (6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
  - (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a “relevant appeal”) was determined by a court or tribunal (or is treated as having been so determined),
  - (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and
  - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- (7) Case F is where the amount in question was paid or is liable to be paid—
  - (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty's Revenue and Customs, or
  - (b) in accordance with an agreement between the claimant and Her Majesty's Revenue and Customs settling such proceedings.
- (8) Case G is where—
  - (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to income tax or capital gains tax (other than a mistake in a PAYE assessment or PAYE calculation), and
  - (b) liability was calculated in accordance with the practice generally prevailing at the time.
- (9) Case H is where—
  - (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in a PAYE assessment or PAYE calculation, and
  - (b) the assessment or calculation was made in accordance with the practice generally prevailing at the end of the period of 12 months following the tax year for which the assessment or calculation was made.

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- (10) For the purposes of Cases G and H—
- (a) “PAYE assessment” means an assessment on the claimant made in accordance with section 709 of ITEPA 2003 (assessment in connection with PAYE deductions), and
  - (b) “PAYE calculation” means a calculation of the amount of a deduction or repayment made or to be made under PAYE regulations in respect of tax estimated to be payable by the claimant.

*Making a claim*

- 3 (1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.
- (2) In relation to a claim made in reliance on paragraph 1(1)(a), the relevant tax year is—
- (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA of this Act, the tax year to which the return (or, if more than one, the first return) relates, and
  - (b) otherwise, the tax year in respect of which the payment was made.
- (3) In relation to a claim made in reliance on paragraph 1(1)(b), the relevant tax year is the tax year to which the assessment, determination or direction relates.
- (4) A claim under this Schedule may not be made by being included in a return under section 8, 8A or 12AA of this Act.

*The claimant: one person accountable for amounts payable by another etc*

- 4 (1) Sub-paragraph (2) applies where, under a relevant enactment, a person (“P”) is accountable to the Commissioners for—
- (a) an amount representing income tax or capital gains tax that is or is estimated to be payable by another person (“T”), or
  - (b) any other amount that, under a relevant enactment, has been or is to be set off against a liability of T.
- (2) A claim under this Schedule in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where—
- (a) a person (“P”) has paid an amount described in sub-paragraph (1) (a) or (b) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
  - (b) P was not so accountable.
- (4) A claim under this Schedule in respect of the amount may be made only by P.
- (5) The Commissioners are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T.
- (6) “Relevant enactment” means—
- (a) PAYE regulations,

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- (b) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
- (c) any other provision of or made under the Taxes Acts.

*The claimant: partnerships*

- 5 (1) This paragraph applies where—
- (a) a trade, profession or business is carried on by two or more persons in partnership,
  - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
  - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under this Schedule in respect of the amount—
- (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
  - (b) may not be made by any other person.
- (3) In relation to such a claim, references in this Schedule to the claimant are to any of the relevant partners.
- (4) “Relevant partner” means—
- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or
  - (b) the personal representative of such a person.

*Assessment of claimant in connection with claim*

- 6 (1) This paragraph applies where—
- (a) a claim is made under this Schedule,
  - (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or determination on the claimant in respect of any chargeable period, and
  - (c) such an assessment or determination could be made but for a relevant restriction.
- (2) “Discovery assessment or determination” means—
- (a) an assessment under section 29(1), or
  - (b) a discovery assessment or discovery determination under Schedule 18 to the Finance Act 1998 (company tax return etc).
- (3) The following are relevant restrictions—
- (a) the conditions in section 29(3) to (5),
  - (b) the restrictions in paragraphs 42 to 45 of Schedule 18 to the Finance Act 1998, and
  - (c) the expiry of a time limit for making a discovery assessment or determination.
- (4) Where this paragraph applies—
- (a) the relevant restrictions are to be disregarded, and



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- (b) the discovery assessment or determination is not out of time if it is made before the final determination of the claim.

*Amendment of partnership return etc in connection with claim*

- 7 (1) This paragraph applies where—
  - (a) a claim is made under this Schedule,
  - (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
  - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and
  - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions—
  - (a) the conditions in section 30B(4) to (6), and
  - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies—
  - (a) the relevant conditions are to be disregarded, and
  - (b) the amendment is not out of time if it is made before the final determination of the claim.

*Contract settlements*

- 8 (1) In paragraph 1(1)(a) the reference to an amount paid by way of income tax or capital gains tax includes an amount paid under a contract settlement in connection with income tax or capital gains tax believed to be due from any person.
- (2) Sub-paragraphs (3) to (6) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.
- (3) In relation to a claim under this Schedule in respect of that amount—
  - (a) the references to the claimant in paragraph 2(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
  - (b) the references to the claimant in paragraph 2(8) and (10) (Cases G and H) have effect as if they were references to the taxpayer,
  - (c) the references to the claimant in paragraphs 6(1)(b) and 7(1)(b) have effect as if they were references to the taxpayer, and
  - (d) references to tax in Schedule 1A (as it applies to a claim under this Schedule) include such an amount.
- (4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment or determination on the taxpayer in respect of any chargeable period.

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- (5) The Commissioners may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination.
- (6) The obligations of the Commissioners and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).
- (7) In this paragraph—  
     “contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment;  
     “discovery assessment or determination” has the same meaning as in paragraph 6.

#### *Interpretation*

- 9 (1) In this Schedule “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.
- (2) For the purposes of this Schedule a claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise).”

#### *Consequential amendments*

- 3 TMA 1970 is amended as follows.
- 4 For the heading before section 32 substitute “*Overpaid tax, excessive assessments etc*”.
- 5 (1) Section 43A (further assessments etc) is amended as follows.
- (2) After subsection (2A) insert—  
     “(2B) For the purposes of this section and section 43B below, a claim under Schedule 1AB is relevant in relation to an assessment for a year of assessment if it relates to that year of assessment.”
- (3) In subsection (3), for “a claim” substitute “any other claim”.
- 6 (1) In paragraph 1 of Schedule 1A (claims etc not included in returns), in the definition of “partnership claim”, after “46(2)(b) of” insert “, or paragraph 5 of Schedule 1AB to, ”.
- 7 (1) Paragraph 4 of that Schedule (giving effect to claims and amendments) is amended as follows.
- (2) In sub-paragraph (1)—  
     (a) for “and (4)” substitute “to (5)”, and  
     (b) omit “and to any other provision in the Taxes Acts which otherwise provides”.
- (3) In sub-paragraph (2), for “and (4)” substitute “to (5)”.
- (4) Insert at the end—  
     “(5) This paragraph has effect subject to any provision in the Taxes Acts that—

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- (a) requires or allows effect to be given to a claim by other means, or
  - (b) provides that an amount is not to be discharged or repaid.”
- 8 In Schedule 3ZA (date by which payment to be made after amendment or correction of self-assessment), omit paragraph 10 (amendment following claim for error or mistake relief).
- 9 (1) Section 70H of CAA 2001 (lessee: requirement for tax return treating lease as long funding lease) is amended as follows.
- (2) In subsection (2), for “for relief under the error or mistake provisions in respect of” substitute “under the recovery provisions for relief in respect of an amount paid or liable to be paid that is excessive by reason of”.
- (3) In subsection (3)—
- (a) for ““the error or mistake provisions”” substitute “;the recovery provisions”, and
  - (b) for “section 33 of” substitute “ Schedule 1AB to ”.

#### *Transitional provision*

- 10 (1) In relation to a relevant claim, paragraph 3(1) of Schedule 1AB to TMA 1970 (inserted by this Part of this Schedule) has effect as if for “more than 4 years after” there were substituted “ more than 5 years after the 31st January next following ”.
- (2) “Relevant claim” means a claim within paragraph 3(2)(a) of Schedule 1AB to TMA 1970 that—
- (a) is made before 1 April 2012 by a person other than a company, and
  - (b) satisfies sub-paragraph (3).
- (3) A claim satisfies this sub-paragraph if notice requiring the return (or, if more than one, the first return) mentioned in paragraph 3(2)(a) of Schedule 1AB to TMA 1970 was not given within one year of the end of the tax year to which the return relates.

#### *Saving for petroleum revenue tax*

- 11 The amendments of TMA 1970 made by this Part of this Schedule do not have effect for the purposes of that Act as applied by paragraph 1 of Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax).

## **PART 2**

### **CORPORATION TAX**

#### *Claims for recovery of overpaid tax etc*

- 12 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 13 For paragraph 51 (and the heading before that paragraph) substitute—

#### *“Claim for relief for overpaid tax etc*

- 51 (1) This paragraph applies where—

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- (a) a person has paid an amount by way of tax but believes that the tax was not due, or
  - (b) a person has been assessed as liable to pay an amount by way of tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.
- (2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for repayment or discharge of the amount.
- (3) Paragraph 51A makes provision about cases in which the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under this paragraph.
- (4) The following make further provision about making and giving effect to claims under this paragraph—
- (a) paragraphs 51B to 51F and Part 7 of this Schedule, and
  - (b) Schedule 1A to the Taxes Management Act 1970 (which is applied by that Part).
- (5) Paragraph 51G makes provision about the application of this paragraph and paragraphs 51A to 51F to amounts paid under contract settlements.
- (6) The Commissioners for Her Majesty's Revenue and Customs are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—
- (a) by this Schedule and Schedule 1A to the Taxes Management Act 1970 (following a claim under this paragraph), or
  - (b) by or under another provision of the Corporation Tax Acts.
- (7) For the purposes of this paragraph and paragraphs 51A to 51G, an amount paid by one person on behalf of another is treated as paid by the other person.

*Cases in which Commissioners not liable to give effect to a claim*

- 51A(1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 51 if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 51C(5)).
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—
- (a) a mistake in a claim, election or a notice,
  - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,
  - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or
  - (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Corporation Tax Acts.
- (4) Case C is where the claimant—

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- (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew, or ought reasonably to have known, before the end of that period that such relief was available.
- (5) Case D is where the claim is made on grounds that—
  - (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
  - (b) have been put to Her Majesty's Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 of the Taxes Management Act 1970 (settling of appeals by agreement)).
- (6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
  - (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a “relevant appeal”) was determined by a court or tribunal (or is treated as having been so determined),
  - (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and
  - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- (7) Case F is where the amount in question was paid or is liable to be paid—
  - (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty's Revenue and Customs, or
  - (b) in accordance with an agreement between the claimant and Her Majesty's Revenue and Customs settling such proceedings.
- (8) Case G is where—
  - (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to corporation tax, and
  - (b) liability was calculated in accordance with the practice generally prevailing at the time.

#### *Making a claim*

- 51B (1) A claim under paragraph 51 may not be made more than 4 years after the end of the relevant accounting period.
- (2) In relation to a claim made in reliance on paragraph 51(1)(a), the relevant accounting period is—
    - (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a company tax return or returns, the accounting period to which the return (or, if more than one, the first return) relates, and
    - (b) otherwise, the accounting period in respect of which the amount was paid.
  - (3) In relation to a claim made in reliance on paragraph 51(1)(b), the relevant accounting period is the accounting period to which the assessment, determination or direction relates.

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- (4) A claim under paragraph 51 may not be made by being included in a company tax return.

*The claimant: one person accountable for amounts payable by another*

- 51C(1) Sub-paragraph (2) applies where a person (“P”) is accountable to the Commissioners for Her Majesty's Revenue and Customs under a relevant enactment for an amount that has been or is to be set off against a liability of another person (“T”) under a relevant enactment.
- (2) A claim under paragraph 51 in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where—
- (a) a person (“P”) has paid an amount described in sub-paragraph (1) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
  - (b) P was not so accountable.
- (4) A claim under paragraph 51 in respect of the amount may be made only by P.
- (5) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T.
- (6) “Relevant enactment” means—
- (a) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
  - (b) any other provision of or made under the Taxes Acts.

*The claimant: partnerships*

- 51D(1) This paragraph applies where—
- (a) a trade, profession or business is carried on by two or more persons in partnership,
  - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
  - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under paragraph 51 in respect of the amount—
- (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
  - (b) may not be made by any other person.
- (3) In relation to such a claim, references in paragraphs 51A to 51F to the claimant are to any of the relevant partners.
- (4) “Relevant partner” means—
- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or
  - (b) the personal representative of such a person.

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*Assessment of claimant in connection with claim*

- 51E (1) This paragraph applies where—
- (a) a claim is made under paragraph 51,
  - (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or discovery determination on the claimant in respect of any accounting period, and
  - (c) such an assessment or determination could be made but for a relevant restriction.
- (2) The following are relevant restrictions—
- (a) the restrictions in paragraphs 42 to 45, and
  - (b) the expiry of a time limit for making a discovery assessment or discovery determination.
- (3) Where this paragraph applies—
- (a) the relevant restrictions are to be disregarded, and
  - (b) the discovery assessment or discovery determination is not out of time if it is made before the final determination of the claim.
- (4) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise).

*Amendment of partnership return etc in connection with claim*

- 51F (1) This paragraph applies where—
- (a) a claim is made under paragraph 51,
  - (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
  - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) of the Taxes Management Act 1970 (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and
  - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions—
- (a) the conditions in section 30B(4) to (6) of the Taxes Management Act 1970, and
  - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies—
- (a) the relevant conditions are to be disregarded, and
  - (b) the amendment is not out of time if it is made before the final determination of the claim.
- (4) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise).

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### *Contract settlements*

51G(1) In paragraph 51(1)(a) the reference to an amount paid by a company by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

(2) Sub-paragraphs (3) to (6) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

(3) In relation to a claim under paragraph 51 in respect of that amount—

- (a) the references to the claimant in paragraph 51A(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
- (b) the reference to the claimant in paragraph 51A(8) (Case G) has effect as if it were a reference to the taxpayer,
- (c) the references to the claimant in paragraphs 51E(1)(b) and 51F(1)(b) have effect as if they were references to the taxpayer, and
- (d) references to tax in Schedule 1A to the Taxes Management Act 1970 (as it applies to a claim under this Part of this Schedule) include such an amount.

(4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment or discovery determination on the taxpayer in respect of any chargeable period.

(5) The Commissioners for Her Majesty's Revenue and Customs may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination.

(6) The obligations of the Commissioners for Her Majesty's Revenue and Customs and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).

(7) “Contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of an enactment.”

14 Accordingly, in the heading of Part 6, at the beginning insert “OVERPAID TAX.”

15 (1) Paragraph 62 (consequential claims etc that may be made) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) This paragraph applies to a claim under paragraph 51 relating to the accounting period in respect of which the amendment or assessment is made.”

(3) In sub-paragraph (2), for “a claim” substitute “ any other claim ”.

16 In paragraph 88 (conclusiveness of amounts stated in return), insert at the end—

“(8) Nothing in this paragraph affects a power of the company making the return to make a claim under paragraph 51 (claim for relief for overpaid tax).”



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*Consequential amendment*

- 17 In Schedule 1A to TMA 1970 (claims etc not included in returns), in paragraph 1, in the definition of “partnership claim”, after “Act” insert “ or paragraph 51D of Schedule 18 to the Finance Act 1998 (claims for overpaid corporation tax) ”.

SCHEDULE 53

Section 101

LATE PAYMENT INTEREST

.....

VALID FROM 31/08/2010

SCHEDULE 54

Section 102

REPAYMENT INTEREST

.....

SCHEDULE 55

Section 106

PENALTY FOR FAILURE TO MAKE RETURNS ETC

.....

SCHEDULE 56

Section 107

PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

.....

SCHEDULE 57

Section 109

AMENDMENTS RELATING TO PENALTIES

**PART 1**

AMENDMENTS OF SCHEDULE 24 TO FA 2007

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 In paragraph 2 (under-assessment by HMRC), insert at the end—
- “(4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)—

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- (a) “assessment” includes determination, and
  - (b) accordingly, references to an under-assessment include an under-determination.”
- 3 In paragraph 5 (normal rule for calculating potential lost revenue), for sub-paragraph (4)(b) substitute—
- “(b) any relief under subsection (4) of section 419 of ICTA (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section;”.
- 4 In paragraph 9(1)(b) and (c) (reductions for disclosure), for “supply or false information” substitute “ supply of false information ”.
- 5 In paragraph 13 (assessment), insert at the end—
- “(7) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.”
- 6 For paragraph 16(2) (appeals) substitute—
- “(2) Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Act.”
- 7 (1) Paragraph 19 (companies: officers' liability) is amended as follows.
- (2) In sub-paragraph (3)—
- (a) after “a body corporate” insert “ other than a limited liability partnership ”,
  - (b) in paragraph (a), omit the “or” at the end, and
  - (c) after that paragraph insert—
- “(aa) a manager, and”.
- (3) After that sub-paragraph insert—
- “(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.”
- (4) Insert at the end—
- “(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.”
- 8 Omit paragraph 28(da) (interpretation of references to assessment).
- 9 In paragraphs 30 and 31 (consequential amendments) for “paragraph 7” substitute “ paragraphs 7 and 7B ”.

## PART 2

### AMENDMENTS OF SCHEDULE 41 TO FA 2008

- 10 Schedule 41 to FA 2008 (penalties for failure to notify and certain other wrongdoing) is amended as follows.
- 11 For paragraph 18(2) (appeals) substitute—

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- “(2) Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Act.”
- 12 (1) Paragraph 22 (companies: officers' liability) is amended as follows.
- (2) In sub-paragraph (3)—
- (a) after “a body corporate” insert “ other than a limited liability partnership ”,
  - (b) in paragraph (a), omit the “or” at the end,
  - (c) after that paragraph insert—  
“(aa) a manager, and”.
- (3) After that sub-paragraph insert—
- “(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.”
- (4) Insert at the end—
- “(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.”

### PART 3

#### OTHER AMENDMENTS

- 13 (1) TMA 1970 is amended as follows.
- (2) In section 100(2) (determination of penalties by officer), omit paragraph (g) and the “or” before it.
- (3) After section 103 insert—
- “103ZA Disapplication of sections 100 to 103 in the case of certain penalties**
- Sections 100 to 103 do not apply to a penalty under—
- (a) Schedule 24 to FA 2007 (penalties for errors),
  - (b) Schedule 36 to FA 2008 (information and inspection powers),
  - (c) Schedule 41 to that Act (penalties for failure to notify and certain other wrongdoing),
  - (d) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or
  - (e) Schedule 56 to that Act (penalties for failure to make payments on time).”
- 14 In FA 2008 omit—
- (a) paragraph 74 of Schedule 36 (information and inspection powers), and
  - (b) paragraph 20(3) of Schedule 40 (amendment of Schedule 24 to FA 2007).

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## SCHEDULE 58

Section 110

## RECOVERY OF DEBTS UNDER PAYE REGULATIONS

*PAYE regulations*

- 1 Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.
- 2 In subsection (1), omit “for Her Majesty's Revenue and Customs”.
- 3 (1) Subsection (2) is amended as follows.
- (2) For “PAYE regulations may, in particular, include” substitute “ The provision that may be made in PAYE regulations includes ”.
- (3) In the list of provisions, in item 1, in paragraph (a), omit “for Her Majesty's Revenue and Customs”.
- (4) In item 2, for “or remaining unpaid (or treated as overpaid or remaining unpaid)” substitute “ (or treated as overpaid) on account of, or any amounts other than relevant debts remaining unpaid (or treated as remaining unpaid) ”.
- (5) After item 2 insert—
- “2A Provision—
- (a) for deductions to be made in respect of relevant debts of a payee,
- (b) as to the circumstances in which such deductions may be made, and
- (c) where such deductions are made, as to the date on which the relevant debts are to be treated as paid.”
- (6) In item 3, for “income tax has been and is” substitute “ amounts have been and are ”.
- 4 After subsection (3) insert—
- “(3A) PAYE regulations under item 2A in the above list may not make provision enabling deductions totalling more than £2,000 to be made from a payee's income for a tax year without the payee's consent.
- (3B) The Treasury may by order amend the amount specified in subsection (3A).”
- 5 In paragraph (a) of subsection (7A), after “tax” insert “ or other amounts ”.
- 6 After that subsection insert—
- “(7AA) In this section “relevant debt”, in relation to a payee, means—
- (a) a sum payable by the payee to the Commissioners under or by virtue of an enactment, other than an excluded debt, and
- (b) a sum payable by the payee to the Commissioners under a contract settlement.
- (7AB) For the purposes of subsection (7AA)—
- (a) child tax credit or working tax credit that the payee is liable to repay is an excluded debt, and
- (b) if the payee is an employer, any amount that the payee is required to deduct from the PAYE income of employees for a tax year is an excluded debt until the tax year has ended.”
- 7 In subsection (7C), before the definition of “payer” insert—

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““the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

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

#### *Consequential provision*

- 8 In section 29(5) of the Tax Credits Act 2002 (recovery of overpayments)—
- (a) for “tax” substitute “ income tax ”, and
  - (b) insert at the end “that is not a relevant debt (within the meaning of section 684 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 9 (1) Part 11 of ITEPA 2003 (pay as you earn) is amended as follows.
- (2) In section 682(1) (scope of Part), insert at the end “ and includes provision in respect of the deduction of certain other amounts from, and the repayment of certain other amounts with, PAYE income ”.
- (3) In section 685 (tax tables)—
- (a) in subsection (1), omit “for Her Majesty's Revenue and Customs”, and
  - (b) in subsection (2)(b), for “or 2” substitute “ , 2 or 2A ”.
- 10 (1) The Treasury may by order make provision—
- (a) amending or repealing provisions of Part 11 of ITEPA 2003,
  - (b) amending, repealing or revoking provisions of enactments or instruments that refer to provisions of that Part, and
  - (c) amending, repealing or revoking provisions of enactments or instruments that apply, or confer power to apply, PAYE regulations or otherwise refer to such regulations.
- (2) An order under this paragraph may only make provision to the extent that it is appropriate in consequence of, or in connection with, the amendments made by this Schedule.
- (3) An order under this paragraph may include transitional provision and savings.
- (4) An order under this paragraph is to be made by statutory instrument.
- (5) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

## SCHEDULE 59

Section 118

### CLIMATE CHANGE LEVY: REMOVAL OF REDUCED RATE

#### PART 1

##### NEW PROVISION FOR REMOVAL OF REDUCED RATE

- 1 In Schedule 6 to FA 2000 (climate change levy), after paragraph 45A insert—

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*“Removal of reduced rate where targets set by climate change agreement not met*

- 45B (1) This paragraph applies where, by virtue of such a certificate as is mentioned in paragraph 44(1), a facility is to be taken as being covered by a climate change agreement for a period specified in that certificate (“the certification period”).
- (2) If it appears to the Secretary of State that the progress made in the certification period towards meeting targets set for the facility by the agreement has been such as under the provisions of the agreement is unsatisfactory, the Secretary of State may issue a certificate under this paragraph.
- (3) The certificate must (in addition to specifying the facility, agreement and certification period to which it applies) specify—
- (a) T, that is, the value (expressed in terms of a reduction in tonnes of carbon dioxide equivalent) of achieving the targets set for the facility by the agreement, and
  - (b) P, that is, the value (expressed in the same terms) of the progress made by the facility, during the certification period, towards meeting those targets.
- (4) Where a certificate has been issued under this paragraph—
- (a) each taxable supply made to the facility at any time falling within the certification period is to be treated as not being a reduced-rate supply, and
  - (b) accordingly, an amount (determined in accordance with sub-paragraph (5)) is payable by way of levy on that taxable supply.
- (5) The amount payable under this paragraph on a taxable supply is—

$$\frac{T - P}{T} \times 0.8R$$

where—

T and P have the values mentioned in sub-paragraph (3), and  
R is the amount which would have been payable by way of levy on the supply (had it not been a reduced-rate supply) at the time that it was made, in accordance with paragraph 42(1)(a).

- (6) The Secretary of State must send the certificate to—
- (a) the Commissioners, and
  - (b) the person who is the operator of the facility.
- (7) A certificate under this paragraph may be issued after the certification period ends.
- (8) A person liable to account for levy under this paragraph—
- (a) is liable to account for it otherwise than by reference to an accounting period, and
  - (b) must not (by virtue of regulations under paragraph 41) become liable to pay it as from a date before the date on which the certificate under this paragraph is issued.

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(9) Levy due under this paragraph is payable in addition to any levy already payable on any supply made in the certification period.

(10) In this paragraph—

“certification period”, in a case where the certificate referred to in sub-paragraph (1) has been varied under paragraph 45, means the period for which that certificate has effect as varied;

“tonne of carbon dioxide equivalent” has the meaning given in the Climate Change Act 2008.”

## PART 2

### CONSEQUENTIAL AMENDMENTS

2 Schedule 6 to FA 2000 is amended as follows.

3 (1) Paragraph 40 (persons liable to account for levy) is amended as follows.

(2) In sub-paragraph (1), after “sub-paragraph (2)” insert “ or (3) ”.

(3) After sub-paragraph (2) insert—

“(3) In the case of levy charged on a taxable supply under paragraph 45B, the person liable to account for the levy is the operator of the facility to which the supply was made.”

4 In paragraph 41(2A) (application of Part 7 where person liable to account otherwise than by reference to accounting period), after “regulations under sub-paragraph (1) (a)(ii) above” insert “ or by virtue of paragraph 45B(8) ”.

5 In paragraph 42 (amount payable by way of levy), after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) is subject to paragraph 45B.”

6 In paragraph 44(2) (definition of “reduced-rate supply” to have effect subject to paragraph 45), for “paragraph 45” substitute “ paragraphs 45 and 45B ”.

7 In paragraph 45A (deemed supplies), after sub-paragraph (2) insert—

“(3) This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B.”

8 (1) Paragraph 91 (interpretation etc of Part 7 of the Schedule) is amended as follows.

(2) In sub-paragraph (5) (modification of references to accounting periods in case of levy due otherwise than by reference to such periods), after “regulations under paragraph 41(1)(a)(ii)” insert “ or by virtue of paragraph 45B(8) ”.

9 In paragraph 147 (interpretation), in the definition of “reduced-rate supply”, for “paragraph 45” substitute “ paragraphs 45 and 45B ”.

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## SCHEDULE 60

Section 119

## LANDFILL TAX: PRESCRIBED LANDFILL SITE ACTIVITIES

*Introduction*

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

*Prescribed landfill site activities to be treated as disposals*

2 After section 65 insert—

**“65A Prescribed landfill site activities to be treated as disposals**

- (1) An order may prescribe a landfill site activity for the purposes of this section.
- (2) If a prescribed landfill site activity is carried out at a landfill site, the activity is to be treated—
  - (a) as a disposal at the landfill site of the material involved in the activity,
  - (b) as a disposal of that material as waste, and
  - (c) as a disposal of that material made by way of landfill.
- (3) Connected provision may be made by order.
- (4) Provision may be made under this section in such way as the Treasury think fit.
- (5) An order under subsection (1) may prescribe a landfill site activity by reference to conditions.
- (6) Those conditions may, in particular, relate to either or both of the following—
  - (a) whether the landfill site activity is carried out in a designated area of a landfill site, and
  - (b) whether there has been compliance with a requirement to give information relating to—
    - (i) the landfill site activity, or
    - (ii) the material involved in the landfill site activity,
 including information relating to whether the activity is carried out in a designated area of a landfill site.
- (7) An order under this section—
  - (a) may amend, or otherwise modify, this Part or any other enactment relating to landfill tax, but
  - (b) may not alter any rate at which landfill tax is charged.
- (8) Subsections (5) to (7) do not limit the generality of subsection (4).
- (9) In this section—
 

“connected provision” means provision which appears to the Treasury to be necessary or expedient in connection with provision made under subsection (1);



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“designated area” means an area of a landfill site designated in accordance with—

- (a) an order under this section, or
- (b) regulations under Part 1 of Schedule 5;

“landfill site activity” means any of the following descriptions of activity, or an activity that falls within any of the following descriptions—

- (a) using or otherwise dealing with material at a landfill site;
- (b) storing or otherwise having material at a landfill site.”

3 In section 71(7) (orders and regulations), after paragraph (c) insert—

- “(ca) an order under section 65A above which produces the result that a landfill site activity which would not otherwise be prescribed for the purposes of section 65A is so prescribed;
- (cb) an order under section 65A above which amends this Part or any enactment contained in an Act;”.

#### *Material temporarily held*

4 Omit section 62 (taxable disposals: regulations about material temporarily held at a landfill site).

#### *Material at landfill sites*

5 Part 1 of Schedule 5 (information) is amended as follows.

6 For the heading before paragraph 1 substitute— “ Information: general ”

7 After paragraph 1 insert—

#### *“Information: material at landfill sites*

1A (1) Regulations may make provision about giving the Commissioners information relating to material at a landfill site or a part of a landfill site.

(2) Regulations under this paragraph may require a person to give information.

(3) Regulations under this paragraph may—

- (a) require a person, or authorise an officer of Revenue and Customs to require a person, to designate a part of a landfill site (an “information area”), and
- (b) require material, or prescribed descriptions of material, to be deposited in an information area.

(4) Regulations under this paragraph may make provision about information relating to what is done with material.

(5) Sub-paragraphs (2) to (4) do not prejudice the generality of sub-paragraph (1).”

8 For the heading before paragraph 2 substitute— “ Records: registrable persons ”

9 After paragraph 2 insert—

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*“Records: material at landfill sites*

- 2A (1) Regulations may require a person to make records relating to material at a landfill site or a part of a landfill site.
- (2) Regulations under this paragraph may make provision about records relating to what is done with material.
- (3) Sub-paragraphs (2) to (7) of paragraph 2 apply in relation to regulations under this paragraph as they apply in relation to regulations under paragraph 2.
- (4) But, in the application of paragraph 2(3)(a) in relation to regulations under this paragraph, the reference to registrable persons has effect as a reference to persons.”

*Site restoration*

- 10 Omit section 43C (site restoration).
- 11 In Part 1 of Schedule 5 (information), after paragraph 1A (inserted by paragraph 7) insert—

*“Information: site restoration*

- 1B (1) Before commencing restoration of all or part of a landfill site, the operator of the site must—
- (a) notify the Commissioners in writing that the restoration is to commence, and
  - (b) provide such other written information as the Commissioners may require generally or in the particular case.
- (2) In this paragraph “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.
- (3) The following are relevant instruments—
- (a) a planning consent,
  - (b) a waste management licence, and
  - (c) a permit authorising the disposal of waste on or in land.”

*Landfill tax returns*

- 12 In section 49(b) (accounting for tax and time for payment), omit “as may be prescribed”.

*Commencement and savings*

- 13 (1) The repeal made by paragraph 10 comes into force on 1 September 2009.
- (2) The amendment made by paragraph 11 has effect in relation to restoration of landfill sites commencing on or after 1 September 2009.

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- (3) The repeal of section 62 made by paragraph 4, and the repeal in section 49 made by paragraph 12—
- (a) do not affect any regulations made under the repealed provisions before the passing of this Act, and
  - (b) do not prevent the powers conferred by the repealed provisions from being used after the passing of this Act to revoke any regulations made under the powers before that time.

## SCHEDULE 61

Section 123

### ALTERNATIVE FINANCE INVESTMENT BONDS

#### PART 1

##### INTRODUCTORY

###### *Interpretation*

- 1 (1) In this Schedule—
- “alternative finance investment bond” means arrangements within section 48A of FA 2005 (alternative finance investment bond: introduction);
  - “bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by that section;
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “prescribed” means prescribed in regulations made by HMRC;
  - “qualifying interest” means a major interest in land (within the meaning given by section 117 of FA 2003) except that it does not include a lease if the lease is for—
    - (a) a term of years of 21 years or less, or
    - (b) in Scotland, a period of 21 years or less.
- (2) Except where the context otherwise requires, any expression which is used in this Schedule and in Part 4 of FA 2003 has the meaning which it has in that Part.

#### PART 2

##### ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER ARRANGEMENTS

###### *Issue, transfer and redemption of rights under bond not be treated as chargeable transaction*

- 2 Section 48B(2) of FA 2005 (effect of bond for purposes of tax) applies for the purposes of stamp duty land tax as it applies for the purposes of income tax and capital gains tax.

###### *Relief not available where bond-holder acquires control of underlying asset*

- 3 (1) Paragraph 2 does not apply if control of the underlying asset is acquired by—

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- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- 4 (1) But paragraph 3(1) does not apply (and, accordingly, section 48B(2) of FA 2005 applies by virtue of paragraph 2) in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph—
- “connected” is to be read in accordance with section 839 of ICTA, and
- “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

### PART 3

#### TRANSACTIONS RELATING TO UNDERLYING ASSETS CONSISTING OF LAND

##### INTRODUCTORY

##### *General conditions for operation of reliefs etc*

- 5 (1) This paragraph defines conditions A to G for the purposes of paragraphs 6 to 18.
- Paragraphs 20 and 22 set out circumstances in which the reliefs provided by paragraphs 6 to 18 are not available even if conditions A to G are met.
- (2) Condition A is that one person (“P”) and another (“Q”) enter into arrangements under which—
- (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
  - (b) P and Q agree that, when the interest ceases to be held by Q as mentioned in sub-paragraph (3)(b), Q will transfer the interest to P.

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- (3) Condition B is that—
  - (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in sub-paragraph (2)), and
  - (b) the interest in land to which those arrangements relate is held by Q as a bond asset.
- (4) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—
  - (a) Q and P enter into a leaseback agreement, or
  - (b) such other condition or conditions as may be specified in regulations made by the Treasury is or are met.
- (5) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q—
  - (a) a lease (if the interest transferred is freehold or, in Scotland, the interest of the owner), or
  - (b) a sub-lease (if the interest transferred is leasehold or, in Scotland, the tenant's right over or interest in a property subject to a lease).
- (6) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides HMRC with the prescribed evidence that—
  - (a) in England and Wales, a satisfactory legal charge has been entered in the register of title kept under section 1 of the Land Registration Act 2002,
  - (b) in Scotland, a satisfactory standard security has been registered in the Land Register of Scotland, or
  - (c) in Northern Ireland, a satisfactory charge has been entered in the register of titles kept under section 10 of the Land Registration Act (Northern Ireland) 1970.
- (7) A charge or security is satisfactory for the purposes of condition D if it—
  - (a) is a first charge on, or a security ranking first granted over, the interest transferred to Q,
  - (b) is in favour of the Commissioners for Her Majesty's Revenue and Customs, and
  - (c) is for the amount mentioned in sub-paragraph (8).
- (8) That amount is the total of—
  - (a) the amount of stamp duty land tax which would (apart from paragraph 6(2)) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and
  - (b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.
- (9) Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.
- (10) Condition F is that Q holds the interest in the land as a bond asset until the termination of the bond.

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- (11) Condition G is that—
- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and
  - (b) the second transaction is effected not more than 10 years after the first transaction.
- (12) The Treasury may by regulations amend sub-paragraph (11)(b) by substituting for the period mentioned there such other period as may be specified.

#### STAMP DUTY LAND TAX

##### *Relief from stamp duty land tax: first transaction*

- 6 (1) This paragraph applies if—
- (a) the first transaction relates to an interest in land in the United Kingdom, and
  - (b) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of that transaction.
- (2) Where this paragraph applies the first transaction is exempt from charge to stamp duty land tax.
- (3) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (4) This paragraph is also subject to paragraph 20.
- 7 (1) This paragraph applies if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
  - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or
  - (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met.
- (2) This paragraph also applies if condition D is not met.
- (3) The relief provided by paragraph 6(2) is withdrawn and stamp duty land tax is chargeable on the first transaction in accordance with this paragraph.
- (4) The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for relief under paragraph 6(2)) if the chargeable consideration for that transaction had been the market value of the interest at the time of that transaction.
- (5) Interest is due and payable on the amount of that tax as from the end of the period of 30 days after the effective date of that transaction until the tax is paid.
- (6) Q must deliver a further land transaction return before the end of the period of 30 days after the date on which this paragraph first applies.
- (7) The return must include a self-assessment of the amount of tax chargeable.
- (8) Tax payable must be paid not later than the filing date for the further return.

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- (9) Schedule 10 to FA 2003 (returns, assessments and other matters) applies to a return under this paragraph as it applies to a return under section 76 of that Act (general requirement to deliver land transaction return), with the following modifications—
- (a) references to the transaction to which the return relates are to the event by virtue of which this paragraph applies, and
  - (b) references to the effective date of the transaction are to the date on which that event occurs.

*Relief from stamp duty land tax: second transaction*

- 8 (1) The second transaction is exempt from charge to stamp duty land tax if—
- (a) each of conditions A to G is met, and
  - (b) the provisions of Part 4 of FA 2003 relating to the first transaction are complied with.
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

*Discharge of charge when conditions for relief met*

- 9 If, after the effective date of the second transaction, Q provides HMRC with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the charge or security registered in pursuance of condition D.

*TAXATION OF CAPITAL GAINS*

*Relief from taxation of capital gains: first transaction*

- 10 (1) This paragraph applies if each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction.
- (2) That transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by Q or a disposal by P.
- (3) If condition C is met by virtue of Q and P having entered into a leaseback agreement, the granting of the lease or sub-lease is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q.
- (4) Sub-paragraphs (2) and (3) are subject to paragraph 11 (treatment of transactions where any of conditions D to G is not met).
- (5) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (6) This paragraph is also subject to paragraph 20.
- 11 (1) This paragraph applies if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
  - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or

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- (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met.
- (2) This paragraph also applies where (in the case of an interest in land in the United Kingdom) condition D is not met.
- (3) Where this paragraph applies, paragraph 10(2) and (3) (disregard of transactions for purposes of TCGA 1992) do not apply.
- (4) Where, by virtue of sub-paragraph (3), any chargeable gain or loss is treated as accruing to a person, that gain or loss is to be treated as accruing—
  - (a) in the case mentioned in sub-paragraph (1)(a), immediately before the transfer from Q to P,
  - (b) in any case mentioned in paragraph (b) or (c) of sub-paragraph (1), at the time mentioned in that paragraph, and
  - (c) in the case mentioned in sub-paragraph (2), at the end of the period mentioned in paragraph 5(6).

*Relief from taxation of capital gains: second transaction*

- 12 (1) The second transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q if—
  - (a) each of conditions A to C and E to G is met, and
  - (b) in the case of an interest in land in the United Kingdom, condition D is met.
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

*CAPITAL ALLOWANCES*

*Introductory*

- 13 (1) Paragraphs 14 to 17 make provision about the treatment, for the purposes of CAA 2001, of transactions relating to land in connection with an alternative finance investment bond.
- (2) Any expression which is used in any of paragraphs 14 to 17 and in CAA 2001 has the meaning which it has in that Act.

*Treatment for purposes of capital allowances*

- 14 (1) This paragraph applies to an asset if—
  - (a) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction, and
  - (b) the asset falls within sub-paragraph (2).
- (2) An asset falls within this sub-paragraph if it is part of the subject matter of the first transaction and constitutes—
  - (a) plant or machinery, or
  - (b) an industrial building (or part of an industrial building).
- (3) For the purposes of CAA 2001—



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- (a) expenditure incurred by Q in acquiring the asset by virtue of the first transaction is not to be regarded as capital expenditure, and
  - (b) Q is not to be regarded as becoming, and P is not to be regarded as ceasing to be, the owner of the asset by virtue of that transaction.
- (4) Sub-paragraph (3) applies in relation to the transactions mentioned in sub-paragraph (5) as it applies in relation to the first transaction (but reading the references to Q as references to P and the reference to P as a reference to Q).
- (5) The transactions are—
- (a) any leaseback agreement entered into by Q and P in order that condition C is met, and
  - (b) the second transaction.
- (6) This paragraph is subject to paragraphs 15 to 17.

*Loss or destruction of asset*

- 15 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset—
- (a) is part of the subject matter of the first transaction, and
  - (b) constitutes plant or machinery.
- (3) The second condition is that, at any time when the asset is held as a bond asset, one of the following events occurs—
- (a) the person with possession of the asset loses possession of it in circumstances where it is reasonable to assume that the loss is permanent, or
  - (b) the asset ceases to exist as such (as a result of destruction, dismantling or otherwise).
- (4) That event is to be treated as a disposal event (in relation to P) occurring in the chargeable period in which that event occurs.
- (5) For the purposes of sub-paragraph (4), the disposal value that P is required to bring into account is—
- (a) where the case falls within item 3 or 4 of the Table in section 61(2) of CAA 2001 and the amount received by P as mentioned in that item is other than zero, that amount, and
  - (b) in any other case, the market value of the asset at the time of the event.

*Q retaining asset when no longer held for purposes of bond*

- 16 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes—
- (a) plant or machinery, or
  - (b) an industrial building (or part of an industrial building).
- (3) The second condition is that Q—
- (a) ceases to hold the asset as a bond asset (whether at the end of the bond term or at any other time), but

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- (b) does not transfer the asset to P or any other person.
- (4) At the time that Q ceases to hold the asset as a bond asset, Q is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset.
- (5) Accordingly, Q's ceasing to hold the asset as a bond asset is to be treated—
  - (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the cessation takes place, and
  - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the cessation takes place.
- (6) For the purposes of sub-paragraph (5)—
  - (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer, and
  - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer.

*Q transferring asset to third person*

- 17 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes—
- (a) plant or machinery, or
  - (b) an industrial building (or part of an industrial building).
- (3) The second condition is that Q transfers the asset to any person other than P.
- (4) At the time that Q transfers the asset, that other person is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset.
- (5) Accordingly, the transfer is to be treated—
- (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the transfer takes place, and
  - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the transfer takes place.
- (6) For the purposes of sub-paragraph (5)—
- (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer, and
  - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer.

*SUPPLEMENTARY*

*Substitution of asset*

- 18 (1) This paragraph applies if—

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- (a) conditions A to C and G are met in relation to an interest in land (“the original land”),
  - (b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,
  - (c) P and Q enter into further arrangements falling within paragraph 5(2) relating to an interest in other land (“the replacement land”), and
  - (d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
- (2) Paragraphs 6 to 17 apply—
- (a) in relation to the original land with the modification set out in sub-paragraph (3), and
  - (b) in relation to the replacement land with the modifications set out in sub-paragraph (4).
- (3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.
- (4) In relation to the replacement land—
- (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
  - (b) condition G applies as if the reference in paragraph 5(11)(b) to the first transaction were a reference to the first transaction relating to the original land.
- (5) If the replacement land is in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when—
- (a) Q provides HMRC with the prescribed evidence that condition G is met in relation to the original land, and
  - (b) condition D is met in relation to the replacement land.
- (6) If the replacement land is not in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when Q provides HMRC with the prescribed evidence that—
- (a) condition G is met in relation to the original land, and
  - (b) each of conditions A to C is met in relation to the replacement land.
- (7) This paragraph also applies where the replacement land is replaced by further replacement land; and in that event—
- (a) the references to the original land (except those in sub-paragraph (4)) are to be read as references to the replacement land, and
  - (b) the references to the replacement land are to be read as references to the further replacement land.

*HMRC to notify Registrar of discharge of charge*

- 19 (1) Where a charge or security is discharged in accordance with paragraph 9 or 18(5) or (6), HMRC must—

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- (a) in the case of a charge on land in England and Wales, notify the Chief Land Register of the discharge in accordance with land registration rules (within the meaning of the Land Registration Act 2002),
  - (b) in the case of a security granted over land in Scotland, register the discharge in the Land Register of Scotland, and
  - (c) in the case of a charge on land in Northern Ireland, notify the Registrar of Titles of the discharge.
- (2) HMRC must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.
- Relief not available where bond-holder acquires control of underlying asset*
- 20 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- (3) In accordance with sub-paragraph (1), in the case of the reliefs provided by paragraphs 6 and 10—
- (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraphs 6 and 10 do not apply, and
  - (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, paragraphs 7 and 11 apply.
- 21 (1) But paragraph 20 does not prevent the reliefs being available in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph—
- “connected” is to be read in accordance with section 839 of ICTA, and

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“underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

*Relief not available if purpose of arrangements is improper*

- 22 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 5(2) —
- (a) are not effected for genuine commercial reasons, or
  - (b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.
- (2) In sub-paragraph (1) “tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty land tax.

*Regulations*

- 23 (1) Regulations under any paragraph of this Schedule—
- (a) may make provision generally or only for specified purposes, or different provision for different purposes, and
  - (b) may make consequential, supplementary or incidental provision (including amendments of any enactment).
- (2) Regulations under any paragraph of this Schedule are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under any paragraph of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

**PART 4**

SUPPLEMENTARY

*Consequential amendments of FA 2003*

24 FA 2003 is amended as follows.

25 After section 73B insert—

**“73C Alternative finance investment bonds**

Schedule 61 to the Finance Act 2009 makes provision for relief from charge in the case of arrangements falling within section 48A of the Finance Act 2005 (alternative finance investment bonds).”

26 In section 86 (payment of tax), after subsection (5) insert—

“(5A) The above provisions are also subject to paragraph 7 of Schedule 61 to the Finance Act 2009 (payment of tax where land ceases to qualify for relief in respect of alternative finance investment bonds).”

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#### *Consequential amendments of FA 2005*

- 27 (1) Section 48B of FA 2005 (alternative finance investment bond: effects) is amended as follows.
- (2) In subsections (2) and (3), for “any tax other than the Corporation Tax Acts” substitute “ income tax or capital gains tax ”.
- (3) After subsection (8) insert—
- “(9) Schedule 61 to the Finance Act 2009 makes—
- (a) further provision about the treatment for the purposes of TCGA 1992 of arrangements falling within section 48A, and
  - (b) provision about their treatment for the purposes of stamp duty land tax and capital allowances.”

#### *Consequential amendment of CTA 2009*

- 28 In CTA 2009, in Schedule 1, omit paragraph 651(a).

#### *Commencement*

- 29 (1) The following provisions of this Schedule come into force on the day on which this Act is passed—
- (a) Part 2,
  - (b) Part 1 so far as relating to that Part, and
  - (c) paragraphs 24, 25, 27 and 28.
- (2) The following provisions of this Schedule have effect where the effective date of the first transaction (within the meaning given by paragraph 5(2)) is on or after the day on which this Act is passed—
- (a) Part 3,
  - (b) Part 1 so far as relating to that Part, and
  - (c) paragraph 26.

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