



# Finance Act 2016

## 2016 CHAPTER 24

### PART 1

#### INCOME TAX

##### *Charge and principal rates etc*

#### **1 Income tax charge and rates for 2016-17**

- (1) Income tax is charged for the tax year 2016-17.
- (2) For that tax year—
  - (a) the basic rate is 20%,
  - (b) the higher rate is 40%, and
  - (c) the additional rate is 45%.

#### **2 Basic rate limit for 2017-18**

- (1) In section 4(1)(b) of FA 2015 (basic rate limit for 2017-18) for “£32,400” substitute “£33,500”.
- (2) Accordingly, omit section 6(b) of F(No.2)A 2015 (basic rate limit for 2017-18).

#### **3 Personal allowance for 2017-18**

- (1) In section 5(1)(b) of FA 2015 (personal allowance for 2017-18) for “£11,200” substitute “£11,500”.
- (2) Accordingly, omit section 5(b) of F(No.2)A 2015 (personal allowance for 2017-18).

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### Rate structure

#### 4 Savings allowance, and savings nil rate etc

- (1) ITA 2007 is amended in accordance with subsections (2) to (12).
- (2) In section 6(3)(a) (other rates: savings), after “starting rate for savings” insert “ and savings nil rate ”.
- (3) In section 7 (starting rate for savings)—
  - (a) the existing text becomes subsection (1),
  - (b) after that subsection insert—
 

“(2) The savings nil rate is 0%.”, and
  - (c) in the heading, after “starting rate for savings” insert “ and savings nil rate ”.
- (4) In section 10(4) (provisions displacing charge at basic, higher and additional rates), before the entry relating to section 13 insert— “ section 12A (savings income charged at the savings nil rate), ”.
- (5) After section 12 insert—

#### “12A Savings income charged at the savings nil rate

- (1) This section applies in relation to an individual if—
  - (a) the amount of the individual's Step 3 income is greater than £L, where £L is the amount of the starting rate limit for savings, and
  - (b) when the individual's Step 3 income is split into two parts—
    - (i) one (“the individual's income up to the starting rate for savings”) consisting of the lowest £L of the individual's Step 3 income, and
    - (ii) the other (“the individual's income above the starting rate limit for savings”) consisting of the rest of the individual's Step 3 income,

some or all of the individual's income above the starting rate limit for savings consists of savings income (whether or not some or all of the individual's income up to the starting rate limit for savings consists of savings income).
- (2) In this section—
 

£A is the amount of the individual's savings allowance (see section 12B),

“the excess” is so much of the individual's income above the starting rate limit for savings as consists of savings income, and

£X is the amount of the excess.
- (3) If £X is less than or equal to £A, income tax is charged at the savings nil rate (rather than the basic, higher or additional rate) on the excess.
- (4) If £X is more than £A, income tax is charged at the savings nil rate (rather than the basic, higher or additional rate) on the lowest £A of the excess.
- (5) Subsections (3) and (4) are subject to any provisions of the Income Tax Acts (apart from section 10) which provide for income to be charged at different rates of income tax in some circumstances.

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- (6) Section 16 has effect for determining the extent to which the individual's income above the starting rate limit for savings consists of savings income.
- (7) For the purposes of this section, an individual's "Step 3 income" is the individual's net income less allowances deducted at Step 3 of the calculation in section 23.

### **12B Individual's entitlement to a savings allowance**

- (1) Subsections (2) to (4) determine the amount of an individual's savings allowance for a tax year.
- (2) If any of the individual's income for the year is additional-rate income, the individual's savings allowance for the year is nil.
- (3) If—
  - (a) any of the individual's income for the year is higher-rate income, and
  - (b) none of the individual's income for the year is additional-rate income,the individual's savings allowance for the year is £500.
- (4) If none of the individual's income for the year is higher-rate income, the individual's savings allowance for the year is £1,000.
- (5) The Treasury may by regulations substitute a different amount for the amount for the time being specified in subsection (2), (3) or (4); and regulations under this subsection that have effect for a tax year may be made at any time before the end of that tax year.
- (6) If regulations under subsection (5) reduce any amount, the regulations may not be made unless a draft of the instrument containing them (whether alone or together with regulations under subsection (5) which increase any amount) has been laid before, and approved by a resolution of, the House of Commons.
- (7) Section 1014(4) (negative procedure) does not apply to regulations under subsection (5) which increase any amount if—
  - (a) the instrument containing them also contains regulations under subsection (5) which reduce any amount, and
  - (b) a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (8) For the purposes of this section—
  - (a) each of the following is "additional-rate income"—
    - (i) income on which income tax is charged at the additional rate or dividend additional rate,
    - (ii) income on which income tax would be charged at the additional rate but for section 12A (income charged at savings nil rate),
    - (iii) income on which income tax would be charged at the dividend additional rate but for section 13A (income charged at dividend nil rate), and
    - (iv) income of an individual who is a Scottish taxpayer or Welsh taxpayer which would, if the individual were not a Scottish

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- taxpayer or Welsh taxpayer (as the case may be), be income on which income tax is charged at the additional rate, and
- (b) each of the following is “higher-rate income”—
- (i) income on which income tax is charged at the higher rate or dividend upper rate,
  - (ii) income on which income tax would be charged at the higher rate but for section 12A (income charged at savings nil rate),
  - (iii) income on which income tax would be charged at the dividend upper rate but for section 13A (income charged at dividend nil rate), and
  - (iv) income of an individual who is a Scottish taxpayer or Welsh taxpayer which would, if the individual were not a Scottish taxpayer or Welsh taxpayer (as the case may be), be income on which income tax is charged at the higher rate.”
- (6) In section 16(1) (purposes of rules about highest part of income), before the “and” at the end of paragraph (a) insert—
- “(aa) the extent to which a person's income above the starting rate limit for savings consists of savings income,”.
- (7) In section 17 (repayment where tax paid at basic rate instead of starting rate for savings)—
- (a) after subsection (1) insert—
- “(1A) This section also applies if income tax at a rate greater than the savings nil rate has been paid on income on which income tax is chargeable at the savings nil rate.”, and
- (b) in the heading—
- (i) for “basic” substitute “ greater ”, and
  - (ii) after “savings” insert “ or savings nil rate ”.
- (8) In sections 55B(2)(b) and 55C(1)(c) (individual liable to tax only at certain rates), after “dividend ordinary rate” insert “, the savings nil rate ”.
- (9) In section 745(1) (transfer of assets abroad: same rate of tax not to be charged twice), after “the starting rate for savings” insert “ when that rate is more than 0%, ”.
- (10) In section 828B(5) (individual liable to tax only at certain rates), after “basic rate” insert “, the savings nil rate ”.
- (11) In section 989 (definitions for the purposes of the Income Tax Acts)—
- (a) at the appropriate places insert—
- ““savings allowance” has the meaning given by section 12B,”, and
- ““savings nil rate” means the rate of income tax specified in section 7(2),”, and
- (b) in the entry for “starting rate of savings”, for “has the meaning given by section 7” substitute “ means the rate of income tax specified in section 7(1) ”.
- (12) In Schedule 4 (index of defined expressions), at the appropriate places insert—

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“savings allowance

section 12B”, and

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“savings nil rate

section 7”

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- (13) In section 669(3) of ITTOIA 2005 (preventing charge to both income and inheritance tax: meaning of “extra liability”), for paragraphs (a) and (b) substitute—
- “(a) income charged at the additional rate or the higher rate were charged at the basic rate, and
  - (b) income charged at the dividend additional rate or the dividend upper rate were charged at the dividend ordinary rate.”
- (14) In consequence of the amendment made by subsection (13)—
- (a) in Schedule 1 to ITA 2007 omit paragraph 561,
  - (b) in Schedule 1 to FA 2008 omit paragraph 59, and
  - (c) in Schedule 2 to FA 2009 omit paragraph 21.
- (15) In section 7(6) of TMA 1970 (cases where person not required to give notice of being chargeable to income tax), after “dividend ordinary rate” insert “, the savings nil rate”.
- (16) In section 91(3)(c) of TMA 1970 (interest adjustments where reliefs given: when to ignore relief from higher rates on income paid subject to deduction of tax) after “basic rate” insert “, the savings nil rate”.
- (17) Subject to subsection (18), the amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.
- (18) The amendments in section 669 of ITTOIA 2005, and the repeals made by subsection (14), have effect where the tax year mentioned in section 669(1)(b) of ITTOIA 2005 is the tax year 2016-17 or a later tax year.
- (19) The Treasury may, by regulations made by statutory instrument, make such provision amending, repealing or revoking any provision made by or under the Taxes Acts as the Treasury considers appropriate in consequence of the amendments made by this section; and regulations under this subsection that have effect for the tax year 2016-17 may be made at any time before the end of that tax year.
- (20) In subsection (19) “the Taxes Acts” means—
- (a) the Tax Acts,
  - (b) TMA 1970, and
  - (c) TCGA 1992 and all other enactments relating to capital gains tax.
- (21) A statutory instrument containing regulations under subsection (19) is subject to annulment in pursuance of a resolution of the House of Commons.

## **5 Rates of tax on dividend income, and abolition of dividend tax credits etc**

- (1) ITA 2007 is amended in accordance with subsections (2) to (8).
- (2) In section 6(3)(b) (other rates: dividends), before “dividend ordinary rate,” insert “dividend nil rate, ”.
- (3) In section 8 (dividend ordinary, upper and additional rates)—
- (a) in the heading, after “The” insert “dividend nil rate, ”,
  - (b) before subsection (1) insert—

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“(A1) The dividend nil rate is 0%.”,

(c) in subsection (1) (dividend ordinary rate), for “10%” substitute “ 7.5% ”, and

(d) in subsection (3) (dividend additional rate), for “37.5%” substitute “ 38.1% ”.

(4) In section 9(2) (dividend trust rate), for “37.5%” substitute “ 38.1% ”.

(5) After section 13 insert—

### “13A Income charged at the dividend nil rate

(1) Subsection (2) applies if, ignoring this section, at least some of an individual's income would be charged to income tax at the dividend ordinary rate, the dividend upper rate or the dividend additional rate.

(2) Income tax is charged at the dividend nil rate (rather than the dividend ordinary rate, dividend upper rate or dividend additional rate) on one or more amounts of the individual's income as follows—

*Step 1* Identify the amount (“D”) of the individual's income which would, ignoring this section, be charged at the dividend ordinary rate.*Rule 1A:* If D is more than £5,000, the first £5,000 of D is charged at the dividend nil rate (rather than the dividend ordinary rate), and is the only amount charged at the dividend nil rate.*Rule 1B:* If D is equal to £5,000, D is charged at the dividend nil rate (rather than the dividend ordinary rate), and is the only amount charged at the dividend nil rate.*Rule 1C:* If D is less than £5,000 but more than nil, D is charged at the dividend nil rate (rather than the dividend ordinary rate).

*Step 2* If D is less than £5,000, identify the amount (“U”) of the individual's income which would, ignoring this section, be charged at the dividend upper rate.*Rule 2A:* If the total of D and U is more than £5,000—

- (a) the first £M of U is charged at the dividend nil rate (rather than the dividend upper rate), where £M is the difference between £5,000 and D, and
- (b) the amounts charged under this Rule and Rule 1C are the only amounts charged at the dividend nil rate.

*Rule 2B:* If the total of D and U is equal to £5,000, U is charged at the dividend nil rate (rather than the dividend upper rate), and the amounts charged under this Rule and Rule 1C are the only amounts charged at the dividend nil rate.*Rule 2C:* If the total of D and U is less than £5,000 but more than nil, U is charged at the dividend nil rate (rather than the dividend upper rate).

*Step 3* If the total of D and U is less than £5,000, identify the amount (“A”) of the individual's income which would, ignoring this section, be charged at the dividend additional rate.*Rule 3A:* If the total of D, U and A is more than £5,000, the first £X of A is charged at the dividend nil rate (rather than the dividend additional rate), where £X is the difference between—

£5,000, and  
the total of D and U,

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and the amounts charged under this Rule, and Rules 1C and 2C, are the amounts charged at the dividend nil rate. *Rule 3B:* If the total of D, U and A is less than or equal to £5,000, A is charged at the dividend nil rate (rather than the dividend additional rate), and the amounts charged under this Rule, and Rules 1C and 2C, are the amounts charged at the dividend nil rate.”

(6) In section 55B(2) (transferable allowance: conditions for entitlement to tax reduction)

- (a) in paragraph (b) (individual liable to tax only at certain rates), after “the basic rate,” insert “ the dividend nil rate, ”, and
- (b) after paragraph (b) insert—
  - “(ba) if for the tax year the individual is liable to tax at the dividend nil rate, the individual would for that year neither be liable to tax at the dividend upper rate, nor be liable to tax at the dividend additional rate, if section 13A (dividend nil rate) were omitted.”.

(7) In section 55C(1) (transferable allowance: conditions for entitlement to elect for reduced personal allowance)—

- (a) in paragraph (c) (individual would be liable to tax only at certain rates), after “the basic rate,” insert “ the dividend nil rate, ”, and
- (b) before the “and” at the end of paragraph (c) insert—
  - “(ca) where on that assumption the individual would for the tax year be liable to tax at the dividend nil rate, the individual on that assumption would for that year neither be liable to tax at the dividend upper rate, nor be liable to tax at the dividend additional rate, if section 13A (dividend nil rate) were omitted.”.

(8) In section 989 (definitions for the purposes of the Income Tax Acts), after the entry for “dividend income” insert—

““dividend nil rate” means the rate of income tax specified in section 8(A1),”.

(9) In section 7 of TMA 1970 (duty to notify HMRC of liability to tax)—

- (a) in subsection (6) (exception for net payments etc)—
  - (i) after paragraph (a) insert “ or ”,
  - (ii) at the end of paragraph (b), for “; or” substitute a comma,
  - (iii) omit paragraph (c), and
  - (iv) in the words after paragraph (c), after “the basic rate” insert “ , the dividend nil rate ”, and
- (b) after subsection (6) insert—
  - “(6A) A source of income falls within this subsection in relation to any person and any year of assessment if for that year—
    - (a) all income from the source is dividend income (see section 19 of ITA 2007), and
    - (b) the person—
      - (i) is UK-resident,
      - (ii) is not liable to tax at the dividend ordinary rate,

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- (iii) is not liable to tax at the dividend upper rate,
- (iv) is not liable to tax at the dividend additional rate, and
- (v) is not charged to tax under section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis) on any dividend income.”

- (10) The amendments made by the preceding provisions of this section have effect for the tax year 2016-17 and subsequent tax years.
- (11) Schedule 1 contains provision for, and connected with, the abolition of dividend tax credits etc.

## 6 Structure of income tax rates

- (1) ITA 2007 is amended in accordance with subsections (2) to (22).

- (2) Before section 10 insert—

### “9A Overview of sections 10 to 15

The general effect of sections 10 to 15 is outlined in the following table—

Note: the table does not address the effect of some exceptions referred to in sections 10 to 15.”

- (3) Before section 7 insert—

### “6C The default basic, higher and additional rates

The default basic rate, default higher rate and default additional rate for a tax year are the rates determined as such by Parliament for the tax year.”

- (4) After section 7 insert—

### “7A The savings basic, higher and additional rates

The savings basic rate, savings higher rate and savings additional rate for a tax year are the rates determined as such by Parliament for the tax year.”

- (5) In section 6(3) (other rates)—

- (a) before paragraph (a) insert—

“(zc) section 6C (default basic, higher and additional rates),” and

- (b) after paragraph (a) insert—

“(aa) section 7A (savings basic, higher and additional rates),”.

- (6) In section 10(2) (income charged at basic rate) omit the words after “at the basic rate”.

- (7) In section 10(4) (provisions displacing charge at basic, higher and additional rates), before the entry (inserted by this Act) relating to section 12A insert—

“section 11C (income charged at the default basic, higher and additional rates: non-UK resident individuals),

section 11D (savings income charged at the savings basic, higher and additional rates: individuals),



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section 12 (savings income charged at the starting rate for savings),”.

- (8) In section 11 (income charged at the basic rate: other persons)—
  - (a) in the heading, for “basic rate: other persons” substitute “ default basic rate: non-individuals ”, and
  - (b) in subsection (1), before “basic” insert “ default ”.
- (9) After section 11B insert—

**“11C Income charged at the default basic, higher and additional rates:  
non-UK resident individuals**

- (1) Income tax on a non-UK resident individual's income up to the basic rate limit is charged at the default basic rate.
- (2) Income tax is charged at the default higher rate on a non-UK resident individual's income above the basic rate limit and up to the higher rate limit.
- (3) Income tax is charged at the default additional rate on a non-UK resident individual's income above the higher rate limit.
- (4) Subsections (1) to (3) are subject to—
  - section 11D (savings income charged at the savings basic, higher and additional rates),
  - section 12 (savings income charged at the starting rate for savings),
  - section 12A (savings income charged at the savings nil rate),
  - section 13 (income charged at the dividend ordinary, upper and additional rates: individuals), and
  - any other provisions of the Income Tax Acts (apart from section 10) which provide for income to be charged at different rates of income tax in some circumstances.

**11D Income charged at the savings basic, higher and additional rates**

- (1) Income tax is charged at the savings basic rate on an individual's income which—
  - (a) is saving income, and
  - (b) would otherwise be charged at the basic rate or the default basic rate.
- (2) Income tax is charged at the savings higher rate on an individual's income which—
  - (a) is savings income, and
  - (b) would otherwise be charged at the higher rate or the default higher rate.
- (3) Income tax is charged at the savings additional rate on an individual's income which—
  - (a) is savings income, and
  - (b) would otherwise be charged at the additional rate or the default additional rate.
- (4) Subsections (1) to (3)—

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- (a) have effect after sections 12 and 12A have been applied (so that any reference in subsections (1) to (3) to income which would otherwise be charged at a particular rate does not include income charged at the starting rate for savings or at the savings nil rate), and
  - (b) are subject to any other provisions of the Income Tax Acts (apart from sections 10 and 11C) which provide for income to be charged at different rates of income tax in some circumstances.
- (5) Section 16 has effect for determining the extent to which an individual's savings income above the starting rate limit for savings would otherwise be charged at the basic, higher or additional rate or the default basic, default higher or default additional rate.
- (6) In relation to an individual who is a Scottish taxpayer, references in this section to income which would otherwise be charged at a particular rate are to be read as references to income that would, if the individual were not a Scottish taxpayer (but were UK resident), be charged at that rate (and subsection (5) is to be read accordingly)."
- (10) In section 12(1) (income charged at the starting rate for savings)—
  - (a) omit "(rather than the basic rate)", and
  - (b) for "as is savings income" substitute "as—
    - (a) is savings income, and
    - (b) would otherwise be charged at the basic rate or the default basic rate".
- (11) In section 12A (inserted by this Act)—
  - (a) in each of subsections (3) and (4), after "rather than the basic, higher or additional rate" insert "or the default basic, default higher or default additional rate ", and
  - (b) in subsection (5), for "section 10" substitute " sections 10 and 11C ".
- (12) In section 12B (inserted by this Act), in subsection (8) (income charged at savings nil-rate: meaning of "additional-rate income" and "higher-rate income")—
  - (a) in paragraph (a)(i), after "at the additional rate" insert " , default additional rate ",
  - (b) in paragraph (a)(ii), after "additional rate" insert " , or default additional rate, ",
  - (c) in paragraph (a)(iv), after "additional rate" insert " or default additional rate ",
  - (d) in paragraph (b)(i), after "at the higher rate" insert " , default higher rate ",
  - (e) in paragraph (b)(ii), after "higher rate" insert " , or default higher rate, ", and
  - (f) in paragraph (b)(iv), after "higher rate" insert " or default higher rate ".
- (13) In section 16(1) (purposes of rules about highest part of income), before the "and" at the end of the paragraph (aa) (inserted by this Act) insert—
  - "(ab) the rate at which income tax would be charged on a person's savings income above the starting rate limit for savings apart from sections 11D and 12A,".
- (14) In section 17(1) (repayment where tax paid at basic rate instead of starting rate for savings), for "at the basic rate" substitute " at a rate greater than the starting rate for savings ".

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(15) In section 55B (entitlement to transferable tax allowances for married couples and civil partners)—

- (a) in subsection (2)(b) as amended by section 5 of this Act, after “other than the basic rate,” insert “ the default basic rate, the savings basic rate, ”, and
- (b) in subsection (3), after “is the basic rate” insert “ or default basic rate ”.

(16) In section 55C(1)(c) (election to reduce personal allowance conditional on not becoming subject to higher rates) as amended by section 5 of this Act, after “other than the basic rate,” insert “ the default basic rate, the savings basic rate, ”.

<sup>F1</sup>(17) .....

<sup>F1</sup>(18) .....

<sup>F1</sup>(19) .....

(20) In section 828B(5) (exemption for non-domiciled UK residents conditional on not being subject to higher rates) as amended by section 4 of this Act, after “other than the basic rate” insert “ , the savings basic rate ”.

(21) In section 989 (definitions for the purposes of the Income Tax Acts), at the appropriate places insert—

““default additional rate” means the rate of income tax of that name determined pursuant to section 6C,

“default basic rate” means the rate of income tax of that name determined pursuant to section 6C,

“default higher rate” means the rate of income tax of that name determined pursuant to section 6C,”and—

““savings additional rate” means the rate of income tax of that name determined pursuant to section 7A,”and—

““savings basic rate” means the rate of income tax of that name determined pursuant to section 7A,

“savings higher rate” means the rate of income tax of that name determined pursuant to section 7A,”.

(22) In Schedule 4 (index of defined expressions), at the appropriate places insert—

“default additional rate	section 6C (as applied by section 989)”
“default basic rate	section 6C (as applied by section 989)”
“default higher rate	section 6C (as applied by section 989)”
“savings additional rate	section 7A (as applied by section 989)”
“savings basic rate	section 7A (as applied by section 989)”

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“savings higher rate

section 7A (as applied by section 989)”

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- (23) In sections 4(4) and (5) and 4BA(1) of TCGA 1992 (rate of capital gains tax depends on individual's liability to higher rates of income tax), after “at the higher rate” insert “, the default higher rate, the savings higher rate”.
- (24) Subject to any provision made by virtue of subsection (25)(b), the amendments made by this section come into force on the day appointed by the Treasury under section 13(14) of the Scotland Act 2016 and have effect—
- (a) for the tax year appointed by the Treasury under section 13(15) of the Scotland Act 2016, and
  - (b) for subsequent tax years.
- (25) The Treasury may by regulations make—
- (a) such consequential provision as they consider appropriate in connection with any preceding provision of this section;
  - (b) such transitional or saving provision as they consider appropriate in connection with the coming into force of any provision of the preceding subsections of this section.
- (26) Regulations under this section may amend, repeal or revoke an enactment, whenever passed or made (including this Act).
- (27) Regulations under this section must be made by statutory instrument.
- (28) A statutory instrument containing regulations under this section which includes provision amending or repealing a provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (29) Any other statutory instrument containing regulations under this section, if made without a draft having been approved by a resolution of the House of Commons, is subject to annulment in pursuance of a resolution of the House of Commons.
- (30) In subsection (26) “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

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#### Subordinate Legislation Made

- P1** S. 6(24): 30.11.2016 appointed for the purposes of the amendments made by this section and those amendments have effect in relation to tax year 2017-18 and subsequent tax years by virtue of [S.I. 2016/1161](#), [regs. 2, 3](#)
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#### Textual Amendments

- F1** S. 6(17)-(19) omitted (6.4.2018) by virtue of [The Scottish Rates of Income Tax \(Consequential Amendments\) Order 2018 \(S.I. 2018/459\)](#), arts. 1(2), [7\(2\)](#)

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*Employment income: taxable benefits*

**7 Taxable benefits: application of Chapters 5 to 7 of ITEPA 2003**

(1) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings) is amended as follows.

(2) In section 97 (living accommodation to which Chapter 5 applies), after subsection (1) insert—

“(1A) Where this Chapter applies to any living accommodation—

- (a) the living accommodation is a benefit for the purposes of this Chapter (and accordingly it is immaterial whether the terms on which it is provided to any of those persons constitute a fair bargain), and
- (b) sections 102 to 108 provide for the cash equivalent of the benefit of the living accommodation to be treated as earnings.”

(3) In section 109 (priority of Chapter 5 over Chapter 1), after subsection (3) insert—

“(4) In a case where the cash equivalent of the benefit of the living accommodation is nil—

- (a) subsections (2) and (3) do not apply, and
- (b) the full amount mentioned in subsection (1)(b) constitutes earnings from the employment for the year under Chapter 1.”

(4) In section 114 (cars, vans and related benefits to which Chapter 6 applies), after subsection (1) insert—

“(1A) Where this Chapter applies to a car or van, the car or van is a benefit for the purposes of this Chapter (and accordingly it is immaterial whether the terms on which it is made available to the employee or member constitute a fair bargain).”

(5) For section 117 substitute—

**“117 Meaning of car or van made available by reason of employment**

(1) For the purposes of this Chapter a car or van made available by an employer to an employee or member of an employee's family or household is to be regarded as made available by reason of the employment unless subsection (2) or (3) excludes the application of this subsection.

(2) Subsection (1) does not apply where—

- (a) the employer is an individual, and
- (b) the car or van in question is made available in the normal course of the employer's domestic, family or personal relationships.

(3) Subsection (1) does not apply where—

- (a) the employer carries on a vehicle hire business under which cars or vans of the same kind are made available to members of the public for hire,
- (b) the car or van in question is hired to the employee or member in the normal course of that business, and

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- (c) in hiring that car or van the employee or member is acting as an ordinary member of the public.”
- (6) In section 120 (benefit of car treated as earnings)—
  - (a) in subsection (2) after “case” insert “ (including a case where the cash equivalent of the benefit of the car is nil) ”, and
  - (b) after subsection (2) insert—
    - “(3) Any reference in this Act to a case where the cash equivalent of the benefit of a car is treated as the employee's earnings for a year by virtue of this section includes a case where the cash equivalent is nil.”
- (7) In section 154 (benefit of van treated as earnings)—
  - (a) the existing text becomes subsection (1) of that section, and
  - (b) after that subsection insert—
    - “(2) In such a case (including a case where the cash equivalent of the benefit of the van is nil) the employee is referred to in this Chapter as being chargeable to tax in respect of the van for that year.
    - (3) Any reference in this Act to a case where the cash equivalent of the benefit of a van is treated as the employee's earnings for a year by virtue of this section includes a case where the cash equivalent is nil.”
- (8) In section 173 (loans to which Chapter 7 applies), after subsection (1) insert—
  - “(1A) Where this Chapter applies to a loan—
    - (a) the loan is a benefit for the purposes of this Chapter (and accordingly it is immaterial whether the terms of the loan constitute a fair bargain), and
    - (b) sections 175 to 183 provide for the cash equivalent of the benefit of the loan (where it is a taxable cheap loan) to be treated as earnings in certain circumstances.”
- (9) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

## **8 Cars: appropriate percentage for 2019-20 and subsequent tax years**

- (1) ITEPA 2003 is amended as follows.
- (2) Section 139 (car with a CO<sub>2</sub> figure: the appropriate percentage) is amended as set out in subsections (3) and (4).
- (3) In subsection (2)—
  - (a) in paragraph (a), for “13%” substitute “ 16% ”,
  - (b) in paragraph (aa), for “16%” substitute “ 19% ”, and
  - (c) in paragraph (b), for “19%” substitute “ 22% ”.
- (4) In subsection (3), for “20%” substitute “ 23% ”.
- (5) Section 140 (car without a CO<sub>2</sub> figure: the appropriate percentage) is amended as set out in subsections (6) and (7).
- (6) In subsection (2), in the Table—

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- (a) for “20%” substitute “ 23% ”, and
- (b) for “31%” substitute “ 34% ”.

(7) In subsection (3)(a), for “13%” (as substituted by section 9(3)) substitute “ 16% ”.

(8) In section 142(2) (car first registered before 1 January 1998: the appropriate percentage), in the Table—

- (a) for “20%” substitute “ 23% ”, and
- (b) for “31%” substitute “ 34% ”.

(9) The amendments made by this section have effect for the tax year 2019-20 and subsequent tax years.

## **9 Cars which cannot emit CO<sub>2</sub>: appropriate percentage for 2017-18 and 2018-19**

(1) In section 140(3)(a) of ITEPA 2003 (car which cannot emit CO<sub>2</sub>: the appropriate percentage), for “7%” substitute “ 9% ”.

(2) The amendment made by subsection (1) has effect for the tax year 2017-18.

(3) In section 140(3)(a) of ITEPA 2003, for “9%” substitute “ 13% ”.

(4) The amendment made by subsection (3) has effect for the tax year 2018-19.

## **10 Diesel cars: appropriate percentage**

(1) In section 24 of FA 2014 (cars: the appropriate percentage), omit the following (“the repealing provisions”)—

- (a) subsection (2),
- (b) subsection (6),
- (c) subsection (10),
- (d) subsection (11), and
- (e) subsection (15).

(2) Any provision of ITEPA 2003 amended or omitted by the repealing provisions has effect for the tax year 2016-17 and subsequent tax years as if the repealing provisions had not been enacted.

## **11 Cash equivalent of benefit of a van**

(1) Section 155 of ITEPA 2003 (cash equivalent of the benefit of a van) is amended as follows.

(2) In subsection (1B)(a), for “2019-20” substitute “ 2021-22 ”.

(3) In subsection (1C), for paragraphs (b) to (e) substitute—

- “(b) 20% for the tax year 2016-17;
- (c) 20% for the tax year 2017-18;
- (d) 40% for the tax year 2018-19;
- (e) 60% for the tax year 2019-20;
- (f) 80% for the tax year 2020-21;
- (g) 90% for the tax year 2021-22.”

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- (4) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

## **12 Tax treatment of payments from sporting testimonials**

Schedule 2 contains provision about the tax treatment of payments from sporting testimonials.

## **13 Exemption for trivial benefits provided by employers**

- (1) ITEPA 2003 is amended as follows.

- (2) After section 323 insert—

### **“323A Trivial benefits provided by employers**

- (1) No liability to income tax arises in respect of a benefit provided by, or on behalf of, an employer to an employee or a member of the employee's family or household if—
  - (a) conditions A to D are met, or
  - (b) in a case where subsection (2) applies, conditions A to E are met.
- (2) This subsection applies where—
  - (a) the employer is a close company, and
  - (b) the employee is—
    - (i) a person who is a director or other office-holder of the employer, or
    - (ii) a member of the family or household of such a person.
- (3) Condition A is that the benefit is not cash or a cash voucher within the meaning of section 75.
- (4) Condition B is that the benefit cost of the benefit does not exceed £50.
- (5) In this section “benefit cost”, in relation to a benefit, means—
  - (a) the cost of providing the benefit, or
  - (b) if the benefit is provided to more than one person and the nature of the benefit or the scale of its provision means it is impracticable to calculate the cost of providing it to each person to whom it is provided, the average cost per person of providing the benefit.
- (6) For the purposes of subsection (5)(b), the average cost per person of providing a benefit is found by dividing the total cost of providing the benefit by the number of persons to whom the benefit is provided.
- (7) Condition C is that the benefit is not provided pursuant to relevant salary sacrifice arrangements or any other contractual obligation.
- (8) “Relevant salary sacrifice arrangements”, in relation to the provision of a benefit to an employee or to a member of an employee's family or household, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive



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an amount of general earnings or specific employment income in return for the provision of the benefit.

(9) Condition D is that the benefit is not provided in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.

(10) Condition E is that—

- (a) the benefit cost of the benefit provided to the employee, or
- (b) in a case where the benefit is provided to a member of the employee's family or household who is not an employee of the employer, the amount of the benefit cost allocated to the employee in accordance with section 323B(4),

does not exceed the employee's available exempt amount (see section 323B).

### **323B Section 323A: calculation of available exempt amount**

(1) The “available exempt amount”, in relation to an employee of an employer, is the amount found by deducting from the annual exempt amount the aggregate of—

- (a) the benefit cost of eligible benefits provided earlier in the tax year by, or on behalf of, the employer to the employee, and
- (b) any amounts allocated to the employee in accordance with subsection (4) in respect of eligible benefits provided earlier in the tax year by, or on behalf of, the employer to a member of the employee's family or household who was not at that time an employee of the employer.

(2) The annual exempt amount is £300.

(3) For the purposes of subsection (1) “eligible benefits” means benefits in respect of which conditions A to D in section 323A are met.

(4) The amount allocated to an employee of an employer in respect of a benefit provided to a person (“P”) who—

- (a) is a member of the employee's family or household, and
- (b) is not an employee of the employer,

is the benefit cost of that benefit divided by the number of persons who meet the condition in subsection (5) and are members of P's family or household.

(5) This condition is met if the person is—

- (a) a director or other office-holder of the employer,
- (b) an employee of the employer who is a member of the family or household of a person within paragraph (a), or
- (c) a former employee of the employer who—
  - (i) was a director or other office-holder at any time when the employer was a close company, or
  - (ii) is a member of the family or household of such a person.

(6) In this section “benefit cost” has the same meaning as in section 323A.

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### **323C Power to amend sections 323A and 323B**

- (1) The Treasury may by regulations amend section 323A so as to alter the conditions which must be met for the exemption conferred by section 323A(1) to apply.
- (2) Regulations under subsection (1) may include any amendment of section 323B that is appropriate in consequence of an amendment made under subsection (1).
- (3) The Treasury must not make regulations under subsection (1) unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.”
- (3) In section 716 (alteration of amounts by Treasury order) in subsection (2), after paragraph (f) insert—
  - “(fa) section 323A(4) (trivial benefits provided by employers: cost of providing benefit),
  - (fb) section 323B(2) (trivial benefits provided by employers: annual exempt amount),”.
- (4) In section 717(4) (negative procedure not to apply to certain statutory instruments) after “other care: meaning of “eligible employee”),” insert “ section 323C(1) (trivial benefits provided by employers), ”.
- (5) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

## **14 Travel expenses of workers providing services through intermediaries**

- (1) In Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee's expenses), after section 339 insert—

### **“339A Travel for necessary attendance: employment intermediaries**

- (1) This section applies where an individual (“the worker”)—
  - (a) personally provides services (which are not excluded services) to another person (“the client”), and
  - (b) the services are provided not under a contract directly between the client or a person connected with the client and the worker but under arrangements involving an employment intermediary.

This is subject to the following provisions of this section.

- (2) Where this section applies, each engagement is for the purposes of sections 338 and 339 to be regarded as a separate employment.
- (3) This section does not apply if it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person.
- (4) Subsection (3) does not apply in relation to an engagement if—
  - (a) Chapter 8 of Part 2 applies in relation to the engagement,

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- (b) the conditions in section 51, 52 or 53 are met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (5) This section does not apply in relation to an engagement if—
  - (a) Chapter 8 of Part 2 does not apply in relation to the engagement merely because the circumstances in section 49(1)(c) are not met,
  - (b) assuming those circumstances were met, the conditions in section 51, 52 or 53 would be met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6) In determining for the purposes of subsection (4) or (5) whether the conditions in section 51, 52 or 53 are or would be met in relation to the employment intermediary—
  - (a) in section 51(1)—
    - (i) disregard “either” in the opening words, and
    - (ii) disregard paragraph (b) (and the preceding or), and
  - (b) read references to the intermediary as references to the employment intermediary.
- (7) Subsection (8) applies if—
  - (a) the client or a relevant person provides the employment intermediary (whether before or after the worker begins to provide the services) with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (3), this section does not or will not apply in relation to the services,
  - (b) that section is taken not to apply in relation to the services, and
  - (c) in consequence, the employment intermediary does not under PAYE regulations deduct and account for an amount that would have been deducted and accounted for under those regulations if this section had been taken to apply in relation to the services.
- (8) For the purpose of recovering the amount referred to in subsection (7)(c) (“the unpaid tax”)—
  - (a) the worker is to be treated as having an employment with the client or relevant person who provided the document, the duties of which consist of the services, and
  - (b) the client or relevant person is under PAYE regulations to account for the unpaid tax as if it arose in respect of earnings from that employment.
- (9) In subsections (7) and (8) “relevant person” means a person, other than the client, the worker or a person connected with the employment intermediary, who—
  - (a) is resident, or has a place of business, in the United Kingdom, and
  - (b) is party to a contract with the employment intermediary or a person connected with the employment intermediary under or in consequence of which—
    - (i) the services are provided, or

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- (ii) the employment intermediary, or a person connected with the employment intermediary, makes payments in respect of the services.
- (10) In determining whether this section applies, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that this section does not to any extent apply.
- (11) In this section—
  - “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not enforceable, and any associated operations;
  - “employment intermediary” means a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour;
  - “engagement” means any such provision of service as is mentioned in subsection (1)(a);
  - “excluded services” means services provided wholly in the client's home;
  - “managed service company” means a company which—
    - (a) is a managed service company within the meaning given by section 61B, or
    - (b) would be such a company disregarding subsection (1)(c) of that section.”
- (2) In section 688A of ITEPA 2003 (managed service companies: recovery from other persons), in subsection (5), in the definition of “managed service company”, after “section 61B” insert “ but for the purposes of section 339A has the meaning given by subsection (11) of that section ”.
- (3) After section 688A of ITEPA 2003 insert—

**“688B Travel expenses of workers providing services through intermediaries: recovery of unpaid tax**

- (1) PAYE regulations may make provision for, or in connection with, the recovery from a director or officer of a company, in such circumstances as may be specified in the regulations, of amounts within any of subsections (2) to (5).
- (2) An amount within this subsection is an amount that the company is to account for in accordance with PAYE regulations by virtue of section 339A(7) to (9) (persons providing fraudulent documents).
- (3) An amount within this subsection is an amount which the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in circumstances where—
  - (a) the company is an employment intermediary,
  - (b) on the basis that section 339A does not apply by virtue of subsection (3) of that section, the company has not deducted and paid the amount, but
  - (c) the company has not been provided by any other person with evidence from which it would be reasonable in all the circumstances to

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conclude that subsection (3) of that section applied (and the mere assertion by a person that the manner in which the worker provided the services was not subject to (or to the right of) supervision, direction or control by any person is not such evidence).

- (4) An amount within this subsection is an amount that the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in a case where subsection (4) of that section applies (services provided under arrangements made by intermediaries).
- (5) An amount within this subsection is any interest or penalty in respect of an amount within any of subsections (2) to (4) for which the company is liable.
- (6) In this section—
  - “company” includes a limited liability partnership;
  - “director” has the meaning given by section 67;
  - “employment intermediary” has the same meaning as in section 339A;
  - “officer”, in relation to a company, means any manager, secretary or other similar officer of the company, or any person acting or purporting to act as such”
- (4) In Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (payments, returns and information), after Chapter 3A insert—

### **“CHAPTER 3B**

#### CERTAIN DEBTS OF COMPANIES UNDER SECTION 339A OF ITEPA (TRAVEL EXPENSES OF WORKERS PROVIDING SERVICES THROUGH EMPLOYMENT INTERMEDIARIES)

#### **97ZG Interpretation of Chapter 3B: “relevant PAYE debt” and “relevant date”**

- (1) In this Chapter “relevant PAYE debt”, in relation to a company means an amount within any of paragraphs (2) to (5).
- (2) An amount within this paragraph is an amount that the company is to account for in accordance with these Regulations by virtue of section 339A(7) to (9) of ITEPA (persons providing fraudulent documents).
- (3) An amount within this paragraph is an amount which a company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where—
  - (a) the company is an employment intermediary,
  - (b) on the basis that section 339A of ITEPA does not apply by virtue of subsection (3) of that section the company has not deducted and paid the amount, but
  - (c) the company has not been provided by any other person with evidence from which it would be reasonable in all the circumstances to conclude that subsection (3) of that section applied (and the mere assertion by a person that the manner in which the worker provided

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the services was not subject to (or to the right of) supervision, direction or control by any person is not such evidence).

- (4) An amount within this paragraph is an amount that the company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in a case where subsection (4) of that section applies (services provided under arrangements made by intermediaries).
- (5) An amount within this paragraph is any interest or penalty in respect of an amount within any of paragraphs (2) to (4) for which the company is liable.
- (6) In this Chapter “the relevant date” in relation to a relevant PAYE debt means the date on which the first payment is due on which PAYE is not accounted for.

### 97ZH Interpretation of Chapter 3B: general

In this Chapter—

- “company” includes a limited liability partnership;
- “director” has the meaning given by section 67 of ITEPA;
- “personal liability notice” has the meaning given by regulation 97ZI(2);
- “the specified amount” has the meaning given by regulation 97ZI(2)(a).

### 97ZI Liability of directors for relevant PAYE debts

- (1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct that amount by the time by which the company is required to do so.
- (2) HMRC may serve a notice (a “personal liability notice”) on any person who was, on the relevant date, a director of the company—
  - (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and
  - (b) requiring the director to pay to HMRC—
    - (i) the specified amount, and
    - (ii) specified interest on that amount.
- (3) The interest specified in the personal liability notice—
  - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
  - (b) is to run from the date the notice is served.
- (4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.
- (5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

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### **97ZJ Appeals in relation to personal liability notices**

- (1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.
- (2) A notice of appeal must—
  - (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
  - (b) specify the grounds of the appeal.
- (3) The grounds of appeal are —
  - (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies, or
  - (b) that the person was not a director of the company on the relevant date.
- (4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—
  - (a) the specified amount is a relevant PAYE debt of the company, and
  - (b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.
- (5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.
- (6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies.

### **97ZK Withdrawal of personal liability notices**

- (1) A personal liability notice is withdrawn if the tribunal quashes it.
- (2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.
- (3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

### **97ZL Recovery of sums due under personal liability notice: application of Part 6 of TMA**

- (1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—
  - (a) the personal liability notice were an assessment, and
  - (b) the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), were income tax charged on the director upon whom the notice is served,
 and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.

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- (2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which the personal liability notice is served.

### **97ZM Repayment of surplus amounts**

- (1) This regulation applies if—
- (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and
  - (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZI(2)(b)(ii).
- (2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.
- (3) HMRC is to pay interest on any sum repaid.
- (4) The interest—
- (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
  - (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b)."
- (5) The amendment made by subsection (4) is to be treated as having been made by the Commissioners for Her Majesty's Revenue and Customs in exercise of the power conferred by section 688B of ITEPA 2003 (inserted by subsection (3)).
- (6) The amendment made by subsection (1) has effect in relation to the tax year 2016-17 and subsequent tax years.
- (7) The amendment made by subsection (4) has effect in relation to relevant PAYE debts that are to be deducted, accounted for or paid on or after 6 April 2016.

## **15 Taxable benefits: PAYE**

In section 684 of ITEPA 2003 (PAYE regulations), in subsection (2), in item 1ZA(a), for "Chapters 3 and 5 to 10" substitute " Chapters 3 to 10 ".

*Employment income: other provision*

## **16 Employee share schemes**

Schedule 3 contains miscellaneous minor amendments relating to employee share schemes.

## **17 Securities options**

- (1) In section 418 of ITEPA 2003 (provisions related to Part 7 of ITEPA 2003), in subsection (1), omit "(but not securities options)".



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(2) In that section, after subsection (1) insert—

“(1A) But Chapters 1 and 10 of Part 3 do not have effect in relation to—

- (a) the acquisition of employment-related securities options (within the meaning of Chapter 5 of Part 7), or
- (b) chargeable events (within the meaning given by section 477) occurring in relation to such options.”

(3) In section 227 of that Act (scope of Part 4), in subsection (4), before paragraph (a) insert—

“(za) section 418(1A) (acquisition of, and chargeable events occurring in relation to, employment-related securities options);”.

(4) The amendments made by this section come into force on 6 April 2016.

## **18 Employment income provided through third parties**

(1) Part 7A of ITEPA 2003 (employment income provided through third parties) is amended in accordance with subsections (2) and (3).

(2) In section 554Z2 (value of relevant step to count as employment income) after subsection (1) insert—

“(1A) Where the value of a relevant step would (apart from this subsection) count as employment income of more than one person—

- (a) the value of the relevant step is to be apportioned between each of those persons on a just and reasonable basis, and
- (b) subsection (1) applies as if the reference to the value of the relevant step in relation to A were a reference to so much of the value of the relevant step that is apportioned to A.”

(3) In section 554Z8 (cases where consideration given for relevant step) in subsection (5), omit “and” at the end of paragraph (b) and after paragraph (c) insert “, and

- (d) there is no connection (direct or indirect) between the payment and a tax avoidance arrangement.”

(4) Paragraph 59 of Schedule 2 to FA 2011 (transitional provision relating to Part 7A of ITEPA 2003) is amended in accordance with subsections (5) to (7).

(5) In sub-paragraph (2) for the words from “the earnings” to the end substitute—

- “(a) where sub-paragraph (2A) or (2B) applies, the earnings mentioned in sub-paragraph (1)(f)(i) or any return on those earnings mentioned in sub-paragraph (1)(f)(ii), and
- (b) in any other case, the earnings mentioned in sub-paragraph (1)(f)(i).”

(6) After sub-paragraph (2) insert—

“(2A) This sub-paragraph applies where—

- (a) the agreement mentioned in sub-paragraph (1)(d)(i) is made before 1 April 2017, and
- (b) A or B pays, or otherwise accounts for, any tax as mentioned in sub-paragraph (1)(e) in accordance with that agreement.

(2B) This sub-paragraph applies where—

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- (a) the decision mentioned in sub-paragraph (1)(d)(ii) is made before 1 April 2017, and
  - (b) A or B pays, or otherwise accounts for, any tax as mentioned in sub-paragraph (1)(e) before 1 April 2017.”
- (7) At the end insert—
  - “(5) For the purposes of sub-paragraph (1)(e), a person is not to be regarded as having paid, or otherwise accounted for, any tax by reason only of making—
    - (a) a payment on account of income tax,
    - (b) a payment that is treated as a payment on account under section 223(3) of FA 2014 (accelerated payments), or
    - (c) a payment pending determination of an appeal made in accordance with section 55 of TMA 1970.”
- (8) In Schedule 2 to FA 2011, omit paragraph 64 (power to make provision dealing with interactions etc.).
- (9) The amendment made by subsection (3) has effect in relation to payments made on or after 16 March 2016 by way of consideration for a relevant step (as defined in section 554A(2) of ITEPA 2003) taken on or after that date.
- (10) The amendment made by subsection (7) has effect in relation to chargeable steps (as defined in paragraph 59(1)(a) of Schedule 2 to FA 2011) taken on or after 16 March 2016.

### *Pensions*

## **19 Standard lifetime allowance from 2016-17**

- (1) Section 218 of FA 2004 (pension schemes etc: lifetime allowance) is amended in accordance with subsections (2) to (5).
- (2) For subsections (2) and (3) (standard lifetime allowance is £1,250,000 but may be increased by Treasury order) substitute—
  - “(2) The standard lifetime allowance for the tax years 2016-17 and 2017-18 is £1,000,000.
  - (2A) The standard lifetime allowance for any later tax year (“the subsequent tax year”) is the same as the standard lifetime allowance for the tax year immediately preceding the subsequent tax year, unless subsection (2C) provides for it to be higher.
  - (2B) Subsection (2C) applies if—
    - (a) the consumer prices index for the month of September in any tax year (“the prior tax year”) is higher than it was for the previous September, and
    - (b) the prior tax year is the tax year 2017-18 or a later tax year.
  - (2C) The standard lifetime allowance for the tax year following the prior tax year is the standard lifetime allowance for the prior tax year—
    - (a) increased by the percentage increase in the index, and

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- (b) if the result is not a multiple of £100, rounded up to the nearest amount which is such a multiple.

(2D) The Treasury must before the tax year 2018-19, and before each subsequent tax year, make regulations specifying the amount given by subsections (2A) to (2C) as the standard lifetime allowance for the tax year concerned.”

(3) After subsection (5BB) insert—

“(5BC) Where the operation of a lifetime allowance enhancement factor is provided for by any of sections 220, 222, 223 and 224 and the time mentioned in the definition of SLA in the section concerned fell within the period consisting of the tax year 2014-15 and the tax year 2015-16, subsection (4) has effect as if the amount to be multiplied by LAEF were £1,250,000 if that is greater than SLA.

(5BD) Where more than one lifetime allowance enhancement factor operates, subsection (5BC) does not apply if any of subsections (5A), (5B) and (5BA) applies.”

(4) After subsection (5D) insert—

“(5E) Where benefit crystallisation event 7 occurs on or after 6 April 2016 by reason of the payment of a relevant lump sum death benefit in respect of the death of the individual during the period consisting of the tax year 2014-15 and the tax year 2015-16, the standard lifetime allowance at the time of the benefit crystallisation event is £1,250,000.”

(5) After subsection (5E) insert—

“(5F) Where—

- (a) benefit crystallisation event 5C occurs by reason of the designation on or after 6 April 2015 of sums or assets held for the purposes of an arrangement relating to the individual, and
  - (b) the individual died before 6 April 2012,
- the standard lifetime allowance at the time of the benefit crystallisation event is £1,800,000.

(5G) Where—

- (a) benefit crystallisation event 5C occurs by reason of the designation on or after 6 April 2015 of sums or assets held for the purposes of an arrangement relating to the individual, and
  - (b) the individual died in the period consisting of the tax year 2012-13 and the tax year 2013-14,
- the standard lifetime allowance at the time of the benefit crystallisation event is £1,500,000.

(5H) Where—

- (a) benefit crystallisation event 5C occurs by reason of the designation on or after 6 April 2016 of sums or assets held for the purposes of an arrangement relating to the individual, and
- (b) the individual died in the period consisting of the tax year 2014-15 and the tax year 2015-16,

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the standard lifetime allowance at the time of the benefit crystallisation event is £1,250,000.

(5I) Where—

- (a) benefit crystallisation event 5D occurs by reason of a person becoming entitled on or after 6 April 2016 to an annuity in respect of the individual, and
- (b) the individual died in the period beginning with 3 December 2014 and ending with 5 April 2016,

the standard lifetime allowance at the time of the benefit crystallisation event is £1,250,000.”

(6) In section 280 of FA 2004 (abbreviations and general index for Part 4), in the entry for “standard lifetime allowance” for “and (3)” substitute “ to (2C) ”.

(7) In section 282 of FA 2004 (orders and regulations under Part 4), after subsection (2) (negative procedure applies to instruments not approved in draft) insert—

“(3) Subsection (2) does not apply to an instrument containing only regulations under section 218(2D).”

(8) The amendments made by subsections (2) to (4) have effect for the tax year 2016-17 and subsequent tax years.

(9) The amendment made by subsection (5)—

- (a) so far as it consists of the insertion of new subsections (5F) and (5G)—
  - (i) is to be treated as having come into force on 6 April 2015, and
  - (ii) has effect in relation to benefit crystallisation events occurring on or after that date, and
- (b) so far as it consists of the insertion of new subsections (5H) and (5I)—
  - (i) is to be treated as having come into force on 6 April 2016, and
  - (ii) has effect in relation to benefit crystallisation events occurring on or after that date.

(10) Schedule 4 contains transitional and connected provision (including provision for “fixed protection 2016” and “individual protection 2016”).

## 20 Pensions bridging between retirement and state pension

(1) In Part 1 of Schedule 28 to FA 2004 (registered pension schemes: the pension rules), paragraph 2 (meaning of “scheme pension”) is amended in accordance with subsections (2) to (4).

(2) In sub-paragraph (4) (which specifies circumstances in which amount of scheme pension may go down and gives power to specify additional circumstances) omit paragraph (c) (reduction by reference to state retirement pensions for persons reaching pensionable age before 6 April 2016).

(3) Omit sub-paragraphs (4B), (5) and (5A) (interpretation of sub-paragraph (4)(c)).

(4) In sub-paragraph (8) (regulations under certain sub-paragraphs may make back-dated provision) omit “or (5)”.

(5) In consequence of the amendments made by subsections (2) and (3)—

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- (a) in FA 2006, in Schedule 23 omit paragraph 20(2) and (3), and
  - (b) in FA 2013, omit section 51(2).
- (6) Regulations under paragraph 2(4)(h) of Schedule 28 to FA 2004 (power to prescribe permitted reductions of scheme pensions, and to do so with back-dated effect) may provide for the coming into force of the amendments made by subsections (2) to (5), and—
- (a) those amendments have effect in accordance with regulations under paragraph 2(4)(h) of that Schedule, and
  - (b) paragraph 2(8) of that Schedule (back-dating) applies for the purposes of regulations bringing the amendments into force only so as to permit the amendments to be given effect in relation to times not earlier than 6 April 2016.

#### Commencement Information

- II** [S. 20\(2\)-\(5\)](#) in force at 6.4.2016 with back-dated effect for the purposes of the amendments made by those subsections by [S.I. 2016/1005](#), [reg. 2](#) (with [regs. 1\(2\), 3, 4](#))

## 21 Dependants' scheme pensions

- (1) Part 2 of Schedule 28 to Part 4 of FA 2004 (pension death benefit rules) is amended as follows.
- (2) In paragraph 16A (dependants' scheme pension: when limits in paragraphs 16B and 16C apply), after sub-paragraph (1) insert—
 

“(1A) Sub-paragraph (1) is subject to paragraphs 16AA and 16AB.”
- (3) After paragraph 16A insert—

“16AA

Paragraphs 16B and 16C do not apply if—

- (a) each benefit crystallisation event that has occurred in relation to the member by reference to arrangements relating to the member under the scheme is benefit crystallisation event 5B (having unused funds under a money purchase arrangement at age 75), or
- (b) paragraph 12 of Schedule 36 (enhanced protection by reference to pre-6 April 2006 rights) applies in the case of the member immediately before the member's death.

16AB

- (1) Paragraph 16B does not apply if, at all times in the post-death year (as defined in that paragraph), the payable annual rate is less than the limit.
- (2) Paragraph 16C does not apply in relation to a period of 12 months within paragraph (a) or (b) of paragraph 16C(1) if, at all times in that period of 12 months, the payable annual rate is less than the limit.
- (3) “The payable annual rate”, at any time, is arrived at as follows—

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- (a) identify each dependants' scheme pension payable in respect of the member under the scheme to which a dependant of the member is actually entitled at that time, and
  - (b) identify the annual rate at which each pension identified at paragraph (a) is payable at that time, and
  - (c) if only one pension is identified at paragraph (a), the payable annual rate is the annual rate identified at paragraph (b), and
  - (d) if two or more pensions are identified at paragraph (a), the payable annual rate is the total of the annual rates identified at paragraph (b).
- (4) “The limit”, at any time, is—
- (a) the general limit at that time (see paragraph 16AC), or,
  - (b) if higher, the personal limit at that time (see paragraph 16AD).

#### 16AC

- (1) This paragraph applies for the purposes of paragraph 16AB(4).
- (2) “The general limit” at a time in the tax year 2016-17 is £25,000.
- (3) “The general limit” at a time in a later tax year (“year T”)—

- (a) is given by—

$$G + \left( G \times U\% \right)$$

where G is the general limit at times in the tax year (“year P”) that precedes year T, or

- (b) if the amount given by paragraph (a) is not a multiple of £100, is that amount rounded up to the nearest amount that is such a multiple.
- (4) See paragraph 16AE for the meaning of U%.

#### 16AD

- (1) This paragraph applies for the purposes of paragraph 16AB(4).
  - (2) “The personal limit” at a time in the tax year in which the member dies is arrived at as follows—
- (a) identify each scheme pension under the scheme to which the member is actually or prospectively entitled immediately before the member's death, and
  - (b) as regards each pension identified at paragraph (a)—
- (i) if it is one to which the member is actually entitled immediately before the member's death, identify the annual rate at which it is payable immediately before the member's death, or
  - (ii) if it is one to which the member is prospectively entitled immediately before the member's death, identify the annual rate at which it would have been payable immediately before

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- the member's death had the member been actually entitled to it immediately before the member's death, and
- (c) if only one pension is identified at paragraph (a), the personal limit is the annual rate identified at paragraph (b), and
  - (d) if two or more pensions are identified at paragraph (a), the personal limit is the total of the annual rates identified at paragraph (b).
- (3) “The personal limit” at a time in a tax year (“year S”) later than the tax year in which the member dies—
- (a) is given by—

$$L + \left( L \times U\% \right)$$

- where L is the personal limit at times in the tax year (“year P”) that precedes year S, or
- (b) if the amount given by paragraph (a) is not a multiple of £100, is that amount rounded up to the nearest amount that is such a multiple.
- (4) See paragraph 16AE for the meaning of U%.
- (5) If the scheme is a public service pension scheme, ignore any abatement when identifying at sub-paragraph (2)(b) the annual rate of any scheme pension under the scheme.

#### 16AE

- (1) In paragraphs 16AC(3) and 16AD(3), U% means the highest of—
- (a) 5%,
  - (b) CPI% (see sub-paragraph (2)), and
  - (c) RPI% (see sub-paragraph (3)).
- (2) If the consumer prices index for September in year P is higher than the consumer prices index for September in the tax year preceding year P, CPI% is the percentage increase in the index (but is otherwise 0%).
- (3) If the retail prices index for September in year P is higher than the retail prices index for September in the tax year preceding year P, RPI% is the percentage increase in the index (but is otherwise 0%).
- (4) In this paragraph “year P” has the same meaning as in paragraph 16AC or (as the case may be) paragraph 16AD.”
- (4) In paragraph 16B (limit in post-death year)—
- (a) in sub-paragraph (3)(c), for “amounts” substitute “uprated amounts (see sub-paragraph (6))”, and
  - (b) after sub-paragraph (5) insert—
- “(6) The “uprated amount” of a lump sum is the amount of the lump sum increased by the higher of C% and R%, where—

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- (a) if the consumer prices index for the month in which the member dies is higher than it was for the month in which the member became entitled to the lump sum, C% is the percentage increase in the index (but is otherwise 0%), and
  - (b) if the retail prices index for the month in which the member dies is higher than it was for the month in which the member became entitled to the lump sum, R% is the percentage increase in the index (but is otherwise 0%).”
- (5) In paragraph 16C (limit in subsequent years)—
  - (a) in sub-paragraph (3)(a), omit “period of”,
  - (b) in sub-paragraph (3)(b), for “subsection” substitute “ sub-paragraph ”,
  - (c) for sub-paragraphs (4) and (5) substitute—
    - “(4) The condition is that if the annual rate of a pension payable under the pension scheme to a dependant of the member is increased at any time in the period of 12 months in question—
      - (a) the dependant is at that time one of a group of at least 20 pensioner members of the pension scheme, and
      - (b) all the pensions being paid under the pension scheme to pensioner members of that group are at that time increased at the same rate.”,
  - (d) in sub-paragraph (6)—
    - (i) for “month period” substitute “ months ”, and
    - (ii) for the words after “increased by” substitute “ the permitted margin. ”,
  - (e) in sub-paragraph (8)(a), for “end of the post-death year” substitute “ member's death ”,
  - (f) in sub-paragraph (8)(b), after “first month” insert “ ending after the start ”,
  - (g) in sub-paragraph (11), for “opening month” substitute “ month in which the member died ”, and
  - (h) omit sub-paragraphs (13) and (14).
- (6) The amendments made by this section are treated as having come into force on 6 April 2016.
- (7) The amendments made by subsections (2) to (4), so far as they relate to paragraph 16B of Schedule 28 to FA 2004, have effect where the last day of “the post-death year” (see sub-paragraph (1) of that paragraph) is 6 April 2016 or any later day.
- (8) The following amendments—
  - (a) the amendments made by subsections (2) to (4), so far as they relate to paragraph 16C of Schedule 28 to FA 2004, and
  - (b) the amendments made by subsection (5),
 have effect where the last day of “the 12 months in question” (see sub-paragraph (1) of that paragraph) is 6 April 2016 or any later day.

## 22 Pension flexibility

Schedule 5 makes amendments in connection with pension flexibility.



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## 23 Netherlands Benefit Act for Victims of Persecution 1940-1945

(1) After section 642 of ITEPA 2003 insert—

### “642A Netherlands Benefit Act for Victims of Persecution 1940-1945

No liability to income tax arises on a pension, annuity, allowance or other payment provided in accordance with the provisions of the scheme established under the law of the Netherlands and known as *Wet uitkeringen vervolgingsslachtoffers 1940-1945*.”

(2) The amendment made by this section has effect for the tax year 2016-17 and subsequent tax years.

### *Trading and other income*

## 24 Fixed-rate deductions for use of home for business purposes

(1) In Part 2 of ITTOIA 2005 (trading income), Chapter 5A (trade profits: deductions allowable at a fixed rate) is amended as follows.

(2) Section 94H (use of home for business purposes) is amended as follows.

(3) In subsection (1), for the words from “in respect of” to the end substitute “in respect of—

- (a) the use of the person's home for the purposes of the trade, or
- (b) where the person is a firm, the use of a partner's home for those purposes.”

(4) In subsection (4), for the words from “work done” to the end substitute “qualifying work”.

(5) After subsection (4) insert—

“(4A) Qualifying work” means—

- (a) work done by the person, or any employee of the person, in the person's home wholly and exclusively for the purposes of the trade, or
- (b) where the person is a firm, work done by a partner, or any employee of the firm, in the partner's home wholly and exclusively for those purposes.

(4B) Where more than one person does qualifying work in the same home at the same time, any hour spent wholly and exclusively on that work is to be taken into account only once for the purposes of subsection (4).”

(6) In subsection (5), after “person” insert “, or, where the person is a firm, a partner of the firm,”.

(7) After subsection (5) insert—

“(5A) Where a firm makes a deduction for a period under this section in respect of the use of a partner's home for the purposes of a trade, the only deduction which the firm may make for the period in respect of the use of any other partner's home for those purposes is a deduction under this section.”

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- (8) Section 94I (premises used both as a home and as business premises) is amended as follows.
- (9) In subsection (1)(b), for “used by the person as a home,” substitute “used as a home by—
  - (i) the person carrying on the trade, or
  - (ii) where that person is a firm, a partner of the firm,”.
- (10) After subsection (6) insert—
 

“(6A) Where a person makes a deduction for a period under this section in respect of expenses incurred in relation to premises falling within subsection (1)(b), the only deduction which the person may make for the period in respect of expenses incurred in relation to any other premises falling within subsection (1)(b) is a deduction under this section.”
- (11) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

## 25 Averaging profits of farmers etc

- (1) Chapter 16 of Part 2 of ITTOIA 2005 (averaging profits of farmers and creative artists) is amended as specified in subsections (2) to (7).
- (2) In section 221 (claim for averaging of fluctuating profits)—
  - (a) in subsection (2), at the beginning insert “ For the purposes of section 222 (two-year averaging) ”;
  - (b) after that subsection insert—
 

“(2A) For the purposes of section 222A (five-year averaging), a trade, profession or vocation is a “qualifying trade, profession or vocation” if it falls within subsection (2)(a) or (b).”;
  - (c) in subsection (3), for “this purpose” substitute “ the purpose of subsection (2) ”.
- (3) After section 222 insert—

### **“222A Circumstances in which claim for five-year averaging may be made**

- (1) An averaging claim may be made under this section in relation to five consecutive tax years in which a taxpayer is or has been carrying on the qualifying trade, profession or vocation if the volatility condition in subsection (2) is met.
- (2) The volatility condition is that—
  - (a) one of the following is less than 75% of the other—
    - (i) the average of the relevant profits of the first four tax years to which the claim relates;
    - (ii) the relevant profits of the last of the tax years to which the claim relates; or
  - (b) the relevant profits of one or more (but not all) of the five tax years to which the claim relates are nil.

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- (3) Any of the first four tax years to which an averaging claim under this section relates may be a tax year in relation to which an averaging claim under this section or section 222 has already been made.
  - (4) An averaging claim (“the subsequent claim”) may not be made under this section if an averaging claim in respect of the trade, profession or vocation has already been made under this section or section 222 in relation to a tax year which is later than the last of the tax years to which the subsequent claim relates.
  - (5) An averaging claim may not be made under this section in relation to the tax year in which the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation.
  - (6) An averaging claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the last of the tax years to which the claim relates.
  - (7) But see section 225(4) (extended time limit if profits adjusted for some other reason).”
- (4) In section 222 (circumstances in which claim may be made)—
- (a) in the heading, after “claim” insert “ for two-year averaging ”;
  - (b) in subsection (1), after “made” insert “ under this section ”;
  - (c) for subsection (2) substitute—
    - “(2) The earlier of the two years to which an averaging claim under this section relates may be a tax year in relation to which an averaging claim under this section or section 222A has already been made.”;
  - (d) in subsection (3)—
    - (i) after “made”, in the first place, insert “ under this section ”;
    - (ii) after “made”, in the second place, insert “ under this section or section 222A ”;
  - (e) in subsection (4), after “made” insert “ under this section ”;
  - (f) in subsection (5), after “averaging claim” insert “ under this section ”.
- (5) In section 223 (adjustment of profits)—
- (a) in subsection (2), for “second of the two tax years” substitute “ last of the two or five tax years ”;
  - (b) for subsection (3) substitute—
    - “(3) The amount of the adjusted profits of each of the tax years to which the claim relates is the average of the relevant profits of those tax years.”;
  - (c) omit subsection (4).
- (6) In section 224 (effect of adjustment)—
- (a) in subsection (4), for “either” substitute “ any ”;
  - (b) in subsection (6), for “second of the two tax years” substitute “ last of the two or five tax years ”.
- (7) In section 225 (effect of later adjustment of profits), in subsection (1), for “either or both” substitute “ any one or more ”.

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- (8) In section 31C of ITTOIA 2005 (excluded provisions), in subsection (6), for “section 221” substitute “Chapter 16”.
- (9) In section 1025 of ITA 2007 (meaning of “modified net income”), in subsection (2) (d), for “the earlier of the tax years” substitute “any earlier tax year”.
- (10) In paragraph 3 of Schedule 1B to TMA 1970 (relief for fluctuating profits of farmers etc)—
  - (a) in sub-paragraph (1), for the words from “for two” to the end substitute—
    - “(a) in the case of a two-year claim, for two consecutive years of assessment, and
    - (b) in the case of a five-year claim, for five consecutive years of assessment.”;
  - (b) in sub-paragraph (2), for “the later year” substitute “the last of the two or five years”;
  - (c) in sub-paragraph (3), for “the earlier year”, where it occurs first, substitute “an earlier year”;
  - (d) in sub-paragraph (5)—
    - (i) for “the earlier year” substitute “an earlier year”;
    - (ii) for “the later year” substitute “the last of the two or five years”;
  - (e) after sub-paragraph (6) insert—
    - “(7) In this paragraph—
    - “two-year claim” means a claim under section 222 of ITTOIA 2005;
    - “five-year claim” means a claim under section 222A of ITTOIA 2005.”
- (11) In paragraph 4 of Schedule 1B to TMA 1970 (relief claimed by virtue of section 224(4) of ITTOIA 2005)—
  - (a) in sub-paragraph (1)—
    - (i) after “for two” insert “or five”;
    - (ii) omit “(“the earlier year” and “the later year”)”;
    - (iii) for “either” substitute “any”;
  - (b) in sub-paragraph (2), for “the later year” substitute “the last of the two or five years”;
  - (c) in sub-paragraph (3), for “the earlier year”, where it occurs first, substitute “an earlier year”;
  - (d) in sub-paragraph (5)—
    - (i) for “the earlier year” substitute “an earlier year”;
    - (ii) for “the later year” substitute “the last of the two or five years”.
- (12) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

## 26 Relief for finance costs related to residential property businesses

- (1) In ITTOIA 2005, for sections 274A and 274B and the preceding italic heading (tax reductions for non-deductible costs of dwelling-related loans: individuals, and accumulated or discretionary trust income) substitute—

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

**274A Reduction for individuals: entitlement**

- (1) If for a tax year an individual has—
  - (a) a relievable amount in respect of a property business, or
  - (b) two or more relievable amounts each in respect of a different property business,
 the individual is entitled to relief under this section for that year in respect of that relievable amount or (as the case may be) each of those relievable amounts.
- (2) An individual has a relievable amount for a tax year in respect of a property business if for that year the individual has any one or more of the following in respect of that business—
  - (a) a current-year amount;
  - (b) a current-year estate amount;
  - (c) a brought-forward amount.
- (3) An individual's relievable amount for a tax year in respect of a property business is the total of—
  - (a) the individual's current-year amount (if any) for that year in respect of that business,
  - (b) the individual's current-year estate amounts (if any) for that year in respect of that business, and
  - (c) the individual's brought-forward amount (if any) for that year in respect of that business.
- (4) An individual has a current-year amount for a tax year in respect of a property business if—
  - (a) an amount (“A”) would be deductible in calculating the profits for income tax purposes of that business for that year but for section 272A,
  - (b) the individual is liable for income tax on N% of those profits, where N is a number—
    - (i) greater than 0, and
    - (ii) less than or equal to 100, and
  - (c) that liability is not under Chapter 6 of Part 5 (estate income),
 in which event the individual's current-year amount for that tax year in respect of that business is equal to N% of A.
- (5) An individual has a current-year estate amount for a tax year (“the current year”), in respect of a property business and a particular deceased person's estate, if—
  - (a) an amount (“A”) would, but for section 272A, be deductible in calculating the profits for income tax purposes of that business for a particular tax year (“the profits year”), whether that year is the current year or an earlier tax year,

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- (b) the personal representatives of the deceased person are liable for income tax on N% of those profits, where N is a number—
  - (i) greater than 0, and
  - (ii) less than or equal to 100,
- (c) the individual is liable for income tax on estate income treated under Chapter 6 of Part 5 as arising in the current year from an interest in the estate, and
- (d) the basic amount of that estate income consists of, or includes, an amount representative of E% of the personal representatives' N% of the profits of the business for the profits year, where E is a number—
  - (i) greater than 0, and
  - (ii) less than or equal to 100,

in which event the individual's current-year estate amount for the current tax year, in respect of that business and estate and the profits year, is equal to E % of N% of A.

- (6) As to whether an individual has a brought-forward amount for a tax year in respect of a property business, see section 274AA(4).
- (7) In this section and section 274AA—
  - “estate income”, and
  - “basic amount” in relation to any estate income,
 have the same meaning as in Chapter 6 of Part 5 (see sections 649 and 656(4)).

#### **274AA Reduction for individuals: calculation**

- (1) This section applies if for a tax year an individual is entitled to relief under section 274A in respect of a relievable amount or in respect of each of two or more relievable amounts, and in the following subsections of this section “relievable amount” means that relievable amount or (as the case may be) any of those relievable amounts.
- (2) In respect of a relievable amount, the actual amount on which relief for the year is to be given is (subject to subsection (3)) the amount (“L”) that is the lower of—
  - (a) the relievable amount, and
  - (b) the total of—
    - (i) the profits for income tax purposes of the property business concerned for the year after any deduction under section 118 of ITA 2007 (“the adjusted profits”) or, if less, the share (if any) of the adjusted profits on which the individual is liable to income tax otherwise than under Chapter 6 of Part 5, and
    - (ii) so much (if any) of the relievable amount as consists of current-year estate amounts.
- (3) If S is greater than the individual's adjusted total income for the year (“ATI”), the actual amount on which relief for the year is to be given in respect of a relievable amount is given by—

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$$\frac{ATI}{S} \times L$$

where—

S is the total obtained by identifying the amount that is L for each relievable amount and then finding the total of the amounts identified, and

L has the same meaning as in subsection (2).

(4) Where—

(a) a relievable amount,

is greater than—

(b) the actual amount on which relief for the year is to be given in respect of the relievable amount,

the difference is the individual's brought-forward amount for the following tax year in respect of the property business concerned.

(5) The amount of the relief for the year in respect of a relievable amount is given by—

$$AA \times BR$$

where—

AA is the actual amount on which relief for the year is to be given in respect of the relievable amount, and

BR is the basic rate of income tax for the year,

(6) For the purposes of this section, an individual's adjusted total income for a tax year is identified as follows—

*Step 1* Identify the individual's net income for the year (see Step 2 of the calculation in section 23 of ITA 2007).

*Step 2* Exclude from that net income—

(a) so much of it as is within section 18(3) or (4) of ITA 2007 (income from savings), and

(b) so much of it as is dividend income.

*Step 3* Reduce what is left after Step 2 of this calculation by the amount of any allowances deducted for the year in the individual's case at Step 3 of the calculation in section 23 of ITA 2007. The result is the individual's adjusted total income for the year.

### **274B Reduction for accumulated or discretionary trust income: entitlement**

(1) If for a tax year the trustees of a settlement have—

(a) a relievable amount in respect of a property business, or

(b) two or more relievable amounts each in respect of a different property business,

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the trustees of the settlement are entitled to relief under this section for that year in respect of that relievable amount or (as the case may be) each of those relievable amounts.

- (2) The trustees of a settlement have a relievable amount for a tax year in respect of a property business if for that year the trustees of the settlement have a current-year amount, or brought-forward amount, in respect of that business (or have both).
- (3) In the case of trustees of a settlement, their relievable amount for a tax year in respect of a property business is the total of—
  - (a) their current-year amount (if any) for that year in respect of that business, and
  - (b) their brought-forward amount (if any) for that year in respect of that business.
- (4) The trustees of a settlement have a current-year amount for a tax year in respect of a property business if—
  - (a) an amount (“A”) would be deductible in calculating the profits for income tax purposes of that business for that year but for section 272A,
  - (b) the trustees of the settlement are liable for income tax on N% of those profits, where N is a number—
    - (i) greater than 0, and
    - (ii) less than or equal to 100, and
  - (c) in relation to the trustees of the settlement, that N% of those profits is accumulated or discretionary income,
 in which event the current-year amount of the trustees of the settlement for that tax year in respect of that business is equal to N% of A.
- (5) As to whether the trustees of a settlement have a brought-forward amount for a tax year in respect of a property business, see section 274C(3).
- (6) In this section and section 274C “accumulated or discretionary income” has the meaning given by section 480 of ITA 2007.

#### **274C Reduction for accumulated or discretionary trust income: calculation**

- (1) This section applies if for a tax year the trustees of a settlement are entitled to relief under section 274B in respect of a relievable amount or in respect of each of two or more relievable amounts, and in the following subsections of this section “relievable amount” means that relievable amount or (as the case may be) any of those relievable amounts.
- (2) The amount of the relief in respect of a relievable amount is given by—

$$L \times BR$$

where—

BR is the basic rate of income tax for the year, and



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L is the lower of—

- (a) the relievable amount, and
- (b) the profits for income tax purposes of the property business concerned for the year after any deduction under section 118 of ITA 2007 (“the adjusted profits”) or, if less, the share of the adjusted profits—
  - (i) on which the trustees of the settlement are liable for income tax, and
  - (ii) which, in relation to the trustees of the settlement, is accumulated or discretionary income.

- (3) Where L in the case of a relievable amount is less than the relievable amount, the difference between them is the brought-forward amount of the trustees of the settlement for the following tax year in respect of the property business concerned.”

- (2) In consequence of the amendment made by subsection (1), in F(No.2)A 2015 omit section 24(5).

## 27 Individual investment plans of deceased investors

- (1) In Chapter 3 of Part 6 of ITTOIA 2005 (power to exempt income from individual investment plans from income tax), after section 694 insert—

### “694A Deceased investors

- (1) In section 694(1) “income of an individual from investments under a plan” includes—
  - (a) income (of any person) from administration-period investments under a plan, and
  - (b) income (of any person) from the estate of a deceased person (“D”) where the whole or any part of the income of D’s personal representatives is income from administration-period investments under a plan.
- (2) For the purposes of sections 694(3)(a) and (4) and 695(1) “individual”, in relation to investments that are administration-period investments, includes—
  - (a) the personal representatives of the deceased individual concerned, and
  - (b) any other person on whose directions plan managers agree to act in relation to the investments.
- (3) In sections 699 and 701 “investor” includes a person entitled to an exemption given by investment plan regulations by virtue of subsection (1) of this section.
- (4) Investments are “administration-period investments” if—
  - (a) an individual dies, and
  - (b) immediately before the individual’s death—
    - (i) the investments were held under a plan,
    - (ii) the individual was entitled to the income from the investments, and

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- (iii) as a result of investment plan regulations, the individual's income from investments under the plan was exempt from income tax (either wholly or to an extent specified in the regulations).
- (5) Investments are also “administration-period investments” if (directly or indirectly) they represent investments that are administration-period investments as a result of subsection (4).
- (6) Investment plan regulations may provide that investments are administration-period investments as a result of subsection (4) or (5) only at times specified in, or ascertained in accordance with, the regulations.
- (7) Provision under subsection (6) may (in particular) be framed by reference to the completion of the administration of a deceased individual's estate.
- (8) In the application of subsection (7) in relation to Scotland, the reference to the completion of the administration is to be read in accordance with section 653(2).”
- (2) In section 151(2) of TCGA 1992 (Chapter 3 of Part 6 of ITTOIA 2005 applies with modifications in relation to regulations giving relief from capital gains tax in respect of investments under plans)—
  - (a) in the words before paragraph (a), for “section 694(1) to (2)” substitute “sections 694(1) to (2) and 694A(1)”, and
  - (b) after paragraph (a) insert—
    - “(aa) section 694A(2) applies also for the purposes of subsection (1) of this section,
    - (ab) the reference in section 694A(3) to section 694A(1) is to be read as a reference to paragraph (aa) of this subsection,
    - (ac) the reference in section 694A(4)(b)(iii) to the individual's income from investments under the plan being exempt from income tax is to be read as a reference to the individual being entitled to relief from capital gains tax in respect of the investments,”.
- (3) In section 62 of TCGA 1992 (death: general provisions), after subsection (4) (acquisition of asset as legatee) insert—
  - “(4A) The Treasury may by regulations make provision having effect in place of subsection (4)(b) above in a case where there has been a time when the personal representatives—
    - (a) held the asset acquired by the legatee, and
    - (b) would, if they had disposed of the asset at that time—
      - (i) by way of a bargain at arm's length, and
      - (ii) otherwise than to a legatee,
 have been entitled as a result of regulations under section 151 (investments under plans) to relief from capital gains tax in respect of any chargeable gain accruing on the disposal.
  - (4B) Provision made by regulations under subsection (4A) above may (in particular) treat a person who acquires an asset as legatee as doing so at a time or for a consideration, or at a time and for a consideration, ascertained as specified by the regulations.”

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- (4) In consequence of subsection (2)(a), in FA 2011 omit section 40(6)(a).

*Reliefs: enterprise investment scheme, venture capital trusts etc*

## 28 EIS, SEIS and VCTs: exclusion of energy generation

- (1) In section 192(1) of ITA 2007 (meaning of “excluded activities”: EIS and SEIS), for paragraphs (ka) to (kc) substitute—

- “(ka) generating or exporting electricity or making electricity generating capacity available,
- (kb) generating heat,
- (kc) generating any form of energy not within paragraph (ka) or (kb),
- (kd) producing gas or fuel, and”.

- (2) In section 303(1) of ITA 2007 (meaning of “excluded activities”: VCTs), for paragraphs (ka) to (kc) substitute—

- “(ka) generating or exporting electricity or making electricity generating capacity available,
- (kb) generating heat,
- (kc) generating any form of energy not within paragraph (ka) or (kb),
- (kd) producing gas or fuel, and”.

- (3) In consequence of subsection (1), ITA 2007 is amended as follows—

- (a) in section 192(2)—
  - (i) for paragraph (g) substitute “and
  - (g) section 198A (export of electricity).”;
  - (ii) omit paragraph (h);
- (b) in section 198A—
  - (i) in the heading, omit “subsidised generation or”;
  - (ii) omit subsections (3) to (9);
- (c) omit section 198B.

- (4) In consequence of subsection (2), ITA 2007 is amended as follows—

- (a) in section 303(2)—
  - (i) for paragraph (g) substitute “and
  - (g) section 309A (export of electricity).”;
  - (ii) omit paragraph (h);
- (b) in section 309A—
  - (i) in the heading, omit “subsidised generation or”;
  - (ii) omit subsections (3) to (9);
- (c) omit section 309B.

- (5) The amendments made by subsections (1) and (3) have effect in relation to shares issued on or after 6 April 2016.

- (6) The amendments made by subsections (2) and (4) have effect in relation to relevant holdings issued on or after 6 April 2016.

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## 29 EIS and VCTs: definition of certain periods

(1) In section 175A of ITA 2007 (EIS: the permitted maximum age requirement)—

- (a) in subsection (7) for the words from “five” to the end substitute “ relevant five year period. ”;
- (b) after that subsection insert—

“(7A) Subject to subsection (7B), the relevant five year period is the five year period which ends immediately before the beginning of the last accounts filing period.

(7B) If the last accounts filing period ends more than 12 months before the issue date, the relevant five year period is the five year period which ends 12 months before the issue date.”

(2) In section 252A of ITA 2007 (EIS: meaning of “knowledge-intensive company”)—

- (a) in subsection (4), in the definition of “the relevant three preceding years”, for the words from “means” to the end substitute “ means, subject to subsection (4A), the three consecutive years the last of which ends immediately before the beginning of the last accounts filing period. ”;
- (b) after that subsection insert—

“(4A) If the last accounts filing period ends more than 12 months before the date on which the relevant shares are issued, the relevant three preceding years are the three consecutive years the last of which ends 12 months before the date on which the relevant shares are issued.”

(3) In section 280C of ITA 2007 (VCTs: the permitted maximum age condition)—

- (a) in subsection (8) for the words from “five” to the end substitute “ relevant five year period. ”;
- (b) after that subsection insert—

“(8A) Subject to subsection (8B), the relevant five year period is the five year period which ends immediately before the beginning of the last accounts filing period.

(8B) If the last accounts filing period ends more than 12 months before the investment date, the relevant five year period is the five year period which ends 12 months before the investment date.”

(4) In section 294A of ITA 2007 (VCTs: the permitted company age requirement)—

- (a) in subsection (7) for the words from “five” to the end substitute “ relevant five year period. ”;
- (b) after that subsection insert—

“(7A) Subject to subsection (7B), the relevant five year period is the five year period which ends immediately before the beginning of the last accounts filing period.

(7B) If the last accounts filing period ends more than 12 months before the investment date, the relevant five year period is the five year period which ends 12 months before the investment date.”

(5) In section 331A of ITA 2007 (VCTs: meaning of “knowledge-intensive company”)—

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- (a) in subsection (5), in the definition of “the relevant three preceding years”, for the words from “means” to the end substitute “ means, subject to subsection (5A), the three consecutive years the last of which ends immediately before the beginning of the last accounts filing period. ”;
- (b) after that subsection insert—
  - “(5A) If the last accounts filing period ends more than 12 months before the applicable time, the relevant three preceding years are the three consecutive years the last of which ends 12 months before the applicable time.”
- (6) The amendments made by this section are to be treated as always having had effect; but this is subject to section 30.

### 30 EIS and VCTs: election

- (1) If a company (“the relevant company”) makes an election for this section to apply, then—
  - (a) the amendments made by subsection (1) of section 29 do not apply in relation to shares issued by the relevant company in the material period,
  - (b) the amendments made by subsection (2) of that section do not apply for the purposes of determining whether, at the date of issue of any shares issued by the company in the material period, the company is a knowledge-intensive company for the purposes of Part 5 of ITA 2007,
  - (c) the amendments made by subsection (3) of that section do not apply in relation to investments made in the relevant company in the material period,
  - (d) the amendments made by subsection (4) of that section do not apply for the purposes of determining whether the requirement of section 294A of ITA 2007 is met in relation to any holding of shares or securities issued by the relevant company in the material period, and
  - (e) the amendments made by subsection (5) of that section do not apply for the purposes of determining whether, at any time in the material period which is the applicable time within the meaning given by section 331A of ITA 2007, the relevant company is a knowledge-intensive company for the purposes of Part 6 of ITA 2007.
- (2) Amendments that by reason of an election under this section do not apply in relation to particular shares or investments or for particular purposes are also to be treated as never having applied in relation to those shares or investments or for those purposes.
- (3) Any election under this section must be made in writing and signed by a director of the relevant company.
- (4) Where a company has made an election under this section—
  - (a) it must include a statement that the election has been made in any compliance statement subsequently provided by it under section 204(2) of ITA 2007 in respect of an issue of shares made by it in the material period, and
  - (b) it must provide a copy of the election to each company to which it has issued shares or securities in the material period.
- (5) An election under this section is irrevocable.

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- (6) In this section “the material period” means the period beginning with 18 November 2015 (the date when F(No. 2)A 2015 was passed) and ending with 5 April 2016.

### 31 VCTs: requirements for giving approval

- (1) Section 274 of ITA 2007 (requirements for the giving of approval) is amended as follows.
- (2) In the table in subsection (2), after the entry beginning “The 70% eligible shares condition” insert—

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“The non-qualifying investments condition	<p>The company has not made and will not make, in the relevant period, an investment which is neither of the following—</p> <p>(a) an investment that on the date it is made is included in the company's qualifying holdings;</p> <p>(b) an investment falling within subsection (3A).”</p>
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- (3) In subsection (3), in each of paragraphs (f), (g) and (h), for “(3A)” substitute “(3ZA)”.

- (4) After subsection (3) insert—

“(3ZA) In the second column of the table in subsection (2), in the entries for the investment limits condition, the permitted maximum age condition and the no business acquisition condition, any reference to an investment made by the company in a company does not include an investment falling within subsection (3A).”

- (5) In subsection (3A)—

- (a) for the words from “In the second” to “does not include” substitute “ An investment made by a company (“the investor”) falls within this subsection if it is ”;
- (b) in paragraph (c) for “the company” substitute “ the investor ”;
- (c) after paragraph (c) insert—
- “(d) money in the investor's possession;
- (e) a sum owed to the investor which—
- (i) under section 285(4)(b) (read with section 285(5) and (6)) is to be regarded as an investment of the investor, and
- (ii) is such that the investor's right mentioned in section 285(5)(a) may be exercised on 7 days' notice given by the investor.”

- (6) After subsection (3A) insert—

“(3B) In subsection (3A), any reference to a thing which may be done on 7 days' notice includes a case where that thing may be done—

- (a) on less than 7 days' notice, or
- (b) without notice.”

- (7) In subsection (5)—

- (a) after paragraph (b) insert—

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- “(ba) amend or repeal subsection (3B) in consequence of any provision made under paragraph (b),”;
  - (b) in paragraph (c) for the words from “made by” to “(3A)” substitute “ falling within subsection (3A) may be held by the company ”.
- (8) The amendments made by this section have effect in relation to investments made on or after 6 April 2016.

*Reliefs: peer-to-peer lending*

### 32 Income tax relief for irrecoverable peer-to-peer loans

- (1) ITA 2007 is amended as follows.
- (2) After section 412 insert—

#### “CHAPTER 1A

#### IRRECOVERABLE PEER-TO-PEER LOANS

#### *The relief*

#### 412A Relief for irrecoverable peer-to-peer loans

- (1) A person (“L”) is entitled to relief under this section if—
  - (a) L has made a peer-to-peer loan (“the relevant loan”),
  - (b) the loan was made through an operator,
  - (c) L has not assigned the right to recover the principal of the loan, and
  - (d) any outstanding amount of the principal of the loan has, on or after 6 April 2015, become irrecoverable.
- (2) But if the outstanding amount became irrecoverable before 6 April 2016 L is entitled to relief under this section only on the making of a claim.
- (3) The relief is given by deducting the outstanding amount in calculating L's net income for the tax year in which the amount became irrecoverable (see Step 2 of the calculation in section 23).
- (4) The deduction under this section is to be made only from income arising from the payment to L of interest on—
  - (a) the relevant loan, and
  - (b) any other loan within subsection (5) or (6).
- (5) A loan is within this subsection if—
  - (a) it is a peer-to-peer loan made by L, and
  - (b) it was made through the operator through whom the relevant loan was made.
- (6) A loan is within this subsection if—
  - (a) the loan was made by someone other than L,
  - (b) the right to receive interest on the loan has been assigned to L,

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- (c) the right was assigned through the operator through whom the relevant loan was made, and
- (d) either—
  - (i) L is a person within paragraph (a), (b) or (c) of section 412I(4), or
  - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.
- (7) The amount deducted under this section is limited in accordance with section 25(4) and (5).
- (8) In this section “irrecoverable” means irrecoverable other than by legal proceedings or by the exercise of any right granted by way of security for the loan.

#### **412B Claims for additional relief: sideways relief**

- (1) A person (“L”) may make a claim for relief under this section if—
  - (a) L is entitled to relief under section 412A in respect of any outstanding amount of the principal of a loan (“the relevant loan”), but
  - (b) in the tax year in relation to which L is entitled to that relief (“the relevant year”)—
    - (i) L has no income of the kind mentioned in section 412A(4) from which to deduct the outstanding amount, or
    - (ii) L has insufficient income of that kind to enable the outstanding amount to be deducted in full under that section.
- (2) The claim is for the outstanding amount or (in a case within subsection (1)(b)(ii)) the part of the outstanding amount not capable of being deducted under section 412A to be deducted under this section in calculating L's net income for the relevant year.
- (3) The deduction under this section is to be made only from income arising from the payment to L of interest on loans within subsection (4) or (5).
- (4) A loan is within this subsection if—
  - (a) it is a peer-to-peer loan made by L, and
  - (b) it was made through an operator who is not the operator through whom the relevant loan was made.
- (5) A loan is within this subsection if—
  - (a) the loan was made by someone other than L,
  - (b) the right to receive interest on the loan has been assigned to L,
  - (c) that right was assigned through an operator who is not the operator through whom the relevant loan was made, and
  - (d) either—
    - (i) L is a person within paragraph (a), (b) or (c) of section 412I(4), or
    - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.



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- (6) The amount deducted under this section is limited in accordance with section 25(4) and (5).

#### **412C Claims for additional relief: carry-forward relief**

- (1) A person (“L”) may make a claim for relief under this section if—
- (a) L is entitled to relief under section 412A in respect of any outstanding amount of the principal of a loan (“the relevant loan”), but
  - (b) in the tax year in relation to which L is entitled to that relief (“the relevant year”)—
    - (i) L has no income of the kind mentioned in section 412A(4) or section 412B(3) from which to deduct the outstanding amount, or
    - (ii) L has insufficient income of that kind to enable the outstanding amount to be deducted in full under those sections.
- (2) The claim is for the outstanding amount or (in a case within subsection (1)(b)(ii)) the part of the outstanding amount not capable of being deducted under sections 412A and 412B to be deducted under this section in calculating L's net income for the four tax years following the relevant year.
- (3) The deduction under this section is to be made only from income arising from the payment to L of interest on—
- (a) the relevant loan, and
  - (b) any other loan within subsection (4) or (5).
- (4) A loan is within this subsection if—
- (a) it is a peer-to-peer loan made by L, and
  - (b) it was made through an operator (whether or not that operator is the operator through whom the relevant loan was made).
- (5) A loan is within this subsection if—
- (a) the loan was made by someone other than L,
  - (b) the right to receive interest on the loan has been assigned to L,
  - (c) that right was assigned through an operator (whether or not that operator is the operator through whom the relevant loan was made), and
  - (d) either—
    - (i) L is a person within paragraph (a), (b) or (c) of section 412I(4), or
    - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.
- (6) This section needs to be read with section 412D (how relief works).

#### **412D How carry-forward relief works**

- (1) This subsection explains how deductions are to be made under section 412C.

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The amount to be deducted at any step is limited in accordance with section 25(4) and (5).

*Step 1* Deduct the outstanding amount or (in a case within section 412C(1)(b)(ii)) the part of the outstanding amount not capable of being deducted under sections 412A and 412B from the lending income for the first tax year following the relevant year.

*Step 2* Deduct from the lending income for the second tax year following the relevant year any part of the outstanding amount not previously deducted.

*Step 3* Apply Step 2 in relation to the lending income for the third and fourth tax years following the relevant year, stopping if all of the outstanding amount is deducted.

(2) In this section—

“lending income” means income of a kind mentioned in section 412C(3);

“relevant year” has the meaning given by section 412C(1)(b).

#### *Supplementary provisions*

#### **412E Subsequent recovery of peer-to-peer loans**

(1) This section applies where—

- (a) any amount of the principal of a loan has been deducted under this Chapter in calculating a person's net income for a tax year, and
- (b) the person subsequently recovers that amount or any part of it.

(2) The amount recovered is to be treated for the purposes of this Act as if it were interest on the loan paid to the person at the time it was recovered.

(3) For the purposes of this section, a person is to be treated as recovering an amount if the person (or any other person at his or her direction) receives any money or money's worth—

- (a) in satisfaction of the person's right to recover that amount, or
  - (b) in consideration of the person's assignment of the right to recover it;
- and where a person assigns such a right otherwise than by way of a bargain made at arm's length the person shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.

#### **412F Assigned loans treated as made by the assignee etc**

(1) This section applies where—

- (a) a person (“A”) is assigned the right to recover the principal of a loan,
- (b) the right is assigned through an operator (“O”),
- (c) A makes a payment in consideration of the assignment, and
- (d) A does not further assign the right.

(2) The loan is to be treated for the purposes of section 412A(1) as—

- (a) having been made by A, and
- (b) having been made through O.

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- (3) The amount (if any) of the principal of the loan which is treated as irrecoverable may not exceed the amount which is arrived at by—
- (a) taking the amount of the payment mentioned in subsection (1)(c), and
  - (b) deducting any amount of the principal of the loan previously recovered by A.

#### **412G Nominees etc**

For the purposes of this Chapter—

- (a) a loan or a payment made by or to a nominee or bare trustee for a person is treated as made by or to that person, and
- (b) a right assigned by or to a nominee or bare trustee for a person is treated as assigned by or to that person.

#### **412H Interaction with other reliefs**

- (1) Subsection (2) applies in relation to a loan if any person has obtained income tax relief (other than under this Chapter) which is properly attributable to the loan.
- (2) The amount (if any) of the principal of the loan which is treated as irrecoverable may not exceed the amount which is arrived at by—
- (a) taking the amount of the principal of the loan, and
  - (b) deducting the amount of the relief mentioned in subsection (1).

### *Interpretation*

#### **412I Meaning of “loan”, “peer-to-peer loan” and related terms**

- (1) This section applies for the purposes of this Chapter.
- (2) “Loan” means a loan of money which—
- (a) is made on genuine commercial terms, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is to obtain a tax advantage (within the meaning given by section 208 of the FA 2013).
- (3) A loan is a “peer-to-peer loan” only if it meets—
- (a) Condition A or B, and
  - (b) Condition C.
- (4) Condition A is that the person who made the loan is—
- (a) an individual,
  - (b) a partnership which consists of—
    - (i) two or three persons, and
    - (ii) at least one person who is not a body corporate, or
  - (c) an unincorporated body of persons which—
    - (i) is not a partnership, and
    - (ii) consists of at least one person who is not a body corporate.

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- (5) Condition B is that—
  - (a) the recipient of the loan is a person within paragraph (a), (b) or (c) of subsection (4), and
  - (b) the loan is a personal or small loan.
- (6) Condition C is that, assuming interest were paid on the loan, the person who made the loan would (except for this Chapter) be liable for income tax charged on the interest.
- (7) “Personal loan” means a loan which is not used wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the recipient of the loan.
- (8) “Small loan” means a loan of £25,000 or less.

#### **412J Meaning of “operator” and related terms**

- (1) This section applies for the purposes of this Chapter.
- (2) “Operator” means a person who—
  - (a) has permission under Part 4A of FISMA 2000 to carry on a regulated activity specified in Article 36H of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending), or
  - (b) has been granted equivalent permission under the law of a territory outside the United Kingdom that is within the European Economic Area.
- (3) A loan is “made through” an operator if the person who makes the loan and the recipient of the loan enter the agreement under which the loan is made at the invitation of the operator.
- (4) A right is “assigned through” an operator if the person who assigns the right and the person to whom the right is assigned enter the agreement under which the assignment takes effect at the invitation of the operator.
- (5) A person is not to be treated as having entered an agreement at the invitation of an operator if the operator made the invitation otherwise than in the course of carrying on the activity to which the permission mentioned in subsection (2) (a) or (b) relates.”
- (3) In section 24(1) (list of reliefs deductible at Step 2 of the calculation of income tax liability), in paragraph (b), at the appropriate place insert— “ Chapter 1A of Part 8 (irrecoverable peer-to-peer loans), ”.
- (4) In section 25(3) (list of provisions requiring reliefs to be deducted from particular components of income etc) at the appropriate place insert— “ sections 412A(4), 412B(3) and 412C(3) (relief for irrecoverable peer-to-peer loans only against interest on certain loans), ”.

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### *Transactions in securities*

## **33 Transactions in securities: company distributions**

- (1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.
- (2) In section 684 (person liable to counteraction), in subsection (1)—
  - (a) in the opening words, after “a person” insert “ (“the party”) ”;
  - (b) in paragraph (c), omit “the person in being a party to”;
  - (c) in paragraph (d), for “the person” substitute “ the party or any other person ”.
- (3) In that section, in subsection (2)—
  - (a) in paragraph (c), omit the final “and”;
  - (b) after paragraph (d) insert—
    - “(e) a repayment of share capital or share premium, and
    - (f) a distribution in respect of securities in a winding up.”
- (4) In section 685 (receipt of consideration in connection with distribution by or assets of close company)—
  - (a) in subsection (2)—
    - (i) in the opening words, for “the person” substitute “ a relevant person ”;
    - (ii) in the words after paragraph (c), after “and” insert “ the relevant person ”;
  - (b) in subsection (3)—
    - (i) in paragraph (a), for “the person” substitute “ a relevant person ”;
    - (ii) in paragraph (c), for “the person” substitute “ the relevant person ”;
  - (c) after subsection (3) insert—

“(3A) In subsections (2) and (3) “relevant person” means—

    - (a) the party, or
    - (b) any person other than the party in relation to whom the condition in section 684(1)(d) is met.”
  - (d) omit subsection (6);
  - (e) after subsection (7) insert—

“(7A) The references in subsection (4)(a)(i) and (ii) to assets do not include assets shown to represent return of sums paid by subscribers on the issue of securities merely because the law of the country in which the company is incorporated allows assets of that description to be available for distribution by way of dividend.

(7B) The references in subsections (4)(a)(i) and (5)(a) to assets which are available for distribution by way of dividend by the company include assets which are available for distribution to the company by way of dividend by any other company it controls.”
- (5) In section 686 (excluded circumstances: fundamental change of ownership)—
  - (a) in subsection (1)(a), for the words from “the person” to “party”)” substitute “ the party ”;
  - (b) for subsections (2) to (5) substitute—

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- “(2) There is a fundamental change of ownership of the close company if, as a result of the transaction or transactions in securities, the condition in subsection (3) is met.
- (3) The condition in this subsection is that the original shareholder or original shareholders taken together with any associate or associates—
  - (a) do not directly or indirectly hold more than 25% of the ordinary share capital of the close company,
  - (b) do not directly or indirectly hold shares in the close company carrying an entitlement to more than 25% of the distributions which may be made by the close company, and
  - (c) do not directly or indirectly hold shares in the close company carrying more than 25% of the total voting rights in the close company.
- (4) In this section “original shareholder” means a person who, immediately before the transaction in securities (or the first of the transactions in securities), held any ordinary share capital of the close company.
- (5) For the purposes of this section, shares of or share capital in the close company which are held by a person controlled by an original shareholder, or by two or more original shareholders taken together, count as shares or share capital held by that original shareholder or those original shareholders.”
- (6) In section 687 (income tax advantage)—
  - (a) in subsection (1), in the opening words, for “the person” substitute “a person”;
  - (b) in subsection (2)—
    - (i) after “to the person” insert “or an associate of the person”;
    - (ii) for “the relevant consideration is received” substitute “Condition A or B in section 685 is met”.
- (7) In section 713 (interpretation), at the appropriate place insert—
 

““associate” is to be construed in accordance with section 681DL, but as if subsection (4) of that section also included, as persons associated with each other, a person as trustee of a settlement and an individual, where one or more beneficiaries of the settlement are connected or associated with the individual;”.
- (8) The amendments made by this section have effect in relation to—
  - (a) a transaction occurring on or after 6 April 2016, or
  - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April 2016 in consequence of—
  - (a) a transaction occurring before that date, or
  - (b) a series of transactions all of which occur before that date.

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(10) Where—

- (a) before 6 April 2016 a person provides particulars to the Commissioners for Her Majesty's Revenue and Customs under section 701 of ITA 2007 in respect of a transaction or transactions,
- (b) on the basis of Chapter 1 of Part 13 of ITA 2007 as it has effect apart from this section, notification is given under section 701 of that Act that no counteraction notice ought to be served about the transaction or transactions,
- (c) the transaction, or any one or more of the transactions, occurs on or after 6 April 2016, and
- (d) the person would, but for the notification, be liable for counteraction of an income tax advantage from the transaction or transactions under Chapter 1 of Part 13 of ITA 2007 as amended by this section,

the notification is void and section 702(2) of ITA 2007 does not apply in relation to the transaction or transactions.

### **34 Transactions in securities: procedure for counteraction of advantage**

(1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.

(2) For section 695 (preliminary notification) substitute—

#### **“695 Notice of enquiry**

(1) An officer of Revenue and Customs may enquire into a transaction or transactions if—

- (a) the officer has reason to believe that section 684 (person liable to counteraction of income tax advantage) may apply to a person (“the taxpayer”) in respect of the transaction or transactions, and
- (b) the officer notifies the taxpayer of his intention to do so.

(2) The notification may be given at any time not more than 6 years after the end of the tax year to which the income tax advantage in question relates.”

(3) Omit sections 696 and 697 (opposed notifications).

(4) In section 698 (counteraction notices), for subsection (1) substitute—

“(1) If on an enquiry under section 695 an officer of Revenue and Customs determines that section 684 applies to the taxpayer, the income tax advantage in question is to be counteracted by adjustments, unless the officer is of the opinion that no counteraction is required.”

(5) In that section, for subsection (5) substitute—

“(5) An assessment may be made in accordance with a counteraction notice at any time (without regard to any time limit on making the assessment that would otherwise apply).”

(6) After that section insert—

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### **“698A No-counteraction notices**

- (1) If on an enquiry under section 695 an officer of Revenue and Customs is of the opinion that no counteraction is required, the officer must serve notice on the person (a “no-counteraction notice”) stating that no counteraction is required and why.
- (2) The taxpayer may apply to the tribunal for a direction requiring an officer of Revenue and Customs to issue one of the following within a specified period—
  - (a) a counteraction notice;
  - (b) a no-counteraction notice.
- (3) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (4) The tribunal must give the direction applied for unless satisfied that there are reasonable grounds for not serving either a counteraction notice or a no-counteraction notice within a specified period.”
- (7) In section 684 (person liable to counteraction), for subsection (4) substitute—

“(4) This section is subject to no-counteraction notices issued under section 698A.”
- (8) The amendments made by this section have effect in relation to—
  - (a) a transaction occurring on or after 6 April 2016, or
  - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April 2016 in consequence of—
  - (a) a transaction occurring before that date, or
  - (b) a series of transactions all of which occur before that date.

## **35 Distributions in a winding up**

- (1) In Chapter 3 of Part 4 of ITTOIA 2005 (dividends and other distributions from UK resident companies), after section 396A insert—

### **“396B Distributions in a winding up**

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in the winding up of a UK resident company is a distribution of the company if—
  - (a) Conditions A to D are met, and
  - (b) the distribution is not excluded (see subsection (7)).
- (2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.
- (3) Condition B is that the company—
  - (a) is a close company when it is wound up, or



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- (b) was a close company at any time in the period of two years ending with the start of the winding up.
- (4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—
  - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,
  - (b) the individual is a partner in a partnership which carries on such a trade or activity,
  - (c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—
    - (i) carries on such a trade or activity, or
    - (ii) is connected with a company which carries on such a trade or activity, or
  - (d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
- (5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—
  - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
  - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.
- (7) A distribution to an individual is excluded if or to the extent that—
  - (a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or
  - (b) the distribution is a distribution of irredeemable shares.
- (8) In this section—
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992;
  - “participator” has the meaning given by section 454 of CTA 2010.
- (9) For the purposes of this section, an individual has at least a 5% interest in a company if—
  - (a) at least 5% of the ordinary share capital of the company is held by the individual, and
  - (b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.
- (10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she

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is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).”

- (2) In Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), after section 404 insert—

**“404A Distributions in a winding up**

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in a winding up of a non-UK resident company is a dividend of the company if—
  - (a) Conditions A to D are met, and
  - (b) the distribution is not excluded (see subsection (7)).
- (2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.
- (3) Condition B is that the company—
  - (a) is a close company when it is wound up, or
  - (b) was a close company at any time in the period of two years ending with the start of the winding up.
- (4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—
  - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,
  - (b) the individual is a partner in a partnership which carries on such a trade or activity,
  - (c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—
    - (i) carries on such a trade or activity, or
    - (ii) is connected with a company which carries on such a trade or activity, or
  - (d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
- (5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—
  - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
  - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.
- (7) A distribution to an individual is excluded if or to the extent that—
  - (a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or

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- (b) the distribution is a distribution of irredeemable shares.
- (8) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “close company” includes a company which would be a close company if it were a UK resident company;
  - “effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992;
  - “participator” has the meaning given by section 454 of CTA 2010.
- (9) For the purposes of this section, a person has at least a 5% interest in a company if—
- (a) at least 5% of the ordinary share capital of the company is held by the individual, and
  - (b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.
- (10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).”
- (3) The amendments made by this section have effect in relation to distributions made on or after 6 April 2016.

### *Disguised fees and carried interest*

## **36 Disguised investment management fees**

- (1) Section 809EZA of ITA 2007 (disguised investment management fees: charge to income tax) is amended as specified in subsections (2) and (3).
- (2) In subsection (3)—
- (a) in paragraph (a), for “performs” substitute “ at any time performs or is to perform ”;
  - (b) omit paragraph (b);
  - (c) in paragraph (c), for “the scheme” substitute “ an investment scheme ”.
- (3) After subsection (6) insert—
- “(7) The reference in subsection (6)(a) to a collective investment scheme includes—
- (a) arrangements which permit an external investor to participate in investments acquired by the collective investment scheme without participating in the scheme itself, and
  - (b) arrangements under which sums arise to an individual performing investment management services in respect of the collective investment scheme without those sums arising from the scheme itself.”

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- (4) In section 809EZE of that Act (interpretation), in subsection (1), in paragraph (a) of the definition of “external investor”, for “performs” substitute “ at any time performs or is to perform ”.
- (5) The amendments made by this section have effect in relation to sums arising on or after 6 April 2016 (whenever the arrangements under which the sums arise were made).

### 37 Income-based carried interest

- (1) In Chapter 5E of Part 13 of ITA 2007 (tax avoidance: disguised investment management fees), in section 809EZB(1) (meaning of “management fee”), for paragraph (c) substitute—
  - “(c) carried interest which is not income-based carried interest (see sections 809EZC and 809EZD for carried interest, and Chapter 5F for income-based carried interest).”
- (2) After Chapter 5E of Part 13 of ITA 2007 insert—

#### “CHAPTER 5F

#### INCOME-BASED CARRIED INTEREST

#### *Income-based carried interest*

#### 809FZA Overview

- (1) This Chapter determines when carried interest arising to an individual from an investment scheme is “income-based carried interest” for the purposes of Chapter 5E (and, in particular, section 809EZB(1)(c)).
- (2) Section 809FZB contains the general rule, under which the extent to which carried interest is income-based carried interest depends on the average holding period of the investment scheme.
- (3) Sections 809FZC to 809FZP contain further provision relating to average holding periods.
- (4) Sections 809FZQ and 809FZR contain a particular rule for direct lending funds.
- (5) Sections 809FZS and 809FZT contain an exception to the general rule for carried interest which is conditionally exempt from income tax.
- (6) Sections 809FZU to 809FZZ contain supplementary and interpretative provision.
- (7) Nothing in this Chapter affects the liability to any tax of—
  - (a) the investment scheme, or
  - (b) external investors in the investment scheme.

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### 809FZB Income-based carried interest: general rule

- (1) “Income-based carried interest” is the relevant proportion of a sum of carried interest arising to an individual from an investment scheme.
- (2) The relevant proportion is determined by reference to the investment scheme's average holding period as follows.

<i>Average holding period</i>	<i>Relevant proportion</i>
Less than 36 months	100%
At least 36 months but less than 37 months	80%
At least 37 months but less than 38 months	60%
At least 38 months but less than 39 months	40%
At least 39 months but less than 40 months	20%
40 months or more	0%

- (3) This section is subject to the following provisions of this Chapter.

#### *Average holding period*

### 809FZC Average holding period

- (1) The average holding period of an investment scheme, in relation to a sum of carried interest, is the average length of time for which relevant investments have been held for the purposes of the scheme.
- (2) In this section, “relevant investments” means investments—
  - (a) which are made for the purposes of the scheme, and
  - (b) by reference to which the carried interest is calculated.
- (3) The average holding period is calculated by reference to the time the carried interest arises.
- (4) It is calculated as follows.
  - Step 1* For each relevant investment, multiply the value invested at the time the investment was made by the length of time for which the investment has been held.
  - Step 2* Add together the amounts produced under *step 1* in respect of all relevant investments.
  - Step 3* Divide the amount produced under *step 2* by the total value invested in all relevant investments.
- (5) Disregard intermediate holdings or intermediate holding structures (including intermediate investment schemes) by or through which investments are made or held—
  - (a) when identifying, for the purpose of determining the average holding period of an investment scheme, what relevant investments are held for the purposes of an investment scheme, and

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- (b) for any other purpose relating to the determination of the average holding period.

This is subject to the following provisions of this Chapter.

- (6) In this section, references to the length of time for which a relevant investment has been held are—
  - (a) in the case of an investment which has been disposed of before the carried interest arises, references to the time for which it was held before being disposed of, and
  - (b) in any other case, references to the time for which it has been held up to the time the carried interest arises.
- (7) For the purposes of this Chapter, carried interest which is deferred carried interest in relation to a person within the meaning of section 103KG of TCGA 1992 is to be treated as arising to that person at the time it would have arisen had it not been deferred as specified in section 103KG(3)(a) or (b) of that Act.
- (8) Sections 809FZD to 809FZP apply for the purposes of determining the average holding period of an investment scheme.

*Average holding period: disposals*

### 809FZD Disposals

- (1) An investment or part of an investment is disposed of where—
  - (a) there is a disposal of the investment or the part of the investment for the purposes of the investment scheme,
  - (b) there is a disposal for the purposes of the investment scheme of an intermediate holding or intermediate holding structure (including an intermediate investment scheme) by or through which the investment is held, or
  - (c) in any other case, there is a deemed disposal under subsection (2).
- (2) There is a deemed disposal of an investment or part of an investment under this subsection where—
  - (a) under any arrangements—
    - (i) the scheme in substance closes its position on the investment or the part of the investment, or
    - (ii) the scheme ceases to be exposed to risks and rewards in the respect of the investment or the part of the investment, and
  - (b) it is reasonable to suppose that the arrangements were designed to secure that result.
- (3) In the case of a disposal of part of a holding of securities in a company which are of the same class, suppose for the purposes of determining which investments have been disposed of that the disposal affects the securities in the order in which they were acquired (that is, on a first in first out basis).
- (4) The references in subsection (1)(a) and (b) to a disposal are to something which is a disposal for the purposes of TCGA 1992; but for the purposes of subsection (1)(a) disregard section 116 of TCGA 1992 (which disappplies sections 127 to 130 of that Act in relation to qualifying corporate bonds).

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### 809FZE Part disposals

- (1) Where there is a disposal of part of an investment, the part disposed of and the part not disposed of are to be treated as two separate investments which were made at the same time.
- (2) The value of each of those two separate investments is the appropriate proportion of the value first invested in the whole investment.
- (3) The appropriate proportion is the proportion of the value of the part in question to the value of the whole investment at the time of the disposal.
- (4) The disposal of part of an asset includes the disposal of an interest in or right over the asset (and “part disposed of” is to be construed accordingly).

### 809FZF Unwanted short-term investments

- (1) The making and disposal of an investment for the purposes of an investment scheme are to be disregarded if—
  - (a) the investment is an unwanted short-term investment, and
  - (b) the unwanted short-term investment is excludable.
- (2) An investment is an unwanted short-term investment where—
  - (a) the investment is made as part of a transaction under which one or more other investments are made for the purposes of the scheme,
  - (b) the value of the investment does not exceed that of the other investments taken together,
  - (c) it is reasonable to suppose that the investment had to be made in order for the other investments to be made,
  - (d) at the time the investment is made, managers of the scheme have a firm, settled and evidenced intention to dispose of the investment for the purposes of the scheme within the relevant period,
  - (e) the investment is disposed of for the purposes of the scheme within the relevant period, and
  - (f) any profit resulting from the disposal has no bearing on whether a sum of carried interest arises or on the amount of any sum of carried interest which does arise.
- (3) An unwanted short-term investment is excludable if it constitutes—
  - (a) an investment in land,
  - (b) an investment in securities in an unlisted company,
  - (c) the making of a direct loan where the other investments specified in subsection (2)(b) are shares or other securities in an unlisted company, or
  - (d) the making of a direct loan which is a qualifying loan within the meaning given by section 809FZR(2).
- (4) In subsection (2)(e) “relevant period” means—
  - (a) for an investment within subsection (3)(a), 12 months;
  - (b) for an investment within subsection (3)(b) or (c), 6 months;
  - (c) for an investment within subsection (3)(d), 120 days.

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- (5) But if at any time it becomes reasonable to suppose that, when the scheme ceases to invest, 25% or more of the capital of the investment scheme will have been invested in unwanted short-term investments which are excludable, subsection (1) does not apply to any investment made subsequently for the purposes of the scheme.

*Average holding period: derivatives and hedging*

### 809FZG Derivatives

- (1) A derivative contract entered into for the purposes of an investment scheme is an investment, subject to the following provisions of this section.
- (2) The value invested in the derivative contract is—
  - (a) where the contract is an option, the cost of acquiring the option (whether from the grantor or another person),
  - (b) where the contract is a future, the price specified in the contract for the underlying subject matter, or
  - (c) where the contract is a contract for differences, the notional principal of the contract.
- (3) But where entering into a derivative contract constitutes a deemed disposal of an investment or part of an investment by virtue of section 809FZD(2)(a)(ii)—
  - (a) the derivative contract is not an investment, and
  - (b) the subsequent disposal of the derivative contract without a corresponding disposal of the investment or part investment is to be regarded as the making of a new investment to the extent that the scheme becomes materially exposed to risks and rewards in respect of the investment or part investment.
- (4) For the purposes of this Chapter, references to disposal, in the case of a derivative contract, include any of the following events (to the extent that the event is not otherwise a disposal under section 809FZD(1) or (2))—
  - (a) the expiry of the contract,
  - (b) the termination of the contract (whether or not in accordance with its terms),
  - (c) the disposal, substantial variation, loss or cancellation of the investment scheme's rights under the contract, and
  - (d) in the case of a derivative contract which is an option, the exercise of the option,but do not include the renewal of the contract with the same counterparty on substantially the same terms.
- (5) The substantial variation of an investment scheme's rights under a derivative contract constitutes (in addition to the disposal of the contract as originally entered into (see subsection (4)(c)) a new investment consisting of the contract as varied.

### 809FZH Hedging: exchange gains and losses

- (1) This section applies where—



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- (a) an investment scheme has a hedging relationship between a relevant instrument and a relevant investment, and
  - (b) the hedging relationship relates to exchange gains or losses.
- (2) In this section—
  - “relevant instrument” means a derivative contract or a liability representing a loan relationship, and
  - “relevant investment” means—
    - (a) where the relevant instrument is a derivative contract, an investment made for the purposes of the scheme or a liability representing a loan relationship;
    - (b) where the relevant instrument is a liability representing a loan relationship, an investment made for the purposes of the scheme.
- (3) An investment scheme has a hedging relationship between a relevant instrument and a relevant investment if or to the extent that—
  - (a) the instrument and the investment are designated by the scheme as a hedge, or
  - (b) in any other case, the instrument is intended to act as a hedge of exposure to—
    - (i) changes in fair value of the investment or an identified portion of the investment, or
    - (ii) variability in cash flows,where the exposure is attributable to exchange gains or losses and could affect profit or loss of the investment scheme.
- (4) Entering into the hedging relationship is not a deemed disposal of the relevant investment under section 809FZD(2).
- (5) The relevant instrument is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (3)(a) and (b) are met.
- (6) But the termination of the hedging relationship is the making of an investment constituting the relevant instrument if or to the extent that that instrument continues to subsist.

#### **809FZI Hedging: interest rates**

- (1) This section applies where an investment scheme has a hedging relationship between—
  - (a) an interest rate contract, and
  - (b) a qualifying investment held for the purposes of the fund.
- (2) An investment scheme has a hedging relationship between an interest rate contract and a qualifying investment if or to the extent that—
  - (a) the interest rate contract and the investment are designated by the scheme as a hedge, or
  - (b) in any other case, the interest rate contract is intended to act as a hedge of exposure to—
    - (i) changes in fair value of the investment or an identified portion of the investment, or

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- (ii) variability in cash flows,  
 where the exposure is attributable to interest rates and could affect profit or loss of the investment scheme.
- (3) Entering into the hedging relationship is not a deemed disposal of the relevant investment under section 809FZD(2).
- (4) The interest rate contract is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (2)(a) and (b) are met.
- (5) But the termination of the hedging relationship is the making of an investment constituting the interest rate contract if or to the extent that the interest rate contract continues to subsist.
- (6) In this section “qualifying investment” means—
  - (a) money placed at interest,
  - (b) securities (excluding shares issued by companies),
  - (c) alternative finance arrangements, and
  - (d) a liability representing a loan relationship.

*Average holding period: aggregation of acquisitions and disposals*

#### **809FZJ Significant interests**

- (1) Where an investment scheme has a controlling interest in a trading company or the holding company of a trading group—
  - (a) any investment made for the purposes of the scheme in that company after the time when the controlling interest was acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the scheme of an investment in the company after the time the controlling interest was acquired is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b) “relevant disposal”, in relation to a company, means a disposal which (apart from subsection (1)) has the effect that the investment scheme ceases to have a 40% interest in the company.
- (3) For the purposes of this section, in determining whether an investment scheme has a controlling interest or a 40% interest in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the investment scheme.

#### **809FZK Venture capital funds**

- (1) Where a venture capital fund has a relevant interest in a trading company or the holding company of a trading group—
  - (a) any venture capital investment made for the purposes of the scheme in the company after the time the relevant interest was acquired (and before a relevant disposal) is to be regarded as having been made at the time the relevant interest was acquired, and

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- (b) any disposal for the purposes of the scheme of a venture capital investment in the company after that time is to be regarded as not being made until—
    - (i) a relevant disposal is made, or
    - (ii) the scheme director condition ceases to be met.
- (2) For the purposes of subsection (1) a venture capital fund has a relevant interest in a company if —
  - (a) by virtue of its venture capital investments the fund has at least a 5% interest in the company, or
  - (b) venture capital investments held for the purposes of the scheme in the company have a value of more than £1 million.
- (3) For the purposes of subsection (1) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the venture capital fund has disposed of more than 80% of the greatest amount invested at any one time in the company for the purposes of the fund.
- (4) In this Chapter, “venture capital fund” means an investment scheme in relation to which the condition in subsection (5) is met.
- (5) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
  - (a) at least two-thirds of the total value invested for the purposes of the scheme will be invested in venture capital investments, and
  - (b) at least two-thirds of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.
- (6) In determining whether subsection (5)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (7) In this section, “venture capital investment”, in relation to an investment scheme, means an investment in a trading company or the holding company of a trading group where—
  - (a) at the time the investment is made the company is unlisted and is likely to remain so,
  - (b) at least 75% of the total value of the investment is invested in—
    - (i) newly issued shares or
    - (ii) newly issued securities convertible into shares,
  - (c) the investment is used in a trade carried on by the trading company or the trading group—
    - (i) to support its growth, or
    - (ii) for the development of new products or services,
 and is not used directly or indirectly to acquire shares in the company which are not newly issued,
  - (d) if the investment is the first investment made in the company for the purposes of the scheme, the trading company or group has not carried on that trade for more than 7 years, and
  - (e) the scheme director condition is met.

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- (8) In this Chapter, the scheme director condition, in relation to an investment scheme and a company, is that—
  - (a) the scheme (or the scheme and one or more investment schemes acting together) are entitled to appoint a director (“the scheme director”) of—
    - (i) the company, or
    - (ii) a company which controls the company, and
  - (b) the scheme director is entitled to exercise rights within subsection (9).
- (9) Those rights are rights which—
  - (a) are rights conferred under contractual arrangements—
    - (i) to which some or all of the investors in the company are parties, and
    - (ii) which it would be reasonable to suppose would not otherwise be capable of being exercised by the scheme director,
  - (b) relate to the conduct of the business and affairs of the company, and
  - (c) are at least equivalent to the rights which it is reasonable to suppose a prudent investor would have obtained on making an investment in the company at arm's length of the same size and nature as that held in the company for the purposes of the investment scheme.
- (10) In determining whether the condition in subsection (2)(a) or (b) is met in relation to a venture capital fund, any share capital of a company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the venture capital fund.

#### 809FZL Significant equity stake funds

- (1) Where a significant equity stake fund has a significant equity stake investment in a trading company or the holding company of a trading group—
  - (a) any investment made for the purposes of the fund in that company made after the time the significant equity stake investment was acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the fund of an investment in the company after that time is to be regarded as not being made until—
    - (i) a relevant disposal is made, or
    - (ii) the scheme director condition ceases to be met.
- (2) In subsection (1)(b) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the significant equity stake fund ceases to have a 15% interest in the company.
- (3) In this Chapter, “significant equity stake fund” means an investment scheme—
  - (a) which is not a venture capital fund, and
  - (b) in relation to which the condition in subsection (4) is met.
- (4) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—

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- (a) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are significant equity stake investments, and
  - (b) more than 50% of that value will be invested in investments which are held for 40 months or more.
- (5) In determining whether subsection (4)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (6) In this section, “significant equity stake investment”, in relation to an investment scheme, means an investment in a trading company or the holding company of a trading group where—
  - (a) at the time the investment is made, the company is unlisted and likely to remain so,
  - (b) by virtue of the investment (on its own or with other investments) the scheme has a 20% interest in the company, and
  - (c) the scheme director condition is met.
- (7) For the purposes of this section, in determining whether a significant equity stake fund has an interest of a particular percentage in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the significant equity stake fund.

#### 809FZM Controlling equity stake funds

- (1) Where a controlling equity stake fund has a 25% interest in a trading company or the holding company of a trading group—
  - (a) any investment made for the purposes of the controlling equity stake fund in the company after the time the 25% interest was acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the controlling equity stake fund of an investment in the company after that time is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b), “relevant disposal”, in relation to a company, means a disposal which (apart from subsection (1)) has the effect that the controlling equity stake fund ceases to have a 25% interest in the company.
- (3) In this Chapter, “controlling equity stake fund” means an investment scheme—
  - (a) which is not a venture capital fund or significant equity stake fund, and
  - (b) in relation to which the condition in subsection (4) is met.
- (4) The condition is that when the scheme starts to invest it is reasonable to suppose that, over the investing life of the scheme—
  - (a) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are controlling interests in trading companies or holding companies of trading groups, and
  - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.

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- (5) In determining whether subsection (4)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (6) For the purposes of this section, in determining whether a controlling equity stake fund has a controlling interest or an interest of a particular percentage in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the controlling equity stake fund.

#### 809FZN Real estate funds

- (1) Where a real estate fund has a major interest in any land—
  - (a) any investment made for the purposes of the fund in that land after the time the major interest was acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the fund of an investment in the land after that time is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the real estate fund has disposed of more than 50% of the greatest amount invested at any one time in the land for the purposes of the real estate fund.
- (3) Where a real estate fund has a major interest in any land (“the original land”) and subsequently acquires a major interest in any adjacent land—
  - (a) the acquisition is an investment in the original land for the purposes of subsection (1)(a), and
  - (b) after the acquisition, the adjacent land is to be regarded as part of the original land for the purposes of subsections (1) and (2).
- (4) In this Chapter, “real estate fund” means an investment scheme—
  - (a) which is not a venture capital fund, significant equity stake fund or controlling equity stake fund, and
  - (b) in relation to which the condition in subsection (5) is met.
- (5) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
  - (a) more than 50% of the total value invested for the purposes of the scheme will be invested in land, and
  - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.
- (6) In determining whether subsection (5)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.

#### 809FZO Funds of funds

- (1) Section 809FZC(5) (disregard of intermediate holdings and holding structures) does not apply to an investment made for the purposes of a fund of

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funds in a collective investment scheme (and, accordingly, such an investment is regarded as an investment in the collective investment scheme itself).

- (2) Subsection (1) does not apply in relation to a fund of funds in relation to a collective investment scheme if it is reasonable to suppose that the main purpose or one of the main purposes of the making of any investment in any collective investment scheme for the purposes of the fund of funds is to reduce the proportion of carried interest arising to any person which is income-based carried interest.
- (3) Where by virtue of subsection (1) a fund of funds has a significant investment in a collective investment scheme (“the underlying scheme”)—
  - (a) any qualifying investment made for the purposes of the fund in the underlying scheme after the time the significant investment was acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the fund of a qualifying investment in the underlying scheme after that time is to be regarded as not being made until a relevant disposal is made.
- (4) In subsection (3)(b) “relevant disposal”, in relation to an underlying scheme, means a disposal which (apart from subsection (3)) has the effect that—
  - (a) the fund of funds has (by virtue of disposals of its interest in the underlying scheme) disposed of at least 50% of the greatest amount invested for its purposes at any one time in the underlying scheme, or
  - (b) the fund of fund's investment in the underlying scheme is worth less than whichever is the greater of—
    - (i) £1 million, or
    - (ii) 5% of the total value of the investments made before the disposal for the purposes of the fund of funds in the underlying scheme.
- (5) In this Chapter, “fund of funds” means an investment scheme in relation to which the condition in subsection (6) is met.
- (6) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
  - (a) substantially all of the total value invested for the purposes of the scheme will be invested in collective investment schemes of which the scheme holds less than 50% by value,
  - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more, and
  - (c) more than 75% of the total value invested in the scheme will be invested by external investors.
- (7) In determining whether subsection (6)(b) is met in relation to an investment scheme, apply the rule in subsection (3) to the scheme.
- (8) In this section, “significant investment”, in relation to a collective investment scheme, means—
  - (a) an investment of at least £1 million in the scheme, or
  - (b) an investment of at least 5% of the total amounts raised or to be raised from external investors in the scheme.

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- (9) In this section, “qualifying investment” means an investment made for the purposes of an investment scheme in a collective investment scheme (“the underlying scheme”) where—
- (a) the investment is held on the same terms as other investments made by external investors in the underlying scheme,
  - (b) the fund of funds, together with any connected funds, does not hold more than 30% by value of the underlying scheme,
  - (c) the underlying scheme has not made an investment in the fund of funds,
  - (d) no person providing investment management services to the underlying scheme provides investment management services to the fund of funds, and
  - (e) it is reasonable to suppose that the investment in the underlying scheme is not part of arrangements the main purpose or one of the main purposes of which is to reward any person involved in providing investment management services to the underlying scheme or a scheme connected with that underlying scheme.

#### 809FZP Secondary funds

- (1) Section 809FZC(5) (disregard of intermediate holdings and holding structures) does not apply to investments acquired for the purposes of a secondary fund in a collective investment scheme (and, accordingly, such an investment is regarded as an investment in the collective investment scheme itself).
- (2) Subsection (1) does not apply in relation to a secondary fund in relation to a collective investment scheme if it is reasonable to suppose that the main purpose or one of the main purposes of the making of any investment in any collective investment scheme for the purposes of the secondary fund is to reduce the proportion of carried interest arising to any person which is income-based carried interest.
- (3) Where by virtue of subsection (1) a secondary fund has a significant investment in a collective investment scheme (“the underlying scheme”)—
  - (a) any qualifying investment acquired for the purposes of the fund in the underlying scheme after the time when the significant investment is acquired is to be regarded as having been made at that time, and
  - (b) any disposal for the purposes of the fund of a qualifying investment in the underlying scheme after that time is to be regarded as not being made until a relevant disposal is made.
- (4) In subsection (3)(b) “relevant disposal” means a disposal which (apart from subsection (3)) has the effect that—
  - (a) the secondary fund has (by virtue of disposals of its interest in the underlying scheme) disposed of at least 50% of the greatest amount invested for its purposes at any one time in the underlying scheme, or
  - (b) the secondary fund's investment in the underlying scheme is worth less than whichever is the greater of—
    - (i) £1 million, or



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- (ii) 5% of the total value of the investments held immediately before the disposal for the purposes of the secondary fund in the underlying scheme.
- (5) In this Chapter, “secondary fund” means an investment scheme in relation to which the condition in subsection (6) is met.
- (6) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
  - (a) substantially all of the total value invested for the purposes of the scheme will be in the acquisition of investments in, or the acquisition of portfolios of investments from, unconnected collective investment schemes,
  - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more, and
  - (c) more than 75% of the total amount invested in the scheme will be invested by external investors.
- (7) In determining whether subsection (6)(b) is met in relation to an investment scheme, apply the rule in subsection (3) to the scheme.
- (8) In this section, “significant interest”, in relation to a collective investment scheme, means—
  - (a) an investment of at least £1 million in the scheme, or
  - (b) an investment of at least 5% of the total amounts raised or to be raised from external investors in the scheme.
- (9) In this section, “qualifying investment” means an investment in a collective investment scheme (“the underlying scheme”) acquired for the purposes of a secondary fund where—
  - (a) the investment acquired was originally made on the same terms as investments in the underlying scheme made by external investors,
  - (b) the terms on which the investment was acquired or investments made in the underlying scheme were made by external investors have not significantly changed since the investment was acquired,
  - (c) the secondary fund, together with any connected funds, does not hold more than 30% by value of the underlying scheme,
  - (d) no person providing investment management services to the underlying scheme provides investment management services to the secondary fund, and
  - (e) it is reasonable to suppose that the investment in the underlying scheme is not part of arrangements the main purpose or one of the main purposes of which is to reward any person involved in providing investment management services to the underlying scheme or a scheme connected with that underlying scheme.

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### *Direct lending funds*

#### **809FZQ Direct lending funds**

- (1) Carried interest arising from an investment scheme which is a direct lending fund is income-based carried interest in its entirety.

Subsections (2) to (4) apply for the purposes of this Chapter.

- (2) A direct lending fund is an investment scheme—
- (a) which is not a venture capital fund, significant equity stake fund, controlling equity stake fund or real estate fund, and
  - (b) in relation to which it is reasonable to suppose that, when the scheme ceases to invest, a majority of the investments made for the purposes of the scheme (calculated by reference to value invested) will have been direct loans made by the scheme.
- (3) An investment scheme makes a direct loan if for the purposes of the scheme money is advanced at interest or for any other return determined by reference to the time value of money.
- (4) The acquisition of a direct loan is to be regarded as the making of a direct loan if the loan is acquired within the period of 120 days beginning with the day on which the money is first advanced.

#### **809FZR Direct lending funds: exception**

- (1) Section 809FZQ does not apply to carried interest arising from a direct lending fund if—
- (a) the fund is a limited partnership,
  - (b) the carried interest is a sum falling within section 809EZD(2) or (3), and
  - (c) it is reasonable to suppose that, when investments cease to be made for the purposes of the fund, at least 75% of the direct loans made by the fund (calculated by reference to value advanced) will have been qualifying loans.
- (2) In this section “qualifying loan” means a direct loan made by an investment scheme where—
- (a) the borrower is not connected with the investment scheme,
  - (b) the money is advanced under a genuine commercial loan agreement negotiated at arm's length,
  - (c) repayments are fixed and determinable,
  - (d) maturity is fixed,
  - (e) the scheme has the positive intention and ability to hold the loan to maturity, and
  - (f) the relevant term of the loan is at least four years.
- (3) In this section “relevant term”, in relation to a loan, means the period which—
- (a) begins with the time when the money is advanced, and

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- (b) ends with the time by which, under the terms of the loan, at least 75% of the principal due under the loan must be repaid.
- (4) For the purposes of determining the average holding period of a scheme, where—
  - (a) a qualifying loan made by an investment scheme is repaid by the borrower to any extent before the end of 40 months from the time the loan is made, and
  - (b) it is reasonable to suppose that the borrower's decision to repay was not affected by considerations relating to the application of this Chapter,  
the loan is, to the extent it is repaid by the borrower before the end of 40 months from the time it is made, to be treated as held for 40 months.
- (5) In determining for the purposes of subsection (1)(b) whether a sum falls within section 809EZF(2) or (3), read section 809EZF(4)(b) as if the reference to 6% were to 4%.
- (6) Section 809FZF applies to carried interest to which, by virtue of subsection (1), section 809FZQ does not apply.

#### *Conditionally exempt carried interest*

#### **809FZS Conditionally exempt carried interest**

- (1) Carried interest which—
  - (a) arises to an individual from an investment scheme, and
  - (b) is conditionally exempt from income tax,  
is to be treated as if it were not income-based carried interest to any extent.
- (2) Carried interest is conditionally exempt from income tax if Conditions A to D are met.
- (3) Condition A is that the carried interest arises to the individual in the period of—
  - (a) four years beginning with the day on which the scheme starts to invest, or
  - (b) ten years beginning with that day if the carried interest is calculated on the realisation model.
- (4) Condition B is that the carried interest would, apart from this section, be income-based carried interest to any extent.
- (5) Condition C is that it is reasonable to suppose that, were the carried interest to arise to the individual at the relevant time (but by reference to the same relevant investments), it would not be income-based carried interest to any extent.
- (6) The “relevant time” is whichever is the earliest of—
  - (a) the time when it is reasonable to suppose that the investment scheme will be wound up;
  - (b) the end of the period of four years beginning with the time when it is reasonable to suppose that the scheme will cease to invest;

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- (c) the end of the period of—
    - (i) four years beginning with the day on which the sum of carried interest arises to the individual, or
    - (ii) ten years beginning with that day if the carried interest was calculated on the realisation model;
  - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest was determined.
- (7) Subsection (5) does not affect what would otherwise be the time at which an investment is disposed of for the purposes of this Chapter.
- (8) Condition D is that the individual makes a claim under this section for the carried interest to be conditionally exempt from income tax.

#### **809FZT Carried interest which ceases to be conditionally exempt**

- (1) Carried interest which is conditionally exempt from income tax ceases to be conditionally exempt from income tax at whichever is the earliest of—
  - (a) the time when the investment scheme is wound up;
  - (b) the end of the period of four years beginning with the time the scheme ceases to invest;
  - (c) the end of the period of—
    - (i) four years beginning with the day on which the sum of carried interest arises to the individual, or
    - (ii) ten years beginning with that day if the carried interest was calculated on the realisation model;
  - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest is determined;
  - (e) the time at which Condition C in section 809FZS(5) ceases to be met.
- (2) Carried interest which ceases to be conditionally exempt from income tax is to be treated as having been income-based carried interest at the time it arose to the individual if or to the extent that, had it arisen to the individual at the time it ceased to be conditionally exempt (but in relation to the same relevant investments) it would have been income-based carried interest.
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).
- (4) Any amount paid by way of capital gains tax in respect of carried interest which is conditionally exempt from income tax is to be treated as if it had been paid in respect of any income tax liability arising under subsection (2).

#### *Supplementary*

#### **809FZU Employment-related securities**

This Chapter does not apply in relation to carried interest arising to an individual in respect of employment-related securities as defined by section 421B(8) of ITEPA 2003.

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### 809FZV “Loan to own” investments

- (1) This section applies where—
  - (a) an investment scheme acquires a debt,
  - (b) the debt is to any extent uncollectable or otherwise impaired,
  - (c) the debt is acquired at a discount with a view to securing direct or indirect ownership of any assets which are—
    - (i) owned by a company which is the debtor in respect of the debt, or
    - (ii) subject to a security interest in respect of the debt, and
  - (d) the fund acquires ownership of the assets within three months of the acquisition of the debt.
- (2) For the purposes of this Chapter—
  - (a) the debt and the assets are to be treated as a single investment, and
  - (b) the value invested in that single investment is the amount paid for the debt.
- (3) In this section “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any obligation.

### 809FZW Anti-avoidance

- (1) For the purposes mentioned in subsection (2), no regard is to be had to any arrangements the main purpose of which, or one of the main purposes of which, is to reduce the proportion of carried interest which is income-based carried interest.
- (2) The purposes referred to in subsection (1) are—
  - (a) determining the average holding period, or
  - (b) determining whether an investment scheme is a venture capital fund, significant equity stake fund, controlling equity stake fund, real estate fund, fund of funds or secondary fund.
- (3) In determining to what extent carried interest is income-based carried interest, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 809EZA(1) (charge to income tax) does not apply in relation to some or all of the carried interest.

### 809FZX Treasury regulations

- (1) The Treasury may by regulations make—
  - (a) provision relating to the calculation of the average holding period in some or all cases;
  - (b) provision repealing, or restricting the application of, section 809FZU (employment-related securities).
- (2) The provision referred to in subsection (1)(a) includes in particular—
  - (a) provision for a method of calculating that period which is different from that in section 809FZC;

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- (b) provision as to what is and is not to be regarded as an investment;
  - (c) provision as to when an investment is to be regarded as made or disposed of;
  - (d) anti-avoidance provision.
- (3) Regulations under this section may—
- (a) amend this Chapter;
  - (b) make different provision for different purposes;
  - (c) contain incidental, supplemental, consequential and transitional provision and savings.

#### **809FZY “Reasonable to suppose”**

- (1) For the purposes of this Chapter, in determining what it is reasonable to suppose in relation to an investment scheme, regard is to be had to all the circumstances.
- (2) Those circumstances include in particular any prospectus or other document which—
  - (a) is made available to external investors in the investment scheme, and
  - (b) on which external investors may reasonably be supposed to have relied or been able to rely.

#### *Interpretation*

#### **809FZZ Interpretation of Chapter 5F**

- (1) In this Chapter—
  - “5% interest”, “15% interest”, “20% interest”, “25% interest” and “40% interest” are to be construed in accordance with subsection (4);
  - “act together”: two or more investment schemes act together in relation to a company if—
    - (a) they enter into contractual arrangements (with or without other persons) in relation to the conduct of the company's affairs,
    - (b) the arrangements are negotiated on arm's length terms, and
    - (c) the investment schemes act together to secure greater control or influence over the company's affairs than they would be able to secure individually;
  - “alternative finance arrangements” has the same meaning as in Part 6 of CTA 2009 (see section 501(2) of that Act);
  - “arrangements” has the same meaning as in Chapter 5E (see section 809EZE);
  - “associated”: two (or more) investment schemes are “associated if—
    - (a) the same or substantially the same individuals provide investment management services to both schemes;
    - (b) the investment schemes have the same or substantially the same investments, and
    - (c) the schemes act together in relation to all or substantially all of the investments they acquire;

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“carried interest” has the same meaning as in section 809EZB (see sections 809EYC and 809EYD);

“collective investment scheme” has the same meaning as in Chapter 5E (see section 809EZE);

“connected” and “unconnected” are to be construed in accordance with subsections (6) and (7);

“contract for differences” has the same meaning as in Part 7 of CTA 2009 (see section 582 of that Act);

“controlling equity stake fund” has the meaning given in section 809FZM;

“controlling interest” has the meaning given in subsection (3);

“derivative contract” has the same meaning as in Part 7 of CTA 2009 (but see below);

“designated” has the same meaning as for accounting purposes;

“direct lending fund” and “direct loan” have the meanings given in section 809FZQ;

“exchange gain or loss” is to be construed in accordance with section 475 of CTA 2009;

“external investor” has the same meaning as in Chapter 5E (see section 809EZE);

“fund of funds” has the meaning given in section 809FZO;

“future” has the same meaning as in Part 7 of CTA 2009 (see section 581 of that Act);

“interest rate contract” means—

- (a) a derivative contract whose underlying subject-matter is, or includes, interest rates, or
- (b) a swap contract in which payments fall to be made by reference to a rate of interest;

“investing life” is to be construed in accordance with subsection (2);

“investment” does not include—

- (a) cash awaiting investment, or
- (b) cash representing the proceeds of the disposal of an investment, where the cash is to be distributed as soon as reasonably practicable to investors in the scheme;

“investment scheme” has the same meaning as in Chapter 5E (see section 809EZA(6));

“limited partnership” means—

- (a) a limited partnership registered under the Limited Partnerships Act 1907,
- (b) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)), or
- (c) a firm or entity of a similar character to any of those mentioned in paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom;

“loan relationship” has the meaning given by section 302 of CTA 2009 (but see below);

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“major interest”, in relation to land, has the meaning given by section 96 of the Value Added Tax Act 1994;

“option” has the same meaning as in Part 7 of CTA 2009, disregarding section 580(2) of that Act;

“real estate fund” has the meaning given by section 809FZN;

“realisation model”: a sum of carried interest is calculated on the “realisation model” if it falls within section 809EZD(2) or (3) (disregarding section 809EZD(2)(b) and (3)(b));

“scheme director condition” has the meaning given by section 809FZK(8) and (9);

“secondary fund” has the meaning given by section 809FZP;

“significant equity stake fund” has the meaning given by section 809FZL;

“sum” has the same meaning as in Chapter 5E (see section 809EZB(3));

“trading company” and “trading group” have the meanings given by paragraphs 20 and 21 of Schedule 7AC to TCGA 1992;

“underlying subject matter” has the same meaning as in Part 7 of CTA 2009;

“unlisted”: a company is unlisted if—

- (a) no shares of any class issued by the company are listed on any stock exchange, and
- (b) there are no other trading arrangements in place in respect of shares of any class issued by the company;

“venture capital fund” has the meaning given by section 809FZK.

(2) In this Chapter—

- (a) references to when a scheme starts or ceases to invest are to the time when investments start or cease to be made for the purposes of the scheme, and
- (b) references to the investing life of the scheme are to the time between when a scheme starts and ceases to invest.

(3) For the purposes of this Chapter, an investment scheme has a controlling interest in a company if share capital of the company is held for the purposes of the scheme which—

- (a) amounts to more than 50% of the ordinary share capital of the company, and
- (b) carries an entitlement to more than 50% of—
  - (i) voting rights in the company,
  - (ii) profits available for distribution to shareholders, and
  - (iii) assets of the company available for distribution to shareholders in a winding-up.

(4) For the purposes of this Chapter, an investment scheme has an interest of a particular percentage in a company (for example, a 40% interest) if share capital of the company is held for the purposes of the scheme which—

- (a) amounts to at least that percentage of the ordinary share capital of the company, and
- (b) carries an entitlement to at least that percentage of—
  - (i) voting rights in the company,



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- (ii) profits available for distribution to shareholders, and
  - (iii) assets of the company available for distribution to shareholders in a winding-up.
- (5) For the purposes of subsections (3) and (4) any share capital held by a company controlled by an investment scheme is to be regarded as held for the purposes of the investment scheme.
- (6) For the purposes of this Chapter, an investment scheme (A) is connected with another investment scheme or person (B) if—
  - (a) A directly or indirectly has control of B, or
  - (b) the same person, directly or indirectly, has control of A and B.
- (7) For the purposes of subsection (6) “control”—
  - (a) in the case of control of a company, is to be read in accordance with sections 450 and 451 of CTA 2010;
  - (b) in the case of control of a partnership, has the meaning given in section 995(3);
  - (c) in the case of control of an investment scheme which is not a company or partnership, or of any other person which is not a company or partnership, means the ability to secure that the affairs of that scheme or other person are conducted in accordance with one's wishes.
- (8) For the purposes of the definition of “derivative contract”, read Part 7 of CTA 2009 as if—
  - (a) references to a company were references to an investment scheme, and
  - (b) references to a contract of a company were references to a contract for the purposes of an investment scheme.
- (9) For the purposes of the definition of “loan relationship”, read Part 5 of CTA 2009 as if—
  - (a) references to a company were references to an investment scheme, and
  - (b) references to a loan relationship of a company were references to a loan relationship for the purposes of an investment scheme.”
- (3) In section 2 of ITA 2007 (overview), in subsection (13), after paragraph (hb) insert—
  - “(hc) income-based carried interest (Chapter 5F),”.
- (4) The amendments made by this section have effect in relation to sums of carried interest arising on or after 6 April 2016 (whenever the arrangements under which the sums arise were made).

## **38 Income-based carried interest: persons coming to the UK**

- (1) In section 809EZA of ITA 2007 (disguised investment management fees: charge to income tax), after subsection (2) insert—
  - “(2A) Subsection (2B) applies instead of subsections (1) and (2) where—
    - (a) one or more disguised fees arise to an individual in a tax year (“the relevant tax year”) from one or more investment schemes (whether or not by virtue of the same arrangements),

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- (b) the disguised fees consist of carried interest which is income-based carried interest,
  - (c) the individual is UK resident in the relevant tax year,
  - (d) before the relevant tax year, the individual was not UK resident for a period of at least five consecutive tax years (“the period of non-residence”), and
  - (e) either—
    - (i) the relevant tax year is the first tax year immediately after the end of the period of non-residence, or
    - (ii) the relevant tax year is the second, third, or fourth tax year after the end of that period and the individual has been UK resident in all the intervening tax years.
- (2B) To the extent that the income-based carried interest arises by virtue of pre-arrival services, the individual is liable for income tax for the relevant tax year in respect of it as if—
- (a) in relation to pre-arrival services performed in the United Kingdom—
    - (i) the individual were carrying on a trade for the relevant year consisting of the performance of those services,
    - (ii) the income-based carried interest, so far as arising by virtue of those services, were profits of that trade, and
    - (iii) the individual were the person receiving or entitled to those profits, and
  - (b) in relation to pre-arrival services performed outside the United Kingdom—
    - (i) the individual were carrying on a trade for the relevant tax year consisting of the performance of those services,
    - (ii) the income-based carried interest, so far as arising by virtue of those services, were profits of that trade, and
    - (iii) the individual were the person receiving or entitled to those profits.
- (2C) In subsection (2B) “pre-arrival services” means investment management services performed before the end of the period of non-residence.”
- (2) The amendment made by this section has effect in relation to sums of carried interest arising on or after 6 April 2016 (whenever the arrangements under which the sums arise were made).

### *Deduction at source*

## **39 Deduction of income tax at source**

Schedule 6 contains provisions about deduction of income tax at source.

## **40 Deduction of income tax at source: intellectual property**

- (1) Part 15 of ITA 2007 (deduction from other payments connected with intellectual property) is amended as specified in subsections (2) and (3).

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(2) In section 906 (certain royalties etc where usual place of abode of owner is abroad), for subsections (1) to (3) substitute—

“(1) This section applies to any payment made in a tax year where condition A or condition B is met.

(2) Condition A is that—

- (a) the payment is a royalty, or a payment of any other kind, for the use of, or the right to use, intellectual property (see section 907),
- (b) the usual place of abode of the owner of the intellectual property is outside the United Kingdom, and
- (c) the payment is charged to income tax or corporation tax.

(3) Condition B is that—

- (a) the payment is a payment of sums payable periodically in respect of intellectual property,
- (b) the person entitled to those sums (“the assignor”) assigned the intellectual property to another person,
- (c) the usual place of abode of the assignor is outside the United Kingdom, and
- (d) the payment is charged to income tax or corporation tax.”

(3) For section 907 substitute—

**“907 Meaning of “intellectual property”**

(1) In section 906 “intellectual property” means—

- (a) copyright of literary, artistic or scientific work,
- (b) any patent, trade mark, design, model, plan, or secret formula or process,
- (c) any information concerning industrial, commercial or scientific experience, or
- (d) public lending right in respect of a book.

(2) In this section “copyright of literary, artistic or scientific work” does not include copyright in—

- (a) a cinematographic film or video recording, or
- (b) the sound-track of a cinematographic film or video recording, except so far as it is separately exploited.”

(4) The amendments made by subsections (2) and (3) have effect in respect of payments made on or after 28 June 2016.

(5) In determining whether section 906 of ITA 2007 applies to a payment, no regard is to be had to any arrangements the main purpose of which, or one of the main purposes of which, is to avoid the effect of the amendments made by this section.

(6) Where arrangements are disregarded under subsection (5) in relation to a payment which—

- (a) is made before 28 June 2016, and
- (b) is due on or after that day,

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the payment is to be regarded for the purposes of section 906 of ITA 2007 as made on the date on which it is due.

- (7) In determining the date on which a payment is due for the purposes of subsection (6), disregard the arrangements referred to in that subsection.
- (8) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable and whether entered into before, or on or after, 28 June 2016).

#### **41 Deduction of income tax at source: intellectual property - tax avoidance**

- (1) In Part 15 of ITA 2007 (deduction of income tax at source), after section 917 insert—

##### *“Tax avoidance*

##### **917A Tax avoidance arrangements**

- (1) This section applies if and to the extent that—
  - (a) a person (“the payer”) makes an intellectual property royalty payment,
  - (b) the payment is received by a person (“the payee”) who is connected with the payer, and
  - (c) the payment is made under DTA tax avoidance arrangements.
- (2) Any duty under Chapter 6 or 7 to deduct a sum representing income tax at any rate applies without regard to any double taxation arrangements.
- (3) Any income tax deducted by virtue of subsection (2) may not be set off under section 967 or 968 of CTA 2010.
- (4) In this section—
  - “arrangements” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “DTA tax avoidance arrangements” means arrangements where, having regard to all the circumstances, it is reasonable to conclude that—
    - (a) the main purpose, or one of the main purposes, of the arrangements was to obtain a tax advantage by virtue of any provisions of a double taxation arrangement, and
    - (b) obtaining that tax advantage is contrary to the object and purpose of those provisions;
  - “intellectual property royalty payment” means a payment referred to in section 906(2)(a) or (3)(a);
  - “receive” means receive—
    - (a) directly or indirectly;
    - (b) by one payment or by a series of payments;
  - “tax advantage” is to be construed in accordance with section 208 of FA 2013.
- (5) For the purposes of this section the payer is connected with the payee if the participation condition is met as between them.

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- (6) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (5) as for the purposes of section 147(1)(b) of that Act, but as if references to the actual provision were to the provision made or imposed between the payer and the payee in respect of the arrangements under which the payment is made.”
- (2) The amendment made by this section has effect in respect of a payment made on or after 17 March 2016 under arrangements entered into at any time (including arrangements entered into before that date).
- (3) In relation to payments made (under any such arrangements) on or after 17 March 2016 and on or before the day on which this Act is passed, section 917A of ITA 2007 as inserted by subsection (1) has effect as if the definition of “intellectual property royalty payment” in that section were as follows—
- ““intellectual property royalty payment” means—
- (a) a payment of a royalty or other sum in respect of the use of a patent,
  - (b) a payment specified in section 906(1)(a) (as originally enacted), or
  - (c) a payment which is a “qualifying annual payment” for the purposes of Chapter 6 by virtue of section 899(3)(a)(ii) (royalties etc from intellectual property);”.
- (4) In relation to payments made (under any such arrangements) on or after 28 June 2016 and on or before the day on which this Act is passed, section 917A of ITA 2007 as inserted by subsection (1) has effect as if “intellectual property royalty payment” also included (so far as it would not otherwise do so) any payments referred to in section 906(2)(a) or (3)(a) of ITA 2007 as substituted by section 40.

### *Receipts from intellectual property*

## **42 Receipts from intellectual property: territorial scope**

- (1) In section 577 of ITTOIA 2005 (territorial scope of Part 5 charges), at the end insert—
- “(5) See also section 577A (territorial scope of Part 5 charges: receipts from intellectual property).”
- (2) After that section insert—

### **“577A Territorial scope of Part 5 charges: receipts from intellectual property**

- (1) References in section 577 to income which is from a source in the United Kingdom include income arising where—
- (a) a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident, and
  - (b) the payment is made in connection with a trade carried on by that person through a permanent establishment in the United Kingdom.
- (2) Subsection (3) applies where a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident in connection with a trade carried on by that person only in part through a permanent establishment in the United Kingdom.

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- (3) The payment referred to in subsection (2) is to be regarded for the purposes of subsection (1)(b) as made in connection with a trade carried on through a permanent establishment in the United Kingdom to such extent as is just and reasonable, having regard to all the circumstances.
- (4) In determining for the purposes of section 577 whether income arising is from a source in the United Kingdom, no regard is to be had to arrangements the main purpose of which, or one of the main purposes of which, is to avoid the effect of the rule in subsection (1).
- (5) In this section—
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “intellectual property” has the same meaning as in section 579;
  - “permanent establishment”—
    - (a) in relation to a company, is to be read (by virtue of section 1007A of ITA 2007) in accordance with Chapter 2 of Part 24 of CTA 2010, and
    - (b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.”
- (3) The amendments made by subsections (1) and (2) have effect in relation to royalties or other sums paid in respect of intellectual property on or after 28 June 2016.
- (4) It does not matter for the purposes of subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) whether the arrangements referred to in that subsection are entered into before, or on or after, 28 June 2016.
- (5) Where arrangements are disregarded under subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) in relation to a payment of a royalty or other sum which—
  - (a) is made before 28 June 2016, but
  - (b) is due on or after that day,
 the payment is to be regarded for the purposes of subsection (1) of that section as made on the date on which it is due.
- (6) In determining the date on which a payment is due for the purposes of subsection (5), disregard the arrangements referred to in that subsection.
- (7) Where—
  - (a) an intellectual property royalty payment within the meaning of section 917A of ITA 2007 is made on or after 28 June 2016,
  - (b) the payment is made under arrangements (within the meaning of that section) entered into before that day,
  - (c) the arrangements are not DTA tax avoidance arrangements for the purposes of that section,
  - (d) it is reasonable to conclude that the main purpose, or one of the main purposes, of the arrangements was to obtain a tax advantage by virtue of any provisions of a foreign double taxation arrangement, and

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- (e) obtaining that tax advantage is contrary to the object and purpose of those provisions,

the arrangements are to be regarded as DTA tax avoidance arrangements for the purposes of section 917A of ITA 2007 in relation to the payment.

- (8) In subsection (7)—

“foreign double taxation arrangement” means an arrangement made by two or more territories outside the United Kingdom with a view to affording relief from double taxation in relation to tax chargeable on income (with or without other tax relief);

“tax advantage” is to be construed in accordance with section 208 of FA 2013 but as if references in that section to “tax” were references to tax chargeable on income under the law of a territory outside the United Kingdom.

- (9) Where—

- (a) a royalty is paid on or after 28 June 2016,
- (b) the right in respect of which the royalty is paid was created or assigned before that day [<sup>F2</sup>under arrangements (within the meaning of section 917A of ITA 2007) entered into before that day],

<sup>F3</sup>(c) ..... and

- (d) it is reasonable to conclude that the main purpose, or one of the main purposes, of any person connected with the creation or assignment of the right was to take advantage, by means of that creation or assignment, of the law of any territory giving effect to Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States,

[<sup>F4</sup>the arrangements are to be regarded as DTA tax avoidance arrangements for the purposes of section 917A of ITA 2007].

#### Textual Amendments

- F2** Words in s. 42(9)(b) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 34\(6\)\(a\)](#)
- F3** S. 42(9)(c) omitted (with effect in accordance with s. 34(8) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\), s. 34\(6\)\(b\)](#)
- F4** Words in s. 42(9) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 34\(6\)\(c\)](#)

## 43 Receipts from intellectual property: diverted profits tax

- (1) Part 3 of FA 2015 (diverted profits tax) is amended as follows.

- (2) In section 79 (charge to tax), at the end insert—

“(6) But banking surcharge profits and notional banking surcharge profits, to the extent that they are determined by reference to notional PE profits (or what would have been notional PE profits) for an accounting period, do not include any amount which is (or would have been) included in notional PE profits for that period by virtue of section 88(5)(b).”

- (3) In section 88 (which relates to the calculation of taxable diverted profits), for subsection (5) substitute—

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“(5) Notional PE profits”, in relation to an accounting period, means an amount equal to the sum of—

- (a) the amount of profits (if any) which would have been the chargeable profits of the foreign company for that period, attributable (in accordance with sections 20 to 32 of CTA 2009) to the avoided PE, had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the trade mentioned in section 86(1)(b), and
- (b) an amount equal to the total of royalties or other sums which are paid by the foreign company during that period in connection with that trade in circumstances where the payment avoids the application of section 906 of ITA 2007 (duty to deduct tax).

(5A) For the purposes of subsection (5)(b) a payment of a royalty or other sum avoids the application of section 906 of ITA 2007 if—

- (a) that section does not apply in relation to the payment, but
- (b) that section would have applied in relation to the payment had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the trade mentioned in section 86(1)(b).”

(4) In section 100 (credit for UK or foreign tax on same profits), for the heading substitute “Credits for tax on the same profits”.

(5) In section 100, after subsection (2) insert—

“(2A) Subsection (2)(b) does not allow a credit against a liability to diverted profits tax if or to the extent that the liability arises by virtue of section 88(5)(b) (payments of royalties etc).”

(6) In section 100, after subsection (4) insert—

“(4A) Subsection (4B) applies where—

- (a) a company's notional PE profits for an accounting period include an amount under section 88(5)(b) determined by reference to a royalty or other sum,
- (b) the company's liability to diverted profits tax for the accounting period is determined by reference to taxable diverted profits calculated under section 91(4) or (5), and
- (c) those taxable diverted profits include an amount of relevant taxable income referred to in section 91(4)(b) or (5)(b) determined by reference to the same royalty or other sum.

(4B) A credit equal to the company's liability to diverted profits tax for that accounting period which arises by virtue of section 88(5)(b) in respect of the royalty or other sum, to the extent that it is included in relevant taxable income for the purposes of section 91(4)(b) or (5)(b), is allowed against the company's total liability to diverted profits tax for that period.

(4C) Subsection (4D) applies where—

- (a) by reason of the payment of a royalty or other sum a company's liability to diverted profits tax for an accounting period includes liability arising by virtue of section 88(5)(b),



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- (b) the royalty or other sum is paid to a person who is resident in a country or territory outside the United Kingdom, and
  - (c) under any relevant provision relief would have been due to that person had the avoided PE been a permanent establishment in the United Kingdom through which the company carried on the trade mentioned in section 86(1)(b).
- (4D) Such credit as is just and reasonable having regard to the amount of the relief referred to in subsection (4C)(c) is allowed against the company's liability to diverted profits tax.
- (4E) In subsection (4C)(c) “relevant provision” means—
  - (a) the provision of a double taxation arrangement (as defined by section 2(4) of TIOPA 2010), or
  - (b) section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments).”
- (7) The amendments made by this section have effect in relation to accounting periods ending on or after 28 June 2016.
- (8) For the purposes of section 88(5)(b) of FA 2015 as substituted by this section, a royalty or other sum which would not otherwise be regarded as paid during an accounting period ending on or after 28 June 2016 is to be regarded as so paid if—
  - (a) for the purposes of section 906 of ITA 2007 it is regarded as paid on a date during that period by virtue of section 40(6), or
  - (b) for the purposes of section 577A(1) of ITTOIA 2005 it is regarded as paid on a date during that period by virtue of section 42(5).

*Supplementary welfare payments: Northern Ireland*

#### **44 Tax treatment of supplementary welfare payments: Northern Ireland**

- (1) In this section “supplementary welfare payment” means a payment made under regulations under—
  - (a) Article 135(1)(a) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)) (“the Order”) (discretionary support),
  - (b) Article 137 of the Order (payments to persons suffering financial disadvantage), or
  - (c) any provision (including future provision) of the Order which enables provision to be made for payments to persons who suffer financial disadvantage as a result of relevant housing benefit changes.
- (2) In subsection (1)(c) “relevant housing benefit changes” means changes to social security benefits consisting of or including changes contained in [<sup>F5</sup>the [Housing Benefit \(Amendment No. 2\) Regulations \(Northern Ireland\) 2016 \(S.R. \(N.I.\) 2016 No. 326\)](#)].
- (3) The Treasury may by regulations amend any provision of Chapters 1 to 5 of Part 10 of ITEPA 2003 so as to—
  - (a) provide that no liability to income tax arises on supplementary welfare payments of a specified description;

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- (b) impose a charge to income tax under Part 10 of ITEPA 2003 on payments of a specified description made under regulations under Article 137 of the Order (payments to persons suffering financial disadvantage).
- (4) The regulations may make—
  - (a) different provision for different cases;
  - (b) incidental or supplementary provision;
  - (c) consequential provision (which may include provision amending any provision made by or under the Income Tax Acts).
- (5) Regulations made before 6 April 2017 may, so far as relating to the tax year 2016-17, have effect in relation to times before they are made.
- (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 section 655(2) of ITEPA 2003 (other provisions about the taxation of social security payments) after the entry relating to section 782 of ITTOIA 2005 insert “; section 44 of FA 2016 (tax treatment of supplementary welfare payments: Northern Ireland).”

#### Textual Amendments

**F5** Words in s. 44(2) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 70](#)

## PART 2

### CORPORATION TAX

#### *Charge and rates*

#### **45 Charge for financial year 2017**

Corporation tax is charged for the financial year 2017.

#### **46 Rate of corporation tax for financial year 2020**

In section 7(2) of F(No.2)A 2015 (main rate of corporation tax for the financial year 2020) for “18%” substitute “ 17% ”.

#### *Research and development*

#### **47 Abolition of vaccine research relief**

- (1) CTA 2009 is amended in accordance with subsections (2) to (9).
- (2) Omit Chapter 7 of Part 13 (vaccine research relief).

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- (3) In section 1039 (overview of Part 13) omit—
  - (a) subsection (6), and
  - (b) in subsection (8) “or 7”.
- (4) In section 1042 (meaning of “relevant research and development”) omit subsection (3).
- (5) In section 1113 (cap on aid under Chapters 2 and 7)—
  - (a) in the heading omit “or 7”, and
  - (b) in subsection (4) omit—
    - (i) the “or” at the end of paragraph (a), and
    - (ii) paragraph (b).
- (6) In section 1118(2) (meaning of “qualifying expenditure”) omit—
  - (a) the “or” at the end of paragraph (a), and
  - (b) paragraph (b).
- (7) In section 1133(3) (sub-contractor payments) omit “and section 1102(2).”
- (8) In section 1137(1)(b) (accounting periods) omit “or qualifying Chapter 7 expenditure”.
- (9) In Schedule 4 (index of defined expressions) omit the entries for—
  - (a) qualifying Chapter 7 expenditure (in Part 13), and
  - (b) qualifying R&D activity (in Chapter 7 of Part 13).
- (10) CTA 2010 is amended in accordance with subsections (11) to (13).
- (11) In section 357P (research and development expenditure: introduction and interpretation)—
  - (a) in subsection (1) omit—
    - (i) the “and” at the end of paragraph (b), and
    - (ii) paragraph (c), and
  - (b) omit subsection (2)(d) and (e).
- (12) Omit section 357PF (additional deduction under section 1087 CTA 2009).
- (13) In Schedule 4 (index of defined expressions) omit the entries for—
  - (a) Northern Ireland qualifying Chapter 7 expenditure (in Chapter 9 of Part 8B), and
  - (b) qualifying Chapter 7 expenditure (in Chapter 9 of Part 8B).
- (14) In consequence of the amendments made by subsections (1) to (13)—
  - (a) in Schedule 3 to FA 2012 omit paragraphs 7, 12 to 14, 16(2), 17, 20 to 30, and 31(2), and
  - (b) in FA 2015 omit section 28(4)(o) and (p).
- (15) The amendments made by this section have effect in relation to expenditure incurred on or after 1 April 2017.

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

- (1) CTA 2009 is amended as follows.
- (2) In section 1114 (calculation of total R&D aid)—

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- (a) in the formula for “(N x CT)” substitute “ N ”, and
  - (b) in the definition of “N” for “relief” substitute “ R&D expenditure credit ”.
- (3) In section 1118(1) (meaning of “notional relief”)—
- (a) for “relief” in the first two places it occurs substitute “ R&D expenditure credit ”,
  - (b) for “Chapter 5 (relief for large companies)” substitute “ Chapter 6A of Part 3 (trade profits: R&D expenditure credits) ”, and
  - (c) in the heading for “relief” substitute “ R&D expenditure credit ”.
- (4) The amendments made by this section have effect in relation to expenditure incurred on or after 1 April 2016.

### *Loan relationships*

#### **49      Loan relationships and derivative contracts**

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

#### **50      Loans to participants etc: rate of tax**

- (1) In section 455 of CTA 2010 (charge to tax in case of loan to participant), in subsection (2), for “25% of the amount of the loan or advance” substitute “ such percentage of the amount of the loan or advance as corresponds to the dividend upper rate specified in section 8(2) of ITA 2007 for the tax year in which the loan or advance is made ”.
- (2) The amendment made by subsection (1) has effect in relation to a loan or advance made on or after 6 April 2016.
- (3) In section 464A of CTA 2010 (charge to tax: arrangements conferring benefit on participant), in subsection (3), for “25% of the value of the benefit conferred” substitute “ such percentage of the value of the benefit conferred as corresponds to the dividend upper rate specified in section 8(2) of ITA 2007 for the tax year in which the benefit is conferred ”.
- (4) The amendment made by subsection (3) has effect in relation to a benefit conferred on or after 6 April 2016.

#### **51      Loans to participants etc: trustees of charitable trusts**

- (1) In section 456 of CTA 2010 (exceptions to the charge to tax in case of loan to participant), after subsection (2) insert—
 

“(2A) Section 455 does not apply to a loan or advance made to a trustee of a charitable trust if the loan or advance is applied to the purposes of the charitable trust only.”
- (2) The amendment made by subsection (1) has effect in relation to a loan or advance made on or after 25 November 2015.

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### *Intangible fixed assets*

## **52 Intangible fixed assets: pre-FA 2002 assets**

- (1) Chapter 16 of Part 8 of CTA 2009 (pre-FA 2002 assets) is amended as follows.
- (2) In section 882 (application of Part 8 to assets created or acquired on or after 1 April 2002), after subsection (5) insert—
  - “(5A) References in this section to one person being (or not being) a related party in relation to another person are to be read as including references to the participation condition being met (or, as the case may be, not met) as between those persons.
  - (5B) References in subsection (5A) to a person include a firm in a case where, for section 1259 purposes, references in this section to a company are read as references to the firm.
  - (5C) In subsection (5B) “section 1259 purposes” means the purposes of determining under section 1259 the amount of profits or losses to be allocated to a partner in a firm.
  - (5D) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (5A) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”
- (3) In section 894 (preserved status condition etc), after subsection (6) insert—
  - “(6A) Section 882(5A) to (5D) applies for the purposes of section 893 and this section.”
- (4) In section 895 (assets acquired in connection with disposals of pre-FA 2002 assets), at the end insert—
  - “(5) Section 882(5A) to (5D) applies for the purposes of this section.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 25 November 2015.
- (6) For the purposes of subsection (5), an accounting period beginning before and ending on or after 25 November 2015 is to be treated as if so much of the accounting period as falls before that date, and so much of the accounting period as falls on or after that date, were separate accounting periods.
- (7) An apportionment for the purposes of subsection (6) must be made—
  - (a) in accordance with section 1172 of CTA 2010 (time basis), or
  - (b) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

## **53 Intangible fixed assets: transfers treated as at market value**

- (1) In section 845 of CTA 2009 (transfer between company and related party treated as at market value), after subsection (4) insert—

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- “(4A) References in subsection (1) to a related party in relation to a company are to be read as including references to a person in circumstances where the participation condition is met as between that person and the company.
- (4B) References in subsection (4A) to a company include a firm in a case where, for section 1259 purposes, references in subsection (1) to a company are read as references to the firm.
- (4C) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (4A) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.
- (4D) Subsection (4E) applies where—
  - (a) a gain on the disposal of an intangible asset by a firm is a gain to be taken into account for section 1259 purposes, and
  - (b) for those purposes, references in subsection (1) to a company are read as references to the firm.
- (4E) Where this subsection applies, the gain referred to in subsection (4D)(a) is to be treated for the purposes of this section as if it were a chargeable realisation gain for the purposes of section 741(1) (meaning of “chargeable intangible asset”).
- (4F) In this section, “section 1259 purposes” means the purposes of determining under section 1259 the amount of profits or losses to be allocated to a partner in a firm.”
- (2) The amendment made by this section applies in relation to a transfer which takes place on or after 25 November 2015, unless it takes place pursuant to an obligation, under a contract, that was unconditional before that date.
- (3) For the purposes of subsection (2), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

### *Creative industry reliefs*

## **54 Tax relief for production of orchestral concerts**

Schedule 8 contains provision about relief in respect of the production of orchestral concerts.

## **55 Television and video games tax relief: consequential amendments**

In the following provisions, for “section 1218” substitute “ section 1218B ”

- (a) paragraph 8(2)(c) of Schedule 7A to TCGA 1992,
- (b) section 63(1) of CTA 2010, and
- (c) section 729 of CTA 2010.

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## *Banking companies*

### **56 Banking companies: excluded entities**

(1) Section 133F of CTA 2009 (“excluded company”) has effect, and is to be deemed always to have had effect, with the amendments set out in subsections (2) to (4).

(2) After subsection (2) insert—

“(2A) A company is also an “excluded company” at any time (in an accounting period) if—

- (a) the company would fall within a relevant relieving provision but for one (and only one) line of business which it carries on,
- (b) that line of business does not involve the relevant regulated activity described in the provision mentioned in section 133G(1)(a), and
- (c) the company's activities in that line of business would not, on their own, result in it being both a 730k firm and a full scope investment firm.

(2B) For the purposes of subsection (2A) the “relevant relieving provisions” are paragraphs (b), (c), (e), (g) and (h) of subsection (2).”

(3) In subsection (7), before the definition of “authorised corporate director” insert—

““730k firm”—

- (a) in relation to any time on or after 1 January 2014, means an IFPRU 730k firm,
- (b) in relation to any time before that date, means a BIPRU 730k firm;”.

(4) In subsection (7), at the appropriate places insert—

““BIPRU 730k firm” and “full scope BIPRU investment firm” have the same meaning as in subsections (2) to (4) of section 133H;”

““IFPRU 730k firm” and full scope IFPRU investment firm” have the meaning given by the FCA Handbook at the time in question;”

““full scope investment firm”—

- (a) in relation to any time on or after 1 January 2014, means a full scope IFPRU investment firm,
- (b) in relation to any time before that date, means a full scope BIPRU investment firm;”.

(5) Section 133M of CTA 2009 has effect, and is to be deemed always to have had effect, with the amendment set out in subsection (6).

(6) For subsection (5)(b)(ii) substitute—

“(ii) the firm would not (if references in section 133F(2) and (3) to companies included firms) be an excluded company for the purposes of section 133E.”

(7) Part 7A of CTA 2010 has effect, and is to be deemed always to have had effect, with the amendments set out in subsections (8) and (9).

(8) In section 269BA (excluded entities), after subsection (1) insert—

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- “(1A) For the purposes of section 269B an entity is also an “excluded entity” if—
- (a) the entity would fall within a relevant relieving provision but for one (and only one) line of business which it carries on,
  - (b) that line of business does not involve the relevant regulated activity described in the provision mentioned in section 269BB(a), and
  - (c) the entity's activities in that line of business would not, on their own, result in it being both an IFPRU 730k firm and a full scope IFPRU investment firm.

(1B) For the purposes of subsection (1A) the “relevant relieving provisions” are paragraphs (b), (c), (e), (g) and (h) of subsection (1).”

(9) In section 269DO (interpretation)—

- (a) after subsection (5) insert—

“(5A) For the purposes of section 269BA(1A) (extension of certain exclusions under subsection (1) of that section) a line of business carried on by a company is not regarded as involving the relevant regulated activity described in the provision mentioned in section 269BB(a) if—

- (a) the carrying on of that activity is ancillary to asset management activities the company carries on, and
- (b) the company would not carry that activity on but for the fact that it carries on asset management activities.”;

- (b) in subsection (6) for “subsection (5)” substitute “ subsections (5) and (5A) ”.

(10) In Schedule 19 to FA 2011 (the bank levy), paragraph 73 is amended in accordance with subsections (11) and (12).

(11) In sub-paragraph (1), omit “or” at the end of paragraph (j) and after paragraph (k) insert “, or

- (l) an entity falling within sub-paragraph (1A).”

(12) After sub-paragraph (1) insert—

“(1A) An entity falls within this sub-paragraph if—

- (a) it would fall within a relevant relieving provision but for one (and only one) line of business which it carries on,
- (b) that line of business does not involve the relevant regulated activity described in the provision mentioned in paragraph 79(a), and
- (c) the entity's activities in that line of business would not, on their own, result in it being both an IFPRU 730k firm and a full scope IFPRU investment firm.

(1B) For the purposes of sub-paragraph (1A) the “relevant relieving provisions” are paragraphs (b), (c), (e), (g) and (h) of sub-paragraph (1).”

(13) Subsections (10) to (12) have effect in relation to chargeable periods beginning on or after the day on which this Act is passed.

(14) But for the purposes of determining what groups and entities must be listed under subsection (4) of section 285 of FA 2014 (Code of Practice on Taxation for Banks: HMRC reports) in any relevant report under that section—



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- (a) subsection (13) is to be disregarded, and
  - (b) Schedule 19 to FA 2011 is to be deemed to have effect, and always to have had effect, with the amendments set out in subsections (10) to (12).
- (15) In subsection (14) “relevant report” means a report for the reporting period beginning with 1 April 2015 or any subsequent reporting period.

## **57 Banking companies: restrictions on loss relief etc**

- (1) Chapter 3 of Part 7A of CTA 2010 (restrictions on banking companies obtaining certain deductions) is amended as follows.
- (2) In section 269CA (restriction on deductions for trading losses), in subsection (2), for “50%” substitute “ 25% ”.
- (3) In section 269CB (restriction on deductions for non-trading deficits from loan relationships), in subsection (2), for “50%” substitute “ 25% ”.
- (4) In section 269CC (restriction on deductions for management expenses etc), in step 1 in subsection (7), for “50%” substitute “ 25% ”.
- (5) The amendments made by this section have effect for the purposes of determining the taxable total profits of companies for accounting periods beginning on or after 1 April 2016.
- (6) For the purposes of subsection (5), where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”)—
  - (a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) profits or losses of the company for the straddling period are apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 of CTA 2010 (time basis), or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

### *Oil and gas*

## **58 Reduction in rate of supplementary charge**

- (1) In section 330 of CTA 2010 (supplementary charge in respect of ring fence trades), in subsection (1), for “20%” substitute “ 10% ”.
- (2) The amendment made by subsection (1) has effect in relation to accounting periods beginning on or after 1 January 2016 (but see also subsection (3)).
- (3) Subsections (4) and (5) apply where a company has an accounting period beginning before 1 January 2016 and ending on or after that date (“the straddling period”).
- (4) For the purpose of calculating the amount of the supplementary charge on the company for the straddling period—

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- (a) so much of that period as falls before 1 January 2016, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) the company's adjusted ring fence profits for the straddling period are apportioned to the two separate accounting periods in proportion to the number of days in those periods.
- (5) The amount of the supplementary charge on the company for the straddling period is the sum of the amounts of supplementary charge that would, in accordance with subsection (4), be chargeable on the company for those separate accounting periods.
- (6) In this section—
- “adjusted ring fence profits” has the same meaning as in section 330 of CTA 2010;
  - “supplementary charge” means any sum chargeable under section 330(1) of CTA 2010 as if it were an amount of corporation tax.

## 59 Investment allowance: disqualifying conditions

- (1) Section 332D of CTA 2010 (expenditure on acquisition of asset: disqualifying conditions) is amended as follows.
- (2) In subsection (1) after “an asset” insert “ (“the acquisition concerned”) ”.
- (3) In subsection (2)—
- (a) for “acquisition,” substitute “ acquisition concerned, ” and
  - (b) after “acquiring,” insert “ leasing, ”.
- (4) In subsection (3)(b)—
- (a) for “acquisition,” substitute “ acquisition concerned, ”, and
  - (b) after “acquiring,” insert “ leasing, ”.
- (5) After subsection (4) insert—
- “(5) In subsection (3)(c) “this Chapter” means the provisions of this Chapter, and of any regulations made under this Chapter, as those provisions have effect at the time when the investment expenditure mentioned in subsection (1) is incurred.
- (6) Subsections (7) and (8) apply where investment expenditure mentioned in subsection (1) would, in the absence of this section, be relievable under section 332C by reason of section 332CA (treatment of expenditure incurred before field is determined).
- (7) Where this subsection applies—
- (a) subsection (2) is to be read as if after “was” there were inserted “ , or has become, ”, and
  - (b) in determining for the purposes of subsection (2) or (3)(b) whether particular expenditure was incurred “before” the acquisition concerned—
    - (i) paragraph (b) of section 332CA(3) is to be ignored, and
    - (ii) accordingly, that expenditure is to be taken (for the purposes of determining whether it was incurred before the acquisition

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concerned) to have been incurred when it was actually incurred.

(8) Where this subsection applies, in determining whether the second disqualifying condition applies to the asset—

- (a) the reference in subsection (3)(a)(i) to a qualifying oil field is to be read as including an area which, at the time of the acquisition concerned, had not been determined to be an oil field but which has subsequently become a qualifying oil field,
- (b) the reference in subsection (3)(a)(ii) to a qualifying oil field is to be read as including an area which, at the time of the transfer, had not been determined to be an oil field but which has subsequently become a qualifying oil field,
- (c) the reference in subsection (3)(c)(i) to “the qualifying oil field” is to be read accordingly, and
- (d) the following sub-paragraph is to be treated as substituted for subsection (3)(c)(ii)—

“(ii) would have been relievable under section 332C if this Chapter had been fully in force and had applied to expenditure incurred at the time when that expenditure was actually incurred and the area in question had been a qualifying oil field at that time.”

(9) In subsection (8)(a) and (b) “determined” means determined under Schedule 1 to OTA 1975.

(10) In this section any reference to expenditure which was incurred by a company in “leasing” an asset is to expenditure incurred by the company under an agreement under which the asset was leased to the company.”

(6) The amendments made by this section have effect for the purposes of determining whether any expenditure—

- (a) incurred by a company on or after 16 March 2016 on the acquisition of an asset, or
  - (b) treated under section 332CA of CTA 2010 as so incurred,
- is relievable expenditure for the purposes of section 332C of CTA 2010.

## **60 Investment allowance: power to expand meaning of “relevant income”**

(1) Section 332F of CTA 2010 (activation of investment allowance) is amended as follows.

(2) In subsection (2)(b) before “the company's relevant income” insert “ the total amount of”.

(3) For subsection (3) substitute—

“(3) For the purposes of this Chapter, income is relevant income of a company from a qualifying oil field for an accounting period if it is—

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- (a) production income of the company from any oil extraction activities carried on in that oil field that is taken into account in calculating the company's adjusted ring fence profits for the accounting period, or
- (b) income that—
  - (i) is income of such description (whether or not relating to the oil field) as may be prescribed by the Treasury by regulations, and
  - (ii) is taken into account as mentioned in paragraph (a).
- (4) The Treasury may by regulations make such amendments of this Chapter as the Treasury consider appropriate in consequence of, or in connection with, any provision contained in regulations under subsection (3)(b).
- (5) Regulations under subsection (3)(b) or (4) may provide for any of the provisions of the regulations to have effect in relation to accounting periods ending before (or current when) the regulations are made.
- (6) But subsection (5) does not apply to—
  - (a) any provision of amending or revoking regulations under subsection (3)(b) which has the effect that income of any description is to cease to be treated as relevant income of a company from a qualifying oil field for an accounting period, or
  - (b) provision made under subsection (4) in consequence of or in connection with provision within paragraph (a).
- (7) Regulations under this section may make transitional provision or savings.
- (8) Regulations under this section 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.”

## 61 Onshore allowance: disqualifying conditions

- (1) CTA 2010 is amended as follows.
- (2) In section 356C after subsection (4) insert—
 

“(4A) Subsections (1) to (4) are subject to section 356CAA (which prevents expenditure on the acquisition of an asset from being relievably in certain circumstances).”
- (3) After section 356CA insert—

### **“356CAA Expenditure on acquisition of asset: further disqualifying conditions**

- (1) Capital expenditure incurred by a company (“the acquiring company”) on the acquisition of an asset (“the acquisition concerned”) is not relievably capital expenditure for the purposes of section 356C if subsection (2), (3) or (8) applies to the asset.
- (2) This subsection applies to the asset if capital expenditure incurred before the acquisition concerned, by the acquiring company or another company, in

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acquiring, bringing into existence or enhancing the value of the asset was relievable under section 356C.

- (3) This subsection applies to the asset if—
- (a) the asset—
    - (i) is the whole or part of the equity in a qualifying site, or
    - (ii) is acquired in connection with a transfer to the acquiring company of the whole or part of the equity in a qualifying site,
  - (b) capital expenditure was incurred before the acquisition concerned, by the acquiring company or another company, in acquiring, bringing into existence or enhancing the value of the asset, and
  - (c) any of that expenditure—
    - (i) related to the qualifying site, and
    - (ii) would have been relievable under section 356C if this Chapter had been fully in force and had applied to expenditure incurred at that time.
- (4) For the purposes of subsection (3)(a)(ii) it does not matter whether the asset is acquired at the time of the transfer.
- (5) In subsection (3)(c) “this Chapter” means the provisions of this Chapter as those provisions have effect at the time when the capital expenditure mentioned in subsection (1) is incurred.
- (6) The reference in subsection (3)(c)(i) to the qualifying site includes an area that, although not a qualifying site when the expenditure mentioned in subsection (3)(b) was incurred, subsequently became the qualifying site.
- (7) Where expenditure mentioned in subsection (3)(b) related to an area which subsequently became the qualifying site, the following sub-paragraph is to be treated as substituted for subsection (3)(c)(ii)—
- “(ii) would have been relievable under section 356C if the area in question had been a qualifying site when the expenditure was incurred, or if the area in question had been such a site at that time and this Chapter had been fully in force and had applied to expenditure incurred at that time.”
- (8) This subsection applies to the asset if—
- (a) capital expenditure mentioned in subsection (1) would, in the absence of this section, be relievable under section 356C by reason of an election under section 356CB (treatment of expenditure not related to an established site), and
  - (b) capital expenditure which was incurred before the acquisition concerned, by the acquiring company or another company, in acquiring, bringing into existence or enhancing the value of the asset, either—
    - (i) has become relievable under section 356C by reason of an election under section 356CB, or
    - (ii) would be so relievable if such an election were made in respect of that expenditure.

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- (9) In determining for the purposes of subsection (8)(b) whether particular expenditure was incurred “before” the acquisition concerned—
  - (a) paragraph (b) of section 356CB(6) is to be ignored, and
  - (b) accordingly, that expenditure is to be taken (for the purposes of determining whether it was incurred before the acquisition concerned) to have been incurred when it was actually incurred.
- (10) For the purposes of subsection (8)(b)(ii) it does not matter if an election is not in fact capable of being made.”
- (4) The amendments made by this section have effect for the purposes of determining whether any expenditure—
  - (a) incurred by a company on or after 16 March 2016 on the acquisition of an asset, or
  - (b) treated by reason of an election under section 356CB as so incurred,
 is relievable expenditure for the purposes of section 356C of CTA 2010.

## **62 Cluster area allowance: disqualifying conditions**

- (1) Section 356JFA of CTA 2010 (expenditure on acquisition of asset: disqualifying conditions) is amended as follows.
- (2) In subsection (2) after “acquiring,” insert “ leasing, ”.
- (3) In subsection (3)(b) after “acquiring,” insert “ leasing, ”.
- (4) After subsection (4) insert—
  - “(5) In this section any reference to expenditure which was incurred by a company in “leasing” an asset is to expenditure incurred by the company under an agreement under which the asset was leased to the company.”
- (5) The amendments made by this section have effect for the purposes of determining whether any expenditure incurred by a company on or after 16 March 2016 on the acquisition of an asset is relievable expenditure for the purposes of section 356JF of CTA 2010.

## **63 Cluster area allowance: power to expand meaning of “relevant income”**

- (1) Section 356JH of CTA 2010 (activation of cluster area allowance) is amended as follows.
- (2) In subsection (2)(b) before “the company's relevant income” insert “ the total amount of ”.
- (3) For subsection (3) substitute—
  - “(3) For the purposes of this Chapter, income is relevant income of a company from a cluster area for an accounting period if it is—
    - (a) production income of the company from any oil extraction activities carried on in that area that is taken into account in calculating the company's adjusted ring fence profits for the accounting period, or
    - (b) income that—

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- (i) is income of such description (whether or not relating to the cluster area) as may be prescribed by the Treasury by regulations, and
  - (ii) is taken into account as mentioned in paragraph (a).
- (4) The Treasury may by regulations make such amendments of this Chapter as the Treasury consider appropriate in consequence of, or in connection with, any provision contained in regulations under subsection (3)(b).
- (5) Regulations under subsection (3)(b) or (4) may provide for any of the provisions of the regulations to have effect in relation to accounting periods ending before (or current when) the regulations are made.
- (6) But subsection (5) does not apply to—
  - (a) any provision of amending or revoking regulations under subsection (3)(b) which has the effect that income of any description is to cease to be treated as relevant income of a company from a cluster area for an accounting period, or
  - (b) provision made under subsection (4) in consequence of or in connection with provision within paragraph (a).
- (7) Regulations under this section may make transitional provision or savings.
- (8) Regulations under this section 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.”

#### *Exploitation of patents etc*

### **64 Profits from the exploitation of patents etc**

- (1) Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.
- (2) In section 357A (election for special treatment of profits from patents etc)—
  - (a) for subsections (6) and (7) substitute—
    - “(6) Chapter 2A makes provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in a case where—
      - (a) the accounting period begins on or after 1 July 2021, or
      - (b) the company is a new entrant (see subsection (11)).
    - (7) Chapters 2B, 3 and 4 make provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in various cases where—
      - (a) the accounting period begins before 1 July 2021, and
      - (b) the company is not a new entrant.”
  - (b) after subsection (10) insert—
    - “(11) A company is a “new entrant” for the purposes of this Part if—

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- (a) the first accounting period for which the company's election (or most recent election) under subsection (1) has effect begins on or after 1 July 2016, or
- (b) the company elects to be treated as a new entrant for the purposes of this Part.”

(3) After section 357BE insert—

## “CHAPTER 2A

### RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(6)

#### *Steps for calculating relevant IP profits of a trade*

#### **357BF Relevant IP profits**

- (1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—
- (a) the accounting period begins on or after 1 July 2021, or
  - (b) the company is a new entrant (see section 357A(11)).

- (2) To determine the relevant IP profits—

*Step 1* Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357BG), and divide them into two “streams”, amounts of relevant IP income (see sections 357BH to 357BHC) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is “the relevant IP income stream”; the other stream is the “standard income stream”.

*Step 2* Divide the relevant IP income stream into “relevant IP income sub-streams” so that each sub-stream is—

- (a) a sub-stream consisting of income properly attributable to a particular qualifying IP right (an “individual IP right sub-stream”),
- (b) a sub-stream consisting of income properly attributable to a particular kind of IP item (a “product sub-stream”), or
- (c) a sub-stream consisting of income properly attributable to a particular kind of IP process (a “process sub-stream”).

See subsection (5) for the meaning of “IP item” and “IP process” and see subsections (6) and (7) for further provision in connection with product sub-streams and process sub-streams.

*Step 3* Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any excluded debits (see section 357BI), and allocate them on a just and reasonable basis between the standard income stream and each of the relevant IP income sub-streams.

*Step 4* Deduct from each relevant IP income sub-stream—

- (a) the amounts allocated to the sub-stream at Step 3, and
- (b) the routine return figure for the sub-stream (see section 357BJ).



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But see section 357BIA (which provides that certain amounts allocated to a relevant IP income sub-stream at Step 3 are not to be deducted from the sub-stream at this Step).

*Step 5* Deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the marketing assets return figure for the sub-stream (see section 357BK).

*Step 6* Multiply the amount of each relevant IP income sub-stream (following the deductions required at Steps 4 and 5) by the R&D fraction for the sub-stream (see section 357BL).

*Step 7* Add together the amounts of the relevant IP income sub-streams (following Step 6).

*Step 8* If the company has made an election under section 357BM (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 7 any amount determined in accordance with subsection (3) of that section.

- (3) If the amount given by subsection (2) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (4) If the amount given by subsection (2) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
- (5) In this section—
  - “IP item” means—
    - (a) an item in respect of which a qualifying IP right held by the company has been granted, or
    - (b) an item which incorporates one or more items within paragraph (a);
  - “IP process” means—
    - (a) a process in respect of which a qualifying IP right held by the company has been granted, or
    - (b) a process which incorporates one or more processes within paragraph (a).
- (6) For the purposes of this section two or more IP items, or two or more IP processes, may be treated as being of a particular kind if they are intended to be, or are capable of being, used for the same or substantially the same purposes.
- (7) Income may be allocated at Step 2 of subsection (2) to a product sub-stream or process sub-stream only if—
  - (a) it would not be reasonably practicable to apportion the income between individual IP right sub-streams, or
  - (b) it would be reasonably practicable to do that but doing so would result in it not being reasonably practicable to apply any of the remaining steps in subsection (2).
- (8) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

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### *Finance income*

#### **357BG Finance income**

- (1) For the purposes of this Part “finance income”, in relation to a trade of a company, means—
- (a) any credits which are treated as receipts of the trade by virtue of—
    - (i) section 297 of CTA 2009 (credits in respect of loan relationships), or
    - (ii) section 573 of CTA 2009 (credits in respect of derivative contracts),
  - (b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and
  - (c) any return, in relation to an amount, which—
    - (i) is produced for the company by an arrangement to which it is a party, and
    - (ii) is economically equivalent to interest.
- (2) In subsection (1)—
- “economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and
  - “financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.
- (3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

### *Relevant IP income*

#### **357BH Relevant IP income**

- (1) For the purposes of this Part “relevant IP income” means income falling within any of the Heads set out in—
- (a) subsection (2) (sales income),
  - (b) subsection (6) (licence fees),
  - (c) subsection (7) (proceeds of sale etc),
  - (d) subsection (8) (damages for infringement), and
  - (e) subsection (9) (other compensation).

This is subject to section 357BHB (excluded income).

- (2) Head 1 is income arising from the sale by the company of any of the following items—

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- (a) items in respect of which a qualifying IP right held by the company has been granted (“qualifying items”);
  - (b) items incorporating one or more qualifying items;
  - (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).
- (3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.
- (4) In subsection (3) “packaging”, in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.
- (5) In a case where a qualifying item and an item that is designed to incorporate that item (“the parent item”) are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.
- (6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
  - (a) a right in respect of any qualifying IP right held by the company,
  - (b) any other right in respect of a qualifying item or process, and
  - (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.

In this subsection “qualifying process” means a process in respect of which a qualifying IP right held by the company has been granted.
- (7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.
- (8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.
- (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and—
  - (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
  - (b) represents a loss of income which would, if received by the company at the time of that event, have been relevant IP income.
- (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when—
  - (a) the company was a qualifying company, and
  - (b) an election under section 357A(1) had effect in relation to it.

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- (11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.
- (12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

### **357BHA Notional royalty**

- (1) This section applies where—
  - (a) a company holds a qualifying IP right or an exclusive licence in respect of a qualifying IP right,
  - (b) the qualifying IP right falls within paragraph (a), (b) or (c) of section 357BB(1), and
  - (c) the income of a trade of the company for an accounting period includes income (“IP-derived income”) which—
    - (i) arises from things done by the company that involve the exploitation by the company of the qualifying IP right, and
    - (ii) is not relevant IP income, finance income or excluded income.
- (2) The company may elect that the appropriate percentage of the IP-derived income is to be treated for the purposes of this Part as if it were relevant IP income.
- (3) The “appropriate percentage” is the proportion of the IP-derived income which the company would pay another person (“P”) for the right to exploit the qualifying IP right in the accounting period concerned if the company were not otherwise able to exploit it.
- (4) For the purposes of determining the appropriate percentage under this section, assume that—
  - (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the qualifying IP right to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the qualifying IP right as it actually has,
  - (d) the right to exploit the qualifying IP right is conferred on the relevant day,
  - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
  - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the qualifying IP right, and
  - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the qualifying IP right.
- (5) In subsection (4)(d) “the relevant day” means—

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- (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first began to hold the qualifying IP right or licence.
- (6) In determining the appropriate percentage, the company must act in accordance with—
  - (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (7) In this section “excluded income” means any income falling within either of the Heads in section 357BHB.

### **357BHB Excluded income**

- (1) For the purposes of this Part income falling within either of the Heads set out in the following subsections is not relevant IP income—
  - (a) subsection (2) (ring fence income),
  - (b) subsection (3) (income attributable to non-exclusive licences).
- (2) Head 1 is income arising from oil extraction activities or oil rights.  
 In this subsection “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).
- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a “non-exclusive licence”) held by the company which—
  - (a) is a licence in respect of an item or process, but
  - (b) is not an exclusive licence in respect of a qualifying IP right.
- (4) In a case where—
  - (a) a company holds an exclusive licence in respect of a qualifying IP right, and
  - (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,
 the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

### **357BHC Mixed sources of income**

- (1) This section applies to any income that—
  - (a) is mixed income, or
  - (b) is paid under a mixed agreement.
- (2) “Mixed income” means the proceeds of sale where an item falling within subsection (2) of section 357BH and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.
- (3) A “mixed agreement” is an agreement providing for—
  - (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and

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- (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are—
  - (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6),
  - (c) a sale or disposal falling within section 357BH(7),
  - (d) the sale of any other item,
  - (e) the grant of any other right,
  - (f) any other sale or disposal,
  - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to—
  - (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6), or
  - (c) a sale or disposal falling within section 357BH(7),
 is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

#### *Excluded debits etc*

### **357BI Excluded debits**

For the purposes of this Part “excluded debits” means—

- (a) the amount of any debits which are treated as expenses of a trade by virtue of—
  - (i) section 297 of CTA 2009 (debts in respect of loan relationships), or
  - (ii) section 573 of CTA 2009 (debts in respect of derivative contracts),
- (b) the amount of any additional deduction for an accounting period obtained by a company under Part 13 of CTA 2009 for expenditure on research and development in relation to a trade,
- (c) the amount of any additional deduction for an accounting period obtained by a company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme,
- (d) the amount of any additional deduction for an accounting period obtained by a company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game, and
- (e) the amount of any additional deduction for an accounting period obtained by a company under Part 15C of CTA 2009 in respect of qualifying expenditure on a theatrical production.

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### **357BIA Certain amounts not to be deducted from sub-streams at Step 4 of section 357BF**

- (1) This section applies where a company enters into an arrangement with a person under which—
  - (a) the person assigns to the company a qualifying IP right or grants or transfers to the company an exclusive licence in respect of a qualifying IP right, and
  - (b) the company makes to the person an income-related payment.
- (2) A payment is an “income-related payment” for the purposes of subsection (1) if—
  - (a) the obligation to make the payment arises under the arrangement by reason of the amount of income the company has accrued which is properly attributable to the right or licence, or
  - (b) the amount of the payment is determined under the arrangement by reference to the amount of income the company has accrued which is so attributable.
- (3) If the amount of the income-related payment is allocated to a relevant IP income sub-stream at Step 3 of section 357BF(2), the amount is not to be deducted from the sub-stream at Step 4 of section 357BF(2) unless the payment will not affect the R&D fraction for the sub-stream.”

### *Routine return figure*

### **357BJ Routine return figure**

- (1) This section applies for the purpose of calculating the routine return figure for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) The routine return figure for the sub-stream is 10% of the aggregate of any routine deductions which—
  - (a) have been made by the company in calculating the profits of the trade for the accounting period, and
  - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).

For the meaning of “routine deductions”, see sections 357BJA and 357BJB.

- (3) In a case where—
  - (a) the company (“C”) is a member of a group,
  - (b) another member of the group has incurred expenses on behalf of C,
  - (c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period,
  - (d) the deduction would have been a routine deduction, and
  - (e) the deduction would have been allocated to the sub-stream at Step 3 in section 357BF(2),

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C is to be treated for the purposes of subsection (2) as having made such a routine deduction and as having allocated the deduction to the sub-stream.

- (4) Where expenses have been incurred by any member of the group on behalf of C and any other member of the group, subsection (3) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

### **357BJA Routine deductions**

- (1) For the purposes of this Part, “routine deductions” means deductions falling within any of the Heads set out in—
- (a) subsection (2) (capital allowances),
  - (b) subsection (3) (costs of premises),
  - (c) subsection (4) (personnel costs),
  - (d) subsection (5) (plant and machinery costs),
  - (e) subsection (6) (professional services), and
  - (f) subsection (7) (miscellaneous services).

This is subject to section 357BJB (deductions that are not routine deductions).

- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.
- (4) Head 3 is any deductions made by the company in respect of—
- (a) any director or employee of the company, or
  - (b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.
- (6) Head 5 is any deductions made by the company in respect of any of the following services—
- (a) legal services, other than IP-related services;
  - (b) financial services, including—
    - (i) insurance services, and
    - (ii) valuation or actuarial services;
  - (c) services provided in connection with the administration or management of the company's directors and employees;
  - (d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
- (a) the supply of water, fuel or power;
  - (b) telecommunications services;
  - (c) computing services, including computer software;
  - (d) postal services;
  - (e) the transportation of any items;
  - (f) the collection, removal and disposal of refuse.



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(8) In this section—

“externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),

“IP-related services” means services provided in connection with—

- (a) any application for a right to which this Part applies, or
  - (b) any proceedings relating to the enforcement of any such right,
- “premises” includes any land,

“telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and

“telecommunication system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy.

(9) The Treasury may by regulations amend this section.

### **357BJB Deductions that are not routine deductions**

(1) For the purposes of this Part a deduction is not a “routine deduction” if it falls within any of the Heads set out in—

- (a) subsection (2) (loan relationships and derivative contracts),
- (b) subsection (3) (R&D expenses),
- (c) subsection (4) (capital allowances for R&D or patents),
- (d) subsection (5) (R&D-related employee share acquisitions),
- (e) subsection (8) (television production expenditure),
- (f) subsection (9) (video games development expenditure).

(2) Head 1 is any debits which are treated as expenses of the trade by virtue of—

- (a) section 297 of CTA 2009 (debts in respect of loan relationships), or
- (b) section 573 of CTA 2009 (debts in respect of derivative contracts).

(3) Head 2 is—

- (a) the amount of any expenditure on research and development in relation to the trade—
  - (i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, or
  - (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009, and
- (b) where the company obtains an additional deduction as mentioned in paragraph (a)(i), the amount of that additional deduction.

(4) Head 3 is any allowances under—

- (a) Part 6 of CAA 2001 (research and development allowances), or
- (b) Part 8 of CAA 2001 (patent allowances).

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- (5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—
  - (a) shares are acquired by an employee or another person because of the employee's employment by the company, and
  - (b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).
- (6) In subsection (5) “the appropriate proportion”, in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).
 

“Staffing costs” has the same meaning as in that Part (see section 1123 of that Act).
- (7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.
- (8) Head 5 is—
  - (a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
  - (b) the amount of that additional deduction.
- (9) Head 6 is—
  - (a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
  - (b) the amount of that additional deduction.
- (10) The Treasury may by regulations amend this section.

### *Marketing assets return figure*

#### **357BK Marketing assets return figure**

- (1) The marketing assets return figure for a relevant IP income sub-stream is—

$$\text{NMR} - \text{AMR}$$

where—

NMR is the notional marketing royalty in respect of the sub-stream (see section 357BKA), and

AMR is the actual marketing royalty in respect of the sub-stream (see section 357BKB).

- (2) Where—
  - (a) AMR is greater than NMR, or

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- (b) the difference between NMR and AMR is less than 10% of the amount of the relevant IP income sub-stream following the deductions required by Step 4 in section 357BF(2),  
the marketing assets return figure for the sub-stream is nil.

### **357BKA Notional marketing royalty**

- (1) The notional marketing royalty in respect of a relevant IP income sub-stream is the appropriate percentage of the income allocated to that sub-stream at Step 2 in section 357BF(2).
- (2) The “appropriate percentage” is the proportion of that income which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in the accounting period concerned if the company were not otherwise able to exploit them.
- (3) For the purposes of this section a marketing asset is a “relevant marketing asset” in relation to a relevant IP income sub-stream if the sub-stream includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.
- (4) For the purpose of determining the appropriate percentage under this section, assume that—
  - (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
  - (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
  - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
  - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
  - (g) no income other than income within the relevant IP income sub-stream will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.
- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
  - (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—
  - (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.

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- (7) In this section “marketing asset” means any of the following (whether or not capable of being transferred or assigned)—
- (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
  - (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
  - (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
  - (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

### **357BKB Actual marketing royalty**

- (1) The actual marketing royalty for a relevant IP income sub-stream is the aggregate of any sums which—
- (a) were paid by the company for the purposes of acquiring any relevant marketing assets or the right to exploit any such assets, and
  - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).
- (2) In this section “relevant marketing asset” has the same meaning as in section 357BKA.

### *R&D fraction*

### **357BL Introduction**

- (1) Sections 357BLA to 357BLH apply for the purpose of determining the R&D fraction for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) In sections 357BLA to 357BLH, references to “the sub-stream”, “the trade”, “the company” and “the accounting period” are to the relevant IP income sub-stream, the trade, the company and the accounting period referred to in subsection (1).

### **357BLA The R&D fraction**

- (1) The R&D fraction for the sub-stream is the lesser of 1 and—

$$\frac{(D + S1) \times 1.3}{D + S1 + S2 + A}$$

where—

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D is the company's qualifying expenditure on relevant R&D undertaken in-house (see section 357BLB),

S1 is the company's qualifying expenditure on relevant R&D sub-contracted to unconnected persons (see section 357BLC),

S2 is the company's qualifying expenditure on relevant R&D sub-contracted to connected persons (see section 357BLD), and

A is the company's qualifying expenditure on the acquisition of relevant qualifying IP rights (see section 357BLE).

- (2) This section is subject to section 357BLH (R&D fraction: increase for exceptional circumstances).

### **357BLB Qualifying expenditure on relevant R&D undertaken in-house**

- (1) In section 357BLA, the company's "qualifying expenditure on relevant R&D undertaken in-house" means the expenditure incurred by the company during the relevant period which meets conditions A and B.

- (2) Condition A is that the expenditure is—

- (a) incurred on staffing costs,
- (b) incurred on software or consumable items,
- (c) qualifying expenditure on externally provided workers, or
- (d) incurred on relevant payments to the subjects of clinical trials.

- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.

- (4) If an election made by the company under section 18A of CTA 2009 (election for exemption for profits or losses of company's foreign permanent establishments) applies to the relevant period, expenditure incurred by the company during the period which meets conditions A and B—

- (a) is not "qualifying expenditure on relevant R&D undertaken in-house", but
- (b) is "qualifying expenditure on relevant R&D sub-contracted to connected persons",

so far as it is expenditure brought into account in calculating a relevant profits amount, or a relevant losses amount, aggregated at section 18A(4)(a) or (b) of CTA 2009 in calculating the company's foreign permanent establishments amount for the period.

- (5) In this section and sections 357BLC and 357BLD, "relevant research and development" means research and development (within the meaning of section 1138) which—

- (a) in a case where the sub-stream is an individual IP right sub-stream, relates to the qualifying IP right to which the income in the sub-stream is attributable,
- (b) in a case where the sub-stream is a product sub-stream, relates to a qualifying IP right granted in respect of any item—
  - (i) to which income in the sub-stream is attributable, or

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- (ii) which is incorporated in an item to which income in the sub-stream is attributable, or
- (c) in a case where the sub-stream is a process sub-stream, relates to a qualifying IP right granted in respect of any process—
  - (i) to which income in the sub-stream is attributable, or
  - (ii) which is incorporated in a process to which income in the sub-stream is attributable.
- (6) Research and development “relates” to a qualifying IP right for the purposes of subsection (5) if—
  - (a) it creates, or contributes to the creation of, the invention,
  - (b) it is undertaken for the purpose of developing the invention,
  - (c) it is undertaken for the purpose of developing ways in which the invention may be used or applied, or
  - (d) it is undertaken for the purpose of developing any item or process incorporating the invention.
- (7) The following provisions of CTA 2009 apply for the purposes of this section—
  - (a) section 1123 (meaning of “staffing costs”),
  - (b) section 1124 (when staffing costs are attributable to relevant research and development),
  - (c) section 1125 (meaning of “software or consumable items”),
  - (d) sections 1126 to 1126B (when software or consumable items are attributable to relevant research and development),
  - (e) sections 1127 to 1131 (meaning of “qualifying expenditure on externally provided workers”),
  - (f) section 1132 (when qualifying expenditure on externally provided workers is attributable to relevant research and development), and
  - (g) section 1140 (meaning of “relevant payments to the subjects of clinical trials”),

and in the application of those provisions for the purposes of this section any reference to “relevant research and development” is to be read as a reference to relevant research and development within the meaning given by subsection (5).

### **357BLC Qualifying expenditure on relevant R&D sub-contracted to unconnected persons**

- (1) In section 357BLA, the company's “qualifying expenditure on relevant R&D sub-contracted to unconnected persons” means the expenditure incurred by the company during the relevant period in making payments within subsection (2).
- (2) A payment is within this subsection if—
  - (a) it is made to a person in respect of relevant research and development contracted out by the company to the person, and
  - (b) the company and the person are not connected (within the meaning given by section 1122).
- (3) If an election made by the company under section 18A of CTA 2009 (election for exemption for profits or losses of company's foreign permanent

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establishments) applies to the relevant period, expenditure incurred by the company during the period in making payments within subsection (2)—

- (a) is not “qualifying expenditure on relevant R&D sub-contracted to unconnected persons”, but
- (b) is “qualifying expenditure on relevant R&D sub-contracted to connected persons”,

so far as it is expenditure brought into account in calculating a relevant profits amount, or a relevant losses amount, aggregated at section 18A(4)(a) or (b) of CTA 2009 in calculating the company's foreign permanent establishments amount for the period.

- (4) Where a payment is made to a person in respect of relevant research and development contracted out to the person and in respect of other matters, so much of the payment as is properly attributable to other matters is to be disregarded for the purposes of this section.

### **357BLD Qualifying expenditure on relevant R&D sub-contracted to connected persons**

- (1) In section 357BLA, the company's “qualifying expenditure on relevant R&D sub-contracted to connected persons” means the total of—
  - (a) any expenditure which is “qualifying expenditure on relevant R&D sub-contracted to connected persons” as a result of section 357BLB(4) or 357BLC(3) (certain expenditure attributed to company's foreign permanent establishments), and
  - (b) the expenditure incurred by the company during the relevant period in making payments within subsection (2).
- (2) A payment is within this subsection if—
  - (a) it is made to a person in respect of relevant research and development contracted out by the company to the person, and
  - (b) the company and the person are connected (within the meaning given by section 1122).
- (3) Where a payment is made to a person in respect of relevant research and development contracted out to the person and in respect of other matters, so much of the payment as is properly attributable to other matters is to be disregarded for the purposes of this section.

### **357BLE Qualifying expenditure on acquisition of relevant qualifying IP rights**

- (1) In section 357BLA, the company's “qualifying expenditure on the acquisition of relevant qualifying IP rights” means the expenditure incurred by the company in making during the relevant period payments within any of subsections (2), (3) and (4).
- (2) A payment is within this subsection if it is made to a person in respect of the assignment by that person to the company of a relevant qualifying IP right.
- (3) A payment is within this subsection if it is made to a person in respect of the grant or transfer by that person to the company of an exclusive licence in respect of a relevant qualifying IP right.

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- (4) A payment is within this subsection if—
  - (a) it is made to a person in respect of the disclosure by that person to the company of any item or process, and
  - (b) the company applies for and is granted a relevant qualifying IP right in respect of that item or process (or any item or process derived from it).
- (5) Where the company has incurred expenditure in making a series of payments to a person in respect of a single assignment, grant, transfer or disclosure, each of the payments in the series is to be treated for the purposes of this section as having been made on the date on which the first payment in the series was made.
- (6) “Relevant qualifying IP right” means—
  - (a) in a case where the sub-stream is an individual IP right sub-stream, the qualifying IP right to which the income in the sub-stream is attributable,
  - (b) in a case where the sub-stream is a product sub-stream, a qualifying IP right granted in respect of an item—
    - (i) to which income in the sub-stream is attributable, or
    - (ii) which is incorporated in an item to which income in the sub-stream is attributable, or
  - (c) in a case where the sub-stream is a process sub-stream, a qualifying IP right granted in respect of a process—
    - (i) to which income in the sub-stream is attributable, or
    - (ii) which is incorporated in a process to which income in the sub-stream is attributable.

### **357BLF Meaning of the “relevant period” etc**

- (1) Subsections (2) to (6) define “the relevant period” for the purposes of sections 357BLB to 357BLE.
- (2) The “relevant period” is the period which—
  - (a) ends with the last day of the accounting period, and
  - (b) begins on the relevant day or such earlier day as the company may elect.

This is subject to subsection (6).

- (3) The “relevant day” is 1 July 2013 in a case where—
  - (a) the accounting period begins before 1 July 2021, and
  - (b) the company is a new entrant (see section 357A(11)).
- (4) The “relevant day” is 1 July 2016 in any other case.
- (5) A day elected under subsection (2)(b) must not be more than 20 years before the last day of the accounting period.
- (6) If the last day of the accounting period is, or is after, 1 July 2036 the “relevant period” is the period of 20 years ending with that day.



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- (7) Expenditure incurred by the company is to be treated for the purposes of sections 357BLB to 357BLD as incurred during the relevant period if (and only if) the expenditure is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for an accounting period which falls, in whole or in part, within the relevant period.

### **357BLG Cases where the company is a new entrant with insufficient information about pre-enactment expenditure**

- (1) This section applies if—
- (a) the accounting period begins before 1 July 2021 and the company is a new entrant (so that subsection (3) of section 357BLF applies), and
  - (b) the company has insufficient information about its expenditure in the period which begins with 1 July 2013 and ends with 30 June 2016 to be able to calculate the R&D fraction for the sub-stream.
- (2) If the accounting period begins on or after 1 July 2019, the company may elect that, for the purposes of enabling it to determine the R&D fraction for the sub-stream, section 357BLF is to have effect as if in subsection (3) for “1 July 2013” there were substituted “1 July 2016”.
- (3) If the accounting period begins before 1 July 2019 the company may elect that, for the purposes of enabling it to determine the R&D fraction for the sub-stream, sections 357BL to 357BLE are to have effect as if—
- (a) any reference in those sections to the relevant period were to the period of three years ending with the last day of the accounting period,
  - (b) in section 357BLB, for subsections (5) and (6) there were substituted—
 

“(5) In this section and sections 357BLC and 357BLD, “relevant research and development” means research and development (within the meaning of section 1138) which relates to the trade.”, and
  - (c) in section 357BLE—
    - (i) in each of subsections (2), (3) and (4) the word “relevant” were omitted, and
    - (ii) subsection (6) were omitted.

### **357BLH R&D fraction: increase for exceptional circumstances**

- (1) The company may elect to increase the R&D fraction for the sub-stream by the amount mentioned in subsection (2) if (but for the increase)—
- (a) it would not be less than 0.325, and
  - (b) it would, because of exceptional circumstances, be less than the value fraction for the sub-stream (see subsection (3)).
- (2) The amount of the increase referred to in subsection (1) is the amount which is equal to the difference between the R&D fraction (before the increase) and the value fraction.
- (3) The “value fraction” for the sub-stream is the fraction which, on a just and reasonable assessment, represents the proportion of the value of the

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relevant qualifying IP rights which is properly attributable to research and development undertaken at any time—

- (a) by the company itself, or
- (b) on behalf of the company by persons not connected with it.

- (4) An election under subsection (1) is made by the company giving notice to an officer of Revenue and Customs.
- (5) The notice must be given on or before the last day on which an amendment of the company's tax return for the accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
- (6) In this section—
  - “relevant qualifying IP rights” has the same meaning as in section 357BLE, and
  - “research and development” has the meaning given by section 1138.
- (7) Section 1122 (meaning of “connected” persons”) applies for the purposes of this section.

#### *Profits arising before grant of right*

#### **357BM Profits arising before grant of right**

- (1) This section applies where a company—
  - (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
  - (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.
- (2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the “additional amount”).
- (3) The additional amount is the difference between—
  - (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
  - (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.
- (4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.
- (5) In this section “relevant accounting period” means—
  - (a) the accounting period of the company in which the right is granted, and

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- (b) any earlier accounting period of the company which meets the conditions in subsection (6).
- (6) The conditions mentioned in subsection (5)(b) are—
  - (a) that it is an accounting period for which an election made by the company under section 357A(1) has effect,
  - (b) that it is an accounting period for which the company is a qualifying company, and
  - (c) that it ends on or after the relevant day.
- (7) In this section “the relevant day” is the later of—
  - (a) the first day of the period of 6 years ending with the day on which the right is granted, and
  - (b) the day on which—
    - (i) the application for the grant of the right was filed, or
    - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

### *Small claims treatment*

#### **357BN Small claims treatment**

- (1) This section applies where—
  - (a) a company carries on only one trade during an accounting period,
  - (b) section 357BF applies for the purposes of determining the relevant IP profits of the trade for the accounting period, and
  - (c) the qualifying residual profit of the trade for the accounting period does not exceed whichever is the greater of—
    - (i) £1,000,000, and
    - (ii) the relevant maximum for the accounting period.
- (2) The company may make any of the following elections for the accounting period—
  - (a) a notional royalty election (see section 357BNA),
  - (b) a small claims figure election (see section 357BNB), and
  - (c) a global streaming election (see section 357BNC).

This is subject to subsections (3) and (4).

- (3) The company may not make a notional royalty election, a small claims figure election or a global streaming election for the accounting period if—

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- (a) the qualifying residual profit of the trade for the accounting period exceeds £1,000,000,
  - (b) section 357BF applied for the purposes of determining the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period, and
  - (c) the company did not make a notional royalty election, a small claims figure election or (as the case may be) a global streaming election for that previous accounting period.
- (4) The company may not make a small claims figure election for the accounting period if—
  - (a) the qualifying residual profit of the trade for the accounting period exceeds £1,000,000,
  - (b) section 357C or 357DA applied for the purposes of determining the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period, and
  - (c) the company did not make an election under section 357CL for small claims treatment for that previous accounting period.
- (5) In subsections (3) and (4) “the relevant 4-year period” means the period of 4 years ending with the beginning of the accounting period mentioned in subsection (1)(a).
- (6) For the purposes of this section, the “qualifying residual profit” of a trade of a company for an accounting period is the amount which (assuming the company did not make an election under this section) would be equal to the aggregate of the relevant IP income sub-streams established at Step 2 in section 357BF(2) in determining the relevant IP profits of the trade for the accounting period, following the deductions from those sub-streams required by Step 4 in section 357BF(2) (ignoring the amount of any sub-stream which is not greater than nil following those deductions).
- (7) For the purposes of this section, the “relevant maximum” for an accounting period of a company is—
  - (a) in a case where no company is a related 51% group company of the company in the accounting period, £3,000,000;
  - (b) in a case where one or more companies are related 51% group companies of the company in the accounting period, the amount given by the formula—

$$\frac{\pounds 3,000,000}{(1 + N)}$$

where N is the number of those related 51% group companies in relation to which an election under section 357A(1) has effect for the accounting period.

- (8) For an accounting period of less than 12 months, the relevant maximum is proportionally reduced.

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### 357BNA Notional royalty election

- (1) Subsection (2) applies where a company has made a notional royalty election for an accounting period under section 357BN(2)(a).
- (2) In its application for the purposes of determining the relevant IP profits of the trade of the company for the accounting period, section 357BHA (notional royalty) has effect as if—
  - (a) in subsection (2) for “the appropriate percentage” there were substituted “ 75% ”, and
  - (b) subsections (3) to (6) were omitted.

### 357BNB Small claims figure election

- (1) Subsection (2) applies where a company has made a small claims figure election for an accounting period under section 357BN(2)(b).
- (2) In its application for the purposes of determining the relevant IP profits of the trade of the company for the accounting period, section 357BF(2) (steps for calculating relevant IP profits) has effect as if in Step 5—
  - (a) for “marketing assets return figure” there was substituted “ small claims figure ”, and
  - (b) for “(see section 357BK)” there was substituted “ (see section 357BNB(3)) ”.
- (3) Subsections (4) to (9) apply for the purpose of calculating the small claims figure for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (4) If 75% of the qualifying residual profit of the trade for the accounting period is lower than the small claims threshold, the small claims figure for the sub-stream is 25% of the amount of the sub-stream following Step 4 in section 357BF(2).
- (5) If 75% of the qualifying residual profit of the trade for the accounting period is higher than the small claims threshold, the small claims figure for the sub-stream is the amount given by—

$$A - \left( \frac{A}{QRP} \times SCT \right)$$

where—

A is the amount of the sub-stream following the deductions required by Step 4 in section 357BF(2),

QRP is the qualifying residual profit of the trade of the company for the accounting period, and

SCT is the small claims threshold.

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- (6) If no company is a related 51% group company of the company in the accounting period, the small claims threshold is £1,000,000.
- (7) If one or more companies are related 51% group companies of the company in the accounting period, the small claims threshold is—

$$\frac{\pounds 1,000,000}{(1 + N)}$$

where N is the number of those related 51% group companies in relation to which an election under section 357A(1) has effect for the accounting period.

- (8) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.
- (9) Subsection (6) of section 357BN (meaning of “qualifying residual profit”) applies for the purposes of subsection (4) and (5) of this section.

### **357BNC Global streaming election**

- (1) Subsection (2) applies where a company has made a global streaming election for an accounting period under section 357BN(2)(c).
- (2) In its application for the purpose of determining the relevant IP profits of the trade of the company for the accounting period, this Chapter has effect with the following modifications.
- (3) In subsection (2) of section 357BF (relevant IP profits)—
- (a) omit Step 2,
  - (b) in Step 3 for “each of the relevant IP income sub-streams” substitute “the relevant IP income stream”,
  - (c) in Step 4—
    - (i) in the words before paragraph (a), for “each” substitute “the”,
    - (ii) for “sub-stream”, in each place it occurs, substitute “stream”,
  - (d) in Step 5—
    - (i) at the beginning insert “If the relevant IP income stream is greater than nil following Step 4,”,
    - (ii) for the words from “each” to “Step 4” substitute “the stream”,
    - (iii) for “sub-stream”, in the second place it occurs, substitute “stream”,
  - (e) in Step 6—
    - (i) for “each relevant IP income sub-stream” substitute “the relevant IP income stream”,
    - (ii) for “sub-stream”, in the second place it occurs, substitute “stream”,
  - (f) omit Step 7, and

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- (g) in Step 8 for “given by Step 7” substitute “ of the relevant IP income stream following Step 6 ”.
- (4) In subsection (3) of that section for “given by” substitute “ of the relevant IP income stream following the Steps in ”.
- (5) In subsection (4) of that section for “given by” substitute “ of the relevant IP income stream following the Steps in ”.
- (6) Omit subsections (5) to (7) of that section.
- (7) In section 357BIA(3) (certain amounts not to be deducted from sub-streams at Step 4 of section 357BF)—
  - (a) for “a relevant IP income sub-stream” substitute “ the relevant IP income stream ”;
  - (b) for “sub-stream”, in the second and third places it occurs, substitute “ stream ”.
- (8) In section 357BJ (routine return figure)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (9) In section 357BK (marketing asset return figure) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (10) In section 357BKA (notional marketing royalty)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (11) In section 357BKB (actual marketing royalty) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (12) In section 357BL (R&D fraction: introduction)—
  - (a) for “sub-stream” (in each place it occurs) substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (13) In section 357BLA(1) (R&D fraction) for “sub-stream” substitute “ stream ”.
- (14) In section 357BLB(5) (qualifying expenditure on relevant R&D undertaken in-house) for the words after “1138)” substitute “ which relates to a qualifying IP right to which income in the stream is attributable ”.
- (15) In section 357BLE(6) (qualifying expenditure on acquisition of relevant qualifying IP rights) for the words from “means” to the end substitute “ means a qualifying IP right to which income in the stream is attributable ”.
- (16) In section 357BLG (cases where the company is a new entrant with insufficient information about pre-enactment expenditure) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (17) In section 357BLH (R&D fraction: increase for exceptional circumstances) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (18) In section 357BNB (small claims figure election)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (3) for “Step 2” substitute “ Step 1 ”.

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## CHAPTER 2B

### RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(7): INCOME FROM NEW IP

#### **357BO Relevant IP profits**

- (1) Section 357BF applies, with the modifications set out in section 357BQ, for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—
  - (a) the accounting period begins before 1 July 2021,
  - (b) the company is not a new entrant (see section 357A(11)), and
  - (c) any amount of relevant IP income brought into account as a credit in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).
- (2) Where it is necessary for the purposes of section 357BF, as applied by this section, to determine the R&D fraction for a relevant IP income sub-stream, the company concerned is to be treated for the purposes of sections 357BLF and 357BLG as if it were a new entrant.
- (3) Where section 357BF applies by reason of this section for the purposes of determining the relevant IP profits of a trade of a company for an accounting period, the company may not make a global streaming election for the accounting period under section 357BN(2)(c).

#### **357BP Meaning of “new qualifying IP right” and “old qualifying IP right”**

- (1) This section applies for the purposes of this Part.
- (2) “New qualifying IP right”, in relation to a company, means a qualifying IP right which meets condition A, B or C.
- (3) “Old qualifying IP right”, in relation to a company, means a qualifying IP right which does not meet any of those conditions.
- (4) Condition A is that the right was granted or issued to the company in response to an application filed on or after the relevant date.
- (5) Condition B is that the right was assigned to the company on or after the relevant date.
- (6) Condition C is that an exclusive licence in respect of the right was granted to the company on or after the relevant date.
- (7) The “relevant date” for the purposes of subsections (4), (5) and (6) is 1 July 2016; but this is subject to subsection (8).
- (8) The “relevant date” for the purposes of subsections (5) and (6) is 2 January 2016 if—
  - (a) the company and the person who assigned the right or granted the licence were connected at the time of the assignment or grant,



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- (b) the main purpose, or one of the main purposes, of the assignment of the right or the grant of the licence was the avoidance of a foreign tax,
  - (c) the person who assigned the right or granted the licence was not within the charge to corporation tax at the time of the assignment or grant, and
  - (d) the person who assigned the right or granted the licence was not liable at the time of the assignment or grant to a foreign tax which is designated for the purposes of this section by regulations made by the Treasury.
- (9) Regulations may be made under subsection (8)(d) which designate a foreign tax only if it appears to the Treasury that the tax may be charged at a reduced rate under provisions of the law of the country or territory concerned which correspond to the provisions of this Part.
- (10) Regulations may not be made under subsection (8)(d) after 31 December 2016.
- (11) In this section “foreign tax” means a tax under the law of a country or territory outside the United Kingdom.
- (12) Section 1122 (meaning of “connected” persons) applies for the purposes of this section.

### 357BQ The modifications

- (1) The modifications of section 357BF referred to in section 357BO(1) are as follows.
- (2) Omit subsection (1).
- (3) In subsection (2)—
  - (a) in Step 2—
    - (i) before paragraph (a) insert—
      - “(aa) a sub-stream consisting of income properly attributable to old qualifying IP rights (“an old IP rights sub-stream”),”
    - (ii) in paragraph (a) before “qualifying IP right” insert “ new ”,
    - (iii) in the words after paragraph (c) for “and (7)” substitute “ to (7E) ”,
  - (b) in Step 6, for “relevant IP income sub-stream” substitute “ individual IP right sub-stream, each product sub-stream and each process sub-stream ”, and
  - (c) for Step 7 substitute—
    - “Step 7 Add together—
      - (a) the amount of any old IP rights sub-stream (following Steps 4 and 5), and
      - (b) the amount of each of the individual IP right sub-streams, each of the product sub-streams and each of the process sub-streams (following Step 6).”
- (4) In subsection (7) for paragraph (a) substitute—

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“(a) it would not be reasonably practicable to apportion the income between—

- (i) individual IP rights sub-streams, or
- (ii) individual IP rights sub-streams and an old IP rights sub-stream, or”.

(5) After subsection (7) insert—

“(7A) Subsections (7B) to (7E) apply where—

- (a) income which is properly attributable to an IP item or IP process may in accordance with subsection (7) be allocated at Step 2 of subsection (2) to a product sub-stream or process sub-stream, and
- (b) the IP item or IP process incorporates—
  - (i) at least one item or process in respect of which an old qualifying IP right held by the company has been granted, and
  - (ii) at least one item or process in respect of which a new qualifying IP right held by the company has been granted.

(7B) If—

- (a) the value of the IP item or IP process is wholly or mainly attributable to the incorporation in it of the items or processes referred to in subsection (7A)(b)(i), or
- (b) the old IP percentage for the IP item or IP process is 80% or more, the income properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, the income may be allocated at Step 2 of subsection (2) to an old qualifying IP rights sub-stream (rather than to a product sub-stream or process sub-stream).

(7C) If the old IP percentage for the IP item or IP process is less than 80% but not less than 20%, that percentage of the income which is properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, that percentage of the income may be allocated at Step 2 of subsection (2) to an old IP rights sub-stream (and the remainder is to be allocated to a product sub-stream or process sub-stream).

(7D) Where by reason of subsection (7C) only part of the income properly attributable to the IP item or IP process is allocated to a product sub-stream or process sub-stream, the IP item or IP process is to be treated, in determining the R&D fraction for the sub-stream, as if it did not incorporate the items or processes referred to in subsection (7A)(b)(i).

(7E) For the purposes of subsection (7B) and (7C), the “old IP percentage” for an IP item or IP process is the percentage found by the following calculation—

$$\frac{O}{T} \times 100$$

where—

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O is the number of items or processes incorporated in the IP item or IP process in respect of which an old qualifying IP right held by the company has been granted, and

T is the number of items or processes incorporated in the IP item or IP process in respect of which an old or a new qualifying IP right held by the company has been granted.””

(4) In section 357FB (tax advantage schemes)—

(a) in subsection (2)(b) (list of ways by which deductions can be inflated)—

(i) omit “or” at the end of sub-paragraph (ii), and

(ii) after sub-paragraph (iii) insert “, or

(iv) an R&D fraction (see subsection (4A)) being greater than it would be but for the scheme.”, and

(b) after subsection (4) insert—

“(4A) The reference in subsection (2)(b)(iv) to an R&D fraction is a reference to such a fraction as is mentioned at Step 6 of section 357BF(2).”

(5) After section 357GC insert—

*“Transferred trades*

**357GCA Application of this Part in relation to transferred trades**

(1) Where—

(a) a company (“the transferor”) ceases to carry on a trade which involves the exploitation of a qualifying IP right (“the relevant qualifying IP right”),

(b) the transferor assigns the relevant qualifying IP right, or grants or transfers an exclusive licence in respect of it, to another company (“the transferee”), and

(c) the transferee begins to carry on the trade,

the following provisions apply in determining under this Part the relevant IP profits of the trade carried on by the transferee.

(2) The transferee is to be treated as not being a new entrant if—

(a) an election under section 357A(1) has effect in relation to the transferor on the date of the assignment, grant or transfer mentioned in subsection (1)(b) (“the transfer date”), and

(b) the first accounting period of the transferor for which that election had effect began before 1 July 2016.

(3) The relevant qualifying IP right is to be treated as being an old qualifying IP right in relation to the transferee if by reason of section 357BP it is an old qualifying IP right in relation to the transferor.

(4) Expenditure incurred prior to the transfer date by the transferor which is attributable to relevant research and development undertaken by the transferor is to be treated for the purposes of section 357BLB as if it is expenditure

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incurred by the transferee which is attributable to relevant research and development undertaken by the transferee.

- (5) Expenditure incurred prior to the transfer date by the transferor in making a payment to a person in respect of relevant research and development contracted out by the transferor to that person is to be treated for the purposes of sections 357BLC and 357BLD as if it is expenditure incurred by the transferee in making a payment to that person in respect of relevant research and development contracted out by the transferee to that person.
- (6) Expenditure incurred prior to the transfer date by the transferor in making a payment in connection with the relevant qualifying IP right which is within subsection (2), (3) or (4) of section 357BLE is to be treated for the purposes of that section as if it is expenditure incurred by the transferee in making a payment in connection with that right which is within one of those subsections.
- (7) Expenditure incurred by the transferee in making a payment to the transferor in respect of the assignment, grant or transfer mentioned in subsection (1)(b) is to be ignored for the purposes of section 357BLE.
- (8) In this section—
  - “trade” includes part of a trade, and
  - “relevant research and development” means research and development which relates to the relevant qualifying IP right.
- (9) For the purposes of this section research and development “relates” to the relevant qualifying IP right if—
  - (a) it creates, or contributes to the creation of the invention,
  - (b) it is undertaken for the purpose of developing the invention,
  - (c) it is undertaken for the purpose of developing ways in which the invention may be used or applied, or
  - (d) it is undertaken for the purpose of developing any item or process incorporating the invention.”
- (6) Schedule 9 contains amendments consequential on this section.
- (7) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 July 2016.
- (8) Subsection (9) applies where a company has an accounting period (“the straddling period”) which begins before, and ends on or after, 1 July 2016 or 1 July 2021 (“the relevant date”).
- (9) For the purposes of this section and Part 8A of CTA 2010—
  - (a) so much of the straddling period as falls before the relevant date, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.
- (10) Subsection (11) applies if—
  - (a) an election is made by a company under section 357A(1) of CTA 2010, and

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- (b) the notice under section 357G of that Act specifies the accounting period of the company which ends on 30 June 2016, or any earlier accounting period, as being the first accounting period for which the election is to have effect.
- (11) Nothing in section 357GA(5) prevents the election having effect in relation to the accounting period of the company which ends on 30 June 2016 or any subsequent accounting period.
- (12) Subsection (13) applies to an amount of relevant IP income of a company if—
  - (a) the company is not a new entrant,
  - (b) the income is properly attributable to a new qualifying IP right which was assigned to the company, or in respect of which an exclusive licence was granted to the company, during the period beginning on 2 January 2016 and ending on 1 July 2016, and
  - (c) the income accrued to the company during the period beginning on 1 July 2016 and ending on 1 January 2017.
- (13) The income is to be treated for the purposes of Part 8A of CTA 2010 as being properly attributable to an old qualifying IP right.
- (14) Expressions used in subsections (12) and (13) and in Part 8A of CTA 2010 have the meaning they have in that Part.

### *Miscellaneous*

## **65 Power to make regulations about the taxation of securitisation companies**

- (1) Section 624 of CTA 2010 (power to make regulations about the application of the Corporation Tax Acts in relation to securitisation companies) is amended in accordance with subsections (2) to (4).
- (2) In subsection (1), for “Corporation Tax Acts” substitute “Taxes Acts”.
- (3) In subsection (2), for “Corporation Tax Acts” substitute “Taxes Acts”.
- (4) In subsection (9), after “section” insert “—  
the Taxes Acts” has the meaning given by section 118(1) of TMA 1970, and”.
- (5) In section 625 of CTA 2010 (regulations: supplementary provision) in subsection (3) (power to include retrospective provision) after “may” insert “, insofar as they concern the application of the Corporation Tax Acts in relation to a securitisation company, ”.

## **66 Hybrid and other mismatches**

Schedule 10 contains provision that counteracts, for corporation tax purposes, hybrid and other mismatches that would otherwise arise.

## **67 Insurance companies carrying on long-term business**

- (1) Part 2 of FA 2012 (insurance companies carrying on long-term business) is amended as follows.
- (2) In section 73 (the I-E basis), in step 4—

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- (a) for “(but not below nil) by the” substitute “by the relievable”, and
- (b) at the end of the step insert—

“In this step, “the relievable amount” of a non-trading deficit means so much of the deficit as does not exceed the total of—

- (a) the amount given by the calculation required by step 1,
- (b) the amount given by the calculation required by step 2, and
- (c) any amount of an I-E receipt under section 92 brought into account under step 3.”

- (3) In section 88 (loan relationships, derivative contracts and intangible fixed assets), in subsection (6), for “excess—” and paragraphs (a) and (b), substitute “excess is treated for the purposes of section 76 as a deemed BLAGAB management expense for that period.”
- (4) In section 126 (restrictions in respect of non-trading deficit), in subsection (2), for “would have under section 388” to the end substitute “has, calculated by reference only to credits and debits—
  - (a) arising in respect of such of the company's loan relationships as are debtor relationships (see section 302(6) of CTA 2009), and
  - (b) referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after the day on which this Act is passed.

## 68 Taking over payment obligations as lessee of plant or machinery

- (1) In Part 20 of CTA 2010 (tax avoidance involving leasing plant or machinery), after section 894 insert—

### “CHAPTER 3

#### CONSIDERATION FOR TAKING OVER PAYMENT OBLIGATIONS AS LESSEE TREATED AS INCOME

#### **894A Consideration for taking over payment obligations as lessee treated as income**

- (1) This section applies where under any arrangements—
  - (a) a company chargeable to corporation tax (C) agrees to take over obligations of another person (D) as lessee under a lease of plant or machinery,
  - (b) as a result of that agreement C, or a person connected with C, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
  - (c) a payment is payable to C, or a person connected with C, by way of consideration for that agreement.

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- (2) The payment is treated for the purposes of corporation tax as income received by C in the period of account in which C takes over the obligations mentioned in subsection (1)(a).
  - (3) Subsection (2) does not apply if and to the extent that the payment is (apart from this section)—
    - (a) charged to tax on C, or a person connected with C, as an amount of income,
    - (b) brought into account in calculating for tax purposes any income of C or a person connected with C, or
    - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of C or a person connected with C.
  - (4) It does not matter how C takes over the obligations of D (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
  - (5) In this section—
 

“arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable);

“lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery;

“payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money's worth (and “payable” is to be construed accordingly);

“payment by way of consideration” means any payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a), where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.
  - (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
  - (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
  - (8) Examples of priority rules are section 464 of CTA 2009 (priority of loan relationships rules) and section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).”
- (2) In Chapter 6 of Part 13 of ITA 2007 (avoidance involving leases of plant or machinery), after section 809ZF insert—

**“809ZFA Consideration for taking over payment obligations as lessee treated as income**

- (1) This section applies where under any arrangements—

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- (a) a person within the charge to income tax (P) agrees to take over obligations of another person (Q) as lessee under a lease of plant or machinery,
  - (b) as a result of that agreement P, or a person connected with P, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
  - (c) a payment is payable to P, or a person connected with P, by way of consideration for that agreement.
- (2) The payment is treated for the purposes of income tax as income received by P in the tax year in which P takes over the obligations mentioned in subsection (1)(a).
- (3) Subsection (2) does not apply if and to the extent that the consideration is (apart from this section)—
  - (a) charged to tax on P, or a person connected with P, as an amount of income,
  - (b) brought into account in calculating for tax purposes any income of P or a person connected with P, or
  - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of P or a person connected with P.
- (4) It does not matter how P takes over the obligations of Q (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
- (5) In this section—
  - “arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable);
  - “lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery;
  - “payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money's worth (and “payable” is to be construed accordingly);
  - “payment by way of consideration” includes a payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a), where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.
- (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
- (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
- (8) An example of a priority rule is section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment)."



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- (3) This section applies to agreements of the kind mentioned in section 894A(1)(a) of CTA 2010 or section 809ZFA of ITA 2007 that are made on or after 25 November 2015.

## PART 3

### INCOME TAX AND CORPORATION TAX

#### *Capital allowances*

#### **69 Capital allowances: designated assisted areas**

In section 45K of CAA 2001 (expenditure on plant and machinery for use in designated assisted area), in subsection (1)(b) (condition that expenditure is incurred in the period of 8 years beginning with 1 April 2012), for “1 April 2012” substitute “ the date on which the area is (or is treated as) designated under subsection (2)(a) ”.

#### **70 Capital allowances: anti-avoidance relating to disposals**

- (1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- (2) Section 213 (relevant transactions: sale, hire purchase etc. and assignment) is amended in accordance with subsections (3) and (4).
- (3) In subsection (1) for the words from “enters” to “(“S”)” substitute “ and another person (“S”) enter into a relevant transaction ”.
- (4) After subsection (3) insert—
  - “(4) For the purposes of this Chapter, references to the disposal value of the plant or machinery under a relevant transaction are references to the disposal value that is to be brought into account by S as a result of the sale, contract or assignment in question.”
- (5) Section 215 (transactions to obtain tax advantages) is amended in accordance with subsections (6) to (8).
- (6) In subsection (1)—
  - (a) after “restricted” insert “ , and balancing charges are imposed or increased, ”, and
  - (b) for the words from “B” to “S” substitute “ B and S enter into a relevant transaction ”.
- (7) In subsection (4)—
  - (a) after “includes” insert “—
    - (a)”,
    - and
  - (b) at end insert “, and
    - (b) avoiding liability for the whole or part of a balancing charge to which a person would otherwise be liable.”
- (8) After subsection (4) insert—

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“(4A) If the tax advantage relates to the disposal value of the plant or machinery under the relevant transaction (whether by obtaining a more favourable allowance or by avoiding the whole or part of a balancing charge) then—

- (a) the applicable section is section 218ZB, and
- (b) the tax advantage is to be disregarded for the purposes of subsection (6) and (8)(b).”

(9) After section 218ZA (restrictions on writing down allowances: section 215) insert—

**“218ZB Disposal values: section 215**

(1) If—

- (a) this section applies as a result of section 215,
- (b) a payment is payable to any person under the transaction, scheme or arrangement mentioned in that section,
- (c) some or all of the payment would not (apart from this section) be taken into account in determining the disposal value of the plant or machinery under the relevant transaction, and
- (d) as a result of the matters mentioned in paragraphs (b) and (c) S would otherwise obtain a tax advantage as mentioned in section 215(3) and (4),

the disposal value of the plant or machinery under the relevant transaction is to be adjusted in a just and reasonable manner so as to include an amount representing so much of the payment as would or would in effect cancel out the tax advantage.

(2) In subsection (1) “payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money or money's worth, and “payable” is to be construed accordingly.”

(10) In section 66 (list of provisions outside Chapter 5 about disposal values) insert at the appropriate place—

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“section 218ZB                      disposal of plant or machinery in avoidance cases”.

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(11) The amendments made by this section have effect in relation to transactions mentioned in section 213(1)(a), (b) or (c) of CAA 2001 that take place on or after 25 November 2015.

*Trade and property business profits*

**71      Trade and property business profits: money's worth**

(1) ITTOIA 2005 is amended in accordance with subsections (2) and (3).

(2) In Chapter 3 of Part 2 (trade profits: basic rules), after section 28 insert—

**“28A Money's worth**

(1) Subsection (2) applies—

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- (a) for the purpose of bringing into account an amount arising in respect of a transaction involving money's worth entered into in the course of a trade, and
  - (b) if an amount at least equal to the amount that would be brought into account under that subsection is not otherwise brought into account as a receipt in calculating the profits of a trade under a provision of this Part other than a provision mentioned in subsection (3).
- (2) For the purpose of calculating the profits of the trade, an amount equal to the value of the money's worth is brought into account as a receipt if, had the transaction involved money, an amount would have been brought into account as a receipt in respect of it.
- (3) But where another provision of this Part makes express provision for the bringing into account of an amount in respect of money's worth as a receipt in calculating the profits of a trade (however expressed), that other provision applies instead of subsection (2)."
- (3) In Chapter 3 of Part 3 (profits of property businesses), in section 272 (application of trading income rules), in the Table in subsection (2), at the appropriate place insert—

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“section 28A	money's worth”.
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- (4) CTA 2009 is amended in accordance with subsections (5) and (6).
- (5) In Chapter 3 of Part 3 (trade profits: basic rules), after section 49 insert—

**“49A Money's worth**

- (1) Subsection (2) applies—
  - (a) for the purpose of bringing into account an amount arising in respect of a transaction involving money's worth entered into in the course of a trade, and
  - (b) if an amount at least equal to the amount that would be brought into account under that subsection is not otherwise brought into account as a receipt in calculating the profits of a trade under a provision of this Part other than a provision mentioned in subsection (3).
- (2) For the purpose of calculating the profits of the trade, an amount equal to the value of the money's worth is brought into account as a receipt if, had the transaction involved money, an amount would have been brought into account as a receipt in respect of it.
- (3) But where another provision of this Part makes express provision for the bringing into account of an amount in respect of money's worth as a receipt in calculating the profits of a trade (however expressed), that other provision applies instead of subsection (2)."
- (6) In Chapter 3 of Part 4 (profits of property businesses), in section 210 (application of trading income rules), in the Table in subsection (2), at the appropriate place insert—

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“section 49A	money's worth”.
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- (7) The amendments made by this section have effect in relation to transactions entered into on or after 16 March 2016.

## **72 Replacement and alteration of tools**

- (1) Omit the following provisions (replacement and alteration of trade tools)—
  - (a) section 68 of ITTOIA 2005 and the italic heading before that section, and
  - (b) section 68 of CTA 2009 and the italic heading before that section.
- (2) In consequence of subsection (1)(a), in ITTOIA 2005—
  - (a) in subsection (1) of section 56A (cash basis accounting), omit the entry relating to section 68, and
  - (b) in section 272 (profits of a property business: application of trading income rules), in subsection (2), omit the entry in the table relating to section 68.
- (3) In consequence of subsection (1)(b), in section 210 of CTA 2009 (profits of a property business: application of trading income rules), in subsection (2), omit the entry in the table relating to section 68.
- (4) The amendments made by this section have effect in relation to expenditure incurred on or after the date in subsection (5).
- (5) The date is—
  - (a) for corporation tax purposes, 1 April 2016, and
  - (b) for income tax purposes, 6 April 2016.

### *Property business deductions*

## **73 Property business deductions: replacement of domestic items**

- (1) In Chapter 5 of Part 3 of ITTOIA 2005 (property income), after section 311 insert—

### *“Deduction for replacement of domestic items*

#### **311A Replacement domestic items relief**

- (1) This section applies if conditions A to D are met.
- (2) Condition A is that a person (“P”) carries on a property business in relation to land which consists of or includes a dwelling-house.
- (3) Condition B is that—
  - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
  - (b) P incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
  - (c) the new item is provided solely for the use of the lessee,
  - (d) the new item replaces the old item, and
  - (e) following that replacement, the old item is no longer available for use in the dwelling-house.

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- (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital expenditure rule (see subsection (15)).
- (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (6) In calculating the profits of the business, a deduction for the expenditure is allowed. But this is subject to subsections (7) and (8).
- (7) No deduction is allowed for expenditure in a tax year if—
  - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the tax year.
- (8) No deduction is allowed for expenditure in a tax year if—
  - (a) the person has rent-a-room receipts in respect of the dwelling-house for the tax year, and
  - (b) section 793 or 797 (rent-a-room relief) applies in relation to those receipts.
- (9) The basic amount of the deduction is as follows—
  - (a) where the new item is the same or substantially the same as the old item, the deduction is equal to the expenditure incurred by P on the new item;
  - (b) where the new item is not the same or substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by P on the new item as does not exceed the expenditure which P would have incurred on an item which is the same or substantially the same as the old item.

Subsections (10) to (13) make further provision about the calculation of the deduction in certain cases.
- (10) If P incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.
- (11) If the old item is disposed of in part-exchange for the new item—
  - (a) the expenditure incurred by P on the new item is treated as including an amount equal to the value of the old item, and
  - (b) the deduction is reduced by that amount.
- (12) If the old item is disposed of other than in part-exchange for the new item, the deduction is reduced by the amount or value of any consideration in money or money's worth which P or a person connected with P receives, or is entitled to receive, in respect of the disposal.
- (13) For the purposes of subsection (12), where the old item is disposed of together with other consideration, the consideration in respect of the disposal mentioned in that subsection is taken not to include the amount of, or an amount equal to the value of, that other consideration.

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- (14) In this section, “domestic item” means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.

“Fixture” —

(a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and

(b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.

“Plant or machinery” here has the same meaning as in Part 2 of CAA 2001.

- (15) In this section—

“the capital expenditure rule” means the rule in section 33 (capital expenditure), as applied by section 272;

“lessee” means the person who is entitled to the use of the dwelling-house under a lease or other arrangement under which a sum is payable in respect of the use of the dwelling-house;

“the wholly and exclusively rule” means the rule in section 34 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 272.”

- (2) In Chapter 5 of Part 4 of CTA 2009 (property income), after section 250 insert—

*“Deduction for replacement of domestic items*

### **250A Replacement domestic items relief**

- (1) This section applies if conditions A to D are met.
- (2) Condition A is that a company (“C”) carries on a property business in relation to land which consists of or includes a dwelling-house.
- (3) Condition B is that—
  - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
  - (b) C incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
  - (c) the new item is provided solely for the use of the lessee,
  - (d) the new item replaces the old item, and
  - (e) following that replacement, the old item is no longer available for use in the dwelling-house.
- (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital expenditure rule (see subsection (14)).
- (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (6) In calculating the profits of the business, a deduction for the expenditure is allowed.

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- (7) But no deduction is allowed for expenditure in an accounting period if—
- (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.

- (8) The basic amount of the deduction is as follows—

- (a) where the new item is the same or substantially the same as the old item, the deduction is equal to the expenditure incurred by C on the new item;
- (b) where the new item is not the same or substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by C on the new item as does not exceed the expenditure which C would have incurred on an item which is the same or substantially the same as the old item.

Subsections (9) to (12) make further provision about the calculation of the deduction in certain cases.

- (9) If C incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.
- (10) If the old item is disposed of in part-exchange for the new item—
- (a) the expenditure incurred by C on the new item is treated as including an amount equal to the value of the old item, and
  - (b) the deduction is reduced by that amount.
- (11) If the old item is disposed of other than in part-exchange for the new item, the deduction is reduced by the amount or value of any consideration in money or money's worth which C or a person connected with C receives, or is entitled to receive, in respect of the disposal.
- (12) For the purposes of subsection (11), where the old item is disposed of together with other consideration, the consideration in respect of the disposal mentioned in that subsection is taken not to include the amount of, or an amount equal to the value of, that other consideration.
- (13) In this section, “domestic item” means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.

“Fixture”—

- (a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and
- (b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.

“Plant or machinery” here has the same meaning as in Part 2 of CAA 2001.

- (14) In this section—

“the capital expenditure rule” means the rule in section 53 (capital expenditure), as applied by section 210;

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“lessee” means the person who is entitled to the use of the dwelling-house under a lease or other arrangement under which a sum is payable in respect of the use of the dwelling-house;

“the wholly and exclusively rule” means the rule in section 54 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 210.”

- (3) In section 41 of TCGA 1992 (restriction of losses by reference to capital allowances and renewals allowances), in subsection (4), after paragraph (a) insert—
  - “(aa) any deduction under section 311A of ITTOIA 2005 or section 250A of CTA 2009 (replacement domestic items relief),”.
- (4) In section 308 of ITTOIA 2005 (furnished lettings), in subsection (1)(b), after “expenses” insert “ of a revenue nature ”.
- (5) In section 322 of ITTOIA 2005 (commercial letting of furnished holiday accommodation), after paragraph (za) in subsections (2) and (2A) insert—
  - “(zb) section 311A (replacement domestic items relief: see subsection (7)),”.
- (6) In section 248 of CTA 2009 (furnished lettings), in subsection (1)(b), after “expenses” insert “ of a revenue nature ”.
- (7) In section 264 of CTA 2009 (commercial letting of furnished holiday accommodation), before paragraph (a) in subsections (2) and (2A) insert—
  - “(za) section 250A (replacement domestic items relief: see subsection (7)),”.
- (8) The amendments made by this section have effect in relation to expenditure incurred on or after the date in subsection (9).
- (9) The date is—
  - (a) for corporation tax purposes, 1 April 2016, and
  - (b) for income tax purposes, 6 April 2016.

## 74 **Property business deductions: wear and tear allowance**

- (1) In Part 3 of ITTOIA 2005 (property income)—
  - (a) omit sections 308A to 308C and the italic heading before section 308A (wear and tear allowance), and
  - (b) in section 327 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.
- (2) The amendments made by subsection (1) have effect for the tax year 2016-17 and subsequent tax years.
- (3) In Part 4 of CTA 2009 (property income)—
  - (a) omit sections 248A to 248C of CTA 2009 and the italic heading before section 248A (wear and tear allowance), and
  - (b) in section 269 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.
- (4) The amendments made by subsection (3) have effect in relation to accounting periods beginning on or after 1 April 2016.



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(5) For the purposes of subsection (3), where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”)—

- (a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
- (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a property business for the straddling period are apportioned to the two separate accounting periods in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

### *Transfer pricing*

## **75 Transfer pricing: application of OECD principles**

(1) In section 164(4) of TIOPA 2010 (Part to be interpreted in accordance with OECD principles)—

- (a) in paragraph (a) after “2010” insert “ as revised by the report, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, published by the OECD on 5 October 2015 ”, and
- (b) in the words after paragraph (b)—
  - (i) for “such material” substitute “ material which is ”, and
  - (ii) for “as may be so designated” substitute “ and which is designated for the time being by order made by the Treasury ”.

(2) In section 357GE(1) of CTA 2010 (other interpretation), in the definition of “the OECD transfer pricing guidelines”, for the words from “means” to the end substitute “ has the same meaning as “the transfer pricing guidelines” in section 164 of TIOPA 2010 ”.

(3) The amendments made by subsection (1) have effect (in relation to provision made or imposed at any time)—

- (a) for corporation tax purposes, in relation to accounting periods beginning on or after 1 April 2016, and
- (b) for income tax purposes, in relation to the tax year 2016-17 and subsequent tax years.

(4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 1 April 2016.

### *Transactions in UK land*

## **76 Corporation tax: territorial scope etc**

(1) Section 5 of CTA 2009 (territorial scope of charge) is amended in accordance with subsections (2) to (4).

(2) For subsection (2) substitute—

“(2) A non-UK resident company is within the charge to corporation tax only if—

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- (a) it carries on a trade of dealing in or developing UK land (see section 5B), or
- (b) it carries on a trade in the United Kingdom (other than a trade of dealing in or developing UK land) through a permanent establishment in the United Kingdom.”

(3) After subsection (2) insert—

“(2A) A non-UK resident company which carries on a trade of dealing in or developing UK land is chargeable to corporation tax on all its profits wherever arising that are profits of that trade.”

(4) In subsection (4), after “(1)” insert “, (2A) ”.

(5) After section 5 of CTA 2009 insert—

**“5A Arrangements for avoiding tax**

- (1) Subsection (3) applies if a company has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the company.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of section 6(1) of TIOPA 2010).
- (3) The relevant tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to corporation tax to which the company is chargeable (or would without the tax advantage be chargeable) by virtue of section 5(2A).
- (6) In this section—
  - “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom);
  - “tax advantage” has the meaning given by section 1139 of CTA 2010.

**5B Trade of dealing in or developing UK land**

- (1) A non-UK resident company's “trade of dealing in or developing UK land” consists of —
  - (a) any activities falling within subsection (2) which it carries on, and

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- (b) any activities from which profits, gains or losses arise which are treated under Part 8ZB of CTA 2010 as profits or losses of the company's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
  - (a) dealing in UK land;
  - (b) developing UK land for the purpose of disposing of it.
- (3) In this section “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—
  - “disposal” is to be interpreted in accordance with section 356OQ of CTA 2010;
  - “UK land” means land in the United Kingdom.”
- (6) In section 3 of CTA 2009 (exclusion of charge to income tax), in subsection (1), for paragraph (b) substitute—
  - “(b) the company is not UK resident and—
    - (i) the income is profits of a trade of dealing in or developing UK land, or
    - (ii) the income is within its chargeable profits as defined by section 19.”
- (7) In section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), after subsection (2) insert—
  - “(2A) But profits and losses are not to be left out of account as mentioned in subsection (2) so far as they are, or would if the company were non-UK resident be, profits of the company's trade of dealing in or developing UK land (as defined in section 5B).”
- (8) In section 19 of CTA 2009 (chargeable profits)—
  - (a) in subsection (2) for “company's chargeable profits” substitute “ company's “chargeable profits” ”;
  - (b) after subsection (2) insert—
    - “(2A) But the company's “chargeable profits” do not include profits of a trade of dealing in or developing UK land (and accordingly such profits are not attributable to any permanent establishment of the company).”
- (9) In section 189 of CTA 2009 (post-cessation receipts: extent of charge to tax), in subsection (4), at the end insert “ other than a company's trade of dealing in or developing UK land ”.
- (10) In section 107 of CTA 2010 (restrictions on losses etc surrenderable by non-UK resident), in subsection (1), for the words from “non-UK resident” to the end substitute “non-UK resident company—
  - (a) carrying on a trade of dealing in or developing UK land, or
  - (b) carrying on a trade in the United Kingdom through a permanent establishment.”

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- (11) In section 1119 of CTA 2010 (definitions for purposes of Corporation Tax Acts), at the appropriate place insert—

““trade of dealing in or developing UK land”, in relation to a non-UK resident company, has the meaning given by section 5B of CTA 2009,”.

## 77 Corporation tax: transactions in UK land

- (1) In CTA 2010, after Part 8ZA insert—

### “PART 8ZB

#### TRANSACTIONS IN UK LAND

##### *Introduction*

#### 356OA Overview of Part

This Part contains provision about the corporation tax treatment of certain profits and gains realised from disposals concerned with land in the United Kingdom.

##### *Amounts treated as profits of a trade*

#### 356OB Disposals of land in the United Kingdom

- (1) Section 356OC(1) applies (subject to subsection (3) of that section) if—
  - (a) a person within subsection (2)(a), (b) or (c) realises a profit or gain from a disposal of any land in the United Kingdom, and
  - (b) any of conditions A to D is met in relation to the land.
- (2) The persons referred to in subsection (1) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person who is associated with the person in paragraph (a) at a relevant time, and
  - (c) a person who is a party to, or concerned in, an arrangement within subsection (3).
- (3) An arrangement is within this subsection if—
  - (a) it is effected with respect to all or part of the land, and
  - (b) it enables a profit or gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (4) Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.
- (5) Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.

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- (6) Condition C is that the land is held as trading stock.
- (7) Condition D is that (in a case where the land has been developed) the main purpose, or one of the main purposes, of developing the land was to realise a profit or gain from disposing of the land when developed.
- (8) In this section “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal mentioned in subsection (1).
- (9) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D.
- (10) For the purposes of this section a person (“A”) is associated with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (5) to (7) of section 1122 (read in accordance with section 1123), or
  - (b) A is related to B (see section 356OT).

### **356OC Disposals of land: profits treated as trading profits**

- (1) The profit or gain is to be treated for corporation tax purposes as profits of a trade carried on by the chargeable company (see section 356OG).
- (2) If the chargeable company is non-UK resident, that trade is the company's trade of dealing in or developing UK land (as defined in section 5B of CTA 2009).
- (3) But subsection (1) does not apply to a profit or gain so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for corporation tax purposes, or
  - (b) for income tax purposes.
- (4) The profits are treated as arising in the accounting period of the chargeable company in which the profit or gain is realised.
- (5) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

### **356OD Disposals of property deriving its value from land in the United Kingdom**

- (1) Section 356OE applies (subject to subsection (3) of that section) if—
  - (a) a person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom,
  - (b) the person is a party to, or concerned in, an arrangement concerning some or all of the land mentioned in paragraph (a) (“the project land”), and
  - (c) the arrangement meets the condition in subsection (2).

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- (2) The condition is that the main purpose, or one of the main purposes, of the arrangement is to—
  - (a) deal in or develop the project land, and
  - (b) realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

#### **356OE Disposals within section 356OD: profits treated as trading profits**

- (1) The relevant amount is to be treated for corporation tax purposes as profits of a trade carried on by the chargeable company.
- (2) If the chargeable company is non-UK resident, that trade is the company's trade of dealing in or developing UK land.
- (3) But subsection (1) does not apply to an amount so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for corporation tax purposes, or
  - (b) for income tax purposes.
- (4) The profits are treated as arising in the accounting period of the chargeable company in which the profit or gain is realised.
- (5) In this section the “relevant amount” means so much (if any) of the profit or gain mentioned in section 356OD(1) as is attributable, on a just and reasonable apportionment, to the relevant UK assets.
- (6) In this section “the relevant UK assets” means any land in the United Kingdom from which the property mentioned in section 356OD(1) derives any of its value (at the time of the disposal mentioned in that subsection).
- (7) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

#### **356OF Profits and losses**

- (1) Sections 356OB to 356OE have effect as if they included provision about losses corresponding to the provision they make about profits and gains.
- (2) Accordingly, in the following sections of this Part references to a “profit or gain” include a loss.

*Person to whom profits attributed*

#### **356OG The chargeable company**

- (1) For the purposes of sections 356OC and 356OE the general rule is that the “chargeable company” is the company (“C”) that realises the profit or gain (as mentioned in section 356OB(1) or 356OD(1)).
- (2) The general rule in subsection (1) is subject to the special rules in subsections (4) to (6).

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- (3) But those special rules do not apply in relation to a profit or gain to which section 356OH(3) (fragmented activities) applies.
- (4) If all or any part of the profit or gain accruing to C is derived from value provided directly or indirectly by another person (“B”) which is a company, B is the “chargeable company”.
- (5) Subsection (4) applies whether or not the value is put at the disposal of C.
- (6) If all or any part of the profit or gain accruing to C is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person (“D”) which is a company, D is “the chargeable company” (unless the case falls within subsection (4)).
- (7) For the meaning of “another person” see section 356OO.

### *Anti-fragmentation*

#### **356OH Fragmented activities**

- (1) Subsection (3) applies if—
  - (a) a company (“C”) disposes of any land in the United Kingdom,
  - (b) any of conditions A to D in section 356OB is met in relation to the land, and
  - (c) a person (“R”) who is associated with C at a relevant time has made a relevant contribution to activities falling within subsection (2).
- (2) The following activities fall within this subsection—
  - (a) the development of the land,
  - (b) any other activities directed towards realising a profit or gain from the disposal of the land.
- (3) For the purposes of this Part, the profit or gain (if any) realised by C from the disposal is to be taken to be what that profit or gain would be if R were not a distinct person from C (and, accordingly, as if everything done by or in relation to R had been done by or in relation to C).
- (4) Subsection (5) applies to any amount which is paid (directly or indirectly) by R to C for the purposes of meeting or reimbursing the cost of corporation tax which C is liable to pay as a result of the application of subsection (3) in relation to R and C.
- (5) The amount—
  - (a) is not to be taken into account in calculating profits or losses of either R or C for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (6) In subsection (1) “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal.
- (7) For the purposes of this section any contribution made by R to activities falling within subsection (2) is a “relevant contribution” unless the profit made or to

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be made by R in respect of the contribution is insignificant having regard to the size of the project.

- (8) In this section “contribution” means any kind of contribution, including, for example—
  - (a) the provision of professional or other services, or
  - (b) a financial contribution (including the assumption of a risk).
- (9) For the purposes of this section R is “associated” with C if—
  - (a) R is connected with C by virtue of any of subsections (5) to (7) of section 1122 (read in accordance with section 1123), or
  - (b) R is related to C (see section 356OT).
- (10) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D in section 356OB.

#### *Calculation of profit or gain on disposal*

### **356OI Calculation of profit or gain on disposal**

For the purposes of this Part, the profit or gain (if any) from a disposal of any property is to be calculated according to the principles applicable for calculating the profits of a trade under Part 3 of CTA 2009, subject to any modifications that may be appropriate (and for this purpose the same rules are to apply in calculating losses from a disposal as apply in calculating profits).

### **356OJ Apportionments**

Any apportionment (whether of expenditure, consideration or any other amount) that is required to be made for the purposes of this Part is to be made on a just and reasonable basis.

#### *Arrangements for avoiding tax*

### **356OK Arrangements for avoiding tax**

- (1) Subsection (3) applies if an arrangement has been entered into the main purpose or one of the main purposes of which is to enable a company to obtain a relevant tax advantage.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The tax advantage is to be counteracted by means of adjustments.



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- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to corporation tax charged (or which would, if the tax advantage were not obtained, be charged) in respect of amounts treated as profits of a trade by virtue of this Part.
- (6) In this section—
  - “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom);
  - “tax advantage” has the meaning given by section 1139.

### *Exemption*

#### **356OL Profits attributable to period before relevant activities etc began**

- (1) Subsection (2) applies if—
  - (a) subsection (1) of section 356OC applies because Condition D in section 356OB is met (land developed with purpose of realising a gain from its disposal when developed), and
  - (b) part of the profit or gain mentioned in that subsection is fairly attributable to a period before the intention to develop was formed.
- (2) Section 356OC(1) has effect as if the person mentioned in section 356OB(1) had not realised that part of the profit or gain.
- (3) Subsection (4) applies if—
  - (a) section 356OE(1) applies, and
  - (b) part of the profit or gain mentioned in section 356OE(5) is fairly attributable to a period before the person mentioned in section 356OD(1) was a party to, or concerned in, the arrangement in question.
- (4) Section 356OE has effect as if the person had not realised that part of the profit or gain.
- (5) In applying this section account must be taken of the treatment under Part 3 of CTA 2009 (trading income) of a company which appropriates land as trading stock.

### *Other supplementary provisions*

#### **356OM Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.

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- (2) Value may be traced through any number of companies, partnerships, trusts and other entities or arrangements.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.
- (4) In this section—
  - “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar nature to a partnership; and “partners”, in relation to such arrangements, is to be construed accordingly;
  - “trust” includes arrangements—
    - (a) which have effect under the law of a country or territory outside the United Kingdom; and
    - (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,
  - and “beneficiaries”, in relation to such arrangements, is to be construed accordingly.

### **356ON Relevance of transactions, arrangements, etc**

- (1) In determining whether section 356OC(1) or 356OE(1) applies, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right, however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion on which section 356OC(1) or 356OE(1) applies.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

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## *Interpretation*

### **356OO “Another person”**

- (1) In this Part references to “other” persons are to be interpreted in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

### **356OP “Arrangement”**

- (1) In this Part “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable).
- (2) For the purposes of this Part any number of transactions may be regarded as constituting a single arrangement if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

### **356OQ “Disposal”**

- (1) In this Part references to a “disposal” of any property include any case in which the property is effectively disposed of (whether wholly or in part, as mentioned in subsection (2))—
  - (a) by one or more transactions, or
  - (b) by any arrangement.
- (2) For the purposes of this Part—
  - (a) references to a disposal of land or any other property include a part disposal of the property, and
  - (b) there is a part disposal of property (“the asset”) where on a person making a disposal, any form of property derived from the asset remains undisposed of (including in cases where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal).

### **356OR “Land” and related expressions**

- (1) In this Part “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and

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(c) land under the sea or otherwise covered by water.

(2) In this Part references to property deriving its value from land include—

- (a) any shareholding in a company deriving its value directly or indirectly from land,
- (b) any partnership interest deriving its value directly or indirectly from land,
- (c) any interest in settled property deriving its value directly or indirectly from land, and
- (d) any option, consent or embargo affecting the disposition of land.

### 356OS References to realising a gain

- (1) For the purposes of sections 356OB(1) and 356OD(1) it does not matter whether the person (“P”) realising the profit or gain in question realises it for P or another person.
- (2) For the purposes of subsection (1), if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a profit or gain to another person (“B”), A realises B’s profit or gain for B.

### 356OT Related parties

- (1) For the purposes of this Part a person (“A”) is related to another person (“B”)—
  - (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
  - (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with that day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

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- (5) The 25% investment condition is met in relation to A and B if—
  - (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (6) Section 259NC of TIOPA 2010 applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of this section as it applies for the purposes of section 259NB(2) of that Act.
- (7) In Chapter 2 of Part 4 of TIOPA 2010, sections 157(2), 158(4), 159(2) and 160(2) (which are about the interpretation of references to direct and indirect participation) apply in relation to subsection (4) as they apply in relation to subsection (4) of section 259NA of that Act.”
- (2) In section 1 of CTA 2010 (overview), in subsection (4), omit paragraph (e).
- (3) In section 481 of CTA 2010 (exemption from charges under provisions to which section 1173 applies), in subsection (2) omit paragraph (a).
- (4) In CTA 2010 omit Part 18 (transactions in land).
- (5) In section 1173 of CTA 2010 (miscellaneous charges), in Part 2 of the table in subsection (2), omit the entry relating to section 818(1) of CTA 2010.
- (6) In section 14B of TCGA 1992 (meaning of “non-resident CGT disposal”)—
  - (a) in subsection (1) for “subsection (5)” substitute “ subsections (5) and (6) ”;
  - (b) after subsection (5) insert—
    - “(6) A disposal of a UK residential property interest is not a non-resident CGT disposal if section 356OC(1) of CTA 2010 (gains etc on certain disposals treated as trading profits for corporation tax purposes) or section 517C of ITA 2007 (gains etc on certain disposals treated as trading profits for income tax purposes) applies in relation to it.”
- (7) In section 37 of TCGA 1992 (consideration chargeable to tax on income), in subsection (5A)(a), for the words from “821(3)” to “not” substitute “ 356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than ”.
- (8) In section 39 of TCGA 1992 (exclusion of expenditure by reference to tax on income), in subsection (5)(a), for the words from “821(3)” to “not” substitute “ 356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than ”.
- (9) In section 161 of TCGA 1992 (appropriations to and from stock), in subsection (6), for paragraph (a) substitute—
  - “(a) any person is charged to corporation tax by virtue of sections 356OB and 356OC of CTA 2010 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 356OB(7) of that Act is met, and”.
- (10) In section 188A of TCGA 1992 (election for pooling), in subsection (4), at the end insert “ or section 14B(6) (gains on certain disposals treated as trading profits) ”.

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## 78 Income tax: territorial scope etc

(1) In section 6 of ITTOIA 2005 (territorial scope of charge to tax)—

(a) after subsection (1) insert—

“(1A) Profits of a trade of dealing in or developing UK land arising to a non-UK resident are chargeable to tax under this Chapter wherever the trade is carried on.”;

(b) in subsection (2), after “Profits of a trade” insert “ other than a trade of dealing in or developing UK land ”.

(2) After section 6 of ITTOIA 2005 insert—

### “6A Arrangements for avoiding tax

(1) Subsection (3) applies if a person has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the person.

(2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).

(3) The relevant tax advantage is to be counteracted by means of adjustments.

(4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(5) In this section “relevant tax advantage” means a tax advantage in relation to income tax to which the person is chargeable (or would without the tax advantage be chargeable) by virtue of section 6(1A).

(6) In this section “tax advantage” includes—

- (a) a relief or increased relief from tax,
- (b) repayment or increased repayment of tax,
- (c) avoidance or reduction of a charge to tax or an assessment to tax,
- (d) avoidance of a possible assessment to tax,
- (e) deferral of a payment of tax or advancement of a repayment of tax, and
- (f) avoidance of an obligation to deduct or account for tax.

(7) In this section—

“arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

“double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

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## 6B Trade of dealing in or developing UK land

- (1) A non-UK resident person's "trade of dealing in or developing UK land" consists of—
  - (a) any activities falling within subsection (2) which the person carries on, and
  - (b) any activities from which profits arise which are treated under Part 9A of ITA 2007 as profits of the person's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
  - (a) dealing in UK land;
  - (b) developing UK land for the purpose of disposing of it.
- (3) In this section "land" includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—
 

"disposal" is to be interpreted in accordance with section 517R of ITA 2007;

"UK land" means land in the United Kingdom."
- (3) In section 3 of ITTOIA 2005 (overview of Part 2), in subsection (4) for "6(2)" substitute " 6(1A), (2) ".
- (4) In section 243 of ITTOIA 2005 (post-cessation receipts: extent of charge to tax), in subsection (4), at the end insert " , other than a person's trade of dealing in or developing UK land ".
- (5) In section 989 of ITA 2007 (definitions for purposes of Income Tax Acts), at the appropriate place insert—
 

""trade of dealing in or developing UK land", in relation to a non-UK resident person, has the meaning given by section 6B of ITTOIA 2005,".

## 79 Income tax: transactions in UK land

- (1) In ITA 2007, after Part 9 insert—

### "PART 9A

#### TRANSACTIONS IN UK LAND

##### *Introduction*

### 517A Overview of Part

This Part contains provision about the income tax treatment of certain profits and gains realised from disposals concerned with land in the United Kingdom.

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### *Amounts treated as profits of a trade*

#### **517B Disposals of land in the United Kingdom**

- (1) Section 517C(1) applies (subject to subsection (3) of that section) if—
  - (a) a person within subsection (2)(a), (b) or (c) realises a profit or gain from a disposal of any land in the United Kingdom, and
  - (b) any of conditions A to D is met in relation to the land.
- (2) The persons referred to in subsection (1) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person who is associated with the person in paragraph (a) at a relevant time, and
  - (c) a person who is a party to, or concerned in, an arrangement within subsection (3).
- (3) An arrangement is within this subsection if—
  - (a) it is effected with respect to all or part of the land, and
  - (b) it enables a profit or gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (4) Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.
- (5) Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.
- (6) Condition C is that the land is held as trading stock.
- (7) Condition D is that (in a case where the land has been developed) the main purpose, or one of the main purposes, of developing the land was to realise a profit or gain from disposing of the land when developed.
- (8) In this section “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal mentioned in subsection (1).
- (9) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D.
- (10) For the purposes of this section a person (“A”) is associated with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) A is related to B (see section 517U).



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### **517C Disposals of land: profits treated as trading profits**

- (1) The profit or gain is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the person's trade of dealing in or developing UK land (as defined in section 6B of ITTOIA 2005).
- (3) But subsection (1) does not apply to a profit or gain so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or
  - (b) for corporation tax purposes.
- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

### **517D Disposals of property deriving its value from land in the United Kingdom**

- (1) Section 517E(1) applies (subject to subsection (3) of that section) if—
  - (a) a person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom,
  - (b) the person is a party to, or concerned in, an arrangement concerning some or all of the land mentioned in paragraph (a) (“the project land”), and
  - (c) the arrangement meets the condition in subsection (2).
- (2) The condition is that the main purpose, or one of the main purposes, of the arrangement is to—
  - (a) deal in or develop the project land, and
  - (b) realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

### **517E Disposals within section 517D: profits treated as trading profits**

- (1) The relevant amount is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the chargeable person's trade of dealing in or developing UK land.
- (3) But subsection (1) does not apply to an amount so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or
  - (b) for corporation tax purposes.

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- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) In this section the “relevant amount” means so much (if any) of the profit or gain mentioned in section 517D(1) as is attributable, on a just and reasonable apportionment, to the relevant UK assets.
- (6) In this section “the relevant UK assets” means any land in the United Kingdom from which the property mentioned in section 517D(1) derives any of its value (at the time of the disposal mentioned in that subsection).
- (7) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

#### 517F Profits and losses

- (1) Sections 517B to 517E have effect as if they included provision about losses corresponding to the provision they make about profits and gains.
- (2) Accordingly, in the following sections of this Part references to a “profit or gain” include a loss.

#### *Person to whom profits attributed*

#### 517G The chargeable person

- (1) For the purposes of sections 517C and 517E the general rule is that the “chargeable person” is the person (“P”) that realises the profit or gain (as mentioned in section 517B(1) or 517D(1)).
- (2) The general rule in subsection (1) is subject to the special rules in subsections (4) to (6).
- (3) But those special rules do not apply in relation to a profit or gain to which section 517H(3) (fragmented activities) applies.
- (4) If all or any part of the profit or gain accruing to P is derived from value provided directly or indirectly by another person (“B”), B is the “chargeable person”.
- (5) Subsection (4) applies whether or not the value is put at the disposal of P.
- (6) If all or any part of the profit or gain accruing to P is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person (“D”), D is “the chargeable person” (unless the case falls within subsection (4)).
- (7) For the meaning of “another person” see section 517P.

#### *Anti-fragmentation*

#### 517H Fragmented activities

- (1) Subsection (3) applies if—

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- (a) a person (“P”) disposes of any land in the United Kingdom,
  - (b) any of conditions A to D in section 517B is met in relation to the land, and
  - (c) a person (“R”) who is associated with P at a relevant time has made a relevant contribution to activities falling within subsection (2).
- (2) The following activities fall within this subsection—
  - (a) the development of the land,
  - (b) any other activities directed towards realising a profit or gain from the disposal of the land.
- (3) For the purposes of this Part, the profit or gain (if any) realised by P from the disposal is to be taken to be what that profit or gain would be if R were not a distinct person from P (and, accordingly, as if everything done by or in relation to R had been done by or in relation to P).
- (4) Subsection (5) applies to any amount which is paid (directly or indirectly) by R to P for the purposes of meeting or reimbursing the cost of income tax which P is liable to pay as a result of the application of subsection (3) in relation to R and P.
- (5) The amount—
  - (a) is not to be taken into account in calculating profits or losses of either R or P for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (6) In subsection (1) “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal.
- (7) For the purposes of this section any contribution made by P to activities falling within subsection (2) is a “relevant contribution” unless the profit made or to be made by P in respect of the contribution is insignificant having regard to the size of the project.
- (8) In this section “contribution” means any kind of contribution, including, for example—
  - (a) the provision of professional or other services, or
  - (b) a financial contribution (including the assumption of a risk).
- (9) For the purposes of this section R is “associated” with P if—
  - (a) R is connected with P by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) R is related to P (see section 517U).
- (10) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D in section 517B.

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### *Calculation of profit or gain on disposal*

#### **517I Calculation of surplus on a disposal of land**

For the purposes of this Part, the profit or gain (if any) from a disposal of any property is to be calculated according to the principles applicable for calculating the profits of a trade under Part 2 of ITTOIA 2005, subject to any modifications that may be appropriate (and for this purpose the same rules are to apply in calculating losses from a disposal as apply in calculating profits).

#### **517J Apportionments**

Any apportionment (whether of expenditure, consideration or any other amount) that is required to be made for the purposes of this Part is to be made on a just and reasonable basis.

### *Arrangements for avoiding tax*

#### **517K Arrangements for avoiding tax**

- (1) Subsection (3) applies if an arrangement has been entered into the main purpose or one of the main purposes of which is to enable a person to obtain a relevant tax advantage.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means an advantage in relation to income tax charged (or which would, if the tax advantage were not obtained, be charged) in respect of amounts treated as profits of a trade by virtue of this Part.
- (6) In this section “advantage” includes—
  - (a) a relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.

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### *Exemptions*

#### **517L Gain attributable to period before intention to develop formed**

- (1) Subsection (2) applies if—
  - (a) subsection (1) of section 517C applies because Condition D in section 517B is met (land developed with purpose of realising a gain from its disposal when developed), and
  - (b) part of the profit or gain mentioned in that subsection is fairly attributable to a period before the intention to develop was formed.
- (2) Section 517C(1) has effect as if the person mentioned in section 517B(1) had not realised that part of the profit or gain.
- (3) Subsection (4) applies if—
  - (a) section 517E(1) applies, and
  - (b) part of the profit or gain mentioned in section 517E(5) is fairly attributable to a period before the person mentioned in section 517D(1) was a party to, or concerned in, the arrangement in question.
- (4) Section 517E has effect as if the person had not realised that part of the profit or gain.
- (5) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading income) of a person who appropriates land as trading stock.

#### **517M Private residences**

No liability to income tax arises under this Part in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

### *Other supplementary provisions*

#### **517N Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.
- (2) Value may be traced through any number of companies, partnerships, trusts and other entities or arrangements.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.

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(4) In this section—

“partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar nature to a partnership; and “partners”, in relation to such arrangements, is to be construed accordingly;

“trust” includes arrangements—

- (a) which have effect under the law of a country or territory outside the United Kingdom; and
- (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiaries”, in relation to such arrangements, is to be construed accordingly.

#### **517O Relevance of transactions, arrangements, etc**

(1) In determining whether section 517C(1) or 517E(1) applies, account is to be taken of any method, however indirect, by which—

- (a) any property or right is transferred or transmitted, or
- (b) the value of any property or right is enhanced or diminished.

(2) Accordingly—

- (a) the occasion of the transfer or transmission of any property or right, however indirect, and
- (b) the occasion when the value of any property or right is enhanced, may be an occasion on which section 517C(1) or 517E(1) applies.

(3) Subsections (1) and (2) apply in particular—

- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
- (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
  - (i) share capital or other rights in a company,
  - (ii) rights in a partnership, or
  - (iii) an interest in settled property,
- (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
- (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
- (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
- (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

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### *Interpretation*

#### **517P “Another person”**

- (1) In this Part references to “other” persons are to be interpreted in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

#### **517Q “Arrangement”**

- (1) In this Part “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable.
- (2) For the purposes of this Part any number of transactions may be regarded as constituting a single arrangement if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

#### **517R “Disposal”**

- (1) In this Part references to a “disposal” of any property include any case in which the property is effectively disposed of (whether wholly or in part, as mentioned in subsection (2))—
  - (a) by one or more transactions, or
  - (b) by any arrangement.
- (2) For the purposes of this Part—
  - (a) references to a disposal of land or any other property include a part disposal of the property, and
  - (b) there is a part disposal of property (“the asset”) where on a person making a disposal, any form of property derived from the asset remains undisposed of (including in cases where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal).

#### **517S “Land” and related expressions**

- (1) In this Part “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and

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(c) land under the sea or otherwise covered by water.

(2) In this Part references to property deriving its value from land include—

- (a) any shareholding in a company deriving its value directly or indirectly from land,
- (b) any partnership interest deriving its value directly or indirectly from land,
- (c) any interest in settled property deriving its value directly or indirectly from land, and
- (d) any option, consent or embargo affecting the disposition of land.

#### 517T References to realising a gain

- (1) For the purposes of sections 517B(1) and 517D(1) it does not matter whether the person (“P”) realising the profit or gain in question realises it for P or another person.
- (2) For the purposes of subsection (1), if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a profit or gain to another person (“B”), A realises B’s profit or gain for B.

#### 517U Related parties

- (1) For the purposes of this Part a person (“A”) is related to another person (“B”)—
  - (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
  - (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with that day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.



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- (5) The 25% investment condition is met in relation to A and B if—
  - (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (6) Section 259NC of TIOPA 2010 applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of this section as it applies for the purposes of section 259NB(2) of that Act.
- (7) In Chapter 2 of Part 4 of TIOPA 2010, sections 157(2), 158(4), 159(2) and 160(2) (which are about the interpretation of references to direct and indirect participation) apply in relation to subsection (4) as they apply in relation to subsection (4) of section 259NA of that Act.”
- (2) In section 2 of ITA 2007 (overview of Act)—
  - (a) after subsection (9) insert—
    - “(9A) Part 9A is about the treatment of certain transactions in UK land.”,
    - and
  - (b) in subsection (13), omit paragraph (c).
- (3) In section 482 of ITA 2007 (types of amount to be charged at special rates for trustees), in the words relating to Type 11, for “Chapter 3 of Part 13 of this Act (tax avoidance: transactions in land)” substitute “ Part 9A of this Act (transactions in land) ”.
- (4) In section 527 of ITA 2007 (exemption from charges under provisions to which section 1016 applies), in subsection (2)—
  - (a) insert “ and ” at the end of paragraph (d), and
  - (b) omit paragraph (e).
- (5) In Part 13 of ITA 2007, omit Chapter 3 (transactions in land).
- (6) In section 944 of ITA 2007 (tax avoidance: directions for duty to deduct to apply), in subsection (1)—
  - (a) omit paragraph (a), and
  - (b) in paragraph (b) for “that Part” substitute “ Part 13 ”.
- (7) In section 1016 of ITA 2007 (table of provisions to which that section applies), in Part 2 of the table in subsection (2), omit the entry relating to Chapter 3 of Part 13 of that Act.
- (8) In section 37 of TCGA 1992 (consideration chargeable to tax on income), in subsection (5)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”
- (9) In section 39 of TCGA 1992 (exclusion of expenditure by reference to tax on income), in subsection (4)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”.
- (10) In section 161 of TCGA 1992 (appropriations to and from stock), in subsection (5), for paragraph (a) substitute—
  - “(a) any person is charged to income tax by virtue of sections 517B and 517C of [F6ITA 2007] (certain profits or gains on a disposal of land

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treated as trading profits) on the realisation of a profit or gain because the condition in section 517B(7) of that Act is met, and”.

- (11) In section 830 of ITTOIA 2005, in subsection (3), for the words from “of” to the end substitute “of—
- (a) section 844 (unremittable income: income charged on withdrawal of relief after source ceases), or
  - (b) section 517C or 517E of ITA 2007 (profits on certain disposals concerned with land in the United Kingdom treated as trading profits).”

#### Textual Amendments

**F6** Words in s. 79(10) substituted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 39\(3\)\(4\)](#)

## 80 Pre-trading expenses

- (1) Subsection (2) has effect if—
- (a) a particular time (“T”) is the time when a company (“C”) is first within the charge to corporation tax by virtue of subsection (2)(a) of section 5 of CTA 2009 (territorial scope of charge),
  - (b) immediately before time T, C was within the charge to corporation tax as a result of carrying on the relevant trade in the United Kingdom through a permanent establishment in the United Kingdom, and
  - (c) expenses which the company has incurred for the purposes of the trade meet the conditions in subsection (3) and (4).

“The relevant trade” means the trade of dealing in or developing UK land mentioned in subsection (2)(a) of section 5 of CTA 2009.

- (2) Section 61 of CTA 2009 (pre-trading expenses) has effect in relation to those expenses as if the company had started to carry on the relevant trade at time T.
- (3) The condition in this subsection is that—
- (a) no deduction would be allowed for the expenses in calculating the profits of the relevant trade for corporation tax purposes (ignoring subsection (2)), but
  - (b) a deduction would be allowed for them (in accordance with sections 41 and section 61 of CTA 2009) if the company had not been within the charge to corporation tax in respect of the relevant trade immediately before time T.
- (4) The condition in this subsection is that no relief has been obtained for the expenses under the law of any country or territory outside the United Kingdom.

## 81 Commencement and transitional provision: sections 76, 77 and 80

- (1) The amendments made by sections 76, 77 and 80 have effect in relation to disposals on or after 5 July 2016.
- (2) In subsection (1) of section 5A of CTA 2009 (tax avoidance in relation to section 5(2A) of that Act) “arrangement” does not include an arrangement (as defined in section 5A(6) of that Act) entered into before 16 March 2016.

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- (3) In subsection (1) of section 356OK of CTA 2010 (tax avoidance in relation to Part 8ZB of CTA 2010) “arrangement” does not include an arrangement (as defined in section 356OP of that Act) entered into before 16 March 2016.
- (4) Subsection (6) applies if—
  - (a) a person disposes of a relevant asset to a person who is associated with that person at the relevant time,
  - (b) the disposal is made on or after 16 March 2016 and before 5 July 2016, and
  - (c) a company obtains a relevant tax advantage as a result of the disposal.
- (5) In subsection (4) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (6) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (6) The tax advantage is to be counteracted by means of adjustments.
- (7) Adjustments for the purposes of subsection (6) may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (8) In subsection (4)(c) “relevant tax advantage” means a tax advantage in relation to tax to which the company in question is charged or chargeable (or would, if the tax advantage were not obtained, be charged or chargeable)—
  - (a) by virtue of section 5(2A) of CTA 2009, or
  - (b) in respect of amounts treated as profits of a trade by virtue of Part 8ZB of CTA 2010.
- (9) For the purposes of this section, where any property is disposed of under a contract, the time at which the disposal is made is the time the contract is made (and not, if different, the time at which the property is conveyed or transferred).
- (10) In subsection (9) “contract” includes a conditional contract.
- (11) In this section—
  - “arrangement” includes any scheme, agreement or understanding (whether or not legally enforceable);
  - “disposal” is to be interpreted in accordance with section 356OQ of CTA 2010;
  - “relevant asset” means land, or property deriving the whole or part of its value from land;
  - “tax advantage” has the meaning given by section 1139 of CTA 2010.
- (12) For the purposes of this section a person (“A”) is “associated” with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (5) to (7) of section 1122 of CTA 2010 (read in accordance with section 1123 of that Act), or
  - (b) A is related to B.
- (13) In subsection (12) “related to” is to be interpreted in accordance with section 356OT of CTA 2010.
- (14) In subsection (4) “the relevant time”—

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- (a) in a case within subsection (8)(a), means the time of the disposal mentioned in subsection (4)(a).
- (b) in a case within subsection (8)(b), means any time in the period beginning when the activities of the project began and ending 6 months after the disposal mentioned in section 356OB(1) or 356OD(1) of CTA 2010.

(15) In subsection (14) “the project” means (as the case requires) the project described in section 356OB(9) of CTA 2010 or the activities mentioned in section 356OD(2)(a) of that Act.

## 82 Commencement and transitional provision: sections 78 and 79

- (1) The amendments made by sections 78 and 79 have effect in relation to disposals on or after 5 July 2016.
- (2) In subsection (1) of section 6A of ITA 2007 (tax avoidance arrangements in relation to section 6(1A) of that Act) “arrangement” does not include an arrangement (as defined in section 6A(7) of that Act) entered into before 16 March 2016.
- (3) In subsection (1) of section 517K of ITA 2007 (tax avoidance in relation to Part 9A of that Act) “arrangement” does not include an arrangement (as defined in section 517Q of that Act) entered into before 16 March 2016.
- (4) Subsection (6) applies if—
  - (a) a person disposes of a relevant asset to a person who is associated with that person at the relevant time,
  - (b) the disposal is made on or after 16 March 2016 and before 5 July 2016, and
  - (c) a person obtains a relevant tax advantage as a result of the disposal.
- (5) In subsection (4) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (6) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (6) The tax advantage is to be counteracted by means of adjustments.
- (7) Adjustments for the purposes of subsection (6) may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (8) In subsection (4)(c) “relevant tax advantage” means a tax advantage in relation to tax to which the person in question is charged or chargeable (or would, if the tax advantage were not obtained, be charged or chargeable)—
  - (a) by virtue of section 6(1A) of ITTOIA 2005, or
  - (b) in respect of amounts treated as profits of a trade by virtue of Part 9A of ITA 2007.
- (9) For the purposes of this section, where any property is disposed of under a contract, the time at which the disposal is made is the time the contract is made (and not, if different, the time at which the property is conveyed or transferred).
- (10) In subsection (9) “contract” includes a conditional contract.
- (11) In this section—

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“arrangement” includes any scheme, agreement or understanding (whether or not legally enforceable);

“disposal” is to be interpreted in accordance with section 517R of ITA2007;

“relevant asset” means land, or property deriving the whole or part of its value from land;

“tax advantage” has the same meaning as in section 6A of ITTOIA 2005.

(12) For the purposes of this section a person (“A”) is “associated” with another person (“B”) if—

- (a) A is connected with B by virtue of any of subsections (2) to (4) of section 993 of ITA 2007 (read in accordance with section 994 of that Act), or
- (b) A is related to B.

(13) In subsection (12) “related to” is to be interpreted in accordance with section 517U of ITA 2007.

(14) In subsection (4), “the relevant time”—

- (a) in a case within subsection (8)(a), means the time when the disposal was made,
- (b) in a case within subsection (8)(b), means any time in the period beginning when the activities of the project began and ending 6 months after the disposal mentioned in section 517B(1) or 517D(1) of ITA 2007.

(15) In subsection (14) “the project” means (as the case requires) the project described in section 517B(9) of ITA 2007 or the activities mentioned in section 517D(2)(a) of that Act.

## PART 4

### CAPITAL GAINS TAX

#### Rate

## 83 Reduction in rate of capital gains tax

(1) Section 4 of TCGA 1992 (rates of capital gains tax) is amended as set out in subsections (2) to (12).

(2) In subsection (1) after “entrepreneurs' relief” insert “and section 169VC (rate in case of claim for investors' relief)”.

(3) In subsection (2)—

- (a) after “section” insert “ and section 4BA ”, and
- (b) for the words from “in respect” to the end substitute—
  - “(a) in respect of upper rate gains accruing to a person in a tax year, is 18%, and
  - (b) in respect of gains accruing to a person in a tax year which are not upper rate gains, is 10%.”

(4) After subsection (2) insert—

“(2A) In this section “upper rate gains” means—

- (a) residential property gains (see section 4BB),

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- (b) NRCGT gains (see section 14D), and
  - (c) carried interest gains (see subsections (12) and (13)).”
- (5) For subsection (3) substitute—
  - “(3) The rate of capital gains tax in respect of gains accruing in a tax year to the trustees of a settlement or the personal representatives of a deceased person—
    - (a) in respect of upper rate gains, is 28%, and
    - (b) in respect of gains which are not upper rate gains, is 20%.”
- (6) In subsection (4), for the words from the second “in respect” to the end substitute—
  - “(a) in respect of upper rate gains accruing to the individual in the tax year, is 28%, and
  - (b) in respect of gains accruing to the individual in the tax year which are not upper rate gains, is 20%.”
- (7) In subsection (5) for “28%” substitute “ (subject to section 4BA) 20% ”.
- (8) For subsection (6) substitute—
  - “(6) Subsection (6A) applies for the purposes of subsection (5) where—
    - (a) there is an excess as mentioned in that subsection (“the higher-rate excess”), and
    - (b) the amount on which the individual is chargeable to capital gains tax for the tax year includes any special rate gains, that is, gains which are—
      - (i) chargeable to capital gains tax at the rate in section 169N(3), or
      - (ii) chargeable to capital gains tax at the rate in section 169VC(2).
- (6A) Where this subsection applies—
  - (a) if the total amount of the special rate gains exceeds the unused part of the individual's basic rate band, the higher-rate excess is to be treated as reduced by the amount by which the special rate gains exceed that unused part;
  - (b) if not, the higher-rate excess is to be treated as consisting of gains other than the special rate gains.”
- (9) In subsection (7) for “The reference in subsection (5)” substitute “ Any reference in this section ”.
- (10) In subsection (9) after “this section” insert “ and section 4BA ”.
- (11) In subsection (10) after “and (5)” insert “ and section 4BA(1) ”.
- (12) After subsection (11) insert—
  - “(12) In subsection (2A)(c) “carried interest gains” means—
    - (a) gains treated as accruing under section 103KA(2) or (3), and
    - (b) gains accruing to an individual as a result of carried interest arising to the individual where—
      - (i) the individual performs investment management services directly or indirectly in respect of an investment scheme under arrangements not involving a partnership,

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- (ii) the carried interest arises to the individual under the arrangements, and
- (iii) the carried interest does not constitute a co-investment repayment or return.

(13) For the purposes of subsection (12)(b)—

- (a) “carried interest”, in relation to any arrangements, has the same meaning as in section 809EZB of ITA 2007 (see sections 809EYC and 809EYD of that Act);
- (b) carried interest “arises” to an individual if it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007;
- (c) “arrangements”, “investment management services” and “investment scheme” have the same meanings as in that Chapter (see sections 809EYA(6) and 809EYE of that Act);
- (d) “co-investment repayment or return” has the same meaning as in section 103KA.”

(13) In section 4A of TCGA 1992 (special cases), in subsection (5) after “and (5)” insert “and section 4BA(1) ”.

(14) After section 4B of TCGA 1992 insert—

**“4BA Rates, and use of unused basic rate band, in certain cases**

- (1) This section applies where an individual is chargeable to capital gains tax in respect of gains accruing in a tax year and—
  - (a) no income tax is chargeable at the higher rate, the Welsh higher rate or the dividend upper rate in respect of the income of the individual for the tax year,
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year (“the chargeable gains amount”) exceeds the unused part of the individual's basic rate band, and
  - (c) all or part of the chargeable gains amount consists of upper rate gains.
- (2) In the following provisions of this section “the available gains” means the gains on which the individual is chargeable to capital gains tax for the tax year, excluding any special rate gains.
- (3) The available gains not used by the individual under subsection (4) are to be charged to capital gains tax—
  - (a) to the extent that they consist of upper rate gains, at the rate in section 4(4)(a);
  - (b) to the extent that they consist of gains which are not upper rate gains, at the rate in section 4(5).
- (4) The individual may, subject to subsection (5) (which limits the overall amount that can be used under this subsection)—
  - (a) use any of the available gains that are upper rate gains to be charged at the rate in section 4(2)(a);
  - (b) use any of the available gains that are not upper rate gains to be charged at the rate in section 4(2)(b).

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- (5) The total amount of gains used under subsection (4) must equal the qualifying amount.
- (6) The “qualifying amount” is the unused part of the individual's basic rate band less the total amount of any special rate gains.
- (7) If special rate gains are included in the chargeable gains amount, subsection (4) applies only if the unused part of the individual's basic rate band exceeds the total amount of the special rate gains.
- (8) In this section—
  - “upper rate gains” has the same meaning as in section 4;
  - “special rate gains” has the same meaning as in section 4(6);
  - “the unused part of the individual's basic rate band” has the same meaning as in section 4.

#### **4BB Residential property gain or loss**

- (1) For the purposes of the charge to capital gains tax, a residential property gain or loss is a gain or loss which accrues on the disposal of a residential property interest.
- (2) But a residential property gain or loss does not accrue on a non-resident CGT disposal.
- (3) In this Act “disposal of a residential property interest” means—
  - (a) a disposal of a UK residential property interest, or
  - (b) a disposal of a non-UK residential property interest.
- (4) Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.
- (5) Schedule BA1 gives the meaning in this Act of “disposal of a non-UK residential property interest”.
- (6) See section 57C and Schedule 4ZZC for how to compute—
  - (a) the residential property gain or loss accruing on the disposal of a residential property interest, and
  - (b) the gain or loss accruing on the disposal of a residential property interest which is not a residential property gain or loss.”
- (15) Schedule 11 inserts Schedule BA1 in TCGA 1992 and makes related amendments.
- (16) Schedule 12 inserts section 57C and Schedule 4ZZC in TCGA 1992 and makes related amendments.
- (17) The amendments made by this section and Schedules 11 and 12 have effect in relation to gains accruing on or after 6 April 2016.
- (18) In relation to a time before the tax year appointed under section 14(3)(b) of the Wales Act 2014 in relation to the provision inserted by section 9(14) of that Act, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if the words “, the Welsh higher rate” were omitted.



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- (19) In relation to a time before the tax year appointed under section 13(15) of the Scotland Act 2016, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if before “or the dividend upper rate” there were inserted “ , the Scottish higher rate ”.

### *Entrepreneurs' relief*

## **84 Entrepreneurs' relief: associated disposals**

- (1) Section 169K of TCGA 1992 (disposal associated with relevant material disposal) is amended as follows.

- (2) In subsection (1)—

- (a) in paragraph (a), after “A1,” insert “ A1A, ”, and
- (b) in paragraph (b), for “and C” substitute “ , C and D ”.

- (3) After subsection (1A) insert—

“(1AA) Condition A1A is that P makes a material disposal of business assets which consists of the disposal of the whole of P's interest in the assets of a partnership, and—

- (a) that interest is an interest of less than 5%,
- (b) P holds at least a 5% interest in the partnership's assets throughout a continuous period of at least 3 years in the 8 years ending with the date of the disposal, and
- (c) at the date of the disposal, no partnership purchase arrangements exist.

(1AB) Subject to subsection (6A), for the purposes of conditions A1 and A1A, in relation to the disposal of an interest in the assets of a partnership, “partnership purchase arrangements” means arrangements (other than the material disposal itself) under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share).”

- (4) In subsection (1E), in the words before paragraph (a)—

- (a) at the beginning insert “ Subject to subsection (6A), ”, and
- (b) after “means arrangements” insert “ (other than the material disposal itself) ”.

- (5) After subsection (3A) insert—

“(3AA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and a partnership, “partnership purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share), but does not include any arrangements in connection with a material disposal in relation to which condition A1 or A1A is met.”

- (6) In subsection (3B), for “arrangements” to the end substitute “ share purchase arrangements ”.

- (7) After subsection (3B) insert—

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“(3BA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and company A, “share purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire shares in or securities of—

- (a) company A, or
- (b) a company which is a member of a trading group of which company A is a member,

but does not include any arrangements in connection with a material disposal in relation to which condition A2 or A3 is met.”

(8) In subsection (3C), for “(3B)” substitute “(3BA)”.

(9) After subsection (4) insert—

“(4A) Condition D is that the disposal mentioned in condition B is of an asset which P owns throughout the period of 3 years ending with the date of that disposal.”

(10) Omit subsection (6).

(11) Before subsection (7) insert—

“(6A) For the purposes of this section, in relation to a material disposal of business assets and a disposal mentioned in condition B, arrangements are not partnership purchase arrangements or share purchase arrangements if they were made before both disposals and without regard to either of them.”

(12) In subsection (9), after “entitled to share in the” insert “capital”.

(13) The amendments made by subsections (2)(a), (3) to (8) and (10) to (12) have effect in relation to disposals made on or after 18 March 2015.

(14) The amendments made by subsections (2)(b) and (9) have effect in relation to disposals of assets which are acquired on or after 13 June 2016.

## **85 Entrepreneurs' relief: disposal of goodwill**

(1) Section 169LA of TCGA 1992 (relevant business assets: goodwill transferred to a related party etc) is amended as follows.

(2) In subsection (1)—

- (a) at the beginning insert “ Subject to subsection (1A), ”,
- (b) at the end of paragraph (a) insert “ and ”,
- (c) after paragraph (a) insert—

“(aa) immediately after the disposal—

(i) P and any relevant connected person together own 5% or more of the ordinary share capital of C or of any company which is a member of a group of companies of which C is a member, or

(ii) P and any relevant connected person together hold 5% or more of the voting rights in C or in any company which is a member of a group of companies of which C is a member.”, and

- (d) omit paragraphs (b) and (c).

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(3) After subsection (1) insert—

“(1A) Where—

- (a) subsection (1)(aa) applies by virtue of P's ownership, or any relevant connected person's ownership, of C's ordinary share capital, and
  - (b) the conditions mentioned in subsection (1B) are met,
- subsection (4) does not apply.

(1B) The conditions referred to in subsection (1A)(b) are—

- (a) P and any relevant connected person dispose of C's ordinary share capital to another company (“A”) such that, immediately before the end of the relevant period, neither P nor any relevant connected person own any of C's ordinary share capital, and
- (b) where A is a close company, immediately before the end of the relevant period—
  - (i) P and any relevant connected person together own less than 5% of the ordinary share capital of A or of any company which is a member of a group of companies of which A is a member, and
  - (ii) P and any relevant connected person together hold less than 5% of the voting rights in A or in any company which is a member of a group of companies of which A is a member.

(1C) In subsection (1B) “the relevant period” means the period of 28 days beginning with the date of the qualifying business disposal, or such longer period as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.”

(4) Omit subsections (2) and (3).

(5) In subsection (5), omit the words from “(including” to the end.

(6) In subsection (7), omit paragraph (b) and the “or” at the end of paragraph (a).

(7) In subsection (8)—

- (a) after the definition of “arrangements” insert—

““group” is to be construed in accordance with section 170;”

- (b) for the definition of “associate”, “control”, “major interest” and “participator” substitute—

““relevant connected person” means—

- (a) a company connected with P, and
- (b) trustees connected with P.”

(8) In the heading, for “related party etc” substitute “close company”.

(9) The amendments made by this section have effect in relation to disposals made on or after 3 December 2014.

## 86 **Entrepreneurs' relief: “trading company” and “trading group”**

Schedule 13 contains provision about the meaning of “trading company” and “trading group” for the purposes of Chapter 3 of Part 5 of TCGA 1992 (entrepreneurs' relief).

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### *Investors' relief*

#### **87 Investors' relief**

Schedule 14 contains provision relating to investors' relief.

### *Employee shareholder shares*

#### **88 Employee shareholder shares: limit on exemption**

(1) Section 236B of TCGA 1992 (exemption for employee shareholder shares) is amended in accordance with subsections (2) and (3).

(2) After subsection (1) insert—

“(1A) Where a gain accrues to a person (“P”) on the first disposal of a post-16 March 2016 exempt employee shareholder share (the “relevant disposal”), subsection (1) applies only to so much of the gain as, when added to the total amount of previous potentially chargeable gains, does not exceed £100,000.

(1B) For the purposes of subsection (1A), “previous potentially chargeable gain” means a gain accruing to P on the first disposal of a post-16 March 2016 exempt employee shareholder share at any time before the relevant disposal.

(1C) Where a single transaction disposes of more than one post-16 March 2016 exempt employee shareholder share, the reference in subsection (1A) to the first disposal of a share is to be treated as a reference to the disposal of all of the post-16 March 2016 exempt employee shareholder shares first disposed of by that transaction.”

(3) After subsection (3) insert—

“(3A) In this section, “post-16 March 2016 exempt employee shareholder share” means an exempt employee shareholder share acquired in consideration of an employee shareholder agreement entered into after 16 March 2016.”

(4) Section 236F of TCGA 1992 (reorganisation of share capital involving employee shareholder shares) is amended in accordance with subsections (5) and (6).

(5) After subsection (1) insert—

“(1A) Subsection (1B) applies where—

- (a) an exempt employee shareholder share (“the original EES share”) is held by a person (“P”) before, and is concerned in, a reorganisation, and
- (b) the original EES share is disposed of on the reorganisation.

(1B) P is to be treated as if the original EES share were disposed of for consideration of an amount determined in accordance with subsections (1D) to (1H) (the “relevant amount”).

(1C) In this section “notional gain” means the gain, if any, that would accrue to P if the original EES share were disposed of on the reorganisation for consideration of an amount equal to the market value of the share.

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- (1D) Subsections (1E) to (1G) apply where a notional gain would accrue to P on the disposal of the original EES share.
- (1E) Where the whole of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.
- (1F) Where part (but not the whole) of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the maximum amount, not exceeding the market value of the share, that would secure that on the disposal no chargeable gain would accrue to P.
- (1G) Where no part of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is equal to the market value of the original EES share at the time of the disposal.
- (1H) Where no notional gain would accrue to P on the disposal of the original EES share, the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.
- (1I) In determining for the purposes of this section whether any part of a notional gain is a chargeable gain by virtue of section 236B(1A), subsection (1B) is to be disregarded.
- (1J) Where more than one original EES share is disposed of by P on a reorganisation, references in this section to the disposal of the original EES share are to be treated as references to the disposal of all of the original EES shares disposed of on the reorganisation.
- (1K) In this section “reorganisation” has the same meaning as in section 127.”
- (6) In subsection (2) for “reference in subsection (1) to section 127 includes” substitute “references in this section to section 127 include”.
- (7) Section 58 of TCGA 1992 (spouses and civil partners) is amended in accordance with subsections (8) and (9).
- (8) In subsection (2)(c) after “disposal is” insert “ a relevant disposal ”.
- (9) After subsection (2) insert—
  - “(3) For the purposes of subsection (2) a disposal of exempt employee shareholder shares is a “relevant disposal” if (apart from this section)—
    - (a) a gain would accrue on the disposal, and
    - (b) no part of the gain would be a chargeable gain.
  - (4) Subsection (5) applies where the disposal is of exempt employee shareholder shares and (apart from this section)—
    - (a) a gain would accrue on the disposal, and
    - (b) part (but not the whole) of the gain would be a chargeable gain by virtue of section 236B(1A).
  - (5) Where this subsection applies, subsection (1) has effect in relation to the disposal as if—
    - (a) for “such amount as” there were substituted “ the maximum amount, not exceeding the market value of the asset, that ”, and

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- (b) for “neither a gain nor a loss” there were substituted “ no chargeable gain ”.”

- (10) The amendments made by this section have effect in relation to disposals made after 16 March 2016.

## **89 Employee shareholder shares: disguised fees and carried interest**

- (1) In section 236B of TCGA 1992 (exemption for employee shareholder shares), after subsection (2) insert—

“(2A) Subsection (1) does not apply in relation to a gain accruing on a disposal where the proceeds of the disposal, in relation to any individual, constitute—

- (a) a disguised fee for the purposes of Chapter 5E of Part 13 of ITA 2007 (see section 809EZA(3) of that Act), or
- (b) carried interest within the meaning given by section 809EYC of that Act.”

- (2) The amendment made by this section has effect in relation to gains accruing on or after 6 April 2016.

### *Other provisions*

## **90 Disposals of UK residential property by non-residents etc**

- (1) In Schedule 4ZZA to TCGA 1992 (relevant high value disposals: gains and losses), in paragraph 2(1), for “paragraph 6” substitute “ paragraph 6A ”.
- (2) In Schedule 4ZZB to TCGA 1992 (non-resident CGT disposals: gains and losses), in paragraph 17—
  - (a) omit sub-paragraph (2), and
  - (b) in sub-paragraph (3), omit the words from “If” to “applies”.
- (3) The amendment made by subsection (1) has effect in relation to disposals made on or after 6 April 2015.
- (4) The amendment made by subsection (2) has effect in relation to disposals made on or after 26 November 2015.

## **91 NRCGT returns**

In TMA 1970, after section 12ZB (NRCGT return) insert—

### **“12ZBA Elective NRCGT return**

- (1) A person is not required to make and deliver an NRCGT return under section 12ZB(1), but may do so, in circumstances to which this section applies.
- (2) The circumstances to which this section applies are where the disposal referred to in section 12ZB(1) is—
  - (a) a disposal on or after 6 April 2015 where, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues, or
  - (b) the grant of a lease on or after 6 April 2015 which is—

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- (i) for no premium,
  - (ii) to a person who is not connected with the grantor, and
  - (iii) under a bargain made at arm's length.
- (3) For the purposes of subsection (2)—
  - “connected” is to be construed in accordance with section 286 of 1992 Act;
  - “no gain/no loss provisions” has the meaning given by section 288(3A) of the 1992 Act;
  - “lease” and premium” have the meanings given by paragraph 10 of Schedule 8 to the 1992 Act.
- (4) The Treasury may by regulations made by statutory instrument add or remove circumstances to which this section applies.
- (5) Regulations under subsection (4) may—
  - (a) amend this section or any other enactment;
  - (b) make consequential provision.
- (6) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Paragraph 1 of Schedule 55 to the Finance Act 2009 (penalty for late returns) does not apply in relation to an NRCGT return which is made and delivered by virtue of this section.”

## 92 Addition of CGT to Provisional Collection of Taxes Act 1968

In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax etc), in subsection (1), after “income tax,” insert “capital gains tax,”.

## PART 5

### INHERITANCE TAX ETC

## 93 Inheritance tax: increased nil-rate band

Schedule 15 contains provision in connection with the increased nil-rate band provided for by section 8D of IHTA 1984 (extra nil-rate band on death if interest in home goes to descendants etc).

## 94 Inheritance tax: pension drawdown funds

- (1) IHTA 1984 is amended as follows.
- (2) In the italic heading before section 10, at the end insert “ (and omissions that do not give rise to deemed dispositions) ”.
- (3) In section 12(2G) (interpretation of section 12(2ZA)), in the definition of “entitled”, for “166(2)” substitute “ 167(1A), or section 166(2), ”.
- (4) After section 12 insert—

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**“12A Pension drawdown fund not used up: no deemed disposition**

- (1) Where a person has a drawdown fund, section 3(3) above does not apply in relation to any omission that results in the fund not being used up in the person's lifetime.
- (2) For the purposes of subsection (1) above, a person has a drawdown fund if the person has—
  - (a) a member's drawdown pension fund,
  - (b) a member's flexi-access drawdown fund,
  - (c) a dependant's drawdown pension fund,
  - (d) a dependant's flexi-access drawdown fund,
  - (e) a nominee's flexi-access drawdown fund, or
  - (f) a successor's flexi-access drawdown fund, and
 in respect of a money purchase arrangement under a registered pension scheme.
- (3) For the purposes of subsection (1) above, a person also has a drawdown fund if sums or assets held for the purposes of a money purchase arrangement under a corresponding scheme would, if that scheme were a registered pension scheme, be the person's—
  - (a) member's drawdown pension fund,
  - (b) member's flexi-access drawdown fund,
  - (c) dependant's drawdown pension fund,
  - (d) dependant's flexi-access drawdown fund,
  - (e) nominee's flexi-access drawdown fund, or
  - (f) successor's flexi-access drawdown fund,
 in respect of the arrangement.
- (4) In this section—
 

“corresponding scheme” means—

  - (a) a qualifying non-UK pension scheme (see section 271A below), or
  - (b) a section 615(3) scheme that is not a registered pension scheme;

“money purchase arrangement” has the same meaning as in Part 4 of the Finance Act 2004 (see section 152 of that Act);

“member's drawdown pension fund”, “member's flexi-access drawdown fund”, “dependant's drawdown pension fund”, “dependant's flexi-access drawdown fund”, “nominee's flexi-access drawdown fund” and “successor's flexi-access drawdown fund” have the meaning given, respectively, by paragraphs 8, 8A, 22, 22A, 27E and 27K of Schedule 28 to that Act.”
- (5) The amendment made by subsection (4)—
  - (a) so far as relating to a fund within the new section 12A(2)(a) or (c) (drawdown pension funds), or to a fund within the new section 12A(3) that corresponds to a fund within the new section 12A(2)(a) or (c)—
    - (i) has effect where the person who has the fund dies on or after 6 April 2011, and



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- (ii) is to be treated as having come into force on 6 April 2011, and
- (b) so far as relating to a fund mentioned in the new section 12A(2)(b), (d), (e) or (f) (flexi-access drawdown funds), or to a fund within the new section 12A(3) that corresponds to a fund within the new section 12A(2)(b), (d), (e) or (f)—
  - (i) has effect where the person who has the fund dies on or after 6 April 2015, and
  - (ii) is to be treated as having come into force on 6 April 2015.
- (6) Where an amount paid by way of—
  - (a) inheritance tax, or
  - (b) interest on inheritance tax,
 is repayable as a result of the amendment made by subsection (4), section 241(1) of IHTA 1984 applies as if the last date for making a claim for repayment of the amount were 5 April 2020 if that is later than what would otherwise be the last date for that purpose.

## 95 Inheritance tax: victims of persecution during Second World War era

- (1) After section 153 of IHTA 1984 insert—

*“Payments to victims of persecution during Second World War era*

### **153ZA Qualifying payments**

- (1) This section applies where a qualifying payment has at any time been received by a person (“P”), or by the personal representatives of P.
- (2) The tax chargeable on the value transferred by the transfer made on P's death (the “value transferred”) is to be reduced by an amount equal to—
  - (a) the relevant percentage of the amount of the qualifying payment, or
  - (b) if lower, the amount of tax that would, apart from this section, be chargeable on the value transferred.
- (3) In subsection (2) “relevant percentage” means the percentage specified in the last row of the third column of the Table in Schedule 1.
- (4) For the purposes of this section, a “qualifying payment” is a payment that meets Condition A, B or C.
- (5) Condition A is that the payment—
  - (a) is of a kind specified in Part 1 of Schedule 5A, and
  - (b) is made to a person, or the personal representatives of a person, who was—
    - (i) a victim of National-Socialist persecution, or
    - (ii) the spouse or civil partner of a person within sub-paragraph (i).
- (6) Condition B is that the payment is of a kind listed in Part 2 of Schedule 5A.
- (7) Condition C is that the payment—
  - (a) is of a kind specified in regulations made by the Treasury, and

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- (b) is made to a person, or the personal representatives of a person, who was—
    - (i) held as a prisoner of war, or a civilian internee, during the Second World War, or
    - (ii) the spouse or civil partner of a person within subparagraph (i).
  - (8) The Treasury may by regulations add a payment of a specified kind to the list in Part 1 of Schedule 5A.
  - (9) Regulations under this section are to be made by statutory instrument.
  - (10) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) After Schedule 5 to IHTA 1984 insert—

“SCHEDULE 5A

Section 153ZA

QUALIFYING PAYMENTS: VICTIMS OF  
PERSECUTION DURING SECOND WORLD WAR ERA

**PART 1**

COMPENSATION PAYMENTS

- 1 A payment of a fixed amount from the German foundation known as “Remembrance, Responsibility and Future” (*Stiftung EVZ*) in respect of a person who was a slave or forced labourer.
- 2 A payment of a fixed amount in accordance with the arrangements made under the Swiss Bank Settlement (Holocaust Victim Assets Litigation) in respect of the slave or forced labourers qualifying for compensation under the Remembrance, Responsibility and Future scheme.
- 3 A payment of a fixed amount from the Hardship Fund established by the Government of the Federal Republic of Germany.
- 4 A payment of a fixed amount from the National Fund of the Republic of Austria for Victims of National-Socialism under the terms of the scheme as at June 1995.
- 5 A payment of a fixed amount in respect of a slave or forced labourer from the Austrian Reconciliation Fund.
- 6 A payment of a fixed amount by the Swiss Refugee Programme in accordance with the arrangements made under the Swiss Bank Settlement (Holocaust Victim Assets Litigation) in respect of refugees.
- 7 A payment of a fixed amount under the foundation established in the Netherlands and known as the Dutch Maror Fund (*Stichting Maror-Gelden Overheid*).
- 8 A one-off payment of a fixed amount from the scheme established by the Government of the French Republic and known as the French Orphan Scheme.

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- 9 A payment of a fixed amount from the Child Survivor Fund established by the Government of the Federal Republic of Germany.

## PART 2

### EX-GRATIA PAYMENTS

- 10 A payment of a fixed amount made from the scheme established by the United Kingdom Government and known as the Far Eastern Prisoners of War Ex Gratia Scheme.”

- (3) The amendments made by this section have effect in relation to deaths occurring on or after 1 January 2015.

## 96 Inheritance tax: gifts for national purposes etc

- (1) The Schedule 3 IHTA approval function is transferred to the Treasury.
- (2) The “Schedule 3 IHTA approval function” is the function of approval conferred by Schedule 3 to IHTA 1984 in the entry beginning “Any other similar national institution” (and which was initially conferred on the Treasury but, along with other functions, transferred to the Commissioners of Inland Revenue under section 95 of FA 1985).
- (3) Subsection (1) does not affect any approval given under Schedule 3 to IHTA 1984 before this Act is passed.
- (4) In Schedule 3 to IHTA 1984 (gifts for national purposes, etc), in the entry beginning “Any museum”, after “and is” insert “or has been”.

## 97 Estate duty: objects of national, scientific, historic or artistic interest

- (1) Section 40 of FA 1930 and section 2 of the Finance Act (Northern Ireland) 1931 (exemption from death duties of objects of national etc interest), so far as continuing to have effect, have effect as if after subsection (2) there were inserted—

“(2A) In the event of the loss of any objects to which this section applies, estate duty shall become chargeable on the value of those objects in respect of the last death on which the objects passed at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which this section applies.

(2B) Where subsection (2A) applies, any owner of the objects—

- (a) shall be accountable for the estate duty, and
- (b) shall deliver an account for the purposes thereof.

(2C) The account under subsection (2B)(b) must be delivered within the period of one month beginning with—

- (a) in the case of a loss occurring before the coming into force of subsection (2A)—
  - (i) the coming into force of subsection (2A), or
  - (ii) if later, the date when the owner became aware of the loss;

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- (b) in the case of a loss occurring after the coming into force of subsection (2A)—
  - (i) the date of the loss, or
  - (ii) if later, the date when the owner became aware of the loss.

This is subject to subsection (2E).

(2D) Subsection (2E) applies if—

- (a) no account has been delivered under subsection (2B),
- (b) the Commissioners for Her Majesty's Revenue and Customs have by notice required an owner of the objects to confirm that the objects have not been lost,
- (c) the owner has not so confirmed by the end of—
  - (i) the period of three months beginning with the day on which the notice was sent, or
  - (ii) such longer period as the Commissioners may allow, and
- (d) the Commissioners are satisfied that the objects are lost.

(2E) Where this subsection applies—

- (a) the objects are to be treated as lost for the purposes of subsection (2A) on the day on which the Commissioners are satisfied as specified in subsection (2D)(d), and
- (b) the account under subsection (2B)(b) must be delivered within the period of one month beginning with that date.

(2F) The reference in subsection (2A) to the value of objects is to their value at the time they are lost (or treated as lost).

(2G) Subsection (2A) does not apply in relation to a loss notified to the Commissioners before the coming into force of that subsection.

(2H) In this section “owner”, in relation to any objects, means a person who, if the objects were sold, would be entitled to receive (whether for their own benefit or not) the proceeds of sale or any income arising therefrom.

(2I) In this section references to the loss of objects include their theft or destruction; but do not include a loss which the Commissioners are satisfied was outside the owner's control.”

(2) Section 48 of FA 1950, so far as continuing to have effect, has effect as if—

- (a) after subsection (3) there were inserted—
 

“(3A) But where the value of any objects is chargeable with estate duty under subsection (2A) of the said section forty (loss of objects), no estate duty shall be chargeable under this section on that value.”;
- (b) after subsection (4) there were inserted—
 

“(5) Where any objects are lost (within the meaning of the said section forty) after becoming chargeable with estate duty under this section in respect of any death, the value of those objects shall not be chargeable with estate duty under subsection (2A) of the said section forty.”

(3) Section 39 of FA 1969, so far as continuing to have effect, has effect as if—

- (a) in subsection (1)—

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- (i) after “subsection (2)” there were inserted “ or (2A) ”;
    - (ii) after “other disposal” there were inserted “ or loss ”;
  - (b) in subsection (2), after “subsection (2)” there were inserted “ , (2A) ”;
  - (c) in subsection (3)—
    - (i) after “subsection (2)” there were inserted “ , (2A) ”;
    - (ii) for the words from “the amount” to the end there were substituted “ the amount in respect of which estate duty is chargeable under the said subsection ”.
- (4) Section 6 of the Finance Act (Northern Ireland) 1969, so far as continuing to have effect as originally enacted, has effect as if—
  - (a) in subsection (1)—
    - (i) after “subsection (2)” there were inserted “ or (2A) ”;
    - (ii) after “sale” there were inserted “ or loss ”;
  - (b) in subsection (2)—
    - (i) for “sale” there were substituted “ event ”;
    - (ii) after “subsection (2)” there were inserted “ or (2A) ”;
  - (c) in subsection (3)—
    - (i) for “sale” there were substituted “ event ”;
    - (ii) after “subsection (2)” there were inserted “ or (2A) ”;
    - (iii) for “the amount of the proceeds of sale” there were substituted “ the amount in respect of which estate duty is chargeable under the said subsection ”.
- (5) Section 6 of the Finance Act (Northern Ireland) 1969, so far as continuing to have effect as amended by Article 7 of the Finance (Northern Ireland) Order 1972 (S.I. 1972/1100 (N.I.11)) (deaths occurring after the making of that Order), has effect as if—
  - (a) in subsection (1)—
    - (i) after “subsection (2)” there were inserted “ or (2A) ”;
    - (ii) after “sale” there were inserted “ or loss ”;
  - (b) in subsection (2), after “subsection (2)” there were inserted “ or (2A) ”;
  - (c) in subsection (3)—
    - (i) in the opening words, after “subsection (2)” there were inserted “ or (2A) ”;
    - (ii) in paragraphs (a) and (b), after “otherwise than on sale” there were inserted “ or at the time of the loss ”.
- (6) In section 35 of IHTA 1984 (conditional exemption on death before 7th April 1976), in subsection (2), for paragraphs (a) and (b) substitute—
  - “(a) tax shall be chargeable under section 32 or 32A (as the case may be), or
  - (b) tax shall be chargeable under Schedule 5,”.
- (7) In Schedule 6 to IHTA 1984 (transition from estate duty), in paragraph 4 (objects of national etc interest left out of account on death)—
  - (a) in sub-paragraph (2), for paragraphs (a) and (b) substitute—
    - “(a) tax shall be chargeable under section 32 or 32A of this Act (as the case may be), or

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- (b) estate duty shall be chargeable under those provisions,  
as the Board may elect, ”, and  
(b) in sub-paragraph (4), after “40(2)” insert “ or (2A) ”.
- (8) Subsections (6) and (7) have effect in relation to a chargeable event where the conditionally exempt transfer referred to in section 35(2) of or paragraph 4(2) of Schedule 6 to IHTA 1984 occurred after 16 March 2016.

## PART 6

### APPRENTICESHIP LEVY

#### *Basic provisions*

#### **98 Apprenticeship levy**

- (1) A tax called apprenticeship levy is to be charged in accordance with this Part.
- (2) The Commissioners are responsible for the collection and management of apprenticeship levy.

#### **99 Charge to apprenticeship levy**

- (1) Apprenticeship levy is charged if—
- (a) a person has a pay bill for a tax year, and
  - (b) the relevant percentage of that pay bill exceeds the amount of the person's levy allowance (if any) for that tax year.
- (2) The amount charged for the tax year is equal to—

$$N - A$$

where—

N is the relevant percentage of the pay bill for the tax year, and

A is the amount of the levy allowance (if any) to which the person is entitled for the tax year.

- (3) The person mentioned in subsection (1) is liable to pay the amount charged.
- (4) Except so far as section 103 provides otherwise, a person who has a pay bill for a tax year is entitled to a levy allowance for the tax year.
- (5) The amount of the levy allowance is £15,000 (except where section 101 or 102 provides otherwise).
- (6) For the purposes of this section the “relevant percentage” is 0.5%.

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## 100 A person's pay bill for a tax year

- (1) A person has a pay bill for a tax year if, in the tax year—
  - (a) the person is the secondary contributor in relation to payments of earnings to, or for the benefit of, one or more employed earners, and
  - (b) in consequence, the person incurs liabilities to pay secondary Class 1 contributions.
- (2) The amount of the person's pay bill for the tax year is equal to the total amount of the earnings in respect of which the liabilities mentioned in subsection (1)(b) are incurred.
- (3) For the purposes of this section a person is treated as incurring, in respect of any earnings, any liabilities which the person would incur but for the condition in section 6(1)(b) of the Contributions and Benefits Act.
- (4) The Treasury may by regulations provide for persons specified in certificates in force under section 120(4) of the Social Security Contributions and Benefits Act 1992 (employment at sea: continental shelf operations) to be treated for the purposes of this section as the secondary contributor in relation to payments of earnings to which the certificate relates and as liable to pay secondary Class 1 contributions to which the certificate relates.
- (5) For the purposes of this section—
  - (a) references to “payments of earnings” are to be interpreted as they would be interpreted for the purposes of determining liability to pay secondary Class 1 contributions under the Contributions and Benefits Act;
  - (b) the amount of any earnings is to be calculated in the same manner and on the same basis as for the purpose of calculating the liabilities mentioned in subsection (1)(b).
- (6) In this section references to liability to pay secondary Class 1 contributions are to liability to pay secondary Class 1 contributions under Part 1 of the Contributions and Benefits Act <sup>F7</sup>(including a case where the amount of a liability to pay a secondary Class 1 contribution is £0)].

### Textual Amendments

**F7** Words in s. 100(6) substituted (15.3.2022) by [National Insurance Contributions Act 2022 \(c. 9\)](#), s. 9

### *Connected companies and charities*

## 101 Connected companies

- (1) Two or more companies which are not charities form a “company unit” for a tax year (and are the “members” of that unit) if—
  - (a) they are connected with one another at the beginning of the tax year, and
  - (b) each of them is entitled to a levy allowance for the tax year.
- (2) The members of a company unit must determine what amount of levy allowance each of them is to be entitled to for the tax year (and the determination must comply with subsections (3) and (4)).

But see subsections (6) and (11).

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- (3) A member's levy allowance for a tax year may be zero (but not a negative amount).
- (4) The total amount of the levy allowances to which the members of a company unit are entitled for a tax year must equal £15,000.
- (5) A determination made under subsection (2) (with respect to a tax year) cannot afterwards be altered by the members concerned (but this does not prevent the correction of a failure to comply with subsection (4)).
- (6) If subsection (8) applies—
  - (a) HMRC must determine in accordance with subsection (7) what amount of levy allowance each of the relevant members (see subsection (8)(a)) of the unit concerned is to be entitled to for the tax year, and
  - (b) accordingly subsection (2) is treated as never having applied in relation to that company unit and that tax year.
- (7) The determination is to be made by multiplying the amount of levy allowance set out in each relevant return (see subsection (8)(a)) by—

$$\frac{15,000}{T}$$

where T is the total of the amounts of levy allowance set out in the relevant returns.

The result is, in each case, the amount of the levy allowance to which the relevant member in question is entitled for the tax year (but amounts may be rounded up or down where appropriate provided that subsection (4) is complied with).

- (8) This subsection applies if—
  - (a) HMRC is aware—
    - (i) that two or more members of a company unit (“the relevant members”) have made apprenticeship levy returns (“the relevant returns”) on the basis mentioned in subsection (9), and
    - (ii) that those returns, together, imply that the total mentioned in subsection (4) is greater than £15,000,
  - (b) HMRC has notified the relevant members in writing that HMRC is considering taking action under subsection (6), and
  - (c) the remedial action specified in the notice has not been taken within the period specified in the notice.
- (9) The basis in question is that the member making the return is entitled to a levy allowance (whether or not of zero) for the tax year concerned.
- (10) If any member of the company unit mentioned in subsection (8)(a) is not a relevant member, that member is entitled to a levy allowance of zero for the tax year.
- (11) If subsection (13) applies—
  - (a) HMRC must determine in accordance with subsection (12) what amount of levy allowance each of the members of the unit concerned is to be entitled to for the tax year, and
  - (b) accordingly subsection (2) is treated as never having applied in relation to that company unit and that tax year.



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(12) Each member of the unit is to be entitled to a levy allowance for the tax year equal to—

$$\frac{15,000}{N}$$

where N is the number of the members of the company unit for the tax year.

Amounts determined in accordance with the formula in this subsection may be rounded up or down where appropriate provided that subsection (4) is complied with.

(13) This subsection applies if—

- (a) the total amount paid by the members of a company unit in respect of apprenticeship levy for a tax year or any period in a tax year is less than the total of the amounts due and payable by them for the tax year or other period concerned,
- (b) either the members of the unit have made no apprenticeship levy returns for any period in the tax year concerned or the returns that have been made do not contain sufficient information to enable HMRC to determine how the whole of the £15,000 mentioned in subsection (4) is to be used by the members of the unit for the tax year,
- (c) HMRC has notified all the members of the unit in writing that HMRC is considering taking action under subsection (11), and
- (d) the remedial action specified in the notice has not been taken within the period specified in the notice.

(14) Subsection (4) is to be taken into account in calculating the total of the amounts due and payable as mentioned in subsection (13)(a).

(15) The Commissioners may by regulations provide that in circumstances specified in the regulations the members of a company unit may alter a determination made under subsection (2) (despite subsection (5)).

(16) In this section “apprenticeship levy return” means a return under regulations under section 105(4).

(17) Part 1 of Schedule 1 to the National Insurance Contributions Act 2014 (rules for determining whether companies are “connected” with one another) applies for the purposes of subsection (1) as it applies for the purposes of section 3(1) of that Act.

(18) In this Part “company” has the meaning given by section 1121(1) of CTA 2010 and includes a limited liability partnership.

(19) See section 102 for the meaning of “charity”.

## 102 Connected charities

(1) Two or more charities form a “charities unit” for a tax year (and are the “members” of that unit) if—

- (a) they are connected with one another at the beginning of the tax year, and
- (b) each of them is entitled to a levy allowance for the tax year.

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- (2) The members of a charities unit must determine what amount of levy allowance each of them is to be entitled to for the tax year (and the determination must comply with subsections (3) and (4)).

But see subsections (6) and (11).

- (3) A member's levy allowance for a tax year may be zero (but not a negative amount).
- (4) The total amount of the levy allowances to which the members of a charities unit are entitled for a tax year must equal £15,000.
- (5) A determination made under subsection (2) (with respect to a tax year) cannot afterwards be altered by the members concerned (but this does not prevent the correction of a failure to comply with subsection (4)).
- (6) If subsection (8) applies—
- (a) HMRC must determine in accordance with subsection (7) what amount of levy allowance each of the relevant members (see subsection (8)(a)) of the unit concerned is to be entitled to for the tax year, and
  - (b) accordingly subsection (2) is treated as never having applied in relation to that charities unit and that tax year.
- (7) The determination is to be made by multiplying the amount of levy allowance set out in each relevant return (see subsection (8)(a)) by—

$$\frac{15,000}{T}$$

where T is the total of the amounts of levy allowance set out in the relevant returns.

The result is, in each case, the amount of the levy allowance to which the relevant member in question is entitled for the tax year (but amounts may be rounded up or down where appropriate provided that subsection (4) is complied with).

- (8) This subsection applies if—
- (a) HMRC is aware—
    - (i) that two or more members of a charities unit (“the relevant members”) have made apprenticeship levy returns (“the relevant returns”) on the basis mentioned in subsection (9), and
    - (ii) that those returns, together, imply that the total mentioned in subsection (4) is greater than £15,000,
  - (b) HMRC has notified the relevant members in writing that HMRC is considering taking action under subsection (6), and
  - (c) the remedial action specified in the notice has not been taken within the period specified in the notice.
- (9) The basis in question is that the member making the return is entitled to a levy allowance (whether or not of zero) for the tax year concerned.
- (10) If any member of the charities unit mentioned in subsection (8)(a) is not a relevant member, that member is entitled to a levy allowance of zero for the tax year.
- (11) If subsection (13) applies—

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- (a) HMRC must determine in accordance with subsection (12) what amount of levy allowance each of the members of the unit concerned is to be entitled to for the tax year, and
- (b) accordingly subsection (2) is treated as never having applied in relation to that charities unit and that tax year.

(12) Each member of the unit is to be entitled to a levy allowance for the tax year equal to—

$$\frac{15,000}{N}$$

where N is the number of the members of the charities unit for the tax year.

Amounts determined in accordance with the formula in this subsection may be rounded up or down where appropriate provided that subsection (4) is complied with.

(13) This subsection applies if—

- (a) the total amount paid by the members of a charities unit in respect of apprenticeship levy for a tax year or any period in a tax year is less than the total of the amounts due and payable by them for the tax year or other period concerned,
- (b) either the members of the unit have made no apprenticeship levy returns for any period in the tax year concerned or the returns that have been made do not contain sufficient information to enable HMRC to determine how the whole of the £15,000 mentioned in subsection (4) is to be used by the members of the unit for the tax year,
- (c) HMRC has notified all the members of the unit in writing that HMRC is considering taking action under subsection (11), and
- (d) the remedial action specified in the notice has not been taken within the period specified in the notice.

(14) Subsection (4) is to be taken into account in calculating the total of the amounts due and payable as mentioned in subsection (13)(a).

(15) The Commissioners may by regulations provide that in circumstances specified in the regulations the members of a charities unit may alter a determination made under subsection (2) (despite subsection (5)).

(16) In this section “apprenticeship levy return” means a return under regulations under section 105(4).

(17) In this Part “charity” means—

- (a) a charity within the meaning of Part 1 of Schedule 6 to FA 2010;
- (b) the Trustees of the National Heritage Memorial Fund;
- (c) the Historic Buildings and Monuments Commission for England;
- (d) a registered club within the meaning of Chapter 9 of Part 13 of CTA 2010 (community amateur sports clubs).

(18) Subsection (17) is subject to section 118(5).

(19) See sections 118 and 119 for provision about the meaning of “connected” in subsection (1).

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### *Anti-avoidance*

#### **103 Anti-avoidance**

- (1) For the purposes of this section “avoidance arrangements” are arrangements the main purpose, or one of the main purposes, of which is to secure that a person—
  - (a) benefits, or further benefits, from an entitlement to a levy allowance for a tax year, or
  - (b) otherwise obtains an advantage in relation to apprenticeship levy.
- (2) Subsection (3) applies where, in consequence of avoidance arrangements within subsection (1)(a) or (b), a person incurs a liability to pay secondary Class 1 contributions in a particular tax year (as opposed to another tax year).
- (3) If the person would (apart from this subsection) obtain an advantage in relation to apprenticeship levy as a result of incurring the liability at the time mentioned in subsection (2), section 100 has effect as if the liability had been incurred when it would have been incurred but for the avoidance arrangements.
- (4) Subsection (6) applies where (apart from this section) a person (“P”)—
  - (a) would be in a position to use or make greater use of a levy allowance for a tax year, in consequence of avoidance arrangements within subsection (1)(a), or
  - (b) would otherwise obtain an advantage in relation to apprenticeship levy in consequence of avoidance arrangements within subsection (1)(a).
- (5) But subsection (6) only applies so far as the advantage in relation to apprenticeship levy cannot be counteracted under subsection (3).
- (6) P is not entitled to a levy allowance for the tax year.
- (7) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (8) In this section a reference to “an advantage in relation to apprenticeship levy” includes a reference to—
  - (a) repayment or increased repayment of apprenticeship levy,
  - (b) avoidance or reduction of a charge, or an assessment, to the levy,
  - (c) avoidance of a possible assessment to the levy,
  - (d) deferral of a payment of, or advancement of a repayment of, the levy, and
  - (e) avoidance of an obligation to account for the levy.
- (9) Sections 101 and 102 are to be ignored for the purpose of determining under subsection (4) what the position would be apart from this section.
- (10) In subsection (2) the reference to “a particular tax year” is to be read as including a reference to the period of 12 months beginning with 6 April 2016.

#### **104 Application of other regimes to apprenticeship levy**

- (1) In section 318(1) of FA 2004 (disclosure of tax avoidance schemes: interpretation), in the definition of “tax”, after paragraph (d) insert—
  - “(da) apprenticeship levy,”.

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- (2) In section 206(3) of FA 2013 (taxes to which the general anti-abuse rule applies), after paragraph (da) insert—
  - “(db) apprenticeship levy.”.
- (3) Part 4 of FA 2014 (follower notices and accelerated payments) is amended in accordance with subsections (4) and (5).
- (4) In section 200 (meaning of “relevant tax”), after paragraph (c) insert—
  - “(ca) apprenticeship levy.”.
- (5) In section 203 (meaning of “tax appeal”), after paragraph (e) insert—
  - “(ea) an appeal under section 114 of FA 2016 (apprenticeship levy: appeal against an assessment).”.
- (6) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended in accordance with subsections (7) and (8).
- (7) In section 253(6) (duty to notify the Commissioners: meaning of “tax return”), after paragraph (d) insert—
  - “(da) a return under regulations made under section 105 of FA 2016 (apprenticeship levy).”.
- (8) In section 283(1) (interpretation), in the definition of “tax”, after paragraph (d) insert—
  - “(da) apprenticeship levy.”.

*Payment, collection and recovery*

## 105 Assessment, payment etc

- (1) The Commissioners may by regulations make provision about the assessment, payment, collection and recovery of apprenticeship levy.
- (2) Regulations under subsection (1) may include—
  - (a) provision which applies, with or without modifications, provisions of PAYE regulations;
  - (b) provision for combining any arrangements under the regulations with arrangements under PAYE regulations.
- (3) Regulations under subsection (1) may—
  - (a) require payments to be made on account of apprenticeship levy;
  - (b) determine periods (“tax periods”) by reference to which payments are to be made;
  - (c) make provision about the times at which payments are to be made and methods of payment;
  - (d) require the amounts payable by reference to tax periods to be calculated (and levy allowance to be taken into account) in the manner and on the basis determined by or under the regulations;
  - (e) make provision for dealing with cases where such calculations lead to overpayment of levy (by repayment or otherwise);
  - (f) make other provision about the recovery of overpayments of levy.

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- (4) Regulations under subsection (1) may make provision requiring persons to make returns, including provision about—
  - (a) the periods by reference to which returns are to be made,
  - (b) the information to be included in returns,
  - (c) timing, and
  - (d) the form of, and method of making, returns.
- (5) Regulations under subsection (1) may—
  - (a) authorise HMRC to assess to the best of their judgement amounts payable by a person in respect of apprenticeship levy;
  - (b) make provision about the treatment of amounts so assessed, including provision for treating such amounts as apprenticeship levy payable by the person;
  - (c) make provision about the process of assessments.
- (6) Regulations under subsection (1) may make, in relation to amounts of apprenticeship levy which have been repaid to a person and ought not to have been repaid, any provision which may be made in relation to apprenticeship levy payable by a person.
- (7) Where—
  - (a) a repayment of apprenticeship levy has been increased in accordance with section 102 of FA 2009 (repayment interest), and
  - (b) the whole or part of the repayment has been paid to any person but ought not to have been paid to the person,

any amount by which the repayment paid to the person ought not to have been increased is to be treated for the purposes of regulations made by virtue of subsection (6) as if it were an amount of apprenticeship levy repaid to the person which ought not to have been repaid.
- (8) Regulations under subsection (1) may make provision for enabling the repayment or remission of interest under section 101 of FA 2009.
- (9) The provision that may be made under subsection (1) includes—
  - (a) provision for the making of decisions (other than relevant assessments) by HMRC as to any matter required to be decided for the purposes of the regulations and for appeals against such decisions;
  - (b) provision for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal;
  - (c) provision for the way in which any matters provided for by the regulations are to be proved.
- (10) In subsection (9) “relevant assessment” means an assessment of amounts payable by a person in respect of apprenticeship levy.
- (11) Regulations under subsection (1) must not affect any right of appeal to the tribunal which a person would have apart from the regulations.
- (12) In this section (except where the context requires otherwise) references to payments are to payments of, or on account of, apprenticeship levy.

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## 106 Recovery from third parties

- (1) Regulations under section 105(1) may make corresponding provision for the recovery of amounts in respect of apprenticeship levy from persons other than the person liable to pay the amounts by virtue of section 99(3).
- (2) In subsection (1) “corresponding provision” means provision which corresponds to provision made by regulations under the Contributions and Benefits Act for secondary Class 1 contributions in respect of any earnings to be recovered from a person other than the secondary contributor.

## 107 Real time information

- (1) Regulations under section 105(1) may make provision—
  - (a) for authorising or requiring relevant service providers to supply to HMRC information about payments of apprenticeship levy with respect to which their service is provided, or any information the Commissioners may request about features of the service provided or to be provided with respect to particular payments of apprenticeship levy;
  - (b) for requiring clients to provide relevant service providers with information about payments of apprenticeship levy;
  - (c) for prohibiting or restricting the disclosure, otherwise than to HMRC, of information by a person to whom it was supplied pursuant to a requirement imposed under paragraph (b);
  - (d) for conferring power on the Commissioners to specify by directions circumstances in which provision made by virtue of paragraph (a) or (b) is not to apply in relation to a payment;
  - (e) for requiring relevant service providers to take steps for facilitating the meeting by clients of obligations imposed under paragraph (b);
  - (f) for requiring compliance with any directions the Commissioners may give—
    - (i) specifying, or further specifying, steps for the purposes of paragraph (e), or
    - (ii) specifying information that a person making payments of apprenticeship levy must provide about the method by which the payments are made.
- (2) Directions made under the regulations may make different provision for different cases or different classes of case.
- (3) In this section—
 

“client”, in relation to a relevant service provider, means a person to whom that relevant service provider provides or is to provide a service with respect to a payment of apprenticeship levy;

“payment of apprenticeship levy” includes a payment on account of apprenticeship levy;

“relevant service provider” means a person who provides or is to provide with respect to payments of apprenticeship levy a service that is specified, or of a description specified, by the regulations.

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## **108 Time limits for assessment**

- (1) The general rule is that no assessment under regulations under section 105 may be made more than 4 years after the end of the tax year to which it relates.
- (2) An assessment on a person in a case of loss of apprenticeship levy brought about carelessly by the person may be made at any time not more than 6 years after the end of the tax year to which it relates.
- (3) An assessment on a person in a case falling within subsection (4) may be made at any time not more than 20 years after the end of the tax year to which it relates.
- (4) A case falls within this subsection if it involves a loss of apprenticeship levy—
  - (a) brought about deliberately by the person,
  - (b) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of FA 2004 (obligation of parties to tax avoidance schemes to provide information to HMRC), or
  - (c) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the person was under an obligation to notify the Commissioners under section 253 of FA 2014 (duty to notify Commissioners of promoter reference number) but failed to do so.
- (5) An assessment made by virtue of section 105(6) (amounts of levy repaid which ought not to have been repaid etc) is not out of time as a result of subsection (1) if it is made before the end of the tax year following that in which the amount assessed was repaid or paid (as the case may be).
- (6) Subsections (2), (3) and (5) do not limit one another's application.
- (7) An objection to the making of an assessment on the ground that the time limit for making it has expired may only be made on an appeal against the assessment.
- (8) In subsections (2) and (4) references to a loss brought about by a person include a loss brought about by another person acting on behalf of that person.

## **109 No deduction in respect of levy to be made from earnings**

- (1) A person (“P”) must not—
  - (a) make from any payment of earnings any deduction in respect of apprenticeship levy for which P (or any other person) is liable,
  - (b) otherwise recover the cost, or any part of the cost, of P's (or any other person's) liability to apprenticeship levy from any person who is or has been a relevant earner, or
  - (c) enter into any agreement with any person to do anything prohibited by paragraph (a) or (b).
- (2) In this section “relevant earner” means an earner in respect of whom P is or has been liable to pay any secondary Class 1 contributions under Part 1 of the Contributions and Benefits Act.



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## **110 Collectors and court proceedings**

- (1) The following provisions of Part 6 of TMA 1970 apply in relation to apprenticeship levy as they apply in relation to income tax—
  - (a) section 60 (issue of demand notes and receipts);
  - (b) section 61 (distrain by collectors: Northern Ireland);
  - (c) sections 65 to 68 (court proceedings).
- (2) See also Chapter 5 of Part 7 of FA 2008 (which makes general provision about payment and enforcement).

### *Information and penalties*

## **111 Records**

- (1) The Commissioners may by regulations require persons—
  - (a) to keep for purposes connected with apprenticeship levy records of specified matters, and
  - (b) to preserve the records for a specified period.
- (2) A duty under regulations under this section 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 this section “specified” means specified or described in the regulations.

## **112 Information and inspection powers**

In Schedule 36 to FA 2008 (information and inspection powers), in paragraph 63(1), after paragraph (ca) insert—  
“(cb) apprenticeship levy.”

## **113 Penalties**

- (1) Schedule 24 to FA 2007 (penalties for errors) is amended in accordance with subsections (2) to (4).
- (2) In the Table in paragraph 1, after the entry relating to accounts in connection with a partnership return insert—

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“Apprenticeship levy	Return under regulations under section 105 of FA 2016.”
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- (3) In paragraph 13—
  - (a) in sub-paragraph (1ZA), after “CIS returns,” insert “ or for two or more penalties relating to apprenticeship levy returns, ”;
  - (b) in sub-paragraph (1ZD), after the entry relating to “a CIS return” insert—  
““an apprenticeship levy return” means a return under regulations under section 105 of FA 2016;”.

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- (4) In paragraph 21C, after “capital gains tax)” insert “ and amounts payable on account of apprenticeship levy ”.
- (5) Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended in accordance with subsections (6) to (8).
- (6) In the Table in paragraph 1, after item 4 insert—

“4A	Apprenticeship levy	Return under regulations under section 105 of FA 2016”
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- (7) In paragraph 6B, after “item 4” insert “ or 4A ”.
- (8) In the italic heading before paragraph 6B, at the end insert “ and apprenticeship levy ”.
- (9) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended in accordance with subsections (10) to (15).
- (10) In the Table in paragraph 1, after item 4 insert—

“4A	Apprenticeship levy	Amount payable under regulations section 105 of FA 2016	under The date determined by under or under regulations under section 105 of FA 2016”
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- (11) In paragraph 3(1)—
  - (a) in paragraph (b) after “within” insert “ item 4A or ”;
  - (b) after paragraph (c) insert—
    - “(ca) an amount in respect of apprenticeship levy falling within item 4A which is payable by virtue of regulations under section 106 of FA 2016 (recovery from third parties).”
- (12) In paragraph 5(1), for “or 4” substitute “ , 4 or 4A ”.
- (13) In paragraph 5(2), for “or (c)” substitute “ , (c) or (ca). ”
- (14) In paragraph 6(2), after paragraph (b) insert—
  - “(ba) a payment under regulations under section 105 of FA 2016 of an amount in respect of apprenticeship levy payable in relation to the tax year;”.
- (15) In the italic heading before paragraph 5, at the end insert “ etc. ”.
- (16) The amendments made by subsections (1) to (4) of this section come into force in accordance with provision made by the Treasury by regulations.
- (17) In subsections (2) and (4) of section 106 of FA 2009 (penalties for failure to make returns: commencement etc) references to Schedule 55 to that Act have effect as references to that Schedule as amended by subsections (5) to (8) of this section.
- (18) Schedule 56 to FA 2009, as amended by this section, is taken to come into force for the purposes of apprenticeship levy on the date on which this Act is passed.

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#### Commencement Information

- I2** [S. 113\(1\)-\(4\)](#) in force at 6.4.2017 for the purposes of the amendments made by those subsections by [S.I. 2017/355](#), [reg. 2](#)

### *Appeals*

#### **114 Appeals**

- (1) An appeal may be brought against an assessment of apprenticeship levy or other amounts under regulations under section 105.
- (2) Notice of appeal must be given—
  - (a) in writing,
  - (b) within the period of 30 days beginning with the date on which notice of the assessment was given,
  - (c) to the officer of Revenue and Customs by whom notice of the assessment was given.
- (3) Part 5 of TMA 1970 (appeals and other proceedings) applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to income tax.

### *General*

#### **115 Tax agents: dishonest conduct**

In Schedule 38 to FA 2012 (tax agents: dishonest conduct), in paragraph 37(1), after paragraph (l) insert—  
“(la) apprenticeship levy,”.

#### **116 Provisional collection of apprenticeship levy**

In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions), in subsection (1), after “diverted profits tax,” insert “ the apprenticeship levy, ”.

#### **117 Crown application**

This Part binds the Crown.

#### **118 Charities which are “connected” with one another**

- (1) Two charities are connected with one another for the purposes of section 102(1) if—
  - (a) they are connected with one another in accordance with section 993 of ITA 2007 (meaning of “connected persons”), and
  - (b) their purposes and activities are the same or substantially similar.
- (2) In the application of section 993 of ITA 2007 for the purposes of subsection (1)(a)—

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- (a) a charity which is a trust is to be treated as if it were a company (and accordingly a person), including in this subsection;
  - (b) a charity which is a trust has “control” of another person if the trustees (in their capacity as trustees of the charity) have, or any of them has, control of the person;
  - (c) a person (other than a charity regulator) has “control” of a charity which is a trust if—
    - (i) the person is a trustee of the charity and some or all of the powers of the trustees of the charity could be exercised by the person acting alone or by the person acting together with any other persons who are trustees of the charity and who are connected with the person,
    - (ii) the person, alone or together with other persons, has power to appoint or remove a trustee of the charity, or
    - (iii) the person, alone or together with other persons, has any power of approval or direction in relation to the carrying out by the trustees of any of their functions.
- (3) For the purposes of section 102(1) a charity which is a trust is also connected with another charity which is a trust if at least half of the trustees of one of the charities are—
- (a) trustees of the other charity,
  - (b) persons who are connected with persons who are trustees of the other charity, or
  - (c) a combination of both,
- and the charities' purposes and activities are the same or substantially similar.
- (4) In determining if a person is connected with another person for the purposes of subsection (2)(c)(i) or (3)(b), apply section 993 of ITA 2007 with the omission of subsection (3) of that section (and without the modifications in subsection (2) above).
- (5) If a charity (“A”) controls a company (“B”) which, apart from this subsection, would not be a charity—
- (a) B is to be treated as if it were a charity for the purposes of this Part, and
  - (b) A and B are connected with one another for the purposes of section 102(1).
- (6) In subsection (5) “control” has the same meaning as in Part 10 of CTA 2010 (see sections 450 and 451 of that Act) (and a limited liability partnership is to be treated as a company for the purposes of that Part as applied by this subsection).
- (7) For this purpose, where under section 450 of that Act “C” is a limited liability partnership, subsection (3) of that section has effect as if before (a) there were inserted—
- “(za) rights to a share of more than half the assets, or of more than half the income, of C,”.

## 119 Connection between charities: further provision

- (1) This section applies if—
- (a) a charity (“A”) is connected with another charity (“B”) for the purposes of section 102(1), and
  - (b) B is connected with another charity (“C”) for the purposes of section 102(1).

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(2) A and C are also connected with one another for the purposes of section 102(1) (if that would not otherwise be the case).

(3) In subsection (1)—

- (a) in paragraph (a) the reference to a charity being connected with another charity for the purposes of section 102(1) is to that charity being so connected by virtue of section 118 or this section, and
- (b) in paragraph (b) the reference to a charity being connected with another charity for the purposes of section 102(1) is to that charity being so connected by virtue of section 118.

## 120 General interpretation

(1) In this Part (except where the contrary is indicated, expressly or by implication), expressions which are also used in Part 1 of the Contributions and Benefits Act have the same meaning as in that Part.

(2) In this Part—

- “charity” has the meaning given by section 102(17) and (18);
- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
- “company” has the meaning given by section 101(18);
- “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 or (as the case requires) the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “HMRC” means Her Majesty's Revenue and Customs;
- “tax year” means the 12 months beginning with 6 April in 2017 or any subsequent year;
- “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

## 121 Regulations

(1) Regulations under this Part—

- (a) may make different provision for different purposes;
- (b) may include incidental, consequential, supplementary or transitional provision.

(2) Regulations under this Part are to be made by statutory instrument.

(3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

(4) Subsection (3) does not apply to a statutory instrument containing only regulations under section 113(16).

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## PART 7

### VAT

#### 122 VAT: power to provide for persons to be eligible for refunds

In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33D insert—

##### “33E Power to extend refunds of VAT to other persons

- (1) This section applies where—
    - (a) VAT is chargeable on—
      - (i) the supply of goods or services to a specified person,
      - (ii) the acquisition of any goods from another member State by a specified person, or
      - (iii) the importation of any goods from a place outside the member States by a specified person, and
    - (b) the supply, acquisition or importation is not for the purpose of—
      - (i) any business carried on by the person, or
      - (ii) a supply by the person which, by virtue of section 41A, is treated as a supply in the course or furtherance of a business.
  - (2) If and to the extent that the Treasury so direct, the Commissioners shall, on a claim made by the specified person at such time and in such form and manner as the Commissioners may determine, refund to the person the amount of the VAT so chargeable.
- This is subject to subsection (3) below.
- (3) A specified person may not make a claim under subsection (2) above unless it has been agreed with the Treasury that, in the circumstances specified in the agreement, the amount of the person's funding is to be reduced by all or part of the amount of the VAT so chargeable.
  - (4) A claim under subsection (2) above in respect of a supply, acquisition or importation must be made on or before the relevant day.
  - (5) The “relevant day” is—
    - (a) in the case of a person who is registered, the last day on which the person may make a return under this Act for the prescribed accounting period containing the last day of the financial year in which the supply is made or the acquisition or importation takes place;
    - (b) in the case of a person who is not registered, the last day of the period of 3 months beginning immediately after the end of the financial year in which the supply is made or the acquisition or importation takes place.
  - (6) Subsection (7) applies where goods or services supplied to, or acquired or imported by, a specified person otherwise than for the purpose of—
    - (a) any business carried on by the person, or
    - (b) a supply falling within subsection (1)(b)(ii) above,

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cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, the person for such a purpose.

- (7) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the specified person such proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business or (as the case may be) the making of the supply.
- (8) In this section, “specified person” means a person specified in an order made by the Treasury.
- (9) An order under subsection (8) may make transitional provision or savings.
- (10) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.”

### 123 VAT: representatives and security

- (1) Section 48 of VATA 1994 (VAT representatives) is amended in accordance with subsections (2) to (11).
- (2) In the heading, at the end insert “ and security ”.
- (3) In subsection (1)—
  - (a) for “Where” substitute “ Subsection (1ZA) applies where ”,
  - (b) in paragraph (c) after “residence” insert “ or permanent address ”, and
  - (c) omit the words after paragraph (c).
- (4) After subsection (1) insert—
 

“(1ZA) The Commissioners may direct the person to secure that there is a UK-established person who is—

  - (a) appointed to act on the person's behalf in relation to VAT, and
  - (b) registered against the name of the person in accordance with any regulations under subsection (4).”
- (5) In subsection (1B) for paragraphs (a) and (b) substitute—
 

“(a) section 87 of the Finance Act 2011 (mutual assistance for recovery of taxes etc) and Schedule 25 to that Act;

(b) section 173 of the Finance Act 2006 (international tax enforcement arrangements);”.
- (6) In subsection (2)—
  - (a) in paragraph (a), for the words from “required” to “VAT” substitute “ given a direction under subsection (1ZA) ”,
  - (b) in paragraph (b) for “that subsection” substitute “ subsection (1) ”, and
  - (c) in the words after paragraph (b), for “another” substitute “ a UK-established ”.
- (7) In subsection (2A) for “(1)” substitute “ (1ZA) ”.
- (8) In subsection (4)—
  - (a) omit the “and” at the end of paragraph (a), and
  - (b) after paragraph (b) insert—

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“(c) give the Commissioners power to refuse to register a person as a VAT representative, or to cancel a person's registration as a VAT representative, in such circumstances as may be specified in the regulations.”

(9) In subsection (7) for the words from the beginning to the first “him” substitute “ The Commissioners may require a person in relation to whom the conditions specified in paragraphs (a), (b) and (c) of subsection (1) are satisfied ”.

(10) After subsection (7A) insert—

“(7B) A direction under subsection (1ZA)—

- (a) may specify a time by which it (or any part of it) must be complied with;
- (b) may be varied;
- (c) continues to have effect (subject to any variation) until it is withdrawn or the conditions specified in subsection (1) are no longer satisfied.

(7C) A requirement under subsection (7)—

- (a) may specify a time by which it (or any part of it) must be complied with;
- (b) may be varied;
- (c) continues to have effect (subject to any variation) until it is withdrawn.”

(11) After subsection (8) insert—

“(8A) For the purposes of subsections (1ZA) and (2)—

- (a) a person is UK-established if the person is established, or has a fixed establishment, in the United Kingdom, and
- (b) an individual is also UK-established if the person's usual place of residence or permanent address is in the United Kingdom.”

<sup>F8</sup>(12) . . . . .

#### Textual Amendments

**F8** S. 123(12) repealed (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 8 para. 132\(n\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), regs. 1(2), 21), [S.I. 2020/1545](#), Pt. 4 and [2020 c. 26](#), Sch. 2 para. 7(7)-(9)); [S.I. 2020/1642](#), reg. 4(b) (with reg. 7)

## 124 VAT: joint and several liability of operators of online marketplaces

(1) VATA 1994 is amended in accordance with subsections (2) to (4).

(2) After section 77A insert—

### “77B Joint and several liability: operators of online marketplaces

(1) This section applies where a person (“P”) who is not UK-established—

- (a) makes taxable supplies of goods through an online marketplace, and



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- (b) fails to comply with any requirement imposed on P by or under this Act (whether or not it relates to those supplies).
- (2) The Commissioners may give the person who is the operator of the online marketplace (“the operator”) a notice—
  - (a) stating that, unless the operator secures the result mentioned in subsection (3), subsection (5) will apply, and
  - (b) explaining the effect of subsection (5).
- (3) The result referred to in subsection (2)(a) is that P does not offer goods for sale through the online marketplace at any time between—
  - (a) the end of such period as may be specified in the notice, and
  - (b) the notice ceasing to have effect.
- (4) If the operator does not secure the result mentioned in subsection (3), subsection (5) applies.
- (5) The operator is jointly and severally liable to the Commissioners for the amount of VAT payable by P in respect of all taxable supplies of goods made by P through the online marketplace in the period for which the notice has effect.
- (6) A notice under subsection (2) (“the liability notice”) has effect for the period beginning with the day after the day on which it is given, and ending—
  - (a) with the day specified in a notice given by the Commissioners under subsection (7), or
  - (b) in accordance with subsection (8).
- (7) The Commissioners may at any time give the operator a notice stating that the period for which the liability notice has effect ends with the day specified in the notice.
- (8) If the person to whom the liability notice is given ceases to be the operator of the online marketplace, the liability notice ceases to have effect at the end of—
  - (a) the day on which the person ceases to be the operator, or
  - (b) (if later) the day on which the person notifies the Commissioners that the person is no longer the operator.
- (9) In this section—
  - “online marketplace” means a website, or any other means by which information is made available over the internet, through which persons other than the operator are able to offer goods for sale (whether or not the operator also does so);
  - “operator”, in relation to an online marketplace, means the person who controls access to, and the contents of, the online marketplace.
- (10) For the purposes of this section a person is “UK-established” if the person is established in the United Kingdom within the meaning of Article 10 of Implementing [Regulation \(EU\) No 282/2011](#).
- (11) The Treasury may by regulations provide that supplies made or goods offered for sale in circumstances specified in the regulations are, or are not, to be treated for the purposes of this section as having been made or offered through an online marketplace.

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- (12) The Treasury may by regulations amend this section so as to alter the meaning of—
- “online marketplace”,
  - “operator”, and
  - “UK-established”.

#### **77C Joint and several liability under section 77B: assessments**

- (1) The Commissioners may assess the amount of VAT due from the operator of an online marketplace by virtue of section 77B to the best of their judgment and notify it to the operator.
- (2) Subject to subsections (3) to (6), an assessment may be made for such period or periods as the Commissioners consider appropriate.
- (3) An assessment for any month may not be made after the end of—
  - (a) 2 years after the end of that month, or
  - (b) (if later) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of an assessment for that month, comes to their knowledge.
- (4) Subsection (5) applies if, after the Commissioners have made an assessment for a period, evidence of facts sufficient in the opinion of the Commissioners to justify the making of a further assessment for that period comes to their knowledge.
- (5) The Commissioners may, no later than one year after that evidence comes to their knowledge, make a further assessment for that period (subject to subsection (6)).
- (6) An assessment or further assessment for a month may not be made more than 4 years after the end of the month.
- (7) An amount which has been assessed and notified to a person under this section is deemed to be an amount of VAT due from the person and may be recovered accordingly (unless, or except to the extent that, the assessment is subsequently withdrawn or reduced).
- (8) Subsection (7) is subject to the provisions of this Act as to appeals.
- (9) Expressions used in this section and in section 77B have the same meaning in this section as in section 77B.

#### **77D Joint and several liability under section 77B: interest**

- (1) If an amount assessed under section 77C is not paid before the end of the period of 30 days beginning with the day on which notice of the assessment is given, the amount assessed carries interest from the day on which the notice of assessment is given until payment.
- (2) Interest under this section is payable at the rate applicable under section 197 of the Finance Act 1996.

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- (3) Where the operator of an online marketplace is liable for interest under this section the Commissioners may assess the amount due and notify it to the operator.
  - (4) A notice of assessment under this section must specify a date (not later than the date of the notice) to which the interest is calculated.
  - (5) A further assessment or assessments may be made under this section in respect of any interest accrued after that date.
  - (6) An amount of interest assessed and notified to the operator of an online marketplace under this section is recoverable as if it were VAT due from the operator (unless, or except to the extent that, the assessment is withdrawn or reduced).
  - (7) Interest under this section is to be paid without any deduction of income tax.
  - (8) Expressions used in this section and in section 77B have the same meaning in this section as in section 77B.”
- (3) In section 83(1) (appeals) after paragraph (ra) insert—
    - “(rb) an assessment under section 77C or the amount of such an assessment;”.
  - (4) In section 84 (further provision relating to appeals)—
    - (a) in subsection (3) after “(ra)” insert “ , (rb) ”, and
    - (b) in subsection (5) after “83(1)(p)” insert “ or (rb) ”.

## 125 VAT: Isle of Man charities

In Schedule 6 to FA 2010 (charities etc), in paragraph 2(2) (jurisdiction condition: meaning of “a relevant UK court”), after paragraph (c) (and on a new line) insert “ (and, for enactments relating to value added tax, includes the High Court of the Isle of Man). ”

## 126 VAT: women's sanitary products

- (1) VATA 1994 is amended as follows.
- (2) In Schedule 7A (reduced rate)—
  - (a) in Part 1 (index), omit the entry relating to women's sanitary products;
  - (b) in Part 2 (the Groups), omit Group 4 (women's sanitary products).
- (3) In Schedule 8 (zero-rating), in Part 1 (index), at the end insert—

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“Women's sanitary products	Group 19”.
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- (4) In Schedule 8, in Part 2 (the Groups), after Group 18 insert—

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## “GROUP 19 - WOMEN'S SANITARY PRODUCTS

### *Item No.*

- 1 The supply of women's sanitary products.

### NOTES

- (1) In this Group “women's sanitary products” means women's sanitary products of any of the following descriptions—
- (a) subject to Note (2), products that are designed, and marketed, as being solely for use for absorbing, or otherwise collecting, lochia or menstrual flow;
  - (b) panty liners, other than panty liners that are designed as being primarily for use as incontinence products;
  - (c) sanitary belts.
- (2) Note (1)(a) does not include protective briefs or any other form of clothing.”
- (5) The amendments made by this section have effect in relation to supplies made, and acquisitions and importations taking place, on or after such day as the Treasury may by regulations made by statutory instrument appoint.
- (6) The date appointed under subsection (5) must not be after the later of—
- (a) 1 April 2017, and
  - (b) the earliest date that may be appointed consistently with the United Kingdom's EU obligations.

### **Commencement Information**

- I3** S. 126 has effect as specified (31.12.2020) by [The Finance Act 2016, Section 126 \(Appointed Day\)](#), [the Taxation \(Cross-border Trade\) Act 2018 \(Appointed Day No. 8, Transition and Saving Provisions\)](#) and [the Taxation \(Post-transition Period\) Act 2020 \(Appointed Day No. 1\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1642\)](#), **reg. 3**

## PART 8

### SDLT AND ATED

#### *Stamp duty land tax*

### **127 SDLT: calculating tax on non-residential and mixed transactions**

- (1) Section 55 of FA 2003 (general rules on calculating the amount of stamp duty land tax chargeable) is amended in accordance with subsections (2) to (7).
- (2) In subsection (1) for “, (1C) and (2)” substitute “ and (1C) ”.
- (3) In subsection (1B)—

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- (a) omit the words from “the relevant land” to “and”,
- (b) in Step 1—
  - (i) for “Table A” substitute “ the appropriate table ”,
  - (ii) for “that Table” substitute “ the appropriate table ”,
  - (iii) at the end insert—

““The “appropriate table” is—

- (a) Table A, if the relevant land consists entirely of residential property, and
- (b) Table B, if the relevant land consists of or includes land that is not residential property.”, and
- (c) after Table A insert—

“TABLE B: NON-RESIDENTIAL OR MIXED

<i>Relevant consideration</i>	<i>Percentage</i>
So much as does not exceed £150,000	0%
So much as exceeds £150,000 but does not exceed £250,000	2%
The remainder (if any)	5%”.

- (4) In subsection (1C)—
  - (a) omit the words from “the relevant land” to “and” (in the first place it occurs),
  - (b) in Step 1—
    - (i) for “Table A” substitute “ the appropriate table ”,
    - (ii) for “that Table” substitute “ the appropriate table ”,
    - (iii) at the end insert—

““The “appropriate table” is—

- (a) Table A, if the relevant land consists entirely of residential property, and
- (b) Table B, if the relevant land consists of or includes land that is not residential property.”

- (5) Omit subsection (2).

- (6) In subsection (3)—

- (a) in the words before paragraph (a), for “subsections (1B) and (2)” substitute “ subsection (1B) ”, and
- (b) in paragraph (b) omit “, subject as follows”.

- (7) In subsection (4)—

- (a) in the words before paragraph (a), for the words from “subsections (1C)” to “linked transactions” substitute “ subsection (1C) ”, and
- (b) in paragraph (a) for “those” substitute “ the linked ”.

- (8) Schedule 5 to FA 2003 (rules on calculating the amount of stamp duty land tax chargeable in respect of transactions for which the consideration consists of or includes rent) is amended in accordance with subsections (9) to (11).

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- (9) In paragraph 2(3) (calculation of tax chargeable in respect of rent) in Table B (bands and percentages for non-residential or mixed property) for the final entry substitute—

“Over £150,000 but not over £5 million	1%
Over £5 million	2%”

- (10) In paragraph 9 (tax chargeable in respect of consideration other than rent: general), in sub-paragraph (1), omit “(but see paragraph 9A)”.
- (11) Omit paragraph 9A (calculation of tax chargeable in respect of consideration other than rent: 0% band) and the cross-heading preceding it.
- (12) The amendments made by this section have effect in relation to any land transaction of which the effective date is, or is after, 17 March 2016.
- (13) But those amendments do not have effect in relation to a transaction if the purchaser so elects and either—
- (a) the transaction is effected in pursuance of a contract entered into and substantially performed before 17 March 2016, or
  - (b) the transaction is effected in pursuance of a contract entered into before that date and is not excluded by subsection (15).
- (14) An election under subsection (13)—
- (a) must be included in the land transaction return made in respect of the transaction or in an amendment of that return, and
  - (b) must comply with any requirements specified by the Commissioners for Her Majesty's Revenue and Customs as to its form or the manner of its inclusion.
- (15) A transaction effected in pursuance of a contract entered into before 17 March 2016 is excluded by this subsection if—
- (a) there is any variation of the contract, or assignment of rights under the contract, on or after 17 March 2016,
  - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
  - (c) on or after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- (16) In this section—
- “land transaction return”, in relation to a transaction, means the return under section 76 of FA 2003 in respect of that transaction;
  - “purchaser” has the same meaning as in Part 4 of that Act (see section 43(4) of that Act);
  - “substantially performed”, in relation to a contract, has the same meaning as in that Part (see section 44(5) of that Act).

## 128 **SDLT: higher rates for additional dwellings etc**

- (1) FA 2003 is amended in accordance with subsections (2) to (4).
- (2) In section 55 (amount of tax chargeable: general) after subsection (4) insert—

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“(4A) Schedule 4ZA (higher rates for additional dwellings and dwellings purchased by companies) modifies this section as it applies for the purpose of determining the amount of tax chargeable in respect of certain transactions involving major interests in dwellings.”

(3) After Schedule 4 insert—

**“SCHEDULE  
4ZA**

**STAMP DUTY LAND TAX: HIGHER RATES FOR ADDITIONAL  
DWELLINGS AND DWELLINGS PURCHASED BY COMPANIES**

**PART 1**

**HIGHER RATES**

- 1 (1) In its application for the purpose of determining the amount of tax chargeable in respect of a chargeable transaction which is a higher rates transaction, section 55 (amount of tax chargeable: general) has effect with the modification in sub-paragraph (2).

(2) In subsection (1B) of section 55, for Table A substitute—

**“TABLE A: RESIDENTIAL**

<i><b>Relevant consideration</b></i>	<i><b>Percentage</b></i>
So much as does not exceed £125,000	3%
So much as exceeds £125,000 but does not exceed £250,000	5%
So much as exceeds £250,000 but does not exceed £925,000	8%
So much as exceeds £925,000 but does not exceed £1,500,000	13%
The remainder (if any)	15%”

**PART 2**

**MEANING OF “HIGHER RATES TRANSACTION”**

*Meaning of “higher rates transaction” etc*

- 2 (1) This paragraph explains how to determine whether a chargeable transaction is a “higher rates transaction” for the purposes of paragraph 1.
- (2) In the case of a transaction where there is only one purchaser, determine whether the transaction falls within any of paragraphs 3 to 7; if it does fall within any of those paragraphs it is a “higher rates transaction” (otherwise it is not).

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- (3) In the case of a transaction where there are two or more purchasers—
- (a) take one of the purchasers and determine, having regard to that purchaser only, whether the transaction falls within any of paragraphs 3 to 7, and
  - (b) do the same with each of the other purchasers.

If the transaction falls within any of those paragraphs when having regard to any one of the purchasers it is a “higher rates transaction” (otherwise it is not).

- (4) For the purposes of this Schedule any term of years absolute or leasehold estate is not a “major interest” if its term does not exceed 7 years on the date of its grant.

#### *Single dwelling transactions*

- 3 (1) A chargeable transaction falls within this paragraph if—
- (a) the purchaser is an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in a single dwelling (“the purchased dwelling”), and
  - (c) Conditions A to D are met.
- (2) Condition A is that the chargeable consideration for the transaction is £40,000 or more.
- (3) Condition B is that on the effective date of the transaction the purchased dwelling—
- (a) is not subject to a lease upon which the main subject-matter of the transaction is reversionary, or
  - (b) is subject to such a lease but the lease has an unexpired term of no more than 21 years.
- (4) Condition C is that at the end of the day that is the effective date of the transaction—
- (a) the purchaser has a major interest in a dwelling other than the purchased dwelling,
  - (b) that interest has a market value of £40,000 or more, and
  - (c) that interest is not reversionary on a lease which has an unexpired term of more than 21 years.
- (5) Condition D is that the purchased dwelling is not a replacement for the purchaser's only or main residence.
- (6) For the purposes of sub-paragraph (5) the purchased dwelling is a replacement for the purchaser's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the purchaser intends the purchased dwelling to be the purchaser's only or main residence,
  - (b) in another land transaction (“the previous transaction”) whose effective date was during the period of three years ending with the effective date of the transaction concerned, the purchaser or the purchaser's spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),



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- (c) at any time during that period of three years the sold dwelling was the purchaser's only or main residence, and
  - (d) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the purchaser or the purchaser's spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the purchaser's only or main residence.
- (7) For the purposes of sub-paragraph (5) the purchased dwelling may become a replacement for the purchaser's only or main residence if—
  - (a) on the effective date of the transaction (“the transaction concerned”) the purchaser intended the purchased dwelling to be the purchaser's only or main residence,
  - (b) in another land transaction whose effective date is during the period of three years beginning with the day after the effective date of the transaction concerned, the purchaser or the purchaser's spouse or civil partner disposes of a major interest in another dwelling (“the sold dwelling”), and
  - (c) at any time during the period of three years ending with the effective date of the transaction concerned the sold dwelling was the purchaser's only or main residence.
- 4 A chargeable transaction falls within this paragraph if—
  - (a) the purchaser is not an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in a single dwelling, and
  - (c) Conditions A and B in paragraph 3 are met.

#### *Multiple dwelling transactions*

- 5 (1) A chargeable transaction falls within this paragraph if—
  - (a) the purchaser is an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”), and
  - (c) at least two of the purchased dwellings meet conditions A, B and C.
- (2) A purchased dwelling meets condition A if the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.
- (3) A purchased dwelling meets condition B if on the effective date of the transaction the purchased dwelling—
  - (a) is not subject to a lease upon which the main subject-matter of the transaction is reversionary, or
  - (b) is subject to such a lease but the lease has an unexpired term of no more than 21 years.
- (4) A purchased dwelling meets condition C if it is not subsidiary to any of the other purchased dwellings.
- (5) One of the purchased dwellings (“dwelling A”) is subsidiary to another of the purchased dwellings (“dwelling B”) if—

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- (a) dwelling A is situated within the grounds of, or within the same building as, dwelling B, and
  - (b) the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to dwelling B is equal to, or greater than, two thirds of the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the following combined—
    - (i) dwelling A,
    - (ii) dwelling B, and
    - (iii) each of the other purchased dwellings (if any) which are situated within the grounds of, or within the same building as, dwelling B.
- 6 (1) A chargeable transaction falls within this paragraph if—
  - (a) the purchaser is an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”),
  - (c) only one of the purchased dwellings meets conditions A, B and C,
  - (d) the purchased dwelling which meets those conditions is not a replacement for the purchaser's only or main residence, and
  - (e) at the end of the day that is the effective date of the transaction—
    - (i) the purchaser has a major interest in a dwelling other than one of the purchased dwellings,
    - (ii) that interest has a market value of £40,000 or more, and
    - (iii) that interest is not reversionary on a lease which has an unexpired term of more than 21 years.
- (2) Sub-paragraphs (2) to (5) of paragraph 5 apply for the purposes of sub-paragraph (1)(c) of this paragraph as they apply for the purposes of sub-paragraph (1)(c) of that paragraph.
- (3) Sub-paragraphs (6) and (7) of paragraph 3 apply for the purposes of sub-paragraph (1)(d) of this paragraph as they apply for the purposes of sub-paragraph (5) of that paragraph.
- 7 (1) A chargeable transaction falls within this paragraph if—
  - (a) the purchaser is not an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”), and
  - (c) at least one of the purchased dwellings meets conditions A and B.
- (2) Sub-paragraphs (2) and (3) of paragraph 5 apply for the purposes of sub-paragraph (1)(c) of this paragraph as they apply for the purposes of sub-paragraph (1)(c) of that paragraph.

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## PART 3

### SUPPLEMENTARY PROVISIONS

#### *Further provision in connection with paragraph 3(6) and (7)*

- 8 (1) This paragraph applies where by reason of paragraph 3(7) a chargeable transaction (“the transaction concerned”) ceases to be a higher rates transaction for the purposes of paragraph 1.
- (2) The land transaction (“the subsequent transaction”) by reference to which the condition in paragraph 3(7)(b) was met may not be taken into account for the purposes of paragraph 3(6)(b) in determining whether any other chargeable transaction is a higher rates transaction.
- (3) A land transaction return in respect of the transaction concerned may be amended, to take account of its ceasing to be a higher rates transaction, at any time within whichever of the following periods expires later—
- (a) the period of 3 months beginning within the effective date of the subsequent transaction, and
  - (b) the period of 12 months beginning with the filing date for the return.
- (4) Where a land transaction return in respect of the transaction concerned is amended to take account of its ceasing to be a higher rates transaction (and not for any other reason), paragraph 6(2A) of Schedule 10 (notice of amendment of return to be accompanied by the contract for the transaction etc) does not apply in relation to the amendment.

#### *Spouses and civil partners purchasing alone*

- 9 (1) Sub-paragraph (2) applies in relation to a chargeable transaction if—
- (a) the purchaser (or one of them) is married or in a civil partnership on the effective date,
  - (b) the purchaser and the purchaser's spouse or civil partner are living together on that date, and
  - (c) the purchaser's spouse or civil partner is not a purchaser in relation to the transaction.
- (2) The transaction is to be treated as being a higher rates transaction for the purposes of paragraph 1 if it would have been a higher rates transaction had the purchaser's spouse or civil partner been a purchaser.
- (3) Persons who are married to, or are civil partners of, each other are treated as living together for the purposes of this paragraph if they are so treated for the purposes of the Income Tax Acts (see section 1011 of the Income Tax Act 2007).

#### *Settlements and bare trusts*

- 10 (1) Sub-paragraph (3) applies in relation to a land transaction if—

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- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
    - (b) the purchaser (or one of them) is acting as trustee of a settlement, and
    - (c) under the terms of the settlement a beneficiary will be entitled to—
      - (i) occupy the dwelling or dwellings for life, or
      - (ii) income earned in respect of the dwelling or dwellings.
  - (2) Sub-paragraph (3) also applies in relation to a land transaction if—
    - (a) the main subject-matter of the transaction consists of a term of years absolute in a dwelling, and
    - (b) the purchaser (or one of them) is acting as a trustee of a bare trust.
  - (3) Where this sub-paragraph applies in relation to a land transaction the beneficiary of the settlement or bare trust (rather than the trustee) is to be treated for the purposes of this Schedule as the purchaser (or as one of them).
  - (4) Paragraphs 3(3) and 4 of Schedule 16 (trustees to be treated as the purchaser) have effect subject to sub-paragraph (3).
- 11 (1) Sub-paragraph (3) applies where—
- (a) a person is a beneficiary under a settlement,
  - (b) a major interest in a dwelling forms part of the trust property, and
  - (c) under the terms of the settlement, the beneficiary is entitled to—
    - (i) occupy the dwelling for life, or
    - (ii) income earned in respect of the dwelling.
- (2) Sub-paragraph (3) also applies where—
- (a) a person is a beneficiary under a bare trust, and
  - (b) a term of years absolute in a dwelling forms part of the trust property.
- (3) Where this sub-paragraph applies—
- (a) the beneficiary is to be treated for the purposes of this Schedule as holding the interest in the dwelling, and
  - (b) if the trustee of the settlement or bare trust disposes of the interest, the beneficiary is to be treated for the purposes of this Schedule as having disposed of it.
- 12 (1) This paragraph applies where, by reason of paragraph 10 or 11 or paragraph 3(1) of Schedule 16, the child of a person (“P”) would (but for this paragraph) be treated for the purposes of this Schedule as—
- (a) being the purchaser in relation to a land transaction,
  - (b) holding an interest in a dwelling, or
  - (c) having disposed of an interest in a dwelling.
- (2) Where this paragraph applies—
- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as being the purchaser, holding the interest or (as the case may be) having disposed of the interest, and
  - (b) the child is not to be so treated.
- (3) But sub-paragraph (2)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together.

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- (4) Sub-paragraph (3) of paragraph 9 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.
  - (5) “Child” means a person under the age of 18.
- 13 (1) This paragraph applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
  - (b) the purchaser (or one of them) is acting as trustee of a settlement,
  - (c) that purchaser is an individual, and
  - (d) under the terms of the settlement a beneficiary is not entitled to—
    - (i) occupy the dwelling or dwellings for life, or
    - (ii) income earned in respect of the dwelling or dwellings.
- (2) In determining whether the transaction falls within paragraph 4 or paragraph 7—
- (a) if the purchaser mentioned in sub-paragraph (1) is the only purchaser, ignore paragraph (a) of those paragraphs, and
  - (b) if that purchaser is not the only purchaser, ignore paragraph (a) of those paragraphs when having regard to that purchaser.

#### *Partnerships*

- 14 (1) Sub-paragraph (2) applies in relation to a chargeable transaction whose subject-matter consists of a major interest in one or more dwellings if—
- (a) the purchaser (or one of them) is a partner in a partnership, but
  - (b) the purchaser does not enter into the transaction for the purposes of the partnership.
- (2) For the purposes of determining whether the transaction falls within paragraph 3 or 6 any major interest in any other dwelling that is held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of the purchaser.
- (3) Paragraph 2(1)(a) of Schedule 15 (chargeable interests held by partnerships treated as held by the partners) has effect subject to sub-paragraph (2).

#### *Alternative finance arrangements*

- 15 (1) This paragraph applies in relation to a chargeable transaction which is the first transaction under an alternative finance arrangement entered into between a person and a financial institution.
- (2) The person (rather than the institution) is to be treated for the purposes of this Schedule as the purchaser in relation to the transaction.
- (3) In this paragraph—
- “alternative finance arrangement” means an arrangement of a kind mentioned in section 71A(1) or 73(1);
  - “financial institution” has the meaning it has in those sections (see section 73BA);

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“first transaction”, in relation to an alternative finance arrangement, has the meaning given by section 71A(1)(a) or (as the case may be) section 73(1)(a)(i).

*Major interests in dwellings inherited jointly*

- 16 (1) This paragraph applies where by virtue of an inheritance—
- (a) a person (“P”) becomes jointly entitled with one or more other persons to a major interest in a dwelling, and
  - (b) P's beneficial share in the interest does not exceed 50% (see sub-paragraph (4)).
- (2) P is not to be treated for the purposes of paragraph 3(4)(a) or 6(1)(e) as having the major interest at any time during the period of three years beginning with the date of the inheritance.
- (3) But if at any time during that period of three years P becomes the only person beneficially entitled to the whole of the interest or P's beneficial share in the interest exceeds 50% P is, from that time, to be treated as having the major interest for the purposes of paragraph 3(4)(a) and 6(1)(e) (subject to any disposal by P).
- (4) P's share in the interest exceeds 50% if—
- (a) P is beneficially entitled as a tenant in common or coparcener to more than half the interest,
  - (b) P and P's spouse or civil partner taken together are beneficially entitled as tenants in common or coparceners to more than half the interest, or
  - (c) P and P's spouse or civil partner are beneficially entitled as joint tenants to the interest and there is no more than one other joint tenant who is so entitled.
- (5) In this section “inheritance” means the acquisition of an interest in or towards satisfaction of an entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person.

*Dwellings outside England, Wales and Northern Ireland*

- 17 (1) In the provisions of this Schedule specified in sub-paragraph (3), references to a “dwelling” include references to a dwelling situated in a country or territory outside England, Wales and Northern Ireland.
- (2) In the application of those provisions in relation to a dwelling situated in a country or territory outside England, Wales and Northern Ireland—
- (a) references to a “major interest” in the dwelling are to an equivalent interest in the dwelling under the law of that country or territory,
  - (b) references to persons being beneficially entitled as joint tenants, tenants in common or coparceners to an interest in the dwelling are to persons having an equivalent entitlement to the interest in the dwelling under the law of that country or territory,
  - (c) references to a “land transaction” in relation to the dwelling are to the acquisition of an interest in the dwelling under the law of that country or territory,

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- (d) references to the “effective date” of a land transaction in relation to the dwelling are to the date on which the interest in the dwelling is acquired under the law of that country or territory,
  - (e) references to “inheritance” are to the acquisition of an interest from a deceased person's estate in accordance with the laws of that country or territory concerning the inheritance of property.
- (3) The provisions of this Schedule referred to in sub-paragraphs (1) and (2) are—
- (a) paragraph 3(4), (6)(b), (c) and (d) and (7)(b) and (c),
  - (b) paragraph 6(1)(e),
  - (c) paragraph 11,
  - (d) paragraph 14(2), and
  - (e) paragraph 16.
- (4) Where the child of a person (“P”) has an interest in a dwelling which is situated in a country or territory outside England, Wales and Northern Ireland, P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as having that interest.
- (5) But sub-paragraph (4) does not apply in relation to a spouse or civil partner of P if the two of them are not living together.
- (6) Sub-paragraph (3) of paragraph 9 applies for the purposes of sub-paragraph (5) of this paragraph as it applies for the purposes of that paragraph.

#### *What counts as a dwelling*

- 18 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a single dwelling, or
  - (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- (5) The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
  - (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5)—
- “contract” includes any agreement;

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“relevant deeming provision” means any of sections 44 to 45A or paragraph 5(1) or (2) of Schedule 2A or paragraph 12A of Schedule 17A;

“substantially performed” has the same meaning as in section 44.

- (7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.

#### *Power to modify this Schedule*

- 19 (1) The Treasury may by regulations amend or otherwise modify this Schedule for the purpose of preventing certain chargeable transactions from being higher rates transactions for the purposes of paragraph 1.
- (2) The provision which may be included in regulations under this paragraph by reason of section 114(6)(c) includes incidental or consequential provision which may cause a chargeable transaction to be a higher rates transaction for the purposes of paragraph 1.”
- (4) In paragraph 5 of Schedule 6B (relief for transfers involving multiple dwellings) after sub-paragraph (6) insert—
  - “(6A) In the application of sub-paragraph (1), account is to be taken of paragraph 1 of Schedule 4ZA if the relevant transaction is a higher rates transaction for the purposes of that paragraph.”
- (5) The amendments made by this section have effect in relation to any land transaction of which the effective date is, or is after, 1 April 2016.
- (6) But those amendments do not have effect in relation to a transaction—
  - (a) effected in pursuance of a contract entered into and substantially performed before 26 November 2015, or
  - (b) effected in pursuance of a contract entered into before that date and not excluded by subsection (7).
- (7) A transaction effected in pursuance of a contract entered into before 26 November 2015 is excluded by this subsection if—
  - (a) there is any variation of the contract, or assignment of rights under the contract, on or after 26 November 2015,
  - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
  - (c) on or after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- (8) Subsection (9) applies in relation to a land transaction of which the effective date is or is before 26 November 2018.



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- (9) In its application for the purpose of determining whether a land transaction to which this subsection applies is a higher rates transaction, paragraph 3(6) of Schedule 4ZA to FA 2003 has effect with the following modifications—
- (a) in paragraph (b) for “during the period of three years ending with” substitute “the same as or before”,
  - (b) in paragraph (c) for [F9 the words from “during” to “paragraph (b)”] substitute “before the effective date of the transaction concerned”.
- (10) Paragraph 15 of Schedule 4ZA to FA 2003 does not apply in relation to a land transaction of which the effective date is, or is before, the date on which this Act is passed if the effect of its application would be that the transaction is a higher rates transaction for the purposes of paragraph 1 of that Schedule.

#### Textual Amendments

- F9** Words in s. 128(9)(b) substituted (with effect in accordance with Sch. 11 para. 16(1)-(3) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 11 para. 15](#)

### 129 SDLT higher rate: land purchased for commercial use

- (1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended in accordance with subsections (2) to (4).
- (2) In paragraph 5—
- (a) in sub-paragraph (1)—
    - (i) after paragraph (a) insert—

“(aa) use as business premises for the purposes of a qualifying property rental business (other than one which gives rise to income consisting wholly or mainly of excluded rents);
    - (ab) use for the purposes of a relievable trade;”;
  - (ii) for paragraph (b) substitute—

“(b) development or redevelopment and—

    - (i) resale in the course of a property development trade, or
    - (ii) exploitation falling within paragraph (a) or use falling within paragraph (aa) or (ab);”;
- (b) in sub-paragraph (2), for “the dwelling” substitute “a dwelling on the land”;
- (c) in sub-paragraph (3), at the appropriate place insert—

““relievable trade” means a trade that is run on a commercial basis and with a view to profit.”
- (3) In paragraph 5G, in sub-paragraph (3)(c) for “the dwelling” substitute “any dwelling on the land”.
- (4) In paragraph 6D(3)(b), for “the dwelling” substitute “any dwelling on the land concerned”.
- (5) The amendments made by this section have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

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### **130 SDLT higher rate: acquisition under regulated home reversion plan**

- (1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended as follows.
- (2) After paragraph 5C insert—

#### **5CA “Acquisition under a regulated home reversion plan**

- (1) Paragraph 3 does not apply to a chargeable transaction if (and so far as) the purchaser—
  - (a) is an authorised plan provider, and
  - (b) acquires the subject-matter of the chargeable transaction as a plan provider.
- (2) For the purposes of this paragraph the purchaser acquires the subject-matter of the chargeable transaction “as a plan provider” so far as the purchaser acquires it under a regulated home reversion plan which the purchaser enters into as plan provider.
- (3) In this paragraph—
 

“authorised plan provider” means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the regulated activity specified in article 63B(1) of the Regulated Activities Order (entering into regulated home reversion plan as plan provider);

“the Regulated Activities Order” means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated home reversion plan” means an arrangement which is a regulated home reversion plan for the purposes of Chapter 15A of Part 2 of the Regulated Activities Order.
- (4) In this section references to entering into a regulated home reversion plan “as plan provider” are to be interpreted as if the references were in the Regulated Activities Order.”

- (3) After paragraph 5I insert—

“5IA

- (1) This paragraph applies where relief under paragraph 5CA (acquisition under a regulated home reversion plan) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.
- (2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction the purchaser holds the higher threshold interest otherwise than for the purposes of the regulated home reversion plan (as defined in paragraph 5CA).
- (3) But sub-paragraph (2) does not apply if—
  - (a) after ceasing to hold the higher threshold interest for the purposes of the regulated home reversion plan, the purchaser sells the higher threshold interest without delay (except so far as delay is justified by commercial considerations or cannot be avoided), and

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- (b) at no time when the higher threshold interest is held by the purchaser as mentioned in sub-paragraph (2) is the dwelling (or any part of the dwelling) occupied by a non-qualifying individual.
- (4) In this paragraph—
  - “the dwelling” means the dwelling to which the relief under paragraph 5CA relates;
  - “non-qualifying individual” is to be interpreted in accordance with paragraph 5A.”
- (4) The amendments made by this section have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

### **131 SDLT higher rate: properties occupied by certain employees etc**

- (1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended as follows.
- (2) In paragraph 5D (dwellings for occupation by certain employees etc)—
  - (a) in sub-paragraph (1), for “trade” substitute “ business ”;
  - (b) in sub-paragraph (2)(b) for “trade” substitute “ business ”;
  - (c) for sub-paragraph (4) substitute—
    - “(4) Relievable business” means a trade or property rental business that is run on a commercial basis and with a view to profit.”
- (3) The heading before paragraph 5D becomes “ *Dwellings for occupation by certain employees etc of a relievable business* ”.
- (4) After paragraph 5E insert—

#### **5EA “Acquisition by management company of flat for occupation by caretaker**

- (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in or over a flat which—
  - (a) is one of at least three flats contained in the same premises, and
  - (b) is acquired by a tenants' management company for the purpose of making the flat available for use as caretaker accommodation.
- (2) For the purposes of this paragraph a tenants' management company makes a flat available for use “as caretaker accommodation” if it makes it available to an individual for use as living accommodation in connection with the individual's employment as caretaker of the premises.
- (3) In relation to the acquisition of a flat, a company is a “tenants' management company” if—
  - (a) the tenants of two or more other flats contained in the premises are members of the company, and
  - (b) the company owns, or it is intended that the company will acquire, the freehold of the premises;but a company which carries on a relievable business is not a tenants' management company.

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- (4) In this paragraph “premises” means premises constituting the whole or part of a building.”
- (5) After paragraph 5J insert—
  - “5JA
  - (1) This paragraph applies where relief under paragraph 5EA (acquisition by management company of flat for occupation by caretaker) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.
  - (2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction the purchaser holds the higher threshold interest otherwise than for the purpose of making the flat available for use as caretaker accommodation.
  - (3) For the purposes of this paragraph a tenants' management company makes a flat available for use “as caretaker accommodation” if it makes it available to an individual for use as living accommodation in connection with the individual's employment as caretaker of the premises.”
- (6) In paragraph 5E (meaning of “qualifying partner”, “qualifying employee” etc)—
  - (a) in sub-paragraph (1) for “trade” substitute “ business ”;
  - (b) in sub-paragraph (2) for “qualifying trade” substitute “ relievable business ”;
  - (c) in sub-paragraph (4)—
    - (i) in the words before paragraph (a), for “trade” substitute “ relievable business ”;
    - (ii) in paragraph (a)(i), for “trade” substitute “ relievable business ”.
- (7) In paragraph 5J (withdrawal of relief under paragraph 5D), in sub-paragraph (3)—
  - (a) in paragraph (a), for the words from “trade” to the end substitute “ relievable business ”;
  - (b) in paragraph (c), for the words from “trade” to the end substitute “ relievable business ”.
- (8) In paragraph 6G (withdrawal of relief under paragraph 5D in cases involving alternative finance arrangements), in sub-paragraph (4)—
  - (a) in paragraph (a), for “qualifying trade” substitute “ relievable business ”;
  - (b) in paragraph (c) for “trade” substitute “ relievable business ”.
- (9) In paragraph 9 (interpretation), at the appropriate place insert—
 

““relievable business” has the meaning given by paragraph 5D(4).”
- (10) The amendments made by this section have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

## **132 SDLT: minor amendments of section 55 of FA 2003**

In section 55 of FA 2003 (general rules on calculating the amount of stamp duty land tax chargeable), in subsection (5)—

- (a) for “74(2) and (3)” substitute “ 74(1B) ”, and
- (b) for “rate” substitute “ amount ”.

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**133 SDLT: property authorised investment funds and co-ownership authorised contractual schemes**

Schedule 16 contains provision about—

- (a) the stamp duty land tax treatment of co-ownership authorised contractual schemes, and
- (b) relief from stamp duty land tax for certain acquisitions by such schemes and by property authorised investment funds.

*Annual tax on enveloped dwellings*

**134 ATED: regulated home reversion plans**

- (1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.
- (2) After section 144 insert—

**“144A Regulated home reversion plans**

- (1) A day in a chargeable period is relievably in relation to a single dwelling interest held by a person (“P”) who is an authorised plan provider if—
  - (a) P has, as plan provider, entered into a regulated home reversion plan relating to the single dwelling interest, and
  - (b) the occupation condition is met on that day.
- (2) If no qualifying termination event has occurred, the “occupation condition” is that a person who was originally entitled to occupy the dwelling (or any part of it) under the regulated home reversion plan is still entitled to do so.
- (3) If a qualifying termination event has occurred, the “occupation condition” is that—
  - (a) the single dwelling interest is being held with the intention that it will be sold without delay (except so far as delay is justified by commercial considerations or cannot be avoided), and
  - (b) no non-qualifying individual is permitted to occupy the dwelling (or any part of it).
- (4) In this section—

“authorised plan provider” means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the regulated activity specified in article 63B(1) of the Regulated Activities Order (entering into regulated home reversion plan as plan provider);

“qualifying termination event” is to be interpreted in accordance with article 63B of the Regulated Activities Order;

“the Regulated Activities Order” means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated home reversion plan” means an arrangement which is a regulated home reversion plan for the purposes of Chapter 15A of Part 2 of the Regulated Activities Order (but see also subsection (6)).

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- (5) In this section references to entering into a regulated home reversion plan “as plan provider” are to be interpreted as if the references were in the Regulated Activities Order (but see also subsection (6)).
- (6) For the purposes of this section—
  - (a) an arrangement which P entered into before 6 April 2007 is treated for the purposes of this section as a regulated home reversion plan entered into by P as plan provider if that arrangement would have been so treated for the purposes of article 63B(1) of the Regulated Activities Order had P entered into that arrangement on the day mentioned in subsection (1);
  - (b) an arrangement in relation to which P acquired rights or obligations before 6 April 2007 is treated for the purposes of this section as a regulated home reversion plan entered into by P as plan provider if that arrangement would have been so treated for the purposes of article 63B(1) of the Regulated Activities Order had P acquired those rights or obligations on the day mentioned in subsection (1).
- (7) Section 136 (meaning of “non-qualifying individual”) applies in relation to this section as in relation to sections 133 and 135.”
- (3) In section 116 (dwelling in grounds of another dwelling), in the list in subsection (6), at the appropriate place insert— “ section 144A (regulated home reversion plans); ”.
- (4) In section 117 (dwellings in the same building), in the list in subsection (5), at the appropriate place insert— “ section 144A (regulated home reversion plans); ”.
- (5) In section 132 (effect of reliefs under sections 133 to 150), in the list in subsection (3), at the appropriate place insert— “ section 144A (regulated home reversion plans); ”.
- (6) In section 159A (relief declaration returns), in the table in subsection (9), at the appropriate place insert—

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“144A (regulated home reversion plans)	5A”.
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- (7) The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

### **135 ATED: properties occupied by certain employees etc**

- (1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.
- (2) Section 145 (occupation by certain employees or partners) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1)—
  - (a) in paragraph (b), after “qualifying trade” insert “ or qualifying property rental business ”;
  - (b) in paragraph (d) for “trade” substitute “ qualifying trade or qualifying property rental business ”.
- (4) After subsection (4) insert—
  - “(5) For the meaning of “qualifying property rental business” see section 133(3).”

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- (5) The heading of that section becomes “ **Occupation by employees or partners of a qualifying trade or property rental business** ”.
- (6) In section 146 (meaning of “qualifying employee” and “qualifying partner” in section 145)—
  - (a) in subsection (1), after “trade” insert “ or property rental business ”;
  - (b) in subsection (2)—
    - (i) in the words before paragraph (a), after “qualifying trade” insert “ or qualifying property rental business ”, and
    - (ii) in paragraph (a)(i), after “trade” insert “ or (as the case may be) property rental business ”.
- (7) After section 147 insert—

**“147A Caretaker flat owned by management company**

- (1) A day in a chargeable period is relivable in relation to a single-dwelling interest if the dwelling in question is a flat in relation to which the conditions in subsection (2) are met.
- (2) The conditions are that on that day—
  - (a) a company (“the management company”) holds the single-dwelling interest for the purpose of making the flat available as caretaker accommodation,
  - (b) the flat is contained in premises which also contain two or more other flats,
  - (c) the tenants of at least two of the other flats in the premises are members of the management company,
  - (d) the management company owns the freehold of the premises, and
  - (e) the management company is not carrying on a trade or property rental business.
- (3) For the purposes of subsection (2), the management company makes a flat available “as caretaker accommodation” if it makes it available to an individual for use as living accommodation in connection with the individual's employment as caretaker of the premises.
- (4) In this section “premises” means premises constituting the whole or part of a building.”
- (8) In section 116 (dwelling in grounds of another dwelling), in the list in subsection (6)—
  - (a) in the entry relating to section 145, for “certain employees or partners” substitute “ employees or partners of a qualifying trade or property rental business ”;
  - (b) at the appropriate place insert— “ section 147A (caretaker flat owned by management company); ”.
- (9) In section 117 (dwellings in the same building), in the list in subsection (5)—
  - (a) in the entry relating to section 145, for “certain employees or partners” substitute “ employees or partners of a qualifying trade or property rental business ”;

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- (b) at the appropriate place insert— “ section 147A (caretaker flat owned by management company); ”.
- (10) In section 132 (effect of reliefs under sections 133 to 150), in the list in subsection (3) —
  - (a) in the entry relating to section 145, for “certain employees or partners” substitute “ employees or partners of a qualifying trade or property rental business ”;
  - (b) at the appropriate place insert— “ section 147A (caretaker flat owned by management company); ”.
- (11) In section 159A (relief declaration returns), in the table in subsection (9), in the entry relating to section 145, for “(dwellings used for trade purposes: occupation by certain employees or partners)” substitute “ or 147A (occupation by certain employees etc) ”.
- (12) The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

### **136 ATED: alternative property finance - land in Scotland**

- (1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.
- (2) Section 157 (land sold to financial institution and leased to person) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1)—
  - (a) in paragraph (a), omit “or section 72 of that Act (land in Scotland sold to financial institution and leased to person)”;
  - (b) in paragraph (b), after “transaction” insert “ is in England, Wales or Northern Ireland and ”.
- (4) In subsection (7)—
  - (a) in the definition of “the first transaction” omit “or (as the case requires) 72”;
  - (b) in the definition of “the second transaction” omit “or (as the case requires) 72”.
- (5) Omit subsection (10).
- (6) The heading of that section becomes “ **Land in England, Wales or Northern Ireland sold to financial institution and leased to person** ”.
- (7) After section 157 insert—

#### **“157A Land in Scotland sold to financial institution and leased to person**

- (1) This section applies where Conditions A and B are met.
- (2) Condition A is that arrangements are entered into between a person (“the lessee”) and a financial institution under which the institution—
  - (a) purchases a major interest in land (“the first transaction”),
  - (b) grants to the lessee out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant's right over or interest in a property subject to a lease) (“the second transaction”), and



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- (c) enters into an agreement under which the lessee has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.
- (3) Condition B is that the land in which the institution purchases a major interest under the first transaction is in Scotland and consists of or includes one or more dwellings or parts of a dwelling.
- (4) If the lessee is a company, this Part has effect in relation to times when the arrangements are in operation (see subsection (5)) as if—
  - (a) the interest held by the financial institution as mentioned in subsection (5)(b) were held by the lessee (and not by the financial institution), and
  - (b) the lease or sub-lease granted under the second transaction had not been granted.
- (5) The reference in subsection (4) to times when the arrangements are in operation is to times when—
  - (a) the lessee holds the interest granted to it under the second transaction, and
  - (b) the interest purchased under the first transaction is held by a financial institution.
- (6) A company treated under subsection (4)(a) as holding an interest at a particular time is treated as holding it as a member of a partnership if at the time in question the company holds the interest granted to it under the second transaction as a member of the partnership (and this Part has effect accordingly in relation to the other members of the partnership).
- (7) In relation to times when the arrangements operate for the benefit of a collective investment scheme (see subsection (8)), this Part has effect as if—
  - (a) the interest held by the financial institution as mentioned in subsection (8)(b) were held by the lessee for the purposes of a collective investment scheme (and were not held by the financial institution), and
  - (b) the lease or sub-lease granted under the second transaction had not been granted.
- (8) The reference in subsection (7) to times when the arrangements operate for the benefit of a collective investment scheme is to times when—
  - (a) the lessee holds the interest granted to it under the second transaction for the purposes of a collective investment scheme, and
  - (b) the interest purchased under the first transaction is held by a financial institution.
- (9) In this section “financial institution” has the same meaning as in section 71A of FA 2003 (see section 73BA of that Act).
- (10) References in this section to a “major interest” in land are to—
  - (a) ownership of land, or
  - (b) the tenant's right over or interest in land subject to a lease.

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- (11) Where the lessee is an individual, references in subsections (7) and (8) to the lessee are to be read, in relation to times after the death of the lessee, as references to the lessee's personal representatives.”
- (8) The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

## PART 9

### OTHER TAXES AND DUTIES

#### *Stamp duty and stamp duty reserve tax*

#### **137 Stamp duty: acquisition of target company's share capital**

- (1) Section 77 of FA 1986 (acquisition of target company's share capital) is amended as follows.
- (2) In subsection (3), omit the “and” at the end of paragraph (g) and after paragraph (h) insert “, and
  - (i) at the time the instrument mentioned in subsection (1) is executed there are no disqualifying arrangements, within the meaning given by section 77A, in existence.”
- (3) In subsection (3A) for “(3)” substitute “ (3)(b) to (h) ”.
- (4) In subsection (4) after “this section” insert “ and section 77A ”.
- (5) After section 77 of FA 1986 insert—

#### **“77A Disqualifying arrangements**

- (1) This section applies for the purposes of section 77(3)(i).
- (2) Arrangements are “disqualifying arrangements” if it is reasonable to assume that the purpose, or one of the purposes, of the arrangements is to secure that—
  - (a) a particular person obtains control of the acquiring company, or
  - (b) particular persons together obtain control of that company.
- (3) But neither of the following are disqualifying arrangements—
  - (a) the arrangements for the issue of shares in the acquiring company which is the consideration for the acquisition mentioned in section 77(3);
  - (b) any relevant merger arrangements.
- (4) In subsection (3) “relevant merger arrangements” means arrangements for the issue of shares in the acquiring company to the shareholders of a company (“company B”) other than the target company (“company A”) in a case where—
  - (a) that issue of shares to the shareholders of company B would be the only consideration for the acquisition by the acquiring company of the whole of the issued share capital of company B,

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- (b) the conditions in section 77(3)(c) and (e) would be met in relation to that acquisition (if that acquisition were made in accordance with the arrangements), and
- (c) the conditions in paragraphs (f) to (h) of section 77(3) would be met in relation to that acquisition if—
  - (i) that acquisition were made in accordance with the arrangements, and
  - (ii) the shares in the acquiring company issued as consideration for the acquisition of the share capital of company A were ignored for the purposes of those paragraphs;

and in section 77(3)(e) to (h) and (3A) as they apply by virtue of this subsection, references to the target company are to be read as references to company B.

(5) Where—

- (a) arrangements within any paragraph of subsection (3) are part of a wider scheme or arrangement, and
- (b) that scheme or arrangement includes other arrangements which—
  - (i) fall within subsection (2), and
  - (ii) do not fall within any paragraph of subsection (3),those other arrangements are disqualifying arrangements despite anything in subsection (3).

(6) In this section—

“the acquiring company” has the meaning given by section 77(1);  
“arrangements” includes any agreement, understanding or scheme (whether or not legally enforceable);  
“control” is to be read in accordance with section 1124 of the Corporation Tax Act 2010;  
“the target company” has the meaning given by section 77(1).”

- (6) The amendments made by this section have effect in relation to any instrument executed on or after 29 June 2016 (and references to arrangements in any provision inserted by this section include arrangements entered into before that date).

## **138 Stamp duty: transfers to depositaries or providers of clearance services**

- (1) Part 3 of FA 1986 (stamp duty) is amended as follows.

- (2) In section 67 (depositary receipts)—

- (a) in subsection (2), for the words from “1.5% of” to the end substitute “1.5% of—
  - (a) the amount or value of the consideration for the sale to which the instrument gives effect, or
  - (b) where subsection (2A) applies—
    - (i) the amount or value of the consideration for the sale to which the instrument gives effect, or
    - (ii) if higher, the value of the securities at the date the instrument is executed.”,
- (b) after subsection (2) insert—

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- “(2A) This subsection applies where the instrument transferring the securities is executed pursuant to—
- (a) the exercise of an option to buy or to sell the securities, and
  - (b) either—
    - (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (6), (7) or (8), or
    - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and
  - (c) in subsection (3), for “In any other case” substitute “ If stamp duty is not chargeable on the instrument under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) ”.
- (3) In section 69 (depository receipts: supplementary), in subsection (4), for “section 67(3)” substitute “ section 67(2)(b)(ii) and (3) ”.
- (4) In section 70 (clearance services)—
- (a) in subsection (2), for the words from “1.5% of” to the end substitute “1.5% of—
    - (a) the amount or value of the consideration for the sale to which the instrument gives effect, or
    - (b) where subsection (2A) applies—
      - (i) the amount or value of the consideration for the sale to which the instrument gives effect, or
      - (ii) if higher, the value of the securities at the date the instrument is executed.”,
  - (b) after subsection (2) insert—
 

“(2A) This subsection applies where the instrument transferring the securities is executed pursuant to—

    - (a) the exercise of an option to buy or to sell the securities, and
    - (b) either—
      - (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (6), (7) or (8), or
      - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and
    - (c) in subsection (3), for “In any other case” substitute “ If stamp duty is not chargeable on the instrument under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) ”.
- (5) In section 72 (clearance services: supplementary), in subsection (2), for “section 70(3)” substitute “ section 70(2)(b)(ii) and (3) ”.
- (6) The amendments made by this section have effect in relation to an instrument which transfers securities pursuant to the exercise of an option where—
- (a) the option was granted on or after 25 November 2015, and

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- (b) the option was exercised on or after 23 March 2016.

### 139 SDRT: transfers to depositaries or providers of clearance services

- (1) Part 4 of FA 1986 (stamp duty reserve tax) is amended as follows.

- (2) In section 93 (depositary receipts)—

- (a) in subsection (4)(b), for the words from “worth,” to the end substitute “worth —

- (i) the amount or value of the consideration, or
- (ii) where subsection (4A) applies, the amount or value of the consideration or, if higher, the value of the securities;”, and

- (b) after subsection (4) insert—

“(4A) This subsection applies where the transfer of the securities is pursuant to—

- (a) the exercise of an option to buy or to sell the securities, and

- (b) either—

- (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (2) or (3), or
- (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”

- (3) In section 94 (depositary receipts: supplementary), in subsection (4), for “section 93(4)(c)” substitute “section 93(4)(b)(ii) and (c) ”.

- (4) In section 96 (clearance services)—

- (a) in subsection (2)(b), for the words from “worth,” to the end substitute “worth —

- (i) the amount or value of the consideration, or
- (ii) where subsection (2A) applies, the amount or value of the consideration or, if higher, the value of the securities;”,

- (b) after subsection (2) insert—

“(2A) This subsection applies where the transfer of the securities is pursuant to—

- (a) the exercise of an option to buy or to sell the securities, and

- (b) either—

- (i) a term of the option which provides for the securities to be transferred to A or (as the case may be) to the person whose business is or includes holding chargeable securities as nominee for A, or
- (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and

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- (c) in subsection (10), for “subsection (2)(c)” substitute “ subsection (2)(b)(ii) and (c) ”.
- (5) The amendments made by this section have effect in relation to a transfer pursuant to the exercise of an option where—
  - (a) the option was granted on or after 25 November 2015, and
  - (b) the option was exercised on or after 23 March 2016.

#### *Petroleum revenue tax*

### **140 Petroleum revenue tax: rate**

- (1) In section 1(2) of OTA 1975 (rate of petroleum revenue tax) for “35” substitute “ 0 ”.
- (2) In paragraph 17 of Schedule 2 to that Act (cap on interest on repayments of tax), in sub-paragraph (5)(b) omit the words from “if that” to the end.
- (3) In paragraph 2 of Schedule 19 to FA 1982 (duty to pay instalments based on amount of tax payable in previous chargeable period), after sub-paragraph (4) insert—
 

“(4A) In sub-paragraph (1) the reference to any chargeable period for an oil field ending on or after 30th June 1983 does not include a chargeable period ending on 31st December 2015.”
- (4) The amendment made by subsection (1) has effect with respect to chargeable periods ending after 31 December 2015.

#### *Insurance premium tax*

### **141 Insurance premium tax: standard rate**

- (1) In section 51(2)(b) of FA 1994 (standard rate of insurance premium tax), for “9.5 per cent” substitute “ 10 per cent ”.
- (2) The amendment made by subsection (1) has effect in relation to a premium falling to be regarded for the purposes of Part 3 of FA 1994 as received under a taxable insurance contract by an insurer on or after 1 October 2016.
- (3) The amendment made by subsection (1) does not have effect in relation to a premium which—
  - (a) is in respect of a contract made before 1 October 2016, and
  - (b) falls to be regarded for the purposes of Part 3 of FA 1994 as received under the contract by the insurer before 1 February 2017 by virtue of regulations under section 68 of that Act (special accounting schemes).
- (4) Subsection (3) does not apply in relation to a premium which—
  - (a) is an additional premium under a contract,
  - (b) falls to be regarded for the purposes of Part 3 of FA 1994 as received under the contract by the insurer on or after 1 October 2016 by virtue of regulations under section 68 of that Act, and
  - (c) is in respect of a risk which was not covered by the contract before that date.

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- (5) In the application of sections 67A to 67C of FA 1994 (announced increase in rate) in relation to the increase made by this section—
- (a) the announcement for the purposes of sections 67A(1) and 67B(1) is to be taken to have been made on 16 March 2016,
  - (b) the date of the change is 1 October 2016, and
  - (c) the concessionary date is 1 February 2017.

### *Landfill tax*

#### **142 Landfill tax: rates from 1 April 2017**

- (1) Section 42 of FA 1996 (amount of landfill tax) is amended as follows.
- (2) In subsection (1)(a) (standard rate), for “£84.40” substitute “ £86.10 ”.
- (3) In subsection (2) (reduced rate for certain disposals)—
- (a) for “£84.40” substitute “ £86.10 ”, and
  - (b) for “£2.65” substitute “ £2.70 ”.
- (4) The amendments made by this section have effect in relation to disposals made (or treated as made) on or after 1 April 2017.

#### **143 Landfill tax: rates from 1 April 2018**

- (1) Section 42 of FA 1996 (amount of landfill tax) (as amended by section 142) is amended as follows.
- (2) In subsection (1)(a) (standard rate), for “£86.10” substitute “ £88.95 ”.
- (3) In subsection (2) (reduced rate for certain disposals)—
- (a) for “£86.10” substitute “ £88.95 ”, and
  - (b) for “£2.70” substitute “ £2.80 ”.
- (4) The amendments made by this section have effect in relation to disposals made (or treated as made) on or after 1 April 2018.

### *Climate change levy*

#### **144 CCL: abolition of exemption for electricity from renewable sources**

- (1) In Schedule 6 to FA 2000 (climate change levy), in paragraph 19(1) (exemption for electricity from renewable sources)—
- (a) in paragraph (c), omit the final “and”;
  - (b) after paragraph (d) insert “, and
  - (e) the electricity is actually supplied before 1 April 2018.”
- (2) In that Schedule omit the following—
- (a) in paragraph 5(3), “20(6)(a),”;
  - (b) paragraphs 19 and 20;
  - (c) paragraph 24(2).

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- (3) The repeals made by subsection (2) come into force on the day appointed by the Treasury by regulations made by statutory instrument.

#### **145 CCL: main rates from 1 April 2017**

- (1) In paragraph 42(1) of Schedule 6 to FA 2000 (climate change levy: amount payable by way of levy) for the table substitute—

“TABLE

<i><b>Taxable commodity supplied</b></i>	<i><b>Rate at which levy payable if supply is not a reduced-rate supply</b></i>
Electricity	£0.00568 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00198 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01272 per kilogram
Any other taxable commodity	£0.01551 per kilogram”.

- (2) The amendment made by this section has effect in relation to supplies treated as taking place on or after 1 April 2017.

#### **146 CCL: main rates from 1 April 2018**

- (1) In paragraph 42(1) of Schedule 6 to FA 2000 (climate change levy: amount payable by way of levy) for the table substitute—

“TABLE

<i><b>Taxable commodity supplied</b></i>	<i><b>Rate at which levy payable if supply is not a reduced-rate supply</b></i>
Electricity	£0.00583 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00203 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01304 per kilogram
Any other taxable commodity	£0.01591 per kilogram”.

- (2) The amendment made by this section has effect in relation to supplies treated as taking place on or after 1 April 2018.

#### **147 CCL: main rates from 1 April 2019**

- (1) In paragraph 42(1) of Schedule 6 to FA 2000 (climate change levy: amount payable by way of levy) for the table substitute—



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“TABLE

<i><b>Taxable commodity supplied</b></i>	<i><b>Rate at which levy payable if supply is not a reduced-rate supply</b></i>
Electricity	£0.00847 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00339 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.02175 per kilogram
Any other taxable commodity	£0.02653 per kilogram”.

- (2) The amendment made by this section has effect in relation to supplies treated as taking place on or after 1 April 2019.

#### **148 CCL: reduced rates from 1 April 2019**

- (1) In paragraph 42(1) of Schedule 6 to FA 2000 (climate change levy: amount payable by way of levy)—
- (a) in paragraph (ba) (reduced-rate supplies of electricity), for “10” substitute “ 7 ”;
  - (b) in paragraph (c) (other reduced-rate supplies), for “35” substitute “ 22 ”.
- (2) The amendments made by this section have effect in relation to supplies treated as taking place on or after 1 April 2019.

#### *Air passenger duty*

#### **149 APD: rates from 1 April 2016**

- (1) In section 30 of FA 1994 (air passenger duty: rates of duty) in subsection (4A) (long haul rates of duty)—
- (a) in paragraph (a), for “£71” substitute “ £73 ”, and
  - (b) in paragraph (b), for “£142” substitute “ £146 ”.
- (2) The amendments made by this section have effect in relation to the carriage of passengers beginning on or after 1 April 2016.

#### *Vehicle excise duty*

#### **150 VED: rates for light passenger vehicles, light goods vehicles, motorcycles etc**

- (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 with engine cylinder capacity exceeding 1,549cc), for “£230” substitute “ £235 ”.
- (3) In paragraph 1B (graduated rates of duty for light passenger vehicles)—
- (a) for the tables substitute—

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“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	120	130
140	150	135	145
150	165	175	185
165	175	290	300
175	185	345	355
185	200	490	500
200	225	640	650
225	255	875	885
255		1110	1120

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	100	110
130	140	120	130
140	150	135	145
150	165	175	185
165	175	200	210
175	185	220	230
185	200	260	270
200	225	285	295
225	255	490	500



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- (2) The amendment made by this section has effect in relation to accounting periods beginning on or after 1 April 2016.

### **153 Fuel duties: aqua methanol etc**

- (1) Schedule 17 contains provision relating to fuel duties.
- (2) Part 1 of the Schedule provides for charging excise duty on aqua methanol.
- (3) Part 2 of the Schedule contains miscellaneous amendments.
- (4) Part 3 of the Schedule makes provision about commencement.

### **154 Tobacco products duty: rates**

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

“TABLE

1. Cigarettes	An amount equal to 16.5% of the retail price plus £196.42 per thousand cigarettes
2. Cigars	£245.01 per kilogram
3. Hand-rolling tobacco	£198.10 per kilogram
4. Other smoking tobacco and chewing tobacco	£107.71 per kilogram”.

- (2) The amendment made by this section is treated as having come into force at 6pm on 16 March 2016.

### **155 Alcoholic liquor duties: rates**

- (1) ALDA 1979 is amended as follows.
- (2) In section 62(1A)(a) (rate of duty on sparkling cider of a strength exceeding 5.5%) for “£264.61” substitute “£268.99”.
- (3) For Part 1 of the table in Schedule 1 substitute—

#### **“PART 1**

#### WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22%

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre £</i>
Wine or made-wine of a strength not exceeding 4%	£85.60
Wine or made-wine of a strength exceeding 4% but not exceeding 5.5%	£117.72
Wine or made-wine of a strength exceeding 5.5% but not exceeding 15% and not being sparkling	£277.84

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Sparkling wine or sparkling made-wine of a strength exceeding £268.99  
5.5% but less than 8.5%

Sparkling wine or sparkling made-wine of a strength of at least £355.87  
8.5% but not exceeding 15%

Wine or made-wine of a strength exceeding 15% but not £370.41”.  
exceeding 22%

- 
- (4) The amendments made by this section are treated as having come into force on 21 March 2016.

## PART 10

### TAX AVOIDANCE AND EVASION

#### *General anti-abuse rule*

#### **156 General anti-abuse rule: provisional counteractions**

- (1) In Part 5 of FA 2013 (general anti-abuse rule), after section 209 insert—

**“209A Effect of adjustments specified in a provisional counteraction notice**

- (1) Adjustments made by an officer of Revenue and Customs which—
- (a) are specified in a provisional counteraction notice given to a person by the officer (and have not been cancelled: see sections 209B to 209E),
  - (b) are made in respect of a tax advantage that would (ignoring this Part) arise from tax arrangements that are abusive, and
  - (c) but for section 209(6)(a), would have effected a valid counteraction of that tax advantage under section 209,
- are treated for all purposes as effecting a valid counteraction of the tax advantage under that section.
- (2) A “provisional counteraction notice” is a notice which—
- (a) specifies adjustments (the “notified adjustments”) which the officer reasonably believes may be required under section 209(1) to counteract a tax advantage that would (ignoring this Part) arise to the person from tax arrangements;
  - (b) specifies the arrangements and the tax advantage concerned, and
  - (c) notifies the person of the person's rights of appeal with respect to the notified adjustments (when made) and contains a statement that if an appeal is made against the making of the adjustments—
    - (i) no steps may be taken in relation to the appeal unless and until the person is given a notice referred to in section 209F(2), and
    - (ii) the notified adjustments will be cancelled if HMRC fails to take at least one of the actions mentioned in section 209B(4) within the period specified in section 209B(2).

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- (3) It does not matter whether the notice is given before or at the same time as the making of the adjustments.
- (4) In this section “adjustments” includes adjustments made in any way permitted by section 209(5).

**209B Notified adjustments: 12 month period for taking action if appeal made**

- (1) This section applies where a person (the “taxpayer”) to whom a provisional counteraction notice has been given appeals against the making of the notified adjustments.
- (2) The notified adjustments are to be treated as cancelled with effect from the end of the period of 12 months beginning with the day on which the provisional counteraction notice is given unless an action mentioned in subsection (4) is taken before that time.
- (3) For the purposes of subsection (2) it does not matter whether the action mentioned in subsection (4)(c), (d) or (e) is taken before or after the provisional counteraction notice is given (but if that action is taken before the provisional counteraction notice is given subsection (5) does not have effect).
- (4) The actions are—
  - (a) an officer of Revenue and Customs notifying the taxpayer that the notified adjustments are cancelled;
  - (b) an officer of Revenue and Customs giving the taxpayer written notice of the withdrawal of the provisional counteraction notice (without cancelling the notified adjustments);
  - (c) a designated HMRC officer giving the taxpayer a notice under paragraph 3 of Schedule 43 which—
    - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
    - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken (see paragraph 3(2)(c) of that Schedule);
  - (d) a designated HMRC officer giving the taxpayer a pooling notice or a notice of binding under Schedule 43A which—
    - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
    - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken;
  - (e) a designated HMRC officer giving the taxpayer a notice under paragraph 1(2) of Schedule 43B which—
    - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
    - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken.
- (5) In a case within subsection (4)(c), (d) or (e), if—
  - (a) the notice under paragraph 3 of Schedule 43, or

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- (b) the pooling notice or notice of binding, or
  - (c) the notice under paragraph 1(2) of Schedule 43B,
- (as the case may be) specifies lesser adjustments the officer must modify the notified adjustments accordingly.

- (6) The officer may not take the action in subsection (4)(b) unless the officer was authorised to make the notified adjustments otherwise than under this Part.
- (7) In this section “lesser adjustments” means adjustments which assume a smaller tax advantage than was assumed in the provisional counteraction notice.

#### **209C Notified adjustments: case within section 209B(4)(c)**

- (1) This section applies if the action in section 209B(4)(c) (notice to taxpayer of proposed counteraction of tax advantage) is taken.
- (2) If the matter is not referred to the GAAR Advisory Panel, the notified adjustments are to be treated as cancelled with effect from the date of the designated HMRC officer's decision under paragraph 6(2) of Schedule 43 unless the notice under paragraph 6(3) of Schedule 43 states that the adjustments are not to be treated as cancelled under this section.
- (3) A notice under paragraph 6(3) of Schedule 43 may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (4) If the taxpayer is given a notice under paragraph 12 of Schedule 43 which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled unless that notice states that those adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 12 of Schedule 43 may not contain the statement referred to in subsection (4) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (6) If the taxpayer is given a notice under paragraph 12 of Schedule 43 stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
  - (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

#### **209D Notified adjustments: case within section 209B(4)(d)**

- (1) This section applies if the action in section 209B(4)(d) (pooling notice or notice of binding) is taken.
- (2) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as

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cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.

- (3) A notice under paragraph 8(2) or 9(2) of Schedule 43A may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (4) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
  - (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

#### **209E Notified adjustments: case within section 209B(4)(e)**

- (1) This section applies if the action in section 209B(4)(e) (notice of proposal to make generic referral) is taken.
- (2) If the notice under paragraph 1(2) of Schedule 43B is withdrawn, the notified adjustments are to be treated as cancelled unless the notice of withdrawal states that the adjustments are not to be treated as cancelled under this section.
- (3) The notice of withdrawal may not contain the statement referred to in subsection (2) unless HMRC was authorised to make the notified adjustments otherwise than under this Part.
- (4) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B, which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 8(2) of Schedule 43B may not contain the statement referred to in subsection (4) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (6) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
  - (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

#### **209F Appeals against provisional counteractions: further provision**

- (1) Subsections (2) to (5) have effect in relation to an appeal by a person (“the taxpayer”) against the making of adjustments which are specified in a provisional counteraction notice.



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- (2) No steps after the initial notice of appeal are to be taken in relation to the appeal unless and until the taxpayer is given—
- (a) a notice under section 209B(4)(b),
  - (b) a notice under paragraph 6(3) of Schedule 43 (notice of decision not to refer matter to GAAR advisory panel) containing the statement described in section 209C(2) (statement that adjustments are not to be treated as cancelled),
  - (c) a notice under paragraph 12 of Schedule 43,
  - (d) a notice under paragraph 8(2) or 9(2) of Schedule 43A, or
  - (e) a notice under paragraph 8 of Schedule 43B,
- in respect of the tax arrangements concerned.
- (3) The taxpayer has until the end of the period mentioned in subsection (4) to comply with any requirement to specify the grounds of appeal.
- (4) The period mentioned in subsection (3) is the 30 days beginning with the day on which the taxpayer receives the notice mentioned in subsection (2).
- (5) In subsection (2) the reference to “steps” does not include the withdrawal of the appeal.”
- (2) In section 214(1) of FA 2013 (interpretation of Part 5), at the appropriate place insert—
- ““notified adjustments”, in relation to a provisional counteraction notice, has the meaning given by section 209A(2);”
- ““provisional counteraction notice” has the meaning given by section 209A(2);”.
- (3) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

## **157 General anti-abuse rule: binding of tax arrangements to lead arrangements**

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended in accordance with subsections (2) to (11).
- (2) After Schedule 43 insert—

### **“SCHEDULE 43A**

#### **PROCEDURAL REQUIREMENTS: POOLING NOTICES AND NOTICES OF BINDING**

##### *Pooling notices*

- 1 (1) This paragraph applies where a person has been given a notice under paragraph 3 of Schedule 43 in relation to any tax arrangements (the “lead arrangements”) and the condition in sub-paragraph (2) is met.
- (2) The condition is that the period of 45 days mentioned in paragraph 4(1) of Schedule 43 has expired but no notice under paragraph 12 of Schedule 43 or paragraph 8 of Schedule 43B has yet been given in respect of the matter.

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- (3) If a designated HMRC officer considers—
- (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
  - (b) that those tax arrangements (“R’s arrangements”) are equivalent to the lead arrangements, and
  - (c) that the advantage ought to be counteracted under section 209,
- the officer may give R a notice (a “pooling notice”) which places R’s arrangements in a pool with the lead arrangements.
- (4) There is one pool for any lead arrangements, so all tax arrangements placed in a pool with the lead arrangements (as well as the lead arrangements themselves) are in one and the same pool.
- (5) Tax arrangements which have been placed in a pool do not cease to be in the pool except where that is expressly provided for by this Schedule (regardless of whether or not the lead arrangements or any other tax arrangements remain in the pool).
- (6) The officer may not give R a pooling notice if R has been given in respect of R’s arrangements a notice under paragraph 3 of Schedule 43.

*Notice of proposal to bind arrangements to counteracted arrangements*

- 2 (1) This paragraph applies where a counteraction notice has been given to a person in relation to any tax arrangements (the “counteracted arrangements”) which are in a pool created under paragraph 1.
- (2) If a designated HMRC officer considers—
- (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
  - (b) that those tax arrangements (“R’s arrangements”) are equivalent to the counteracted arrangements, and
  - (c) that the advantage ought to be counteracted under section 209,
- the officer may give R a notice (a “notice of binding”) in relation to R’s arrangements.
- (3) The officer may not give R a notice of binding if R has been given in respect of R’s arrangements a notice under—
- (a) paragraph 1, or
  - (b) paragraph 3 of Schedule 43.
- (4) In this paragraph “counteraction notice” means a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 or sub-paragraph (3) of paragraph 8 of Schedule 43B (notice of final decision to counteract).
- 3 (1) The decision whether or not to give R a pooling notice or notice of binding must be taken, and any notice must be given, as soon as is reasonably practicable after HMRC becomes aware of the relevant facts.
- (2) A pooling notice or notice of binding must—
- (a) specify the tax arrangements in relation to which the notice is given and the tax advantage,

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- (b) explain why the officer considers R's arrangements to be equivalent to the lead arrangements or the counteracted arrangements (as the case may be),
  - (c) explain why the officer considers that a tax advantage has arisen to R from tax arrangements that are abusive,
  - (d) set out the counteraction that the officer considers ought to be taken, and
  - (e) explain the effect of—
    - (i) paragraphs 4 to 10,
    - (ii) subsection (9) of section 209, and
    - (iii) section 212A.
- (3) A pooling notice or notice of binding may set out steps that R may (subject to subsection (9) of section 209) take to avoid the proposed counteraction.

*Corrective action by a notified taxpayer*

- 4 (1) If a person to whom a pooling notice or notice of binding has been given takes the relevant corrective action in relation to the tax arrangements and tax advantage specified in the notice before the beginning of the closed period mentioned in section 209(9), the person is to be treated for the purposes of paragraphs 8 and 9 and Schedule 43B (generic referral of tax arrangements) as not having been given the notice in question (and accordingly the tax arrangements in question are no longer in the pool).
- (2) For the purposes of this Schedule the “relevant corrective action” is taken if (and only if) the person takes the steps set out in sub-paragraphs (3) and (4).
- (3) The first step is that—
- (a) the person amends a return or claim to counteract the tax advantage specified in the pooling notice or notice of binding, or
  - (b) if the person has made a tax appeal (by notifying HMRC or otherwise) on the basis that the tax advantage specified in the pooling notice or notice of binding arises from the tax arrangements specified in that notice, the person takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing that advantage.
- (4) The second step is that the person notifies HMRC—
- (a) that the first step has been taken, and
  - (b) of any additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.
- (5) Where a person takes the first step described in sub-paragraph (3)(b), HMRC may proceed as if the person had not taken the relevant corrective action if the person fails to enter into the written agreement.
- (6) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of sub-paragraph (4)(b), it is to be assumed that, where the person takes the necessary action as mentioned in sub-paragraph (3)(b), the agreement is then entered into.

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- (7) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent the person taking the first step mentioned in sub-paragraph (3)(a) before the tax enquiry is closed.
- (8) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (9), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by the taxpayer to a return or claim in taking the first step mentioned in sub-paragraph (3)(a).
- (9) The provisions are—
  - (a) paragraph 35(1)(b) of Schedule 33,
  - (b) section 31(1)(b) or (c) of TMA 1970,
  - (c) paragraph 9 of Schedule 1A to TMA 1970,
  - (d) paragraph 34(3) of Schedule 18 to FA 1998, and
  - (e) paragraph 35(1)(b) of Schedule 10 to FA 2003.

*Corrective action by lead taxpayer*

- 5 If the person mentioned in paragraph 1(1) takes the relevant corrective action (as defined in paragraph 4A of Schedule 43) before the end of the period of 75 days beginning with the day on which the notice mentioned in paragraph 1(1) was given to that person, the lead arrangements are treated as ceasing to be in the pool.

*Opinion notices and right to make representations*

- 6 (1) Sub-paragraph (2) applies where—
  - (a) a pooling notice is given to a person in relation to any tax arrangements, and
  - (b) an opinion notice (or opinion notices) under paragraph 11(2) of Schedule 43 about another set of tax arrangements in the pool (“the referred arrangements”) is subsequently given to a designated HMRC officer.
- (2) The officer must give the person a pooled arrangements opinion notice.
- (3) No more than one pooled arrangements opinion notice may be given to a person in respect of the same tax arrangements.
- (4) Where a designated HMRC officer gives a person a notice of binding, the officer must, at the same time, give the person a bound arrangements opinion notice.
- 7 (1) In relation to a person who is, or has been, given a pooling notice, “pooled arrangements opinion notice” means a written notice which—
  - (a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the referred arrangements,
  - (b) explains the person's right to make representations falling within sub-paragraph (3), and
  - (c) sets out the period in which those representations may be made.

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- (2) In relation to a person who is given a notice of binding “bound arrangements opinion notice” means a written notice which—
- (a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the counteracted arrangements (see paragraph 2(1)),
  - (b) explains the person's right to make representations falling within sub-paragraph (3), and
  - (c) sets out the period in which those representations may be made.
- (3) A person who is given a pooled arrangements opinion notice or a bound arrangements opinion notice has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—
- (a) representations that no tax advantage has arisen to the person from the arrangements to which the notice relates;
  - (b) representations as to why the arrangements to which the notice relates are or may be materially different from—
    - (i) the referred arrangements (in the case of a pooled arrangements opinion notice), or
    - (ii) the counteracted arrangements (in the case of a bound arrangements opinion notice).
- (4) In sub-paragraph (3)(b) references to “arrangements” include any circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive.

#### *Notice of final decision*

- 8 (1) This paragraph applies where—
- (a) any tax arrangements have been placed in a pool by a notice given to a person under paragraph 1, and
  - (b) a designated HMRC officer has given a notice under paragraph 12 of Schedule 43 in relation to any other arrangements in the pool (the “referred arrangements”).
- (2) The officer must, having considered any opinion of the GAAR Advisory Panel about the referred arrangements and any representations made under paragraph 7(3) in relation to the arrangements mentioned in sub-paragraph (1) (a), give the person a written notice setting out whether the tax advantage arising from those arrangements is to be counteracted under the general anti-abuse rule.
- 9 (1) This paragraph applies where—
- (a) a person has been given a notice of binding under paragraph 2, and
  - (b) the period of 30 days for making representations under paragraph 7(3) has expired.
- (2) A designated HMRC officer must, having considered any opinion of the GAAR Advisory Panel about the counteracted arrangements and any representations made under paragraph 7(3) in relation to the arrangements specified in the notice of binding, give the person a written notice setting out whether the tax advantage arising from the arrangements specified in the notice of binding is to be counteracted under the general anti-abuse rule.

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- 10 If a notice under paragraph 8(2) or 9(2) states that a tax advantage is to be counteracted, it must also set out—
- (a) the adjustments required to give effect to the counteraction, and
  - (b) if relevant, any steps the person concerned is required to take to give effect to it.

*“Equivalent arrangements”*

- 11 (1) For the purposes of paragraph 1, tax arrangements are “equivalent” to one another if they are substantially the same as one another having regard to—
- (a) their substantive results,
  - (b) the means of achieving those results, and
  - (c) the characteristics on the basis of which it could reasonably be argued, in each case, that the arrangements are abusive tax arrangements under which a tax advantage has arisen to a person.

*Notices may be given on assumption that tax advantage does arise*

- 12 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

*Power to amend*

- 13 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
- (2) Regulations under sub-paragraph (1) may include—
- (a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);
  - (b) transitional provision.
- (3) Regulations under sub-paragraph (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) After Schedule 43A insert—

“SCHEDULE  
43B

PROCEDURAL REQUIREMENTS: GENERIC REFERRAL OF TAX ARRANGEMENTS

*Notice of proposal to make generic referral of tax arrangements*

- 1 (1) Sub-paragraph (2) applies if—

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- (a) pooling notices given under paragraph 1 of Schedule 43A have placed one or more sets of tax arrangements in a pool with the lead arrangements,
  - (b) the lead arrangements (see paragraph 1(1) of Schedule 43A) have ceased to be in the pool, and
  - (c) no referral under paragraph 5 or 6 of Schedule 43 has been made in respect of any arrangements in the pool.
- (2) A designated HMRC officer may determine that, in respect of each of the tax arrangements that are in the pool, there is to be given (to the person to whom the pooling notice in question was given) a written notice of a proposal to make a generic referral to the GAAR Advisory Panel in respect of the arrangements in the pool.
- (3) Only one determination under sub-paragraph (2) may be made in relation to any one pool.
- (4) The persons to whom those notices are given are “the notified taxpayers”.
- (5) A notice given to a person (“T”) under sub-paragraph (2) must—
  - (a) specify the arrangements (the “specified arrangements”) and the tax advantage (the “specified advantage”) to which the notice relates,
  - (b) inform T of the period under paragraph 2 for making a proposal.
- 2 (1) T has 30 days beginning with the day on which the notice under paragraph 1 is given to propose to HMRC that it—
  - (a) should give T a notice under paragraph 3 of Schedule 43 in respect of the arrangements to which the notice under paragraph 1 relates, and
  - (b) should not proceed with the proposal to make a generic referral to the GAAR Advisory Panel in respect of those arrangements.
- (2) If a proposal is made in accordance with sub-paragraph (1) a designated HMRC officer must consider it.

#### *Generic referral*

- 3 (1) This paragraph applies where a designated HMRC officer has given notices to the notified taxpayers in accordance with paragraph 1(2).
- (2) If none of the notified taxpayers has made a proposal under paragraph 2 by the end of the 30 day period mentioned in that paragraph, the officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.
- (3) If at least one of the notified taxpayers makes a proposal in accordance with paragraph 2, the designated HMRC officer must, after the end of that 30 day period, decide whether to—
  - (a) give a notice under paragraph 3 of Schedule 43 in respect of one set of tax arrangements in the relevant pool, or
  - (b) make a referral to the GAAR Advisory Panel in respect of the tax arrangements in the relevant pool.
- (4) A referral under this paragraph is a “generic referral”.

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- 4 (1) If a generic referral is made to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide it with—
  - (a) a general statement of the material characteristics of the specified arrangements, and
  - (b) a declaration that—
    - (i) the statement under paragraph (a) is applicable to all the specified arrangements, and
    - (ii) as far as HMRC is aware, nothing which is material to the GAAR Advisory Panel's consideration of the matter has been omitted.
- (2) The general statement under sub-paragraph (1)(a) must—
  - (a) contain a factual description of the tax arrangements;
  - (b) set out HMRC's view as to whether the tax arrangements accord with established practice (when the arrangements were entered into);
  - (c) explain why it is the designated HMRC officer's view that a tax advantage of the nature described in the statement and arising from tax arrangements having the characteristics described in the statement would be a tax advantage arising from arrangements that are abusive;
  - (d) set out any matters the designated officer is aware of which may suggest that any view of HMRC or the designated HMRC officer expressed in the general statement is not correct;
  - (e) set out any other matters which the designated officer considers are required for the purposes of the exercise of the GAAR Advisory Panel's functions under paragraph 6.
- 5 If a generic referral is made the designated HMRC officer must at the same time give each of the notified taxpayers a notice which—
  - (a) specifies that a generic referral is being made, and
  - (b) is accompanied by a copy of the statement given to the GAAR Advisory Panel in accordance with paragraph 4(1)(a).

*Decision of GAAR Advisory Panel and opinion notices*

- 6 (1) If a generic referral is made to the GAAR Advisory Panel under paragraph 3, the Chair must arrange for a sub-panel consisting of 3 members of the GAAR Advisory Panel (one of whom may be the Chair) to consider it.
- (2) The sub-panel must produce—
  - (a) one opinion notice stating the joint opinion of all the members of the sub-panel, or
  - (b) two or three opinion notices which taken together state the opinions of all the members.
- (3) The sub-panel must give a copy of the opinion notice or notices to the designated HMRC officer.
- (4) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—
  - (a) the entering into and carrying out of tax arrangements such as are described in the general statement under paragraph 4(1)(a) is a reasonable course of action in relation to the relevant tax provisions,



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- (b) the entering into or carrying out of such tax arrangements is not a reasonable course of action in relation to the relevant tax provisions, or
  - (c) it is not possible, on the information available, to reach a view on that matter,and the reasons for that opinion.
- (5) In forming their opinions for the purposes of sub-paragraph (4) members of the sub-panel must—
  - (a) have regard to all the matters set out in the statement under paragraph 4(1)(a),
  - (b) assume (unless the contrary is stated in the statement under paragraph 4(1)(a)) that the tax arrangements do not form part of any other arrangements,
  - (c) have regard to the matters mentioned in paragraphs (a) to (c) of section 207(2), and
  - (d) take account of subsections (4) to (6) of section 207.
- (6) For the purposes of the giving of an opinion under this paragraph, the arrangements are to be assumed to be tax arrangements.
- (7) In this Part, a reference to any opinion of the GAAR Advisory Panel in respect of a generic referral of any tax arrangements is a reference to the contents of any opinion notice given in relation to a generic referral in respect of the arrangements.

*Notice of right to make representations*

- 7 (1) Where a designated HMRC officer is given an opinion notice (or opinion notices) under paragraph 6, the officer must give each of the notified taxpayers a copy of the opinion notice (or notices) and a written notice which—
- (a) explains the notified taxpayer's right to make representations falling within sub-paragraph (2), and
  - (b) sets out the period in which those representations may be made.
- (2) A notified taxpayer (“T”) who is given a notice under sub-paragraph (1) has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—
- (a) representations that no tax advantage has arisen from the specified arrangements;
  - (b) representations that T has already been given a notice under paragraph 6 of Schedule 43A in relation to the specified arrangements;
  - (c) representations that any matter set out in the statement under paragraph 4(1)(a) is materially inaccurate as regards the specified arrangements (having regard to all circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive).

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*Notice of final decision after considering opinion of GAAR Advisory Panel*

- 8 (1) A designated HMRC officer who has received a copy of a notice or notices under paragraph 6(3) in respect of a generic referral must consider the case of each notified taxpayer in accordance with sub-paragraph (2).
- (2) The officer must, having considered—
- (a) any opinion of the GAAR Advisory Panel about the matters referred to it, and
  - (b) any representations made by the notified taxpayer under paragraph 7, give to the notified taxpayer a written notice setting out whether the specified advantage is to be counteracted under the general anti-abuse rule.
- (3) If the notice states that a tax advantage is to be counteracted, it must also set out—
- (a) the adjustments required to give effect to the counteraction, and
  - (b) if relevant, any steps that the taxpayer is required to take to give effect to it.

*Notices may be given on assumption that tax advantage does arise*

- 9 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

*Power to amend*

- 10 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
- (2) Regulations under sub-paragraph (1) may include—
- (a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);
  - (b) transitional provision.
- (3) Regulations under sub-paragraph (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (4) In section 209 (counteracting tax advantages), in subsection (6)(a), after “Schedule 43” insert “, 43A or 43B ”.
- (5) In section 210 (consequential relieving adjustments), in subsection (1)(b), after “Schedule 43,” insert “ paragraph 8 or 9 of Schedule 43A or paragraph 8 of Schedule 43B, ”.
- (6) In section 211 (proceedings before a court or tribunal), in subsection (2)(b), for the words from “Panel” to the end substitute “Panel given—

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- (i) under paragraph 11 of Schedule 43 about the arrangements or any tax arrangements which are, as a result of a notice under paragraph 1 or 2 of Schedule 43A, the referred or (as the case may be) counteracted arrangements in relation to the arrangements, or
  - (ii) under paragraph 6 of Schedule 43B in respect of a generic referral of the arrangements.”
- (7) Section 214 (interpretation of Part 5) is amended in accordance with subsections (8) to (10).
- (8) Renumber section 214 as subsection (1) of section 214.
- (9) In subsection (1) (as renumbered), at the appropriate places insert—
  - ““designated HMRC officer” has the meaning given by paragraph 2 of Schedule 43;”.
  - ““notice of binding” has the meaning given by paragraph 2(2) of Schedule 43A;”
  - ““pooling notice” has the meaning given by paragraph 1(4) of Schedule 43A;”
  - ““tax appeal” has the meaning given by paragraph 1A of Schedule 43;”
  - ““tax enquiry” has the meaning given by section 202(2) of FA 2014.”
- (10) After subsection (1) insert—
  - “(2) In this Part references to any “opinion of the GAAR Advisory Panel” about any tax arrangements are to be interpreted in accordance with paragraph 11(5) of Schedule 43.
  - (3) In this Part references to tax arrangements which are “equivalent” to one another are to be interpreted in accordance with paragraph 11 of Schedule 43A.”
- (11) In Schedule 43 (general anti-abuse rule: procedural requirements), in paragraph 6, after sub-paragraph (2) insert—
  - “(3) The officer must, as soon as reasonably practicable after deciding whether or not the matter is to be referred to the GAAR Advisory Panel, give the taxpayer written notice of the decision.”
- (12) Section 10 of the National Insurance Contributions Act 2014 (GAAR to apply to national insurance contributions) is amended in accordance with subsections (13) to (16).
- (13) In subsection (4), at the end insert “ , paragraph 8 or 9 of Schedule 43A to that Act (pooling of tax arrangements: notice of final decision) or paragraph 8 of Schedule 43B to that Act (generic referral of arrangements: notice of final decision) ”.
- (14) After subsection (6) insert—
  - “(6A) Where, by virtue of this section, a case falls within paragraph 4A of Schedule 43 to the Finance Act 2013 (referrals of single schemes: relevant corrective action) or paragraph 4 of Schedule 43A to that Act (pooled schemes: relevant corrective action)—

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- (a) the person (“P”) mentioned in sub-paragraph (1) of that paragraph takes the “relevant corrective action” for the purposes of that paragraph if (and only if)—
    - (i) in a case in which the tax advantage in question can be counteracted by making a payment to HMRC, P makes that payment and notifies HMRC that P has done so, or
    - (ii) in any case, P takes all necessary action to enter into an agreement in writing with HMRC for the purpose of relinquishing the tax advantage, and
  - (b) accordingly, sub-paragraphs (2) to (8) of that paragraph do not apply.”
- (15) In subsection (11)—
  - (a) for “and HMRC” substitute “, “HMRC” and “tax advantage””;
  - (b) after “2013” insert “ (as modified by this section) ”.
- (16) After subsection (11) insert—
 

“(12) See section 10A for further modifications of Part 5 of the Finance Act 2013.”
- (17) After section 10 of the National Insurance Contributions Act 2014 insert—

**“10A Application of GAAR in relation to penalties**

- (1) For the purposes of this section a penalty under section 212A of the Finance Act 2013 is a “relevant NICs-related penalty” so far as the penalty relates to a tax advantage in respect of relevant contributions.
- (2) A relevant NICs-related penalty may be recovered as if it were an amount of relevant contributions which is due and payable.
- (3) Section 117A of the Social Security Administration Act 1992 or (as the case may be) section 111A of the Social Security Administration (Northern Ireland) Act 1992 (issues arising in proceedings: contributions etc) has effect in relation to proceedings before a court for recovery of a relevant NICs-related penalty as if the assessment of the penalty were a NICs decision as to whether the person is liable for the penalty.
- (4) Accordingly, paragraph 5(4)(b) of Schedule 43C to the Finance Act 2013 (assessment of penalty to be enforced as if it were an assessment to tax) does not apply in relation to a relevant NICs-related penalty.
- (5) In the application of Schedule 43C to the Finance Act 2013 in relation to a relevant NICs-related penalty, paragraph 9(5) has effect as if the reference to an appeal against an assessment to the tax concerned were to an appeal against a NICs decision.
- (6) In paragraph 8 of that Schedule (aggregate penalties), references to a “relevant penalty provision” include—
  - (a) any provision mentioned in sub-paragraph (5) of that paragraph, as applied in relation to any class of national insurance contributions by regulations (whenever made);
  - (b) section 98A of the Taxes Management Act 1970, as applied in relation to any class of national insurance contributions by regulations (whenever made);

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- (c) any provision in regulations made by the Treasury under which a penalty can be imposed in respect of any class of national insurance contributions.
- (7) The Treasury may by regulations—
  - (a) disapply, or modify the effect of, subsection (6)(a) or (b);
  - (b) modify paragraph 8 of Schedule 43C to the Finance Act 2013 as it has effect in relation to a relevant penalty provision by virtue of subsection (6)(b) or (c).
- (8) Section 175(3) to (5) of SSCBA 1992 (various supplementary powers) applies to a power to make regulations conferred by subsection (7).
- (9) Regulations under subsection (7) must be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section “NICs decision” means a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671).
- (12) In this section “relevant contributions” means the following contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992—
  - (a) Class 1 contributions;
  - (b) Class 1A contributions;
  - (c) Class 1B contributions;
  - (d) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply.”
- (18) Section 219 of FA 2014 (circumstances in which an accelerated payment notice may be given) is amended in accordance with subsections (19) and (20).
- (19) In subsection (4), after paragraph (c) insert—
  - “(d) a notice has been given under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about the other arrangements (see subsection (8)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;
  - (e) a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of tax arrangements) has been given in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements under paragraph 6

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of Schedule 43B to FA 2013 was as set out in paragraph 6(4)(b) of that Schedule.”

(20) After subsection (7) insert—

“(8) In subsection (4)(d) “other arrangements” means—

- (a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);
- (b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule).”

(21) In section 220 of FA 2014 (content of notice given while a tax enquiry is in progress)—

- (a) in subsection (4)(c), after “219(4)(c)” insert “, (d) or (e) ”;
- (b) in subsection (5)(c), after “219(4)(c)” insert “, (d) or (e) ”;
- (c) in subsection (7), for the words from “under” to the end substitute “under—
  - (a) paragraph 12 of Schedule 43 to FA 2013,
  - (b) paragraph 8 or 9 of Schedule 43A to that Act, or
  - (c) paragraph 8 of Schedule 43B to that Act,

as the case may be. ”

(22) Section 287 of FA 2014 (Code of Practice on Taxation for Banks) is amended in accordance with subsections (23) to (25).

(23) In subsection (4), after “(5)” insert “ or (5A) ”.

(24) In subsection (5)(b), after “Schedule” insert “ or paragraph 8 or 9 of Schedule 43A to that Act ”.

(25) After subsection (5) insert—

“(5A) This subsection applies to any conduct—

- (a) in relation to which there has been given—
  - (i) an opinion notice under paragraph 6(4)(b) of Schedule 43B to FA 2013 (GAAR advisory panel: opinion that such conduct unreasonable) stating the joint opinion of all the members of a sub-panel arranged under that paragraph, or
  - (ii) one or more such notices stating the opinions of at least two members of such a sub-panel, and
- (b) in relation to which there has been given a notice under paragraph 8 of that Schedule (HMRC final decision on tax advantage) stating that a tax advantage is to be counteracted.

(5B) For the purposes of subsection (5), any opinions of members of the GAAR advisory panel which must be considered before a notice is given under paragraph 8 or 9 of Schedule 43A to FA 2013 (opinions about the lead arrangements) are taken to relate to the conduct to which the notice relates.”

(26) In Schedule 32 to FA 2014 (accelerated payments and partnerships), paragraph 3 is amended in accordance with subsections (27) and (28).

(27) In sub-paragraph (5), after paragraph (c) insert—

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- “(d) the relevant partner in question has been given a notice under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about the other arrangements (see sub-paragraph (7)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;
- (e) the relevant partner in question has been given a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements was as set out in paragraph 6(4)(b) of that Schedule.”

(28) After sub-paragraph (6) insert—

“(7) Other arrangements” means—

- (a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);
- (b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule).”

(29) In Schedule 34 to FA 2014 (promoters of tax avoidance schemes: threshold conditions), in paragraph 7—

- (a) in paragraph (a), at the end insert “(referrals of single schemes) or are in a pool in respect of which a referral has been made to that Panel under Schedule 43B to that Act (generic referrals), ”;
- (b) in paragraph (b)—
  - (i) for “in relation to the arrangements” substitute “ in respect of the referral ”;
  - (ii) after “11(3)(b)” insert “ or (as the case may be) 6(4)(b) ”;
- (c) in paragraph (c)(i) omit “paragraph 10 of”.

(30) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

## **158 General anti-abuse rule: penalty**

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.
- (2) After section 212 insert—

### **“212A Penalty**

- (1) A person (P) is liable to pay a penalty if—

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- (a) P has been given a notice under—
    - (i) paragraph 12 of Schedule 43,
    - (ii) paragraph 8 or 9 of Schedule 43A, or
    - (iii) paragraph 8 of Schedule 43B,
 stating that a tax advantage arising from particular tax arrangements is to be counteracted,
  - (b) a tax document has been given to HMRC on the basis that the tax advantage arises to P from those arrangements,
  - (c) that document was given to HMRC—
    - (i) by P, or
    - (ii) by another person in circumstances where P knew, or ought to have known, that the other person gave the document on the basis mentioned in paragraph (c), and
  - (d) the tax advantage has been counteracted by the making of adjustments under section 209.
- (2) The penalty is 60% of the value of the counteracted advantage.
- (3) Schedule 43C—
- (a) gives the meaning of “the value of the counteracted advantage”, and
  - (b) makes other provision in relation to penalties under this section.
- (4) In this section “tax document” means any return, claim or other document submitted in compliance (or purported compliance) with any provision of, or made under, an Act.
- (5) In this section the reference to giving a tax document to HMRC is to be interpreted in accordance with paragraph 11(g) and (h) of Schedule 43C.”
- (3) After Schedule 43B insert—

“SCHEDULE  
43C

PENALTY UNDER SECTION 212A: SUPPLEMENTARY PROVISION

*Value of the counteracted advantage: introduction*

- 1 Paragraphs 2 to 4 set out how to calculate the “value of the counteracted advantage” for the purposes of section 212A.

*Value of the counteracted advantage: basic rule*

- 2 (1) The “value of the counteracted advantage” is the additional amount due or payable in respect of tax as a result of the counteraction mentioned in section 212A(1)(c).
- (2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to—
- (a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and



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- (b) an amount which would be repayable by HMRC if the counteraction were not made.
- (3) The following are ignored in calculating the value of the counteracted advantage—
  - (a) group relief, and
  - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.
- (4) For the purposes of this paragraph consequential adjustments under section 210 are regarded as part of the counteraction in question.
- (5) If the counteraction affects the person's liability to two or more taxes, the taxes concerned are to be considered together for the purpose of determining the value of the counteracted advantage.
- (6) This paragraph is subject to paragraphs 3 and 4.

*Value of counteracted advantage: losses*

- 3 (1) To the extent that the tax advantage mentioned in section 212A(1)(b) (“the tax advantage”) resulted in the wrong recording of a loss for the purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 2.
- (2) To the extent that the tax advantage resulted in the wrong recording of a loss for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is—
  - (a) the value under paragraph 2 of so much of the tax advantage as results (or would in the absence of the counteraction result) from the part (if any) of the loss which was used to reduce the amount due or payable in respect of tax, plus
  - (b) 10% of the part of the loss not so used.
- (3) Sub-paragraphs (1) and (2) apply both—
  - (a) to a case where no loss would have been recorded but for the tax advantage, and
  - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) To the extent that the tax advantage creates or increases (or would in the absence of the counteraction create or increase) an aggregate loss recorded for a group of companies—
  - (a) the value of the counteracted advantage is calculated in accordance with this paragraph, and
  - (b) in applying paragraph 2 in accordance with sub-paragraphs (1) and (2), group relief may be taken into account (despite paragraph 2(3)).
- (5) To the extent that the tax advantage results (or would in the absence of the counteraction result) in a loss, the value of it is nil where, because of the nature

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of the loss or the person's circumstances, there was no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

*Value of counteracted advantage: deferred tax*

- 4 (1) To the extent that the tax advantage mentioned in section 212A is a deferral of tax, the value of the counteracted advantage is—
- (a) 25% of the amount of the deferred tax for each year of the deferral, or
  - (b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year, or, if less, 100% of the amount of the deferred tax.
- (2) This paragraph does not apply to a case to the extent that paragraph 3 applies.

*Assessment of penalty*

- 5 (1) Where a person is liable for a penalty under section 212A, HMRC must assess the penalty.
- (2) Where HMRC assess the penalty, HMRC must—
- (a) notify the person who is liable for the penalty, and
  - (b) state in the notice a tax period in respect of which the penalty is assessed.
- (3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (4) An assessment—
- (a) is to be treated for procedural purposes as if it were an assessment to tax,
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with—
- (a) the end of the appeal period for the assessment which gave effect to the counteraction mentioned in section 212A(1)(b), or
  - (b) if there is no assessment within paragraph (a), the date (or the latest of the dates) on which that counteraction becomes final.
- (6) The reference in sub-paragraph (5)(b) to the counteraction becoming final is to be interpreted in accordance with section 210(8).

*Alteration of assessment of penalty*

- 6 (1) After notification of an assessment has been given to a person under paragraph 5(2), the assessment may not be altered except in accordance with this paragraph or paragraph 7, or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.

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- (3) An assessment may be revised as necessary if it operated by reference to an overestimate of the value of the counteracted advantage.

*Revision of assessment following consequential relieving adjustment*

- 7 (1) Sub-paragraph (2) applies where a person—
- (a) is notified under section 210(7) of a consequential adjustment relating to a counteraction under section 209, and
  - (b) an assessment to a penalty in respect of that counteraction of which the person has been notified under paragraph 5(2) does not take account of that consequential adjustment.
- (2) HMRC must make any alterations of the assessment that appear to HMRC to be just and reasonable in connection with the consequential amendment.
- (3) Alterations under this paragraph may be made despite any time limit imposed by or under an enactment.

*Aggregate penalties*

- 8 (1) Sub-paragraph (3) applies where—
- (a) two or more penalties are incurred by the same person and fall to be determined by reference to an amount of tax to which that person is chargeable,
  - (b) one of those penalties is incurred under section 212A, and
  - (c) one or more of the other penalties are incurred under a relevant penalty provision.
- (2) But sub-paragraph (3) does not apply if section 212(2) of FA 2014 (follower notices: aggregate penalties) applies in relation to the amount of tax in question.
- (3) The aggregate of the amounts of the penalties mentioned in subsection (1) (b) and (c), so far as determined by reference to that amount of tax, must not exceed—
- (a) the relevant percentage of that amount, or
  - (b) in a case where at least one of the penalties is under paragraph 5(2) (b) of, or sub-paragraph (3)(b), (4)(b) or (5)(b) of paragraph 6 of, Schedule 55 to FA 2009, £300 (if greater).
- (4) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under section 212A.
- (5) “Relevant penalty provision” means—
- (a) Schedule 24 to FA 2007 (penalties for errors),
  - (b) Schedule 41 to FA 2008 (penalties: failure to notify etc),
  - (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or
  - (d) Part 5 of Schedule 18 to FA 2016 (penalty under serial tax avoidance regime).
- (6) “The relevant percentage” means—

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- (a) 200% in a case where at least one of the penalties is determined by reference to the percentage in—
  - (i) paragraph 4(4)(c) of Schedule 24 to FA 2007,
  - (ii) paragraph 6(4)(a) of Schedule 41 to FA 2008, or
  - (iii) paragraph 6(3A)(c) of Schedule 55 to FA 2009,
- (b) 150% in a case where paragraph (a) does not apply and at least one of the penalties is determined by reference to the percentage in—
  - (i) paragraph 4(3)(c) of Schedule 24 to FA 2007,
  - (ii) paragraph 6(3)(a) of Schedule 41 to FA 2008, or
  - (iii) paragraph 6(3A)(b) of Schedule 55 to FA 2009,
- (c) 140% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—
  - (i) paragraph 4(4)(b) of Schedule 24 to FA 2007,
  - (ii) paragraph 6(4)(b) of Schedule 41 to FA 2008, or
  - (iii) paragraph 6(4A)(c) of Schedule 55 to FA 2009,
- (d) 105% in a case where at none of paragraphs (a), (b) and (c) applies and at least one of the penalties is determined by reference to the percentage in—
  - (i) paragraph 4(3)(b) of Schedule 24 to FA 2007,
  - (ii) paragraph 6(3)(b) of Schedule 41 to FA 2008, or
  - (iii) paragraph 6(4A)(b) of Schedule 55 to FA 2009, and
- (e) in any other case, 100%.

#### *Appeal against penalty*

- 9 (1) A person may appeal against—
  - (a) the imposition of a penalty under section 212A, or
  - (b) the amount assessed under paragraph 5.
- (2) An appeal under sub-paragraph (1)(a) may only be made on the grounds that the arrangements were not abusive or there was no tax advantage to be counteracted.
- (3) An appeal under sub-paragraph (1)(b) may only be made on the grounds that the assessment was based on an overestimate of the value of the counteracted advantage (whether because the estimate was made by reference to adjustments which were not just and reasonable or for any other reason).
- (4) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 5(2).
- (5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (6) Sub-paragraph (5) does not apply—

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- (a) so as to require a person 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 Part.
- (7) On an appeal against the penalty the tribunal may affirm or cancel HMRC's decision.
- (8) On an appeal against the amount of the penalty the tribunal may—
  - (a) affirm HMRC's decision, or
  - (b) substitute for HMRC's decision another decision that HMRC has power to make.
- (9) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (5)).

#### *Mitigation of penalties*

- 10 (1) The Commissioners may in their discretion mitigate a penalty under section 212A, or stay or compound any proceedings for such a penalty.
- (2) They may also, after judgment, further mitigate or entirely remit the penalty.

#### *Interpretation*

- 11 In this Schedule—
  - (a) a reference to an “assessment” to tax is to be interpreted, in relation to inheritance tax, as a reference to a determination;
  - (b) “direct tax” means—
    - (i) income tax,
    - (ii) capital gains tax,
    - (iii) corporation tax (including any amount chargeable as if it were corporation tax or treated as corporation tax),
    - (iv) petroleum revenue tax, and
    - (v) diverted profits tax;
  - (c) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief;
  - (d) a reference to a repayment of tax includes a reference to allowing a credit against tax or to a payment of a corporation tax credit;
  - (e) “corporation tax credit” means—
    - (i) an R&D tax credit under Chapter 2 or 7 of Part 13 of CTA 2009,
    - (ii) an R&D expenditure credit under Chapter 6A of Part 3 of CTA 2009,
    - (iii) a land remediation tax credit or life assurance company tax credit under Chapter 3 or 4 respectively of Part 14 of CTA 2009,
    - (iv) a film tax credit under Chapter 3 of Part 15 of CTA 2009,
    - (v) a television tax credit under Chapter 3 of Part 15A of CTA 2009,

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- (vi) a video game tax credit under Chapter 3 of Part 15B of CTA 2009,
    - (vii) a theatre tax credit under section 1217K of CTA 2009,
    - (viii) an orchestra tax credit under Chapter 3 of Part 15D of CTA 2009, or
    - (ix) a first-year tax credit under Schedule A1 to CAA 2001;
  - (f) “tax period” means a tax year, accounting period or other period in respect of which tax is charged;
  - (g) a reference to giving a document to HMRC includes a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise),
  - (h) a reference to giving a document to HMRC includes a reference to making a statement or declaration in a document.”
- (4) In section 209 (counteracting the tax advantages), after subsection (7) insert—
- “(8) Where a matter is referred to the GAAR Advisory Panel under paragraph 5 or 6 of Schedule 43, the taxpayer (as defined in paragraph 3 of that Schedule) must not make any GAAR-related adjustments in relation to the taxpayer's tax affairs in the period (the “closed period”) which—
- (a) begins with the 31st day after the end of the 45 day period mentioned in paragraph 4(1) of that Schedule, and
  - (b) ends immediately before the day on which the taxpayer is given the notice under paragraph 12 of Schedule 43 (notice of final decision after considering opinion of GAAR Advisory Panel).
- (9) Where a person has been given a pooling notice or a notice of binding under Schedule 43A in relation to any tax arrangements, the person must not make any GAAR-related adjustments in the period (“the closed period”) that—
- (a) begins with the 31st day after that on which that notice is given, and
  - (b) ends—
    - (i) in the case of a pooling notice, immediately before the day on which the person is given a notice under paragraph 8(2) or 9(2) of Schedule 43A, or a notice under paragraph 8(2) of Schedule 43B, in relation to the tax arrangements (notice of final decision after considering opinion of GAAR Advisory Panel), or
    - (ii) in the case of a notice of binding, with the 30th day after the day on which the notice is given.
- (10) In this section “GAAR-related adjustments” means—
- (a) for the purposes of subsection (8), adjustments which give effect (wholly or in part) to the proposed counteraction set out in the notice under paragraph 3 of Schedule 43;
  - (b) for the purposes of subsection (9), adjustments which give effect (wholly or partly) to the proposed counteraction set out in the notice of pooling or binding (as the case may be).”
- (5) Schedule 43 (general anti-abuse rule: procedural requirements) is amended in accordance with subsections (6) to (9).
- (6) After paragraph 1 insert—

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## 1A “Meaning of “tax appeal”

In this Part “tax appeal” means—

- (a) an appeal under section 31 of TMA 1970 (income tax: appeals against amendments of self-assessment, amendments made by closure notices under section 28A or 28B of that Act, etc), including an appeal under that section by virtue of regulations under Part 11 of ITEPA 2003 (PAYE),
- (b) an appeal under paragraph 9 of Schedule 1A to TMA 1970 (income tax: appeals against amendments made by closure notices under paragraph 7(2) of that Schedule, etc),
- (c) an appeal under section 705 of ITA 2007 (income tax: appeals against counteraction notices),
- (d) an appeal under paragraph 34(3) or 48 of Schedule 18 to FA 1998 (corporation tax: appeals against amendment of a company's return made by closure notice, assessments other than self-assessments, etc),
- (e) an appeal under section 750 of CTA 2010 (corporation tax: appeals against counteraction notices),
- (f) an appeal under section 222 of IHTA 1984 (appeals against HMRC determinations) other than an appeal made by a person against a determination in respect of a transfer of value at a time when a tax enquiry is in progress in respect of a return made by that person in respect of that transfer,
- (g) an appeal under paragraph 35 of Schedule 10 to FA 2003 (stamp duty land tax: appeals against amendment of self-assessment, discovery assessments, etc),
- (h) an appeal under paragraph 35 of Schedule 33 to FA 2013 (annual tax on enveloped dwellings: appeals against amendment of self-assessment, discovery assessments, etc),
- (i) an appeal under paragraph 14 of Schedule 2 to the Oil Taxation Act 1975 (petroleum revenue tax: appeal against assessment, determination etc),
- (j) an appeal under section 102 of FA 2015 (diverted profits tax: appeal against charging notice etc),
- (k) an appeal under section 114 of FA 2016 (apprenticeship levy: appeal against an assessment), or
- (l) an appeal against any determination of—
  - (i) an appeal within paragraphs (a) to (k), or
  - (ii) an appeal within this paragraph.”

(7) In paragraph 3(2)(e), for “of paragraphs 5 and 6” substitute “of—

- (i) paragraphs 5 and 6, and
- (ii) sections 209(8) and (9) and 212A.”

(8) After paragraph 4 insert—

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#### 4A “Corrective action by taxpayer

- (1) If the taxpayer takes the relevant corrective action before the beginning of the closed period mentioned in section 209(8), the matter is not to be referred to the GAAR Advisory Panel.
  - (2) For the purposes of this Schedule the “relevant corrective action” is taken if (and only if) the taxpayer takes the steps set out in sub-paragraphs (3) and (4).
  - (3) The first step is that—
    - (a) the taxpayer amends a return or claim to counteract the tax advantage specified in the notice under paragraph 3, or
    - (b) if the taxpayer has made a tax appeal (by notifying HMRC or otherwise) on the basis that the tax advantage specified in the notice under paragraph 3 arises from the tax arrangements specified in that notice, the taxpayer takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing that advantage.
  - (4) The second step is that the taxpayer notifies HMRC—
    - (a) that the taxpayer has taken the first step, and
    - (b) of any additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.
  - (5) Where the taxpayer takes the first step described in sub-paragraph (3)(b), HMRC may proceed as if the taxpayer had not taken the relevant corrective action if the taxpayer fails to enter into the written agreement.
  - (6) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of sub-paragraph (4)(b), it is to be assumed that, where the taxpayer takes the necessary action as mentioned in sub-paragraph (3)(b), the agreement is then entered into.
  - (7) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent the taxpayer taking the first step mentioned in sub-paragraph (3)(a) before the tax enquiry is closed (whether or not before the specified time).
  - (8) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (9), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by the taxpayer to a return or claim in taking the first step mentioned in sub-paragraph (3)(a).
  - (9) The provisions are—
    - (a) section 31(1)(b) or (c) of TMA 1970,
    - (b) paragraph 9 of Schedule 1A to TMA 1970,
    - (c) paragraph 34(3) of Schedule 18 to FA 1998,
    - (d) paragraph 35(1)(b) of Schedule 10 to FA 2003, and
    - (e) paragraph 35(1)(b) of Schedule 33 to FA 2013.”
- (9) Before paragraph 5 (but after the heading “Referral to GAAR Advisory Panel”) insert—



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“4B Paragraphs 5 and 6 apply if the taxpayer does not take the relevant corrective action (see paragraph 4A) by the beginning of the closed period mentioned in section 209(8).”

(10) In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties)—

- (a) omit “or” at the end of paragraph (g), and
- (b) after paragraph (g) insert

“(ga) section 212A of the Finance Act 2013 (general anti-abuse rule), or”

(11) In section 212 of FA 2014 (follower notices: aggregate penalties) (as amended by Schedule 18), in subsection (4)—

- (a) omit “or” at the end of paragraph (c), and
- (b) after paragraph (d) insert “, or
- (e) section 212A of FA 2013 (general anti-abuse rule).”

(12) FA 2015 is amended in accordance with subsections (13) and (14).

(13) In section 120 (penalties in connection with offshore matters and offshore transfers), in subsection (1), omit “and” before paragraph (c) and after paragraph (c) insert—

“, and

(d) Schedule 43C to FA 2013 (as amended by FA 2016).”

(14) In Schedule 20 to that Act, after paragraph 19 insert—

**“General anti-abuse rule: aggregate penalties**

20 (1) In Schedule 43C to FA 2013 (general anti-abuse rule: supplementary provision about penalty), sub-paragraph (6) of paragraph 8 is amended as follows.

(2) After paragraph (b) insert—

“(ba) 125% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—

- (i) paragraph 4(2)(c) of Schedule 24 to FA 2007,
- (ii) paragraph 6(2)(a) of Schedule 41 to FA 2008,
- (iii) paragraph 6(3A)(a) of Schedule 55 to FA 2009,”.

(3) In sub-paragraph (c) for “neither paragraph (a) nor paragraph (b) applies” substitute “none of paragraphs (a) to (ba) applies.

(4) In sub-paragraph (d) for “none of paragraphs (a), (b) and (c) applies” substitute “none of paragraphs (a) to (c) applies”.

(15) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into on or after the day on which this Act is passed.

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### *Tackling frequent avoidance*

#### **159 Serial tax avoidance**

Schedule 18 contains provision about the issue of warning notices to, and further sanctions for, persons who incur a relevant defeat in relation to arrangements.

#### **160 Promoters of tax avoidance schemes**

- (1) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.
- (2) After section 237 insert—

##### **“237A Duty to give conduct notice: defeat of promoted arrangements**

- (1) If an authorised officer becomes aware at any time (“the relevant time”) that a person (“P”) who is carrying on a business as a promoter meets any of the conditions in subsections (11) to (13), the officer must determine whether or not P's meeting of that condition should be regarded as significant in view of the purposes of this Part.  
  
But see also subsection (14).
- (2) An authorised officer must make the determination set out in subsection (3) if the officer becomes aware at any time (“the section 237A(2) relevant time”) that—
  - (a) a person meets a condition in subsection (11), (12) or (13), and
  - (b) at the section 237A(2) relevant time another person (“P”), who is carrying on a business as a promoter, meets that condition by virtue of Part 4 of Schedule 34A (meeting the section 237A conditions: bodies corporate and partnerships).
- (3) The authorised officer must determine whether or not—
  - (a) the meeting of the condition by the person as mentioned in subsection (2)(a), and
  - (b) P's meeting of the condition as mentioned in subsection (2)(b),
 should be regarded as significant in view of the purposes of this Part.
- (4) Subsections (1) and (2) do not apply if a conduct notice or monitoring notice already has effect in relation to P.
- (5) Subsection (1) does not apply if, at the relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.
- (6) Subsection (2) does not apply if, at the section 237A(2) relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.
- (7) But in a case where subsection (1) does not apply because of subsection (5), or subsection (2) does not apply because of subsection (6), subsection (5) of section 237 has effect as if—
  - (a) the references in paragraph (a) of that subsection to “subsection (1)”, and “subsection (1)(a)” included subsection (1) of this section, and

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- (b) in paragraph (b) of that subsection the reference to “subsection (1A)(a)” included a reference to subsection (2)(a) of this section and the reference to subsection (1A)(b) included a reference to subsection (2)(b) of this section.
- (8) If the authorised officer determines under subsection (1) that P's meeting of the condition in question should be regarded as significant, the officer must give P a conduct notice, unless subsection (10) applies.
- (9) If the authorised officer determines under subsection (3) that—
  - (a) the meeting of the condition by the person as mentioned in subsection (2)(a), and
  - (b) P's meeting of the condition as mentioned in subsection (2)(b),should be regarded as significant in view of the purposes of this Part, the officer must give P a conduct notice, unless subsection (10) applies.
- (10) This subsection applies if the authorised officer determines that, having regard to the extent of the impact that P's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice.
- (11) The condition in this subsection is that in the period of 3 years ending with the relevant time at least 3 relevant defeats have occurred in relation to P.
- (12) The condition in this subsection is that at least two relevant defeats have occurred in relation to P at times when a single defeat notice under section 241A(2) or (6) had effect in relation to P.
- (13) The condition in this subsection is that at least one relevant defeat has occurred in relation to P at a time when a double defeat notice under section 241A(3) had effect in relation to P.
- (14) A determination that the condition in subsection (12) or (13) is met cannot be made unless—
  - (a) the defeat notice in question still has effect when the determination is made, or
  - (b) the determination is made on or before the 90th day after the day on which the defeat notice in question ceased to have effect.
- (15) Schedule 34A sets out the circumstances in which a “relevant defeat” occurs in relation to a person and includes provision limiting what can amount to a further relevant defeat in relation to a person (see paragraph 6).

### **237B Duty to give further conduct notice where provisional notice not complied with**

- (1) An authorised officer must give a conduct notice to a person (“P”) who is carrying on a business as a promoter if—
  - (a) a conduct notice given to P under section 237A(8)—
    - (i) has ceased to have effect otherwise than as a result of section 237D(2) or 241(3) or (4), and
    - (ii) was provisional immediately before it ceased to have effect,
  - (b) the officer determines that P had failed to comply with one or more conditions in the conduct notice,

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- (c) the conduct notice relied on a Case 3 relevant defeat,
  - (d) since the time when the conduct notice ceased to have effect, one or more relevant defeats falling within subsection (2) have occurred in relation to—
    - (i) P, and
    - (ii) any arrangements to which the Case 3 relevant defeat also relates, and
  - (e) had that relevant defeat or (as the case may be) those relevant defeats, occurred before the conduct notice ceased to have effect, an authorised officer would have been required to notify the person under section 237C(3) that the notice was no longer provisional.
- (2) A relevant defeat falls within this subsection if it occurs by virtue of Case 1 or Case 2 in Schedule 34A.
- (3) Subsection (1) does not apply if the authorised officer determines that, having regard to the extent of the impact that the person's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give the person a conduct notice.
- (4) Subsection (1) does not apply if a conduct notice or monitoring notice already has effect in relation to the person.
- (5) For the purposes of this Part a conduct notice “relies on a Case 3 relevant defeat” if it could not have been given under the following condition.  
  
The condition is that paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”.

**237C When a conduct notice given under section 237A(8) is “provisional”**

- (1) This section applies to a conduct notice which—
  - (a) is given to a person under section 237A(8), and
  - (b) relies on a Case 3 relevant defeat.
- (2) The notice is “provisional” at all times when it has effect, unless an authorised officer notifies the person that the notice is no longer provisional.
- (3) An authorised officer must notify the person that the notice is no longer provisional if subsection (4) or (5) applies.
- (4) This subsection applies if—
  - (a) the condition in subsection (5)(a) is not met, and
  - (b) a full relevant defeat occurs in relation to P.
- (5) This subsection applies if—
  - (a) two, or all three, of the relevant defeats by reference to which the conduct notice is given would not have been relevant defeats if paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”, and
  - (b) the same number of full relevant defeats occur in relation to P.

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- (6) A “full relevant defeat” occurs in relation to P if—
- (a) a relevant defeat occurs in relation to P otherwise than by virtue of Case 3 in paragraph 9 of Schedule 34A, or
  - (b) circumstances arise which would be a relevant defeat in relation to P by virtue of paragraph 9 of Schedule 34A if that paragraph had effect with the substitution of “100% of the tested arrangements” for “75% of the tested arrangements”.
- (7) In determining under subsection (6) whether a full relevant defeat has occurred in relation to P, assume that in paragraph 6 of Schedule 34A (provision limiting what can amount to a further relevant defeat in relation to a person) the first reference to a “relevant defeat” does not include a relevant defeat by virtue of Case 3 in paragraph 9 of Schedule 34A.

**237D Judicial ruling upholding asserted tax advantage: effect on conduct notice which is provisional**

- (1) Subsection (2) applies if at any time—
- (a) a conduct notice which relies on a Case 3 relevant defeat (see section 237B(5)) is provisional, and
  - (b) a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which that relevant defeat relates (see paragraph 5(2) of Schedule 34A).
- (2) The conduct notice ceases to have effect when that judicial ruling becomes final.
- (3) An authorised officer must give the person to whom the conduct notice was given a written notice stating that the conduct notice has ceased to have effect.
- (4) For the purposes of this section, a tax advantage is “asserted” in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.

In relation to the arrangements mentioned in paragraph (b) of subsection (1) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.

- (5) For the purposes of this section a court or tribunal “upholds” a tax advantage if—
- (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
  - (b) that judicial ruling is final.
- (6) For the purposes of this Part a judicial ruling is “final” if it is—
- (a) a ruling of the Supreme Court, or
  - (b) a ruling of any other court or tribunal in circumstances where—
    - (i) no appeal may be made against the ruling,
    - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,

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- (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
- (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.

(7) In this section references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A.”

(3) After section 241 insert—

*“Defeat notices*

**241A Defeat notices**

- (1) This section applies in relation to a person (“P”) only if P is carrying on a business as a promoter.
- (2) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of one (and only one) relevant defeat which has occurred in relation to P in the period of 3 years ending with the day on which the notice is given.
- (3) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of two (but not more than two) relevant defeats which have occurred in relation to P in the period of 3 years ending with the day on which the notice is given.
- (4) A notice under this section must be given by the end of the 90 days beginning with the day on which the matters mentioned in subsection (2) or (as the case may be) (3) come to the attention of HMRC.
- (5) Subsection (6) applies if—
  - (a) a single defeat notice which had been given to P (under subsection (2) or (6)) ceases to have effect as a result of section 241B(1), and
  - (b) in the period when the defeat notice had effect a relevant defeat (“the further relevant defeat”) occurred in relation to P.
- (6) An authorised officer or an officer of Revenue and Customs with the approval of an authorised officer may give P a notice in respect of the further relevant defeat (regardless of whether or not it occurred in the period of 3 years ending with the day on which the notice is given).
- (7) In this Part—
  - (a) “single defeat notice” means a notice under subsection (2) or (6);
  - (b) “double defeat notice” means a notice under subsection (3);
  - (c) “defeat notice” means a single defeat notice or a double defeat notice.
- (8) A defeat notice must—

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- (a) set out the dates on which the look-forward period for the notice begins and ends;
  - (b) in the case of a single defeat notice, explain the effect of section 237A(12);
  - (c) in the case of a double defeat notice, explain the effect of section 237A(13).
- (9) HMRC may specify what further information must be included in a defeat notice.
- (10) “Look-forward period”—
  - (a) in relation to a defeat notice under subsection (2) or (3), means the period of 5 years beginning with the day after the day on which the notice is given;
  - (b) in relation to a defeat notice under subsection (6), means the period beginning with the day after the day on which the notice is given and ending at the end of the period of 5 years beginning with the day on which the further relevant defeat mentioned in subsection (6) occurred in relation to P.
- (11) A defeat notice has effect throughout its look-forward period unless it ceases to have effect earlier in accordance with section 241B(1) or (4).

#### **241B Judicial ruling upholding asserted tax advantage: effect on defeat notice**

- (1) If the relevant defeat to which a single defeat notice relates is overturned (see subsection (5)), the notice has no further effect on and after the day on which it is overturned.
- (2) Subsection (3) applies if one (and only one) of the relevant defeats in respect of which a double defeat notice was given is overturned.
- (3) The notice is to be treated for the purposes of this Part (including this section) as if it had always been a single defeat notice given (in respect of the other of the two relevant defeats) on the date on which the notice was in fact given.

The look-forward period for the notice is accordingly unchanged.

- (4) If both the relevant defeats to which a double defeat notice relates are overturned (on the same date), that notice has no further effect on and after that date.
- (5) A relevant defeat specified in a defeat notice is “overturned” if—
  - (a) the notice could not have specified that relevant defeat if paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”, and
  - (b) at a time when the notice has effect a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which the relevant defeat relates (see paragraph 5(2) of Schedule 34A).

Accordingly the relevant defeat is overturned on the day on which the judicial ruling mentioned in paragraph (b) becomes final.

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- (6) If a defeat notice ceases to have effect as a result of subsection (1) or (4) an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person to whom the notice was given that it has ceased to have effect.
- (7) If subsection (3) has effect in relation to a defeat notice, an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person of the effect of that subsection.
- (8) For the purposes of this section, a tax advantage is “asserted” in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.
- (9) In relation to the arrangements mentioned in paragraph (b) of subsection (5) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.
- (10) For the purposes of this section a court or tribunal “upholds” a tax advantage if—
  - (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
  - (b) that judicial ruling is final.
- (11) In this section references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A.”
- (4) In section 242 (monitoring notices: duty to apply to tribunal), after subsection (5) insert—
  - “(6) At a time when a notice given under section 237A is provisional, no determination is to be made under subsection (1) in respect of the notice.
  - (7) If a promoter fails to comply with conditions in a conduct notice at a time when the conduct notice is provisional, nothing in subsection (6) prevents those failures from being taken into account under subsection (1) at any subsequent time when the conduct notice is not provisional.”
- (5) After Schedule 34 insert—

## “SCHEDULE 34A

### PROMOTERS OF TAX AVOIDANCE SCHEMES: DEFEATED ARRANGEMENTS

## PART 1

### INTRODUCTION

- 1 In this Schedule—
  - (a) Part 2 is about the meaning of “relevant defeat”;
  - (b) Part 3 contains provision about when a relevant defeat is treated as occurring in relation to a person;



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- (c) Part 4 contains provision about when a person is treated as meeting a condition in subsection (11), (12) or (13) of section 237A;
- (d) Part 5 contains definitions and other supplementary provisions.

## PART 2

### MEANING OF “RELEVANT DEFEAT”

#### *“Related” arrangements*

- 2 (1) For the purposes of this Part of this Act, separate arrangements which persons have entered into are “related” to one another if (and only if) they are substantially the same.
- (2) Sub-paragraphs (3) to (6) set out cases in which arrangements are to be treated as being “substantially the same” (if they would not otherwise be so treated under sub-paragraph (1)).
- (3) Arrangements to which the same reference number has been allocated under Part 7 of FA 2004 (disclosure of tax avoidance schemes) are treated as being substantially the same.

For this purpose arrangements in relation to which information relating to a reference number has been provided in compliance with section 312 of FA 2004 are treated as arrangements to which that reference number has been allocated under Part 7 of that Act.

- (4) Arrangements to which the same reference number has been allocated under paragraph 9 of Schedule 11A to VATA 1994 (disclosure of avoidance schemes) are treated as being substantially the same.
- (5) Any two or more sets of arrangements which are the subject of follower notices given by reference to the same judicial ruling are treated as being substantially the same.
- (6) Where a notice of binding has been given in relation to any arrangements (“the bound arrangements”) on the basis that they are, for the purposes of Schedule 43A to FA 2013, equivalent arrangements in relation to another set of arrangements (the “lead arrangements”)—
  - (a) the bound arrangements and the lead arrangements are treated as being substantially the same, and
  - (b) the bound arrangements are treated as being substantially the same as any other arrangements which, as a result of this sub-paragraph, are treated as substantially the same as the lead arrangements.

#### *“Promoted arrangements”*

- 3 (1) For the purposes of this Schedule arrangements are “promoted arrangements” in relation to a person if—
  - (a) they are relevant arrangements or would be relevant arrangements under the condition stated in sub-paragraph (2), and
  - (b) the person is carrying on a business as a promoter and—

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- (i) the person is or has been a promoter in relation to the arrangements, or
- (ii) that would be the case if the condition in sub-paragraph (2) were met.

(2) That condition is that the definition of “tax” in section 283 includes, and has always included, value added tax.

*Relevant defeat of single arrangements*

- 4 (1) A defeat of arrangements (entered into by any person) which are promoted arrangements in relation to a person (“the promoter”) is a “relevant defeat” in relation to the promoter if the condition in sub-paragraph (2) is met.
- (2) The condition is that the arrangements are not related to any other arrangements which are promoted arrangements in relation to the promoter.
- (3) For the meaning of “defeat” see paragraphs 10 to 16.

*Relevant defeat of related arrangements*

- 5 (1) This paragraph applies if arrangements (entered into by any person) (“Set A”) —
- (a) are promoted arrangements in relation to a person (“P”), and
  - (b) are related to other arrangements which are promoted arrangements in relation to P.
- (2) If Case 1, 2 or 3 applies (see paragraphs 7 to 9) a relevant defeat occurs in relation to P and each of the related arrangements.
- (3) “The related arrangements” means Set A and the arrangements mentioned in sub-paragraph (1)(b).

*Limit on number of separate relevant defeats in relation to the same, or related, arrangements*

- 6 In relation to a person, if there has been a relevant defeat of arrangements (whether under paragraph 4 or 5) there cannot be a further relevant defeat of—
- (a) those particular arrangements, or
  - (b) arrangements which are related to those arrangements.

*Case 1: counteraction upheld by judicial ruling*

- 7 (1) Case 1 applies if—
- (a) any of Conditions A to E is met in relation to any of the related arrangements, and
  - (b) in the case of those arrangements the decision to make the relevant counteraction has been upheld by a judicial ruling (which is final).
- (2) In sub-paragraph (1) “the relevant counteraction” means the counteraction mentioned in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case requires).

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*Case 2: judicial ruling that avoidance-related rule applies*

- 8 Case 2 applies if Condition F is met in relation to any of the related arrangements.

*Case 3: proportion-based relevant defeat*

- 9 (1) Case 3 applies if—
- (a) at least 75% of the tested arrangements have been defeated, and
  - (b) no final judicial ruling in relation to any of the related arrangements has upheld a corresponding tax advantage which has been asserted in connection with any of the related arrangements.
- (2) In this paragraph “the tested arrangements” means so many of the related arrangements (as defined in paragraph 5(3)) as meet the condition in sub-paragraph (3) or (4).
- (3) Particular arrangements meet this condition if a person has made a return, claim or election on the basis that a tax advantage results from those arrangements and—
- (a) there has been an enquiry or investigation by HMRC into the return, claim or election, or
  - (b) HMRC assesses the person to tax on the basis that the tax advantage (or any part of it) does not arise, or
  - (c) a GAAR counteraction notice has been given in relation to the tax advantage or part of it and the arrangements.
- (4) Particular arrangements meet this condition if HMRC takes other action on the basis that a tax advantage which might be expected to arise from those arrangements, or is asserted in connection with them, does not arise.
- (5) For the purposes of this paragraph a tax advantage has been “asserted” in connection with particular arrangements if a person has made a return, claim or election on the basis that the tax advantage arises from those arrangements.
- (6) In sub-paragraph (1)(b) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which is taken into account by HMRC for the purposes of sub-paragraph (1)(a).
- (7) For the purposes of this paragraph a court or tribunal “upholds” a tax advantage if—
- (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
  - (b) that judicial ruling is final.
- (8) In this paragraph references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16.
- (9) In this paragraph “GAAR counteraction notice” means—
- (a) a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract),

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- (b) a notice under paragraph 8(2) or 9(2) of Schedule 43A to that Act (pooling or binding of arrangements) stating that the tax advantage is to be counteracted under the general anti-abuse rule, or
- (c) a notice under paragraph 8(2) of Schedule 43B to that Act (generic referrals) stating that the tax advantage is to be counteracted under the general anti-abuse rule.

*“Defeat” of arrangements*

- 10 For the purposes of this Part of this Act a “defeat” of arrangements occurs if any of Conditions A to F (in paragraphs 11 to 16) is met in relation to the arrangements.
- 11 Condition A is that—
- (a) a person has made a return, claim or election on the basis that a tax advantage arises from the arrangements,
  - (b) a notice given to the person under paragraph 12 of Schedule 43 to, paragraph 8(2) or 9(2) of Schedule 43A to or paragraph 8(2) of Schedule 43B to FA 2013 stated that the tax advantage was to be counteracted under the general anti-abuse rule,
  - (c) the tax advantage has been counteracted (in whole or in part) under the general anti-abuse rule, and
  - (d) the counteraction is final.
- 12 (1) Condition B is that a follower notice has been given to a person by reference to the arrangements (and not withdrawn) and—
- (a) the person has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage (or part of it), or
  - (b) the denied tax advantage has been counteracted (in whole or in part) otherwise than as mentioned in paragraph (a) and the counteraction is final.
- (2) In this paragraph “the denied tax advantage” is to be interpreted in accordance with section 208(3) of FA 2014.
- (3) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.
- 13 (1) Condition C is that—
- (a) the arrangements are DOTAS arrangements,
  - (b) a person (“the taxpayer”) has made a return, claim or election on the basis that a relevant tax advantage arises,
  - (c) the relevant tax advantage has been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the taxpayer to obtain.
- (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments are made in respect of the taxpayer's tax position on the basis that the whole or part of that tax advantage does not arise.

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- 14 (1) Condition D is that—
- (a) the arrangements are disclosable VAT arrangements to which a taxable person is a party,
  - (b) the taxable person has made a return or claim on the basis that a relevant tax advantage arises,
  - (c) the relevant tax advantage has been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the taxable person to obtain.
- (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments are made in respect of the taxable person's tax position on the basis that the whole or part of that tax advantage does not arise.
- 15 (1) Condition E is that the arrangements are disclosable VAT arrangements to which a taxable person (“T”) is a party and—
- (a) the arrangements relate to the position with respect to VAT of a person other than T (“S”) who has made supplies of goods or services to T,
  - (b) the arrangements might be expected to enable T to obtain a tax advantage in connection with those supplies of goods or services,
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) HMRC assess S to tax or take any other action on a basis which prevents T from obtaining (or obtaining the whole of) the tax advantage in question, or
  - (b) adjustments are made on a basis such as is mentioned in paragraph (a).
- 16 (1) Condition F is that—
- (a) a person has made a return, claim or election on the basis that a relevant tax advantage arises,
  - (b) the tax advantage, or part of the tax advantage would not arise if a particular avoidance-related rule (see paragraph 25) applies in relation to the person's tax affairs,
  - (c) it is held in a judicial ruling that the relevant avoidance-related rule applies in relation to the person's tax affairs, and
  - (d) the judicial ruling is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the person to obtain.

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## PART 3

### RELEVANT DEFEATS: ASSOCIATED PERSONS

#### *Attribution of relevant defeats*

- 17 (1) Sub-paragraph (2) applies if—
- (a) there is (or has been) a person (“Q”),
  - (b) arrangements (“the defeated arrangements”) have been entered into,
  - (c) an event occurs such that either—
    - (i) there is a relevant defeat in relation to Q and the defeated arrangements, or
    - (ii) the condition in sub-paragraph (i) would be met if Q had not ceased to exist,
  - (d) at the time of that event a person (“P”) is carrying on a business as a promoter (or is carrying on what would be such a business under the condition in paragraph 3(2)), and
  - (e) Condition 1 or 2 is met in relation to Q and P.
- (2) The event is treated for all purposes of this Part of this Act as a relevant defeat in relation to P and the defeated arrangements (whether or not it is also a relevant defeat in relation to Q, and regardless of whether or not P existed at any time when those arrangements were promoted arrangements in relation to Q).
- (3) Condition 1 is that—
- (a) P is not an individual,
  - (b) at a time when the defeated arrangements were promoted arrangements in relation to Q—
    - (i) P was a relevant body controlled by Q, or
    - (ii) Q was a relevant body controlled by P, and
  - (c) at the time of the event mentioned in sub-paragraph (1)(c)—
    - (i) Q is a relevant body controlled by P,
    - (ii) P is a relevant body controlled by Q, or
    - (iii) P and Q are relevant bodies controlled by a third person.
- (4) Condition 2 is that—
- (a) P and Q are relevant bodies,
  - (b) at a time when the defeated arrangements were promoted arrangements in relation to Q, a third person (“C”) controlled Q, and
  - (c) C controls P at the time of the event mentioned in sub-paragraph (1)(c).
- (5) For the purposes of sub-paragraphs (3)(b) and (4)(b), the question whether arrangements are promoted arrangements in relation to Q at any time is to be determined on the assumption that the reference to “design” in paragraph (b) of section 235(3) (definition of “promoter” in relation to relevant arrangements) is omitted.

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### *Deemed defeat notices*

- 18 (1) This paragraph applies if—
- (a) an authorised officer becomes aware at any time (“the relevant time”) that a relevant defeat has occurred in relation to a person (“P”) who is carrying on a business as a promoter,
  - (b) there have occurred, more than 3 years before the relevant time—
    - (i) one third party defeat, or
    - (ii) two third party defeats, and
  - (c) conditions A1 and B1 (in a case within paragraph (b)(i)), or conditions A2 and B2 (in a case within paragraph (b)(ii)), are met.
- (2) Where this paragraph applies by virtue of sub-paragraph (1)(b)(i), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the time of the third party defeat, given P a single defeat notice under section 241A(2) in respect of it.
- (3) Where this paragraph applies by virtue of sub-paragraph (1)(b)(ii), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the second of the two third party defeats, given P a double defeat notice under section 241A(3) in respect of the two third party defeats.
- (4) Section 241A(8) has no effect in relation to a notice treated as given as mentioned in sub-paragraph (2) or (3).
- (5) Condition A1 is that—
- (a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of the third party defeat,
  - (b) at the time of the third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a defeat notice in respect of the third party defeat, had the officer been aware that it was a relevant defeat in relation to P, and
  - (c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of the third party defeat have never been met (ignoring this paragraph).
- (6) Condition A2 is that—
- (a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of each, or both, of the third party defeats,
  - (b) at the time of the second third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a double defeat notice in respect of the third party defeats, had the officer been aware that either of the third party defeats was a relevant defeat in relation to P, and
  - (c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of those third party defeats (or either of them) have never been met (ignoring this paragraph).

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- (7) Condition B1 is that, had an authorised officer given P a defeat notice in respect of the third party defeat at the time of that relevant defeat, that defeat notice would still have effect at the relevant time (see sub-paragraph (1)).
- (8) Condition B2 is that, had an authorised officer given P a defeat notice in respect of the two third party defeats at the time of the second of those relevant defeats, that defeat notice would still have effect at the relevant time.
- (9) In this paragraph “third party defeat” means a relevant defeat which has occurred in relation to a person other than P.

*Meaning of “relevant body” and “control”*

- 19 (1) In this Part of this Schedule “relevant body” means—
- (a) a body corporate, or
  - (b) a partnership.
- (2) For the purposes of this Part of this Schedule a person controls a body corporate if the person has power to secure that the affairs of the body corporate are conducted in accordance with the person's wishes—
- (a) by means of the holding of shares or the possession of voting power in relation to the body corporate or any other relevant body,
  - (b) as a result of any powers conferred by the articles of association or other document regulating the body corporate or any other relevant body, or
  - (c) by means of controlling a partnership.
- (3) For the purposes of this Part of this Schedule a person controls a partnership if the person is a controlling member or the managing partner of the partnership.
- (4) In this paragraph “controlling member” has the same meaning as in Schedule 36 (partnerships).
- (5) In this paragraph “managing partner”, in relation to a partnership, means the member of the partnership who directs, or is on a day-to-day level in control of, the management of the business of the partnership.

## PART 4

### MEETING SECTION 237A CONDITIONS: BODIES CORPORATE AND PARTNERSHIPS

*Treating persons under another's control as meeting section 237A condition*

- 20 (1) A relevant body (“RB”) is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) that condition was met by a person (“C”) at a time when—
    - (i) C was carrying on a business as a promoter, or
    - (ii) RB was carrying on a business as a promoter and C controlled RB, and
  - (b) RB is controlled by C at the section 237A(2) relevant time.
- (2) Sub-paragraph (1) does not apply if C is an individual.



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- (3) For the purposes of determining whether the requirements of sub-paragraph (1) are met by reason of meeting the requirement in sub-paragraph (1)(a)(i), it does not matter whether RB existed at the time when C met the section 237A condition.

*Treating persons in control of others as meeting section 237A condition*

- 21 (1) A person other than an individual is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) a relevant body (“A”) met the condition at a time when A was controlled by the person, and
  - (b) at the time mentioned in paragraph (a) A, or another relevant body (“B”) which was also at that time controlled by the person, carried on a business as a promoter.
- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether A or B (or neither) exists at the section 237A(2) relevant time.

*Treating persons controlled by the same person as meeting section 237A condition*

- 22 (1) A relevant body (“RB”) is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) another relevant body met that condition at a time (“time T”) when it was controlled by a person (“C”),
  - (b) at time T, there was a relevant body controlled by C which carried on a business as a promoter, and
  - (c) RB is controlled by C at the section 237A(2) relevant time.
- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether—
- (a) RB existed at time T, or
  - (b) any relevant body (other than RB) by reason of which the requirements of sub-paragraph (1) are met exists at the section 237A(2) relevant time.

*Interpretation*

- 23 (1) In this Part of this Schedule—
- “control” has the same meaning as in Part 3 of this Schedule;
  - “relevant body” has the same meaning as in Part 3 of this Schedule;
  - “section 237A(2) relevant time” means the time referred to in section 237A(2);
  - “section 237A condition” means any of the conditions in section 237A(11), (12) and (13).
- (2) For the purposes of paragraphs 20(1)(a), 21(1)(a) and 22(1)(a), the condition in section 237A(11) (occurrence of 3 relevant defeats in the 3 years ending with the relevant time) is taken to have been met by a person at any time if at least 3 relevant defeats have occurred in relation to the person in the period of 3 years ending with that time.

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## PART 5

### SUPPLEMENTARY

#### *“Adjustments”*

- 24 In this Schedule “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement).

#### *Meaning of “avoidance-related rule”*

- 25 (1) In this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if—
- (a) it refers (in whatever terms) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and
  - (b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).
- (3) A rule is also in Category 1 if it refers (in whatever terms) to—
- (a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and
  - (b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the “sole or main benefit” or “one of the main benefits” or any other reference to a benefit.

- (4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.
- (5) For example, a rule in the following form would fall within Category 1 and within Category 2—

#### **Example rule**

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

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*“DOTAS arrangements”*

- 26 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if at that time a person—
- (a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
  - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule “DOTAS arrangements” does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).
- (3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
  - (b) but for subsection (4A), (4C) or (5) of that section,
- is treated as providing the information at the end of the period referred to in subsection (3) of that section.

*“Disclosable VAT arrangements”*

- 27 For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time—
- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
  - (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or
  - (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

*Paragraphs 26 and 27: supplementary*

- 28 (1) A person “fails to comply” with any provision mentioned in paragraph 26(1) (a) or 27(b) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that—
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,

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- (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “the appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, or
  - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.

*“Final” counteraction*

- 29 For the purposes of this Schedule the counteraction of a tax advantage or of arrangements is “final” when the assessment or adjustments made to effect the counteraction, and any amounts arising as a result of the assessment or adjustments, can no longer be varied, on appeal or otherwise.

*Inheritance tax, stamp duty reserve tax, VAT and petroleum revenue tax*

- 30 (1) In this Schedule, in relation to inheritance tax, each of the following is treated as a return—
- (a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
  - (b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;
  - (c) information or a document provided by a person in accordance with regulations under section 256 of that Act;
- and such a return is treated as made by the person in question.
- (2) In this Schedule references to an assessment to tax, in relation to inheritance tax, stamp duty reserve tax and petroleum revenue tax, include a determination.
- (3) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

*Power to amend*

- 31 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
- (2) An amendment by virtue of sub-paragraph (1) may, in particular, add, vary or remove conditions or categories (or otherwise vary the meaning of “avoidance-related rule”).
- (3) Regulations under sub-paragraph (1) may include any amendment of this Part of this Act that is appropriate in consequence of an amendment made by virtue of sub-paragraph (1).”

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(6) In section 241 (duration of conduct notice), after subsection (4) insert—

“(5) See also section 237D(2) (provisional conduct notice affected by judicial ruling).”

(7) After section 281 insert—

**“281A VAT**

(1) In the provisions mentioned in subsection (2)—

- (a) “tax” includes value added tax, and
- (b) “tax advantage” has the meaning given by section 234(3) and also includes a tax advantage as defined in paragraph 1 of Schedule 11A to VATA 1994.

(2) Those provisions are—

- (a) section 237D;
- (b) section 241B;
- (c) Schedule 34A.

(3) Other references in this Part to “tax” are to be read as including value added tax so far as that is necessary for the purposes of sections 237A to 237D, 241A and 241B and Schedule 34A; but “tax” does not include value added tax in section 237A(10) or 237B(3).”

(8) In section 282 (regulations), in subsection (3), after paragraph (b) insert—

“(ba) paragraph 31 of Schedule 34A.”.

(9) In section 283(1) (interpretation of Part 5)—

(a) in the definition of “conduct notice”, after paragraph (a) insert—

“(aa) section 237A(8),

(ab) section 237B(1).”;

(b) in the definition of “tax”, after ““tax”” insert “(except in provisions to which section 281A applies) ”;

(c) in the definition of ““tax advantage””, after “234(3)” insert “(but see also section 281A) ”;

(d) at the appropriate places insert—

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

““defeat”, in relation to arrangements, has the meaning given by paragraph 10 of Schedule 34A;”

““defeat notice” has the meaning given by section 241A(7);”

““double defeat notice” has the meaning given by section 241A(7);”

““final”, in relation to a judicial ruling, is to be interpreted in accordance with section 237D(6);”

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““judicial ruling” means a ruling of a court or tribunal on one or more issues;”

““look-forward period, in relation to a defeat notice, has the meaning given by section 241A(10);”

““provisional”, in relation to a conduct notice given under section 237A(8), is to be interpreted in accordance with section 237C;”

““relevant defeat”, in relation to a person, is to be interpreted in accordance with Schedule 34A;”

““related”, in relation to arrangements, is to be interpreted in accordance with paragraph 2 of Schedule 34A;”

““relies on a Case 3 relevant defeat” is to be interpreted in accordance section 237B(5);”

““single defeat notice” has the meaning given by section 241A(7).”

(10) Schedule 36 (promoters of tax avoidance schemes: partnerships) is amended in accordance with subsections (11) to (16).

(11) In Part 2, before paragraph 5 insert—

**4A “Defeat notices**

A defeat notice that is given to a partnership must state that it is a partnership defeat notice.”.

(12) In paragraph 7(1)(b) after “a” insert “ defeat notice, ”.

(13) In paragraph 7(2) after “the” insert “ defeat notice, ”.

(14) After paragraph 7 insert—

**7A “Persons leaving partnership: defeat notices**

(1) Sub-paragraphs (2) and (3) apply where—

- (a) a person (“P”) who was a controlling member of a partnership at the time when a defeat notice (“the original notice”) was given to the partnership has ceased to be a member of the partnership,
- (b) the defeat notice had effect in relation to the partnership at the time of that cessation, and
- (c) P is carrying on a business as a promoter.

(2) An authorised officer may give P a defeat notice.

(3) If P is carrying on a business as a promoter in partnership with one or more other persons and is a controlling member of that partnership (“the new partnership”), an authorised officer may give a defeat notice to the new partnership.

(4) A defeat notice given under sub-paragraph (3) ceases to have effect if P ceases to be a member of the new partnership.

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(5) A notice under sub-paragraph (2) or (3) may not be given after the original notice has ceased to have effect.

(6) A defeat notice given under sub-paragraph (2) or (3) is given in respect of the relevant defeat or relevant defeats to which the original notice relates.”

(15) In paragraph 10—

(a) in sub-paragraph (1)(b) for “conduct notice or a” substitute “ , defeat notice, conduct notice or ”;

(b) in sub-paragraph (3), after “partner—” insert—

“(za) a defeat notice (if the original notice is a defeat notice);”.

(c) in sub-paragraph (4), after “(“the new partnership”)—” insert—

“(za) a defeat notice (if the original notice is a defeat notice);”

(d) after sub-paragraph (5) insert—

“(5A) A notice under sub-paragraph (3)(za) or (4)(za) may not be given after the end of the look-forward period of the original notice.”

(16) After paragraph 11 insert—

“11A

The look-forward period for a notice under paragraph 7A(2) or (3) or 10(3) (za) or (4)(za)—

(a) begins on the day after the day on which the notice is given, and

(b) continues to the end of the look-forward period for the original notice (as defined in paragraph 7A(1)(a) or 10(2), as the case may be).”

(17) Part 2 of Schedule 2 to the National Insurance Contributions Act 2015 (application of Part 5 of FA 2014 to national insurance contributions) is amended in accordance with subsections (18) and (19).

(18) After paragraph 30 insert—

### 30A “Threshold conditions

(1) In paragraph 5 of Schedule 34 (non-compliance with Part 7 of FA 2004), in sub-paragraph (4)—

(a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that P is to be deemed not to have failed to comply with the provision concerned as P had a reasonable excuse for not doing the thing required to be done, and

(b) the reference in paragraph (c) to a determination is to be read accordingly.

(2) In this paragraph “corresponding NICs purposes” means the purposes of any provision of regulations under section 132A of SSAA 1992.

### 30B Relevant defeats

(1) Schedule 34A (promoters of tax avoidance schemes: defeated arrangements) has effect with the following modifications.

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- (2) References to an assessment (or an assessment to tax) include a NICs decision relating to a person's liability for relevant contributions.
- (3) References to adjustments include a payment in respect of a liability to pay relevant contributions (and the definition of “adjustments” in paragraph 24 accordingly has effect as if such payments were included in it).
- (4) In paragraph 9(3) the reference to an enquiry into a return includes a relevant contributions dispute (as defined in paragraph 6 of this Schedule).
- (5) In paragraph 28(3)—
  - (a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done, and
  - (b) the reference in paragraph (c) to a determination is to be read accordingly.

“Corresponding NICs purposes” means the purposes of any provision of regulations under section 132A of SSAA 1992.”
- (19) In paragraph 31 (interpretation)—
  - (a) before paragraph (a) insert—
    - “(za) NICs decision” means a decision under section 8 of SSC(TF)A 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671);”
  - (b) in paragraph (b), for “are to sections of” substitute “ or Schedules are to sections of, or Schedules to ”.
- (20) For the purposes of sections 237A and 241A of FA 2014, a defeat (by virtue of any of Conditions A to F in Schedule 34A to that Act) of arrangements is treated as not having occurred if—
  - (a) there has been a final judicial ruling on or before the day on which this Act is passed as a result of which the counteraction referred to in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case may be) is final for the purposes of Schedule 34A of that Act, or
  - (b) (in the case of a defeat by virtue of Condition F in Schedule 34A) the judicial ruling mentioned in paragraph 16(1)(d) of that Schedule becomes final on or before the day on which this Act is passed.
- (21) Subsection (20) does not apply in relation to a person (who is carrying on a business as a promoter) if at any time after 17 July 2014 that person or an associated person takes action as a result of which the person taking the action—
  - (a) becomes a promoter in relation to the arrangements, or arrangements related to those arrangements, or
  - (b) would have become a promoter in relation to arrangements mentioned in paragraph (a) had the person not already been a promoter in relation to those arrangements.
- (22) For the purposes of sections 237A and 241A of FA 2014, a defeat of arrangements is treated as not having occurred if it would (ignoring this sub-paragraph) have occurred—



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- (a) on or before the first anniversary of the day on which this Act is passed, and
  - (b) by virtue of any of Conditions A to E in Schedule 34A to FA 2014, but otherwise than as a result of a final judicial ruling.
- (23) For the purposes of subsection (21) a person (“Q”) is an “associated person” in relation to another person (“P”) at any time when any of the following conditions is met—
- (a) P is a relevant body which is controlled by Q;
  - (b) Q is a relevant body, P is not an individual and Q is controlled by P;
  - (c) P and Q are relevant bodies and a third person controls P and Q.
- (24) In subsection (23) “relevant body” and “control” are to be interpreted in accordance with paragraph 19 of Schedule 34A to FA 2014.
- (25) In subsections (20) to (22) expressions used in Part 5 of FA 2014 (as amended by this section) have the same meaning as in that Part.

## **161 Large businesses: tax strategies and sanctions for persistently unco-operative behaviour**

- (1) Schedule 19 contains provisions relating to—
- (a) the publication of tax strategies by bodies which are or are part of a large business,
  - (b) the imposition of sanctions for such bodies where there has been persistent unco-operative behaviour.
- (2) That Schedule, so far as relating to the publication of a tax strategy for a financial year of a relevant body or other entity, has effect only where the financial year begins on or after the day on which this Act is passed.
- (3) An officer of HMRC may not give a warning notice under Part 3 of that Schedule to a relevant body or other entity before the beginning of its first financial year beginning on or after the day on which this Act is passed.
- (4) In this section and Schedule 19 “HMRC” means Her Majesty's Revenue and Customs.

### *Offshore activities*

## **162 Penalties for enablers of offshore tax evasion or non-compliance**

- (1) Schedule 20 makes provision for penalties for persons who enable offshore tax evasion or non-compliance by other persons.
- (2) Subsection (1) and that Schedule come into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under this section may—
- (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different purposes, and
  - (c) make supplemental, incidental and transitional provision in connection with the coming into force of any provision of the Schedule.

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#### Commencement Information

- I4** [S. 162\(2\)\(3\)](#) in force at Royal Assent, see. [s. 162\(2\)](#)  
**I5** [S. 162\(1\)](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

### 163 Penalties in connection with offshore matters and offshore transfers

- (1) Schedule 21 contains provisions amending—
  - (a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
  - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
  - (c) Schedule 55 to FA 2009 (penalties for failure to make return etc).
- (2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) Regulations under this section may—
  - (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different provisions or for different purposes, and
  - (c) make supplemental, incidental and transitional provision.

### 164 Offshore tax errors etc: publishing details of deliberate tax defaulters

- (1) Section 94 of FA 2009 (publishing details of deliberate tax defaulters) is amended as follows.
- (2) After subsection (4), insert—
 

“(4A) Subsection (4B) applies where a person who is a body corporate or a partnership has incurred—

  - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
  - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).

(4B) The Commissioners may publish the information mentioned in subsection (4) in respect of any individual who—

  - (a) controls the body corporate or the partnership (within the meaning of section 1124 of CTA 2010), and
  - (b) has obtained a tax advantage as a result of the inaccuracy or failure.

(4C) Subsection (4D) applies where one or more trustees of a settlement have incurred—

  - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or

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- (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
- (4D) The Commissioners may publish the information mentioned in subsection (4) in respect of any trustee who is an individual and who has obtained a tax advantage as a result of the inaccuracy or failure.”
- (3) In subsection (6), after “information” insert “ about a person under subsection (1), ”.
- (4) After subsection (6), insert—
  - “(6A) Before publishing any information about an individual under subsection (4B) or (4D), the Commissioners—
    - (a) must inform the individual that they are considering doing so, and
    - (b) afford the individual reasonable opportunity to make representations about whether it should be published.”
- (5) In subsection (10)—
  - (a) omit the word “or” at the end of paragraph (a), and after that paragraph insert—
    - “(aa) paragraph 10A of that Schedule to the full extent permitted following an unprompted disclosure,”;
  - (b) after paragraph (b) insert “, or
  - (c) paragraph 13A of that Schedule to the full extent permitted following an unprompted disclosure.”
- (6) For subsection (16) substitute—
  - “(16) In this section—
    - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
    - “tax advantage” has the meaning given by section 208 of FA 2013.”
- (7) The amendments made by this section come into force on such day as the Treasury may by regulations made by statutory instrument appoint.

#### Commencement Information

**I6** [S. 164](#) in force at 1.4.2017 for the purposes of the amendments made by that section by [S.I. 2017/261](#), [reg. 2](#)

## 165 Asset-based penalties for offshore inaccuracies and failures

- (1) Schedule 22 contains provision imposing asset-based penalties on certain taxpayers who have been charged a penalty for deliberate offshore inaccuracies and failures.
- (2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) Regulations under subsection (2) may—
  - (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different provisions or for different purposes, and

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- (c) make supplemental, incidental and transitional provision.

## 166 Offences relating to offshore income, assets and activities

- (1) After section 106A of TMA 1970 insert—

### *“Offshore income, assets and activities*

#### **106B Offence of failing to give notice of being chargeable to tax**

- (1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has not given that notice by the end of the notification period commits an offence if—
  - (a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and
  - (b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.
- (3) In this section “the notification period” has the same meaning as in section 7 (see subsection (1C) of that section).

#### **106C Offence of failing to deliver return**

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if—
  - (a) the return is not delivered by the end of the withdrawal period,
  - (b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
  - (c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.
- (3) In this section “the withdrawal period” has the same meaning as in section 8B (see subsection (6) of that section).

#### **106D Offence of making inaccurate return**

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period—
  - (a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or

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- both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
- (b) the amount of that increase exceeds the threshold amount.

- (2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.
- (3) In this section “the amendment period” means the period for amending the return under section 9ZA.

#### **106E Exclusions from offences under sections 106B to 106D**

- (1) A person is not guilty of an offence under section 106B, 106C or 106D if the capacity in which the person is required to give the notice or make and deliver the return is—
  - (a) as a relevant trustee of a settlement, or
  - (b) as the executor or administrator of a deceased person.
- (2) The Treasury may by regulations provide that a person is not guilty of an offence under section 106B, 106C or 106D if—
  - (a) conditions specified in the regulations are met, or
  - (b) circumstances so specified exist.
- (3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

#### **106F Offences under sections 106B to 106D: supplementary provision**

- (1) Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer (but not where a period is otherwise extended under that subsection), any reference in section 106B, 106C or 106D to the end of the period is to be read as a reference to the end of the period as so extended.
- (2) The Treasury may by regulations specify the amount (which must not be less than £25,000) that is to be the threshold amount for the purposes of sections 106B to 106D.
- (3) The Treasury may by regulations make provision as to the calculation for the purposes of sections 106B to 106D of—
  - (a) the amount of tax that is chargeable on or by reference to offshore income, assets or activities, and
  - (b) the increase in the amount of tax that is so chargeable as a result of correcting an inaccuracy.
- (4) In sections 106B to 106D and this section “offshore income, assets or activities” means—
  - (a) income arising from a source in a territory outside the United Kingdom,
  - (b) assets situated or held in a territory outside the United Kingdom, or
  - (c) activities carried on wholly or mainly in a territory outside the United Kingdom.

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- (5) In subsection (4), “assets” has the meaning given in section 21(1) of the 1992 Act, but also includes sterling.

### **106G Penalties for offences under sections 106B to 106D**

- (1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction—
- (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (2) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1) (a) to 51 weeks is to be read as a reference to 6 months.

### **106H Regulations under sections 106E and 106F**

- (1) This section makes provision about regulations under sections 106E and 106F.
- (2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.
- (3) The regulations—
- (a) may make different provision for different cases, and
  - (b) may include incidental, supplemental, consequential and transitional provision and savings.
- (4) The regulations are to be made by statutory instrument.
- (5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) The regulations—
- (a) may appoint different days for different purposes, and
  - (b) may include incidental, supplemental, consequential and transitional provision and savings.
- (4) The amendment made by this section does not have effect in relation to—
- (a) a failure to give a notice required by section 7 of TMA 1970,
  - (b) a failure to make and deliver a return required by section 8 of TMA 1970, or
  - (c) a return required by section 8 that contains an inaccuracy,
- if the notice or return relates to a tax year before that in which the amendment comes into force.

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#### Commencement Information

- I7** [S. 166](#) in force at 7.10.2017 for the purposes of the amendment made by that provision with effect in relation to the tax year commencing on 6.4.2017 and subsequent tax years by [S.I. 2017/970](#), [art. 2](#)

## PART 11

### ADMINISTRATION, ENFORCEMENT AND SUPPLEMENTARY POWERS

#### *Assessment and returns*

#### **167 Simple assessments**

- (1) Schedule 23 contains provisions about simple assessments by HMRC.
- (2) Paragraphs 1 to 8 of that Schedule have effect in relation to the 2016-17 tax year and subsequent years.
- (3) Paragraph 9 of that Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (4) Regulations under subsection (3) may—
  - (a) commence paragraph 9 generally or only for specified purposes, and
  - (b) appoint different days for different purposes.

#### **168 Time limit for self assessment tax returns**

- (1) TMA 1970 is amended as follows.
- (2) In section 34 (ordinary time limit of 4 years for assessments), after subsection (2) insert—

“(3) In this section “assessment” does not include a self-assessment.”
- (3) After that section insert—

##### **“34A Ordinary time limit for self-assessments**

- (1) Subject to subsections (2) and (3), a self assessment contained in a return under section 8 or 8A may be made and delivered at any time not more than 4 years after the end of the year of assessment to which it relates.
- (2) Nothing in subsection (1) prevents—
  - (a) a person who has received a notice under section 8 or 8A within that period of 4 years from delivering a return including a self-assessment within the period of 3 months beginning with the date of the notice,
  - (b) a person in respect of whom a determination under section 28C has been made from making a self-assessment in accordance with that section within the period allowed by subsection (5)(a) or (b) of that section.

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- (3) Subsection (1) has effect subject to the following provisions of this Act and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case.
- (4) This section has effect in relation to self-assessments for a year of assessment earlier than 2012-13 as if—
  - (a) in subsection (1) for the words from “not more” to the end there were substituted “on or before 5 April 2017”, and
  - (b) in subsection (2)(a) for the words “within that period of 4 years” there were substituted “on or before 5 April 2017.”

## **169 HMRC power to withdraw notice to file a tax return**

- (1) Section 8B of TMA 1970 (withdrawal of notice under section 8 or 8A) is amended as follows.
- (2) In subsection (2) for the words from “the person” to the end substitute “HMRC may withdraw the notice (whether at the request of the person or otherwise)”.
- (3) In subsection (3) for “no request may be made” substitute “the notice may not be withdrawn”.
- (4) In subsection (4) omit “, on receiving a request,”.
- (5) In subsection (6)(b) for “agree with the person” substitute “determine”.
- (6) In paragraph 17A of Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc), in sub-paragraph (1)(b) for the words from the beginning to “withdraw” substitute “HMRC decide to give P a notice under section 8B withdrawing”.
- (7) The amendments made by this section have effect in relation to any notice under section 8 or 8A of TMA 1970 given in relation to the 2014-15 tax year or any subsequent year (and it is immaterial whether the notice was given before or after the passing of this Act).

### *Judgment debts*

## **170 Rate of interest applicable to judgment debts etc: Scotland**

- (1) This section applies if—
  - (a) a sum is payable to or by the Commissioners under a decree or extract issued in any court proceedings relating to a taxation matter (a “tax-related judgment debt”), and
  - (b) interest in relation to the tax-related judgment debt is included in or payable under the decree or extract.
- (2) In a case where the rate of interest in relation to the tax-related judgment debt is stated in the decree or extract, the rate stated in relation to that debt may not exceed (and may not be capable of exceeding)—
  - (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
  - (b) in the case of a sum payable by the Commissioners, the special repayment rate.



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- (3) In a case where the rate of interest in relation to the tax-related judgment debt is not stated in the decree or extract but provided for by an enactment or rule of court (whenever passed or made), that enactment or rule is to have effect in relation to the debt as if for the rate for which it provides there were substituted—
- (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
  - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (4) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of—
- (a) the date of the decree or extract in question, and
  - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (5) In this section—
- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
  - “enactment” includes an Act of the Scottish Parliament or an instrument made under such an Act;
  - “late payment interest rate” means the rate provided for in regulations made by the Treasury under section 103(1) of FA 2009;
  - “special repayment rate” has the same meaning as in section 52 of F(No.2)A 2015 (and subsections (7) to (10) of that section apply for the purposes of this section as they apply for the purposes of that section);
  - “taxation matter” means anything the collection and management of which is the responsibility of the Commissioners (or was the responsibility of the Commissioners of Inland Revenue or Commissioners of Customs and Excise);
  - “working day” means any day other than a non-business day as defined in section 92 of the Bills of Exchange Act 1882.
- (6) This section extends to Scotland only.

## **171 Rate of interest applicable to judgment debts etc: Northern Ireland**

- (1) This section applies if a sum payable to or by the Commissioners under a judgment or order given or made in any court proceedings relating to a taxation matter (a “tax-related judgment debt”) carries interest.
- (2) In a case where the rate of interest is specified in the judgment (in the case of the High Court) or directed by the judge (in the case of a county court), the rate specified or directed in relation to that debt may not exceed (and may not be capable of exceeding) —
- (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
  - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (3) In a case where the rate of interest in relation to the tax-related judgment debt is not specified in the judgment or directed by the judge but provided for by an enactment or rule of court (whenever passed or made), that enactment or rule is to have effect in relation to the debt as if for the rate for which it provides there were substituted—

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- (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
  - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (4) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of—
- (a) the date of the judgment or order in question, and
  - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (5) In this section—
- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
  - “enactment” includes Northern Ireland legislation or an instrument made under such legislation;
  - “late payment interest rate” means the rate provided for in regulations made by the Treasury under section 103(1) of FA 2009;
  - “special repayment rate” has the same meaning as in section 52 of F(No.2) A 2015 (and subsections (7) to (10) of that section apply for the purposes of this section as they apply for the purposes of that section);
  - “taxation matter” means anything the collection and management of which is the responsibility of the Commissioners (or was the responsibility of the Commissioners of Inland Revenue or Commissioners of Customs and Excise);
  - “working day” means any day other than a non-business day as defined in section 92 of the Bills of Exchange Act 1882.
- (6) This section extends to Northern Ireland only.

## **172 Rate of interest applicable to judgment debts etc: England and Wales**

- (1) In section 52 of F(No. 2)A 2015 (rates of interest applicable to judgment debts etc in taxation matters: England and Wales), in subsection (15), in the definition of “taxation matter” omit “, other than national insurance contributions,”.
- (2) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of—
- (a) the date of the judgment or order in question, and
  - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (3) This section extends to England and Wales only.

### *Enforcement powers*

## **173 Gift aid: power to impose penalties on charities and intermediaries**

- (1) At the end of section 428 of ITA 2007 insert—
- “(5) The regulations may also make provision—

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- (a) for the imposition of a penalty of a specified amount (which must not exceed £3000) for a failure to comply with a specified requirement imposed by the regulations,
  - (b) for the assessment and recovery of the penalty (which may include provision about the reduction of the penalty in specified circumstances), and
  - (c) conferring a right of appeal against a decision that a penalty is payable.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

**Commencement Information**

**I8** [S. 173\(1\)](#) in force at 14.11.2016 for the purposes of the amendment made by that provision by [S.I. 2016/1010, reg. 3](#)

**174 Proceedings under customs and excise Acts: prosecuting authority**

- (1) Part 11 of CEMA 1979 (arrest of persons, forfeiture and legal proceedings) is amended as set out in subsections (2) and (3).
- (2) In section 146A(7) (definition of prosecuting authority)—
- (a) in the opening words, for “prosecution” substitute “prosecuting”;
  - (b) in paragraph (b), omit “the Commissioners or”;
  - (c) in paragraph (c), for “the Commissioners” substitute “the Director of Public Prosecutions for Northern Ireland”.
- (3) In section 150(1) (joint and several liability), for the words from “the Director” to “Ireland)” substitute “prosecuting authority (within the meaning of section 146A) ”.
- (4) In consequence of subsection (3), in Schedule 4 to the Commissioners for Revenue and Customs Act 2005, omit paragraph 25.
- (5) The amendments made by this section apply in relation to proceedings commenced on or after the day on which this Act is passed.

**175 Detention and seizure under CEMA 1979: notice requirements etc**

- (1) CEMA 1979 is amended as follows.
- (2) Schedule 2A (detention of things as liable to forfeiture) is amended as set out in subsections (3) and (4).
- (3) In paragraph 3(2) (exceptions to requirement of notice of detention)—
- (a) omit the “or” at the end of paragraph (b), and after that paragraph insert—
    - “(ba) a person who has (or appears to have) possession or control of the thing being detained,”;
  - (b) in paragraph (c), after “on” insert “or from”;
  - (c) at the end insert “, or
  - (d) in the case of any thing detained on or from a vehicle, the driver of the vehicle.”

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- (4) In paragraph 4(2) (unauthorised removal or disposal of things detained: definition of “responsible person”), for paragraphs (a) and (b) substitute—
- “(a) the person whose offence or suspected offence occasioned the detention,
  - (b) the owner or any of the owners of the thing detained or any servant or agent of such an owner,
  - (c) a person who has (or appears to have) possession or control of the thing being detained,
  - (d) in the case of any thing detained on a ship or aircraft, the master or commander,
  - (e) in the case of any thing detained on a vehicle, the driver of the vehicle, or
  - (f) a person whom the person who detains the thing reasonably believes to be a person within any of paragraphs (a) to (e).”
- (5) In Schedule 3 (seizure and forfeiture), in paragraph 1(2) (exceptions to requirement of notice of seizure)—
- (a) after paragraph (b) insert—
    - “(ba) a person who has (or appears to have) possession or control of the thing being seized; or”;
  - (b) in paragraph (c), for “in” substitute “on or from”;
  - (c) at the end insert “; or
  - (d) in the case of any thing seized on or from a vehicle, the driver of the vehicle.”
- (6) The amendments made by this section have effect in relation to things detained or seized on or after the day on which this Act is passed.

## **176 Data-gathering powers: providers of payment or intermediary services**

- (1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13A insert—

### **“Providers of electronic stored-value payment services**

- 13B (1) A person who provides electronic stored-value payment services is a relevant data-holder.
- (2) In this paragraph “electronic stored-value payment services” means services by means of which monetary value is stored electronically for the purpose of payments being made in respect of transactions to which the provider of those services is not a party.

### **Business intermediaries**

- 13C (1) A person who—
- (a) provides services to enable or facilitate transactions between suppliers and their customers or clients (other than services provided solely to enable payments to be made), and
  - (b) receives information about such transactions in the course of doing so,

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is a relevant data-holder.

(2) In this paragraph “suppliers” means persons supplying goods or services in the course of business.

(3) For the purposes of this paragraph, information about transactions includes information that is capable of indicating the likely quantity or value of transactions.”

(2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).

## **177 Data-gathering powers: daily penalties for extended default**

(1) Part 4 of Schedule 23 to FA 2011 (data-gathering powers: penalties) is amended as follows.

(2) In paragraph 38 (increased daily default penalty)—

- (a) in sub-paragraphs (1)(c) and (2), for “imposed” substitute “ assessable ”;
- (b) for sub-paragraphs (3) and (4) substitute—

“(3) If the tribunal decides that an increased daily penalty should be assessable—

- (a) the tribunal must determine the day from which the increased daily penalty is to apply and the maximum amount of that penalty (“the new maximum amount”);
- (b) from that day, paragraph 31 has effect in the data-holder's case as if “the new maximum amount” were substituted for “£60”.

(4) The new maximum amount may not be more than £1,000.”;

- (c) in sub-paragraph (5), for “the amount” substitute “ the new maximum amount ”.

(3) In paragraph 39—

- (a) in sub-paragraph (1), for “a data-holder becomes liable to a penalty” substitute “ the tribunal makes a determination ”;
- (b) in sub-paragraph (2), for “the day from which the increased penalty is to apply” substitute “ new maximum amount and the day from which it applies ”;
- (c) omit sub-paragraph (3).

(4) In paragraph 40 (enforcement of penalties), in sub-paragraph (2)(a) omit “or 39”.

(5) At the end of paragraph 36 (right to appeal against penalty), the existing text of which becomes sub-paragraph (1), insert—

“(2) But sub-paragraph (1)(b) does not give a right of appeal against the amount of an increased daily penalty payable by virtue of paragraph 38.”

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## *Payment*

### **178 Extension of provisions about set-off to Scotland**

- (1) Sections 130 and 131 of FA 2008 (which deal with the availability of set-off in England and Wales and Northern Ireland) extend also to Scotland.
- (2) Accordingly, those sections are amended as follows.
- (3) In section 130—
  - (a) omit subsection (10), and
  - (b) in the heading omit “: England and Wales and Northern Ireland”.
- (4) In section 131—
  - (a) in subsection (5), in paragraph (a), after “winding up order” insert “ or award of sequestration ”,
  - (b) in that subsection, omit the “or” at the end of paragraph (d) and after paragraph (e) insert “, or
    - (f) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985).”, and
  - (c) omit subsection (9).

## *Raw tobacco*

### **179 Raw tobacco approval scheme**

- (1) After section 8J of TPDA 1979 insert—

#### **“8K Raw tobacco: definitions**

- (1) The following definitions apply for the purposes of sections 8L to 8U.
- (2) “Raw tobacco” means the leaves or any other part of a plant of the genus *Nicotiana* but does not include—
  - (a) any part of a living plant, or
  - (b) a tobacco product.
- (3) “Controlled activity” means any activity involving raw tobacco.

#### **8L Raw tobacco: requirement for approval**

- (1) A person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) The Commissioners may approve a person to carry on a controlled activity only if satisfied that—
  - (a) the person is a fit and proper person to carry on the activity, and
  - (b) the activity will not be carried on for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under section 2(1).

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- (3) An approval may—
  - (a) specify the period of approval, and
  - (b) be subject to conditions or restrictions.
- (4) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval.

### **8M Regulations about approval etc.**

The Commissioners may, by or under regulations, make provision—

- (a) regulating the approval of persons under section 8L,
- (b) about the form, manner and content of an application for approval,
- (c) specifying conditions or restrictions to which an approval is subject,
- (d) regulating the variation or revocation of an approval, or of any condition or restriction to which an approval is subject, and
- (e) about the surrender or transfer of an approval.

### **8N Exemptions from requirement for approval**

- (1) The Commissioners may by regulations provide that section 8L(1) does not apply in relation to a person (an “exempt person”) who—
  - (a) carries on any controlled activity, or a controlled activity of a specified description, and
  - (b) meets the conditions (if any) specified by or under the regulations.
- (2) The regulations may require an exempt person to comply with specified requirements or restrictions relating to the carrying on of a controlled activity.
- (3) The regulations may, in particular—
  - (a) specify the maximum quantity of raw tobacco that may be involved in a controlled activity carried on by an exempt person;
  - (b) require an exempt person to keep records relating to the activity.

### **8O Raw tobacco: penalties**

- (1) A person who contravenes section 8L(1) is liable to a penalty of an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (2) A person who contravenes a requirement or restriction imposed by regulations under section 8N is liable to a penalty of—
  - (a) £250, or
  - (b) if less, an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (3) The relevant quantity of smoking tobacco is equal to the quantity by weight of the raw tobacco in respect of which the controlled activity contravening section 8L(1) or (as the case may be) regulations under section 8N has been carried on.

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- (4) In this section a reference to “smoking tobacco” is a reference to tobacco products within section 1(1)(d) (“other smoking tobacco”).

#### **8P Penalties under section 8O: special reduction**

- (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under section 8O.
- (2) In subsection (1) “special circumstances” does not include ability to pay.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings for a penalty.

#### **8Q Penalties under section 8O: assessment of penalty**

- (1) Where a person becomes liable for a penalty under section 8O—
- (a) the Commissioners may assess the penalty, and
  - (b) if they do so, they must notify the person liable.
- (2) A notice under subsection (1)(b) must state the contravention in respect of which the penalty is assessed.
- (3) A penalty payable under section 8O must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (4) An assessment is to be treated as an amount of duty due from the person liable for the penalty and may be recovered accordingly.
- (5) An assessment may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (6) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty payable under section 8O.

#### **8R Penalties under section 8O: reasonable excuse**

- (1) A person is not liable to a penalty under section 8O in respect of a contravention if—
- (a) the contravention is not deliberate, and
  - (b) the person satisfies the Commissioners that there is a reasonable excuse for the contravention.
- (2) For the purposes of subsection (1)(b)—
- (a) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the contravention;
  - (b) where the person had a reasonable excuse for the relevant act or failure but the excuse has ceased, the person is to be treated as having



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continued to have the excuse if the contravention is remedied without unreasonable delay after the excuse has ceased.

### **8S Penalties under section 8O: double jeopardy**

A person is not liable to a penalty under section 8O in respect of a contravention in respect of which the person has been convicted of an offence.

### **8T Forfeiture of raw tobacco**

Where a person carries on a controlled activity in relation to raw tobacco in contravention of section 8L(1) or a requirement or restriction imposed by regulations under section 8N, the raw tobacco is liable to forfeiture.

### **8U Raw tobacco: application of Customs and Excise Management Act 1979**

The Commissioners may by regulations provide that specified provisions of the Customs and Excise Management Act 1979 apply (with or without modification)—

- (a) in relation to persons who carry on controlled activities as they apply in relation to revenue traders whose trade or business relates to tobacco products, and
- (b) in relation to raw tobacco as they apply in relation to tobacco products.”

(2) In section 9 of TPDA 1979 (regulations)—

- (a) in subsection (1), after “statutory instrument and” insert “ , subject to subsection (1A), ”, and
- (b) after subsection (1) insert—

“(1A) A statutory instrument containing regulations under section 8M, 8N or 8U is subject to annulment in pursuance of a resolution of the House of Commons.”

(3) In section 13A(2) of FA 1994 (customs and excise reviews and appeals: “relevant decisions”), after paragraph (g) insert—

- “(gb) any decision by HMRC that a person is liable to a penalty, or as to the amount of the person's liability, under section 8O of the Tobacco Products Duty Act 1979;”.

(4) In Schedule 5 to FA 1994 (decisions subject to review and appeal) after paragraph 5 insert—

“5A Any decision—

- (a) to refuse an approval under section 8L of the Tobacco Products Duty Act 1979 (raw tobacco: approval to carry on a controlled activity);
- (b) to impose a condition or restriction on, or to revoke or vary the terms of, an approval under that section.”

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- (5) The amendments made by this section come into force on such day as the Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument appoint.
- (6) Regulations under subsection (5) may appoint different days for different purposes.

#### Commencement Information

- I9** S. 179(1) in force at 6.12.2016 for the purposes of the amendment made by that subsection for specified purposes by S.I. 2016/1171, reg. 2(1)
- I10** S. 179(1) in force at 1.4.2017 for the purposes of the amendment made by that subsection in so far as not already in force by S.I. 2016/1171, reg. 2(2)
- I11** S. 179(2)-(4) in force at 6.12.2016 for the purposes of the amendments made by those subsections by S.I. 2016/1171, reg. 2(1)

### *State aids granted through provision of tax advantages*

## 180 Powers to obtain information about certain tax advantages

- (1) The powers conferred by this section are only exercisable for the purpose of complying (or enabling another person to comply) with relevant EU obligations.
- (2) The Commissioners may determine that claims made for a tax advantage of a description listed in Part 1 of Schedule 24 must include (or be accompanied by) such information, presented in such form, as the determination may specify.
- (3) For the purposes of subsection (2) “information” includes—
  - (a) information about the claimant (or the claimant's activities),
  - (b) information about the subject-matter of the claim, and
  - (c) other information which relates to the grant of state aid through the provision of the tax advantage in question.
- (4) A determination under subsection (2)—
  - (a) may make different provision for different descriptions of tax advantages or for different cases or circumstances, and
  - (b) may be revoked or amended by another determination.
- (5) Subsection (6) applies where it appears to the Commissioners that a tax advantage of a description listed in Part 2 of Schedule 24—
  - (a) has been given, or
  - (b) may be given in the future.
- (6) The Commissioners may give the relevant person a notice requiring the person—
  - (a) to supply the Commissioners with the information specified in the request, and
  - (b) if the notice so provides, to present it in the form specified in the request.
- (7) The relevant person must comply with those requirements within the period specified in the notice.
- (8) In subsections (6) and (7) “the relevant person”, in relation to a tax advantage of any description, means the person mentioned in the third column of the entry for that tax advantage in Part 2 of Schedule 24.

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- (9) For the purposes of subsection (6) “information” includes—
- (a) information about—
    - (i) the person to whom the request is given (or their activities),
    - (ii) any other person who is the beneficiary of the tax advantage,
  - (b) information about the tax advantage (including the circumstances in which it was obtained), and
  - (c) any other information which relates to the grant of state aid through the provision of the tax advantage in question.
- (10) A determination under subsection (2) may not apply to claims made before 1 July 2016.
- (11) A notice under subsection (6) may relate to any information required by the Commissioners for the purpose mentioned in subsection (1) (including information which relates to matters arising before this Act is passed).

## **181 Power to publish state aid information**

- (1) The Commissioners may publish any state aid information for the purpose of securing compliance with any relevant EU obligation which requires the publication of that information.
- (2) That power includes power to disclose state aid information to another person for the purpose of securing its publication.
- (3) In this section “state aid information” means information which relates to the grant of state aid through the provision of a tax advantage and includes (but is not limited to) any information mentioned in section 180(3) or (9).
- (4) This section applies to any state aid information (including information which relates to a tax advantage given before the passing of this Act).

## **182 Information powers: supplementary**

- (1) In sections 180 and 181—
  - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
  - “relevant EU obligations” means—
    - (a) obligations under the General Block Exemption Regulation that relate to the grant of state aid through the provision of a tax advantage, or
    - (b) any corresponding [<sup>F10</sup>post-withdrawal obligations] that apply to the grant of a notified state aid through the provision of a tax advantage.
- (2) The “General Block Exemption Regulation” is [Commission Regulation \(EU\) No 651/2014](#) declaring certain categories of aid to be compatible with the internal market in application of Articles 107 and 108 of the Treaty establishing the European Union (which relate to state aids granted by Member States) [<sup>F11</sup>as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement].
  - [<sup>F12</sup>“Post-withdrawal obligations” means obligations that arise or continue by virtue of the EU withdrawal agreement (including the Protocol on Ireland/Northern Ireland).]

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- (3) The Treasury may by regulations made by statutory instrument amend Part 1 or Part 2 of Schedule 24 by adding, omitting or varying an entry for any description of tax advantage.
- (4) Regulations under subsection (3) may include incidental or supplemental provision.
- (5) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) The powers under sections 180 and 181 are in addition to any other powers of the Commissioners to acquire, disclose or publish information.

#### Textual Amendments

- F10** Word in s. 182(1) substituted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, **6(2)**
- F11** Words in s. 182(2) inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, **6(3)**
- F12** Words in s. 182 inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, **6(4)**

### *Qualifying transformer vehicles*

## 183 Qualifying transformer vehicles

- (1) In this section “qualifying transformer vehicle” means a transformer vehicle which meets conditions which are specified in regulations made by the Treasury.
- (2) The Treasury may by regulations make provision about the treatment for the purposes of any enactment relating to taxation of—
  - (a) qualifying transformer vehicles;
  - (b) investors in qualifying transformer vehicles;
  - (c) transactions involving qualifying transformer vehicles.
- (3) Regulations under subsection (2) may, in particular, disapply, apply (with or without modification) or modify the application of any enactment.
- (4) Without limiting the generality of subsection (2), regulations under that subsection may in particular include—
  - (a) provision for profits or other amounts to be calculated with any adjustments, or on any basis, set out in the regulations;
  - (b) provision conferring, altering or removing an exemption or relief;
  - (c) provision about the treatment of arrangements the purpose, or one of the main purposes, of which is to secure a tax advantage;
  - (d) provision about collection and enforcement (including the withholding of tax);
  - (e) in relation to qualifying transformer vehicles, requirements with regard to the provision of information to investors;
  - (f) in relation to qualifying transformer vehicles or investors in qualifying transformer vehicles, requirements with regard to—
    - (i) the provision of information to Her Majesty's Revenue and Customs,

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- (ii) the preparation of accounts,
  - (iii) the keeping of records, or
  - (iv) other administrative matters.
- (5) Regulations under this section—
  - (a) may provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter;
  - (b) may make provision by reference to rules, guidance or other documents issued by any person (as they have effect from time to time).
- (6) Regulations under this section may—
  - (a) make different provision for different cases or different purposes (including different provision in relation to different descriptions of qualifying transformer vehicle or, as the case may be, transformer vehicle);
  - (b) contain incidental, supplementary, consequential and transitional provision and savings.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the House of Commons.
- (9) But the first set of regulations under subsection (1) may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.
- (10) A statutory instrument containing regulations under subsection (2) may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.
- (11) In this section—
  - “enactment” includes subordinate legislation (as defined in section 21 of the Interpretation Act 1978);
  - “investors” in relation to a qualifying transformer vehicle means holders of investments issued by the qualifying transformer vehicle; and for this purpose
  - “investment” includes any asset, right or interest;
  - “tax advantage” has the meaning given by section 1139 of CTA 2010;
  - “transformer vehicle” has the same meaning as in section 284A of the Financial Services and Markets Act 2000.

## PART 12

### OFFICE OF TAX SIMPLIFICATION

#### 184 Office of Tax Simplification

- (1) There continues to be an Office of Tax Simplification (referred to in this Act as the “OTS”).
- (2) Schedule 25 contains provision about the OTS.

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**Commencement Information**

**I12** [S. 184](#) in force at 28.11.2016 by [S.I. 2016/1133](#), [reg. 2](#)

**185 Functions of the OTS: general**

- (1) The OTS must provide advice to the Chancellor of the Exchequer, on request or as the OTS considers appropriate, on the simplification of the tax system.
- (2) For the purposes of this section and section 186—
  - (a) “the tax system” means the law relating to, and the administration of, relevant taxes,
  - (b) “relevant taxes” means taxes that the Commissioners for Her Majesty's Revenue and Customs are responsible for collecting and managing, and
  - (c) a reference to “taxes” includes a reference to duties and national insurance contributions.
- (3) References in this section and section 186 (however expressed) to the simplification of the tax system include references to improving the efficiency of the administration of relevant taxes.

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**Commencement Information**

**I13** [S. 185](#) in force at 28.11.2016 by [S.I. 2016/1133](#), [reg. 2](#)

**186 Functions of the OTS: reviews and reports**

- (1) At the request of the Chancellor of the Exchequer, the OTS must conduct a review of an aspect of the tax system for the purpose of identifying whether, and if so how, that aspect of the tax system could be simplified.
- (2) The OTS must prepare a report—
  - (a) setting out the results of the review, and
  - (b) making such recommendations (if any) as the OTS consider appropriate.
- (3) The OTS must send a copy of the report to the Chancellor of the Exchequer.
- (4) The Chancellor of the Exchequer must—
  - (a) publish the report, and
  - (b) lay a copy of the report before Parliament.
- (5) The Chancellor of the Exchequer must prepare and publish a response to the report.

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**Commencement Information**

**I14** [S. 186](#) in force at 28.11.2016 by [S.I. 2016/1133](#), [reg. 2](#)

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## 187 Annual report

- (1) The OTS must prepare a report of the performance of its functions in each financial year.
- (2) The report relating to a financial year must be prepared as soon as reasonably practicable after the end of the financial year.
- (3) The OTS must—
  - (a) send a copy of the report to the Chancellor of the Exchequer, and
  - (b) publish the report.
- (4) The Chancellor of the Exchequer must lay a copy of the report before Parliament.
- (5) For the purposes of this paragraph, each of the following is a “financial year”—
  - (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
  - (b) each successive period of 12 months.

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### Commencement Information

**I15** [S. 187](#) in force at 28.11.2016 by [S.I. 2016/1133](#), [reg. 2](#)

## 188 Review of the OTS

- (1) The Treasury must, before the end of each review period, conduct a review of the effectiveness of the OTS in performing its functions.
- (2) The “review period” means—
  - (a) in relation to the first review, the period of 5 years beginning with the day on which this section comes into force, and
  - (b) in relation to subsequent reviews, the period of 5 years beginning with the day on which the previous review was completed.
- (3) The Treasury must prepare and publish a report of each review.

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### Commencement Information

**I16** [S. 188](#) in force at 28.11.2016 by [S.I. 2016/1133](#), [reg. 2](#)

## 189 Commencement

Sections 184 to 188 and Schedule 25 come into force on such day as the Treasury may by regulations made by statutory instrument appoint.

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## PART 13

### FINAL

#### 190 Interpretation

In this Act—

- “ALDA 1979” means the Alcoholic Liquor Duties Act 1979;
- “CAA 2001” means the Capital Allowances Act 2001;
- “CEMA 1979” means the Customs and Excise Management Act 1979;
- “CTA 2009” means the Corporation Tax Act 2009;
- “CTA 2010” means the Corporation Tax Act 2010;
- “FA”, followed by a year, means the Finance Act of that year;
- “F(No.2)A, followed by a year means the Finance (No.2) Act of that year;
- “F(No.3)A, followed by a year, means the Finance (No.3) Act of that year;
- “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;
- “TCGA 1992” means the Taxation of Chargeable Gains Act 1992;
- “TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;
- “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;
- “VERA 1994” means the Vehicle Excise and Registration Act 1994.

#### 191 Short title

This Act may be cited as the Finance Act 2016.



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**Changes and effects yet to be applied to :**

- s. 167(3) omitted by [2021 c. 26 Sch. 27 para. 46](#)
- s. 167(4) omitted by [2021 c. 26 Sch. 27 para. 46](#)
- Sch. 18 para. 4(2) words inserted by [2021 c. 26 Sch. 15 para. 13](#)
- Sch. 19 para. 52(3) words inserted by [2017 c. 32 Sch. 14 para. 48\(3\)\(b\)\(i\)](#)
- Sch. 19 para. 13(c) words substituted by [2017 c. 32 Sch. 14 para. 49\(3\)](#)
- Sch. 19 para. 52(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(3\)\(a\)](#)
- Sch. 19 para. 52(3) words substituted by [2017 c. 32 Sch. 14 para. 48\(3\)\(b\)\(ii\)](#)
- Sch. 20 para. 3(3)(b) word omitted by [2021 c. 26 Sch. 27 para. 47\(3\)\(a\)](#)
- Sch. 20 para. 4(3)(b) words inserted by [2021 c. 26 Sch. 27 para. 47\(4\)](#)
- Sch. 20 para. 3(3) words substituted by [2021 c. 26 Sch. 27 para. 47\(3\)\(c\)](#)
- Sch. 22 para. 2(4A) word substituted by [2021 c. 26 Sch. 27 para. 48\(2\)\(b\)](#)
- Sch. 22 para. 5(1)(b) words inserted by [2021 c. 26 Sch. 27 para. 48\(4\)\(a\)](#)
- Sch. 22 para. 2(1) words substituted by [2021 c. 26 Sch. 27 para. 48\(2\)\(a\)](#)
- Sch. 22 para. 5(2)(a) words substituted by [2021 c. 26 Sch. 27 para. 48\(4\)\(b\)](#)
- Sch. 22 para. 19(2) words substituted by [2021 c. 26 Sch. 27 para. 48\(5\)](#)
- Sch. 23 para. 9 omitted by [2021 c. 26 Sch. 27 para. 49](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)