These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These notes relate to the Finance Act 2010 that received Royal Assent on 8 April 2010. They have been prepared by the HM Revenue and Customs in partnership with HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

3. The Act is divided into three parts:

   (1) Charges, rates, etc

   (2) Anti-avoidance and revenue protection

   (3) Other provisions

The Schedules follow the sections on the Act.

Terms used in the Act are explained in these notes where they first appear. Hansard references are provided at the end of the notes.

Section 1: Charge, Main Rates, Thresholds and Allowances Etc for 2010-11

Summary

1. Section 1 imposes the income tax charge, sets the basic, higher and additional rates, sets the basic rate limit and starting rate limit for savings and sets the amounts of personal allowances for 2010-11.

Details of the Section

2. Subsection (1) imposes the income tax charge for 2010-11.

3. Subsection (2) sets the basic rate at 20 per cent, the higher rate at 40 per cent and the additional rate at 50 per cent.

4. Subsection (3) sets the amounts of the basic rate limit, the starting rate limit for savings and personal allowances in the Income Tax Act 2007 (ITA) for 2010-11 in the same amounts as for 2009-10.

Background Note

5. Income tax is an annual tax re-imposed each year by Parliament (even if the proposed rates are the same as for previous years). Parliament also sets the main rates of income tax annually.

6. Where there is an annual increase in the retail prices index (RPI) to the September preceding the relevant tax year, HM Treasury makes an "indexation order". The

indexation order sets the amounts of the basic rate limit, the starting rate limit for savings and personal allowances for the following tax year in amounts increased by the percentage increase in the RPI (any of these amounts can be over-ridden by Parliament through a provision in the Finance Bill). The RPI for the year to September 2009 decreased, so HM Treasury were not able to make an indexation order to set the amounts of the basic rate limit, the starting rate limit for savings and personal allowances for 2010-11. For 2010-11, this section sets the basic rate limit, the starting rate limit for savings, and the personal allowances in the amounts that they were for 2009-10.

7. The table below sets out the main rates and income bands for 2009-10 as they apply to taxable income and the proposed main rates and income bands for 2010-11:

	2009-10	***2010-11***
Basic rate	£0 - £37,400 at 20%	£0 - £37,400 at 20%
Higher rate	Over £37,401 at 40%	£37,401 - £150,000 at 40%
Additional rate		Over £150,000 at 50%

8. The table below sets out the starting rate limit for savings for 2009-10 and the proposed starting rate limit for savings for 2010-11:

	2009-10	***2010-11***
Starting rate limit for savings	£2,440	£2,440

9. The table below sets out the personal allowances for 2009-10 and the proposed personal allowances for 2010-11:

	2009-10	***2010-11***
Personal allowance (aged under 65)	£6,475	£6,475
Personal allowance (aged 65 – 74)	£9,490	£9,490
Personal allowance (aged 75 and over)	£9,640	£9,640
Married couple's allowance[1]	£6,965	£6,965
Married couple's allowance: minimum amount	£2,670	£2,670
Income limit for age-related allowances	£22,900	£22,900
Blind person's allowance	£1,890	£1,890
(1) Married couple's allowance is available to people born before 6 April 1935. It is given at a rate of 10 per cent.		

10. The basic rate limit, starting rate limit for savings and the personal allowances are provided for by ITA, as amended by Finance Acts 2008 and 2009.

1
1

Section 2: Corporation Tax - Charge and Main Rates for Financial Year 2011

Summary

1. Section 2 charges corporation tax (CT) for the financial year beginning 1 April 2011 and sets the main rate of corporation tax at 30 per cent on oil and gas ring fence profits and 28 per cent on non-ring fence profits.

Details of the Section

2. Subsections (1) & (2) set the charge and the main rates of CT for the financial year 2011.

Background Note

3. The main rate of CT is paid by companies with profits of more than £1,500,000 (the upper profits limit).

4. Where two or more companies are associated with one another, the profits limit is reduced. This is done by dividing the limit by the number of associated companies.

5. Profits from oil extraction and oil rights in the UK and the UK Continental Shelf ("ring fence profits") will continue to be subject to a separate main rate of CT applicable to those ring fenced profits. Profits from activities which are not ring fenced will continue to be charged at the main rate of CT applicable to all other profits.

Section 3: Corporation Tax: Small Profits Rates and Fractions for Financial Year 2010

Summary

1. Section 3 sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2010 at 21 per cent for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19 per cent. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 7/400 for all profits apart from "ring fence profits", where the fraction is set at 11/400.

Details of the Section

2. Subsection (1) sets the small profits rate of CT for the financial year 2010.

3. Subsection (2) sets the marginal relief standard and ring fence fractions.

Background Note

4. Companies with profits up to £300,000 pay CT at the small profits rate.

5. Companies with profits between £300,000 and £1,500,000 (the lower and upper limits) benefit from marginal relief from the main rate.

6. Marginal relief has the effect of gradually increasing the rate of tax for a company as its profits move from the lower to the upper profits limit.

7. The example below illustrates the effect of marginal relief for a company with taxable non-ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 28 per cent	£140,000
minus 7/400 of £1,000,000[1]	£17,500
£1,000,000 is the difference between the upper limit and the profit.	

1

Tax payable:	£122,500
£1,000,000 is the difference between the upper limit and the profit.	

8. The example below illustrates the effect of marginal relief for a company with taxable ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 30 per cent	£150,000
minus 11/400 of £1,000,000[1]	£27,500
Tax payable:	£122,500
£1,000,000 is the difference between the upper limit and the profit.	

9. Where two or more companies are associated with one another, the profits limits are divided by the number of associated companies.

Section 4: Increase in Entrepreneurs' Relief

Summary

1. Section 4 increases the lifetime limit for gains that qualify for entrepreneurs' relief from £1 million to £2 million. It takes effect for qualifying disposals on or after 6 April 2010.

Details of the Section

2. Subsection (1) provides that the amount of the lifetime limit for qualifying gains is increased from £1 million to £2 million. It also makes a minor consequential change to the provisions relating to the lifetime limit so that, where earlier claims have used up the whole of the previous £1 million limit, the full balance of the increased lifetime limit is available for future qualifying gains.

3. Subsection (2) is the commencement provision. The new limit applies in respect of disposals made on or after 6 April 2010 that qualify for entrepreneurs' relief.

Background Note

4. Subject to certain conditions being satisfied, individuals can claim entrepreneurs' relief in respect of gains on the disposal of trading businesses they run either alone or in partnership, or of shares in a trading company (or the holding company of a trading group) provided they are an employee or office-holder of the company (or group) with at least 5 per cent of the ordinary share capital and voting rights. Gains qualifying for the relief are charged to capital gains tax at an effective rate of 10 per cent instead of the general rate of 18 per cent.

5. If gains which otherwise qualify for the relief exceed £1 million (whether as a result of one or more disposals), the effective 10 per cent rate applies only to the first £1 million of those gains. Any gains above that amount are charged at the 18 per cent rate. The limit applies to the total qualifying gains made in the individual's lifetime.

6. The section increases this limit to £2 million.

7. The increase applies to gains on disposals made on or after 6 April 2010. So if an individual made qualifying gains of £1.2 million before that date, the change will not allow relief for the £0.2 million that fell outside the old limit. However, if the same individual made further qualifying gains of £1.5 million after 5 April 2010, £1 million

---

1
1
1

of those further gains would qualify for relief, giving the individual entrepreneurs' relief on accumulated qualifying gains up to the new limit of £2 million.

8. Entrepreneurs' relief is also available to the trustees of a settlement in certain circumstances. One of the requirements for trustees to qualify is that the conditions that generally have to be satisfied in respect of the person making the disposal are satisfied in respect of a "qualifying beneficiary" of the settlement. In such cases, the trustees' gains qualifying for relief use up part of the beneficiary's lifetime limit of £1 million. This rule continues to apply, but for disposals on or after 6 April 2010 the beneficiary's lifetime limit is increased to £2 million.

Section 5: Annual Investment Allowance

Summary

1. Section 5 provides legislation to increase the amount of the entitlement to annual investment allowance (AIA) from £50,000 to £100,000. The legislation is effective for expenditure incurred on or after 1 April 2010 for persons within the charge to corporation tax (CT) and on or after 6 April 2010 for persons within the charge to income tax.

Details of the Section

2. Subsection (1) amends subsection (5) of section 51A of the Capital Allowances Act 2001 (CAA) so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £50,000 to £100,000.

3. Subsection (2) provides that the increase in the limit has effect in relation to expenditure incurred on or after the relevant date. "Relevant date" is defined in subsection (6) as 1 April 2010 for CT purposes and from 6 April 2010 for income tax purposes.

4. Subsection (3) provides that where a chargeable period spans the relevant date then subsections (4) and (5) apply.

5. Subsection (4) provides that the maximum allowance is the sum of each maximum allowance that would be found if the actual chargeable period were split into two chargeable periods. The first beginning with the first day of the chargeable period and ending with the day before the relevant date. The second beginning on the relevant date and ending with the last day of the chargeable period.

6. So where a business has a chargeable period that spans the relevant date of the increase, the maximum allowance for that business's transitional chargeable period is the sum of:

   (a) the maximum AIA entitlement, based on the previous £50,000 annual cap for the portion of a year falling before the relevant operative date; and

   (b) the maximum AIA entitlement, based on the new £100,000 cap for the portion of a year falling on or after the relevant date.

7. For example, a company with a calendar year chargeable period from 1 January 2010 to 31 December 2010 would calculate its maximum AIA entitlement based on:

   (a) the proportion of a year from 1 January 2010 to 31 March 2010, that is, 3/12 x £50,000 = £12,500; and

   (b) the proportion of a year from 1 April 2010 to 31 December 2010, that is 9/12 x £100,000 = £75,000.

   The company's maximum AIA for this transitional chargeable period would therefore be the total of (a) + (b) = £12,500 + £75,000 = £87,500.

8. Subsection (5) effectively provides that in the part of the chargeable period falling before 1 April 2010, only a maximum of £50,000 of the company's expenditure would be covered (in other words the previous AIA limit would apply). Returning to the example above, this rule does not affect the business's maximum AIA for the chargeable period as a whole (which is £87,500) simply the amount of expenditure before the relevant start date that may be covered.

9. For example, a company with a calendar year chargeable period would have a maximum entitlement under subsection (4) of £87,500, but if the company spent, say, £70,000 in February 2010 and incurred no other qualifying expenditure for the remainder of the year the maximum AIA available to that company would be £50,000.

Background Note

10. The AIA was introduced in the Finance Act 2008. It is effectively a 100 per cent capital allowance available on most plant and machinery (although it is not available on cars) up to an annual limit, which was originally £50,000.

11. The AIA is available to most businesses, both incorporated and unincorporated, regardless of size. Any expenditure by businesses over the annual limit will attract writing-down allowances (WDAs) at either 20 per cent or 10 per cent per annum in the normal capital allowances regime. The AIA is given for a chargeable period and the annual limit is increased or decreased proportionately when the chargeable period is longer than or shorter than 12 months.

12. The introduction of the AIA represented a major simplification of the tax system, as the vast majority of UK businesses invest less than the upper limit of £50,000 and so, in time, will have no need to calculate WDAs annually. The AIA offers a generous cash flow advantage to businesses (in comparison to WDAs) and therefore acts as a significant incentive to invest in plant and machinery.

13. The AIA is available to:

    - any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary property businesses and individuals having an employment or office);
    - any partnership consisting only of individuals; and
    - any company (subject to certain restriction).

14. In the case of companies in a group there is one AIA available to all the companies in the group.

15. In the case of singleton companies, each receives its own AIA unless, for example, it and another company are under common control. Where companies are under common control (for example, two companies owned by the same individual) each company will still be entitled to a separate £50,000 AIA, unless they are "related".

16. The legislation provides that a company is related to another company in a financial year and, separately, that an unincorporated qualifying activity is related to another qualifying activity in a tax year, if either or both of:

    - the shared premises condition; and
    - the similar activities condition

    are met in relation to the companies or the qualifying activities in that financial year or that tax year, as the case may be.

17. The rules provide businesses with almost complete freedom to allocate the AIA between different types of expenditure. For example, they may allocate it first against any

expenditure on "integral features", qualifying for the lower ten per cent "special rate" of WDA.

18. The rules also allow the persons in control the freedom to allocate the AIA between companies in a group or between "related" companies. There is a similar freedom in relation to the allocation of the AIA between "related" unincorporated businesses in common control. For example, in a group of five companies, all of the AIA could be allocated to one company or it could be split between all or any of the five, as the group might find most convenient.

19. At Budget 2010 the Government announced that the maximum amount of the AIA was to be increased from £50,000 to £100,000 for expenditure incurred on or after 1 April 2010 (CT) or 6 April 2010 (income tax), in order to provide further support for business investment. It also announced that a targeted anti-avoidance rule (TAAR) was to be introduced to accompany the AIA increase. This TAAR (amending provisions in Chapter 4 of Part 4 of the Income Tax Act 2007) comprises section 25 in Finance Bill 2010, for which there is a separate explanatory note.

Section 6: Relief for First-Time Buyers

Summary

1. Section 6 provides a stamp duty land tax (SDLT) relief for purchases of residential property where the chargeable consideration is more than £125,000 but not more than £250,000 and the purchaser is a first-time buyer. The relief applies where the effective date of the transaction is on or after 25 March 2010 and before 25 March 2012.

Details of the Section

2. Subsection (2) introduces a new section 57AA into Part 4 of the Finance Act (FA) 2003.

3. New section 57AA(1) exempts an acquisition of residential property from a charge to SDLT on a freehold purchase or lease premium where the chargeable consideration (excluding rent) is more than £125,000 but not more than £250,000, the purchaser (or each of them) is a first-time buyer who intends to occupy the property as his or her only or main residence and the transaction is not one of a number of linked transactions.

4. New section 57AA(2)(a) and (b) define a "first-time buyer" as a person who has not previously acquired freehold or leasehold residential property in the UK, or its equivalent elsewhere in the world. Subsection (2)(c) and (d) apply an equivalent rule where a person has previously purchased property under alternative finance arrangements (under which a property is purchased by a financial institution, or jointly by a financial institution and a person).

5. New section 57AA(3) excludes from the conditions for relief grants or assignments of leases with less than 21 years to run. This ensures that a purchaser will not be denied relief because he or she has previously taken a short lease on a property.

6. New section 57AA(4) modifies the restriction on linked transactions. This ensures that relief will be available in cases where, for example, a purchase of a house or flat is accompanied by a separate lease of a garage in a block.

7. Subsection (3) inserts a new section 73CA into FA 2003 which allows the relief to apply to a purchase under alternative finance arrangements where the property is purchased by a financial institution, or jointly by a financial institution and a person, where the person is a first-time buyer.

8. Subsection (4) provides that regulations made by the Treasury under section 109 of FA 2003 are subject to negative resolution unless they amend the terms of the first-time buyers' relief in a way which increases any person's liability to tax.

9. Subsection (5) provides that first-time buyers' relief is available for purchases under a shared ownership lease or shared ownership trust only where the purchaser elects to be taxed on a market value basis and the market value is more than £125,000 but not more than £250,000.

10. Subsection (6) provides for the relief to apply where the effective date of the transaction is on or after 25 March 2010 but before 25 March 2012.

Background Note

11. SDLT is a tax on land transactions. Purchasers are charged a percentage of the consideration they pay for an interest in land. Currently, the percentage can be 0, 1, 3 or 4 per cent depending on the amount of consideration.

12. At present, the 0 per cent band applies to purchases of residential property at up to £125,000. The effect of this relief is to extend the 0 per cent band to purchases of residential property at up to £250,000 where the purchaser or purchasers are first-time buyers.

13. The relief is time-limited to two years.

Section 7: Rate in Respect of Residential Property Where Consideration Over £1m

Summary

1. Section 7 provides for a new higher rate of stamp duty land tax (SDLT) for purchases of residential property where the consideration is more than £1 million. This will apply where the effective date of the transaction is on or after 6 April 2011.

Details of the Section

2. Subsection (1) amends Table A at section 55 of the Finance Act 2003 (residential property) to provide a higher rate of 5 per cent for transactions where the relevant consideration is more than £1 million.

3. Subsection (2) provides for commencement.

4. Subsections (3) and (4) are transitional provisions. They provide, subject to certain exclusions, that the new 5 per cent rate of SDLT will not apply to transactions where a contract was entered into before 25 March 2010.

Background Note

5. SDLT is a tax on land transactions. Purchasers are charged a percentage of the consideration they pay for an interest in land. Currently, the percentage can be 0, 1, 3 or 4 per cent depending on the amount of consideration.

6. The 4 per cent rate currently applies to transactions where the consideration exceeds £500,000. This section introduces an additional, higher, rate of 5 per cent for residential transactions where the consideration exceeds £1 million.

Section 8: Inheritance Tax: Rates and Rate Bands

Summary

1. Section 8 provides for the limit of the inheritance tax nil rate band to be set at £325,000 for the tax years 2010-11 to 2014-15 inclusive and maintains the tax rate at 40 per cent for chargeable amounts in excess of this tax-free amount.

Details of the Section

2. Subsection (1) provides that the table of rates of tax in Schedule 1 to the Inheritance Tax Act 1984 substituted by section 155(1)(b) and (4) of the Finance Act (FA) 2006 has effect for the tax year commencing 6 April 2010.

3. Subsection (2) provides that section 4 of FA 2007 and the table of rates substituted by it will be omitted.

4. Subsection (3) provides that section 8 of the Inheritance Act 1984 does not have effect to substitute a new table of rates of tax where the retail prices index is higher for the month of September in 2010, 2011, 2012 or 2013 and the previous September.

Background Note

5. Where the Retail Prices Index (RPI) for the month of September is higher than it was for the previous September, then, unless Parliament otherwise determines, the limit of the inheritance tax nil rate band increases from the 6 April of the following year by the same percentage as the percentage increase in the RPI.

6. Section 155(1)(b) and (4) of FA 2006 provided for the limit of the inheritance tax nil rate band to be set at £325,000 for the tax year 2009-10.

7. Section 4 of FA 2007 previously provided for the limit of the inheritance tax nil rate band to be set at £350,000 for the tax year 2010-11.

8. The RPI for September 2009 was not higher than that for September 2008. This section sets the nil rate band for the tax year 2010-11 at £325,000 and disapplies indexation for tax years 2011-12 to 2014-15 inclusive.

Section 9: Rates of Alcoholic Liquor Duty

Summary

1. Section 9 provides for increases in the rates of excise duty charged on spirits, beer, wine and made-wine, and cider, to have effect on and after 29 March 2010, and also provides for a subsequent reduction in the duty rates for certain cider products.

Details of the Section

2. Subsection (2) substitutes a new rate of excise duty for spirits in section 5 of the Alcoholic Liquor Duties Act 1979 (ALDA). The previous rate of £22.64 is replaced by £23.80.

3. Subsection (3) substitutes a new rate of excise duty for beer, other than small brewery beer, in section 36(1AA)(a) of ALDA. The previous rate of £16.47 is replaced by £17.32.

4. Subsection (4)(a) substitutes a new rate of excise duty for sparkling cider of a strength exceeding 5.5 per cent in section 62(1A)(a) of ALDA. The previous rate of £207.20 is replaced by £217.83.

5. Subsection (4)(b) substitutes a new rate of excise duty for still cider of a strength exceeding 7.5 per cent in section 62(1A)(b) of ALDA. The previous rate of £47.77 is replaced by £54.04.

6. Subsection (4)(c) substitutes a new rate of excise duty for all other ciders in section 62(1A)(c) of ALDA. The previous rate of £31.83 is replaced by £36.01.

7. Subsection (5)(a) substitutes a new rate of excise duty for still cider of a strength exceeding 7.5 per cent in section 62(1A)(b) of ALDA. The previous rate of £54.04 (inserted by subsection (4)(b) above) is replaced by £50.22.

8. Subsection (5)(b) substitutes a new rate of excise duty for all other ciders in section 62(1A)(c) of ALDA. The previous rate of £36.01 (inserted by subsection (4)(c) above) is replaced by £33.46.

9. Subsection (6) provides for the replacement of Parts 1 and 2 of the Table of rates of duty on wine and made-wine in Schedule 1 to ALDA with new Parts 1 and 2, showing the following rates of duty:

   - Wine or made-wine of a strength not exceeding 4 per cent: £69.32;
   - Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent: £95.33;
   - Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling: £225.00;
   - Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent: £217.83;
   - Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or more, but not exceeding 15 per cent: £288.20;
   - Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent: £299.97; and
   - Wine or made-wine of a strength exceeding 22 per cent: £23.80.

10. Subsection (7) provides for the changes made by subsections (2) to (4) and (6) to come into force on 29 March 2010.

11. Subsection (8) provides for the changes made by subsection (5) to come into force on 30 June 2010.

Background Note

12. This section increases the excise duty rates on all alcoholic liquor by 2 per cent above inflation for all alcoholic drinks except for still cider and lower strength sparkling cider which will increase by 10 per cent above inflation.

13. This section also provides for the increase by 10 per cent above inflation in the duty rates on still cider and lower strength sparkling cider to be replaced on 30 June 2010 with an increase of 2 per cent above inflation from current rates (in line with that imposed on all other alcoholic drinks).

Section 10: Rates of Tobacco Products Duty

Summary

1. Section 10 provides for an increase in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco and other smoking tobacco and chewing tobacco) to have effect from 6 pm on 24 March 2010.

Details of the Section

2. Subsection (1) substitutes a new Table of rates of duty into Schedule 1 to the Tobacco Products Duty Act 1979. The duty rates on tobacco products are increased as follows:

   - cigarettes – the *ad valorem* element is unchanged at 24 per cent; the specific duty is increased from £114.31 to £119.03 per 1000 cigarettes;
   - cigars – increased from £173.13 to £180.28 per kilogram;
   - hand-rolling tobacco – increased from £124.45 to £129.59 per kilogram; and

- other smoking tobacco and chewing tobacco – increased from £76.12 to £79.26 per kilogram.

3. Subsection (2) provides for the new Table of duty rates to have effect from 6pm on 24 March 2010.

Background Note

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between rich and poor in the UK. Successive Governments have followed a policy of using tax to maintain the high price of tobacco and help reduce smoking, especially among the young.

5. Research has consistently shown that the price of cigarettes affects demand.

6. This section increases excise duty on all tobacco products by 1 per cent in real terms, thereby helping to provide a further deterrent to smoking, as well as maintaining a contribution to government revenues.

7. The duty increase, together with consequential VAT, will increase the price of a typical packet of 20 cigarettes by 15p, a pack of 5 small cigars by 6p, a 25 gram pack of hand-rolling tobacco by 15p and a 25 gram pack of pipe tobacco by 9p.

8. The estimated revenue yield from these changes is £35 million.

Section 11: Rates for Motorcycles

Summary

1. This section provides for changes in certain rates of vehicle excise duty (VED) applying to motorcyles by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2010.

Details of the Section

2. Subsection (1)(a) amends paragraph 2(1)(c) of Schedule 1 to VERA to increase the rate of duty by £2 to £50 for motorbicycles with a cylinder capacity (engine size) of over 400cc but not more than 600cc.

3. Subsection (1)(b) amends paragraph 2(1)(d) of Schedule 1 to VERA to increase the rate of duty by £4 to £70 for motorbicycles with an engine size of over 600cc, for motortricycles with an engine size over 150cc and for trade licences for motorcycles.

4. Subsection (2) provides that all new rates under this section will take effect for licences taken out on or after 1st April 2010.

Background Note

5. Vehicle Excise Duty (VED) for motorcycles was reformed in 2002 when the number of engine size based rate bands was increased from three to four. The consultation backing the reform identified motorcycles of up to 400c in engine size as predominantly used for commuting purposes.

6. Motorbicycles weighing not more than 450 kilograms unladen fall into one of four motorcycle rate bands:

   a. not more than 150cc (currently set at £15);

   b. more than 150cc but not more than 400cc (currently £33);

c. more than 400cc but not more than 600cc (£48 before the increase now proposed); or

d. more than 600cc (£66 before the increase now proposed).

7. Motortricycles weighing not more than 450 kilograms unladen fall into one of two bands**:**

- not more than 150cc (currently £15); or
- more than 150cc (£66 before the increase now proposed).

8. The lowest rate, applicable to motorbicycles and motortricycles with an engine size of not more than 150cc has remained unchanged since 1991.

9. Where a trade licence is to be used only for motorcycles, the rate set under paragraph 2(1)(d) of Schedule 1 to VERA is applicable to the trade licence by virtue of Section 13(3)(a) to VERA. The rate is £66 before the £4 increase now proposed.

10. The changes in rates apply to all vehicle licences taken out on or after 1 April 2010 regardless of the commencement date on the licence.

Section 12: Fuel Duties: Rates and Rebates from April 2010

Summary

1. Section 12 provides for changes in rates of duty and rates of rebate on products charged to duty under the Hydrocarbon Oil Duties Act 1979 (HODA). Duty rates on the main road fuels are increased by 1 penny per litre (ppl), and effective rates of duty on non-road fuels are increased by the same proportion as main road fuels. The duty rate on biofuels is increased following the abolition of the duty differential by 21ppl to the same rate as on the main road fuels. The duty increase on natural gas maintains the differential with the main road fuels, while the differential for road fuel gas other than natural gas is reduced by the equivalent of 1ppl. Duty on leaded petrol is increased by 1ppl and on aviation gasoline (avgas) by 3.78ppl. These changes come into effect on 1 April 2010.

Details of the Section

2. Subsection (2) amends the rates of duty on unleaded petrol, aviation gasoline, light oil other than unleaded petrol or aviation gasoline, and heavy oil in HODA.

3. Subsections (3) and (4) amend the rate of duty on biodiesel and bioblend to be the same as the heavy oil rate.

4. Subsections (5) and (6) amend the rate of duty on bioethanol and bioethanol blend to be the same as the unleaded petrol rate.

5. Subsection (7) amends the rate of duty on road fuel gases.

6. Subsections (8)-(10) amend the effective rate of duty on fuel oil, gas oil, light oil for use as furnace fuel and biodiesel for off-road use.

7. Subsection (11) provides for the revocation of a number of statutory instruments as a consequence of the abolition of the biofuels differential.

Background Note

8. At Budget 2009 the Government announced that the duty rates on main road fuels would be increased on 1 April from 2010 to 2013 by 1ppl above indexation in each year and that the effective rates of duty for non-road fuels would be increased by the same percentage as road fuels; that the duty increases on natural gas would maintain the differential with the main road fuels; and that the differential for road fuel gas other

than natural gas would be reduced by the equivalent of 1 penny on a litre of petrol each year. Budget 2010 announced that the increases would be implemented in stages in order to ease pressure on incomes at a time when other prices are rising, and that with effect from 1 April 2010 the main road fuel duty would be increased by 1ppl with consequential effects on rebated fuels and road fuel gases.

9. Budget 2008 announced that the duty differential for biofuels would cease in 2010-2011 and the duty would be charged at the same rate as the main road fuels. The 2009 Pre-Budget Report confirmed that this would take effect on 1 April 2010.

10. Duty on leaded petrol is increased with effect from 1 April 2010 by 1 ppl and duty on aviation gasoline is increased by 3.78ppl.

Section 13: Fuel Duties: Further Changes Rates and Rebates

Summary

1. Section 13 provides for changes in rates of duty and rates of rebate on products charged to duty under the Hydrocarbon Oil Duties Act 1979 (HODA). On 1 October 2010 duty rates on the main road fuels are increased by 1 penny per litre (ppl), and effective rates of duty on non-road fuels are increased by the same proportion as main road fuels. The duty differentials for road fuel gases are maintained, the differential for road fuel gas other than natural gas having been reduced by the equivalent of 1 ppl on 1 April. On 1 January 2011 duty rates on the main road fuels are increased by 0.76 ppl, and effective rates of duty on non-road fuels are increased by the same proportion as main road fuels. The duty increases on road fuel gases maintain the differential with the main road fuels.

Details of the Section

2. Subsection (2) amends the rates of duty on unleaded petrol, light oil other than unleaded petrol or aviation gasoline, and heavy oil in HODA.

3. Subsection (3) amends the rate of duty on road fuel gases.

4. Subsections (4)-(6) amend the effective rate of duty on fuel oil, gas oil, light oil for use as furnace fuel and biodiesel for off-road use.

Background Note

5. In Budget 2009 the Government announced that the duty rates on main road fuels would be increased on 1 April from 2010 to 2013 by 1 ppl above indexation in each year; that the effective rates of duty for non-road fuels would be increased by the same percentage as road fuels; that the duty increases on natural gas would maintain the differential with the main road fuels; and that the differential for road fuel gas other than natural gas would be reduced by the equivalent of 1 penny per litre each year.

6. Budget 2010 announced that the 2010 increase would be implemented in stages in order to ease pressure on incomes at a time when other prices are rising and that main road fuel duties would increase by 1ppl on 1 October and by 0.76ppl on 1 January 2011, with consequential effects on rebated fuels and road fuel gases.

7. Duty on leaded petrol is increased with effect from 1 October 2010 by 1ppl and with effect from 1 January 2011 by 0.76ppl.

Section 14: Rates of Air Passenger Duty

Summary

1. Section 14 provides for the rates of air passenger duty (APD) to be amended.

Details of the Section

2. Subsection (1)(a) to (d) amends section 30 of the Finance Act (FA) 1994 by replacing the rates set out in subsections (2) to (4A) of that section.

3. Subsection (2) provides that these changes have effect in relation to the carriage of passengers beginning on or after 1 November 2010.

Background Note

4. In the 2008 Pre-Budget Report (PBR), the Government announced that it would reform APD from a two-distance band regime to a four-distance band regime, rather than proceed with a per plane tax.

5. The four distance bands are set at 2000 mile intervals from London, and destinations are categorised based on the distance from London to the capital city of the destination country/ territory, with the exception of the Russian Federation, which is split east and west of the Urals, as it is administratively simple to do so.

6. Each band has two rates, one for the standard class of travel and one for other classes of travel. FA 2009 provided for these changes.

7. The Government also announced rates for 2010 in the 2008 PBR. This section provides for these rates.

Section 15: Standard Rate of Landfill Tax

Summary

1. Section 15 increases the standard rate of landfill tax from £48 per tonne to £56 per tonne for disposals of relevant waste made at authorised landfill sites on or after 1 April 2011.

Details of the Section

2. Subsection (1) substitutes “£56” for “£48” in sections 42(1)(a) and 42(2) of the Finance Act 1996 (amount of landfill tax).

3. Subsection (2) provides for the increase to apply to disposals of relevant waste made, or treated as made, on or after 1 April 2011.

Background Note

4. Landfill tax was introduced on 1 October 1996 to encourage waste producers and the waste management industry to switch to more sustainable alternatives to landfilling waste. The tax applies to active and inactive waste disposed of at authorised landfill sites. Active waste attracts the standard rate of tax, while a lower rate applies to qualifying wastes listed in a Treasury Order.

5. The Government announced at Budget 2009 that the standard rate would continue to increase by £8 per tonne on 1 April each year from 2011-12 to 2013-14. Budget 2010 announced that the rate would increase by a further £8 per tonne in 2014-15. These increases aim to encourage greater diversion of waste from landfill to more sustainable waste management options.

6. The Government announced in Budget 2010 that the lower rate of landfill tax would be frozen at £2.50 per tonne in 2011-12.

Section 16: Rate of Aggregates Levy

Summary

1. Section 16 increases the rate of aggregates levy from £2.00 per tonne to £2.10 per tonne for aggregate subjected to commercial exploitation on or after 1 April 2011.

Details of the Section

2. Subsection (1) substitutes "£2.10" for "£2.00" in section 16(4) of the Finance Act (FA) 2001.

3. Subsection (2) provides for the amendments made by subsection (1) to have effect in relation to aggregate subjected to commercial exploitation on or after 1 April 2011.

Background Note

4. Aggregates levy came into effect on 1 April 2002. It is designed to bring about environmental benefits by making the price of commercially exploiting aggregates (i.e. rock, gravel or sand) better reflect the true environmental cost and encouraging recycling and the use of alternative materials. The levy was introduced at a rate of £1.60 per tonne. FA 2007 provided for an increase in the rate to £1.95 per tonne for aggregate commercially exploited on or after 1 April 2008, and FA 2008 provided for a further increase in the rate from 1 April 2009 to £2.00 per tonne. There was no increase in FA 2009. Budget 2010 announced a further increase to £2.10 per tonne, effective from 1 April 2011, which is just above current inflation.

Section 17: Rates of Climate Change Levy

Summary

1. Section 17 increases the rates of climate change levy (CCL), broadly in line with current inflation, with effect from 1 April 2011.

Details of the Section

2. Subsection (1) replaces the table of rates in paragraph 42(1) of Schedule 6 to the Finance Act (FA) 2000.

3. Subsection (2) provides for the change to have effect for supplies treated as taking place on or after 1 April 2011.

Background Note

4. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solids fuels), and is aimed at promoting energy efficiency.

5. Since the introduction of the levy in 2001, the rates have been increased broadly in line with inflation in 2007, 2008 and 2009. On each occasion the changes were legislated for in the previous year's FA.

Section 18: Climate Change Levy: Reduced-Rate Supplies

Summary

1. Section 18 amends the reduced rate of climate change levy (CCL) payable by businesses participating in the climate change agreement (CCA) scheme from 20 to 35 per cent of the ordinary rates with effect from 1 April 2011. This section is linked with section 67.

Details of the Section

2. Subsection (1) provides for paragraph 42 of Schedule 6 to the Finance Act 2000 (amount payable by way of climate change levy) to be amended by replacing "20 per cent" in sub-paragraph (1)(c) with "35 per cent."

3. Subsection (2) provides for the change to have effect in relation to supplies treated as taking place on 1 April 2011 or later.

Background Note

4. CCL was introduced in 2001 and is a UK wide tax on the supply of electricity, gas, solid fuel and liquefied gases used for fuel purposes by business and the public sector.

5. The purpose of the CCL is to encourage the efficient use of energy and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

6. CCAs were introduced alongside the levy in recognition of its impact on the competitiveness of energy-intensive sectors of industry. They are voluntary agreements made between the Department of Energy and Climate Change and sector associations and their members. The agreements entitle participating facilities to pay a reduced rate of levy in return for meeting challenging targets for improving energy efficiency or reducing emissions.

7. The reduced rate of CCL, which is claimed by facilities in the CCA scheme, is a State aid. The State aid approval expires on 31 March 2011. The CCL on reduced-rated supplies of gas and solid fuel is currently below the minimum levels set by European Union (EU) Directive 2003/96/EC. Amending the reduced rate from 20 to 35 per cent will ensure that the levy paid on reduced-rated supplies of all taxable commodities will be above the applicable EU minima. This will entitle the UK to use the simplified procedure for State aid clearance provided for by Commission Regulation (EC) No 800/2008 and provide participating facilities with certainty that the reduced rate will continue beyond 31 March 2011. Article 3(1) of that Regulation requires the aid scheme to contain an express reference to the Regulation in the legislation and that reference is contained in section 67 of the Bill.

Section 19: Rate of Bingo Duty

Summary

1. Section 19 provides for a reduction in the rate of bingo duty for accounting periods starting on or after 29 March 2010.

Details of the Section

2. Subsection (1) reduces the rate of bingo duty in section 17(1)(b) of the Betting and Gaming Duties Act 1981 from 22 per cent to 20 per cent.

3. Subsection (2) provides that this has effect in relation to bingo duty accounting periods beginning on or after 29 March 2010.

Background Note

4. Bingo duty is currently calculated at the rate of 22 per cent of a person's bingo promotion profits for an accounting period, essentially the charges made to customers minus winnings paid out. The duty rate was increased from 15 to 22 per cent when VAT was removed from bingo participation fees in 2009. This section reduces the rate of bingo duty to 20 per cent.

Section 20: Rates of Gaming Duty

Summary

1. Section 20 increases the gross gaming yield bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2010.

Details of the Section

2. Subsection (1) substitutes a new table for the existing table in section 11(2) of the Finance Act 1997 which has the effect of increasing the gross gaming yield bands for gaming duty.

3. Subsection (2) provides for this change to have effect for accounting periods beginning on or after 1 April 2010.

Background Note

4. Gaming duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of gross gaming yields (GGY) (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £1,975,000 of GGY, then 20 per cent for the next £1,361,500 of GGY, and so on. Gaming duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October, with interim payments every three months.

5. The change made by this measure increases the GGY bands but makes no change to the rates. The basis for revalorisation of the bands is the Retail Prices Index (RPI) for the year ended 31 December 2009. In this case the RPI was calculated at 2.04 per cent.

Section 21: Amusement Machine Licence Duty

Summary

1. Section 21 increases the amounts of amusement machine licence duty (AMLD) payable in respect of licence applications that are received by HM Revenue & Customs (HMRC) after 4pm on 26 March 2010.

Details of the Section

2. Subsection (1) substitutes a new table for the existing table of amounts of AMLD in section 23(2) of the Betting and Gaming Duties Act 1981. This increases the amount of duty payable on licences.

3. Subsection (2) provides that this will have effect for any application for an amusement machine licence that is received by HMRC after 4pm on 26 March 2010.

Background Note

4. AMLD is a duty of excise that is charged on a licence that allows gaming machines to be provided for play in the UK. Other than specific classes of “excepted machines” all gaming machines fall within the scope of AMLD. The amount of duty that is payable is determined by the period that is covered, between one and 12 months, and the numbers and categories of machines. Machine categories are defined by reference to their maximum prize values and cost to play.

Section 22Schedule 1: Bank Payroll Tax

Summary

1. Section 22 and Schedule 1 impose the charge to bank payroll tax (BPT) and include the relevant conditions, definitions and collection and management provisions.

Details of the Schedule

Part 1 – The Tax

2. Part 1 sets out the circumstances in which the charge to BPT arises, defines key terms and sets out anti-avoidance provisions.

3. Paragraph 1 imposes the charge to BPT. BPT arises on the aggregate of the amounts of chargeable "relevant remuneration" (defined in paragraph 4) "awarded" (defined in paragraph 6) during "the chargeable period" (defined in paragraph 8) to or in respect of "relevant banking employees" (defined in paragraph 9) of a "taxable company" (defined in paragraph 3) by reason of their employment as relevant banking employees. Relevant remuneration is "chargeable" only to the extent that it exceeds £25,000.

4. Paragraph 2 sets the rate of BPT at 50 per cent.

5. Paragraph 3 defines a "taxable company". Taxable companies will include banks resident in the UK and relevant foreign banks trading in the UK. Members of banking groups will also be taxable companies if they are investment companies resident in the UK or financial trading companies, as will building societies and UK resident investment companies or UK resident financial trading companies of a building society group. Part 3 of the Schedule defines the terms used in paragraph 3.

6. Paragraph 4 defines "relevant remuneration". Relevant remuneration includes anything that constitutes earnings under section 62 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) in relation to the employee's employment by the taxable company as a relevant banking employee or benefits which do not themselves constitute earnings provided by reason of that employment but does not include "excluded remuneration". The employee's income tax position is irrelevant for the purposes of determining whether or not anything is relevant remuneration.

7. Paragraph 5 defines "excluded remuneration".

8. Paragraph 5(1) provides that "excluded remuneration" means: any regular salary, wages or benefits; anything where a contractual obligation to pay or provide it to the employee arose before 12.30 pm on 9 December 2009; shares awarded under an approved share incentive plan and share options granted under a Save As You Earn (SAYE) option.

9. Paragraph 5(2) defines the meaning of "regular" in relation to salary, wages or benefits. Regular means the amount of salary, wages or benefits that cannot change because of the performance of the employee, the company or the business of any person connected with the taxable company.

10. Paragraphs 5(3) and (4) set out that a contractual obligation entered into prior to 9 December 2009 to pay or provide something to the employee will not be taken to arise for the purposes of BPT until the amount to be paid or provided becomes fixed. A contractual obligation is taken to arise even if payment or provision is dependent on compliance with any condition.

11. Paragraph 6 defines "awarded".

12. Paragraph 6(1) provides that relevant remuneration is awarded when either a contractual obligation to pay or provide it arises during the chargeable period or that the relevant remuneration is paid or provided during the chargeable period without any such obligation having arisen during that period, subject to paragraph 6(3).

13. Paragraph 6(2) provides that paragraph 5(3)(a) (which sets out when a contractual obligation to pay or provide something will be deemed to arise for the purposes of BPT) applies for the purposes of paragraph 6(1) as it applies for the purposes of paragraph (5)(1)(b).

14. Paragraph 6(3) provides that relevant remuneration is not to be taken to be awarded during the chargeable period if: it is required to be paid or provided at intervals, is in respect of performance or similar considerations relating to times after the chargeable period and where payment is not being made to reduce the liability to BPT.

15. Paragraph 6(4) provides that paragraph 5(4) (which provides that a contractual obligation to pay or provide something is taken to arise even if it depends on the employee complying with any conditions) applies for the purposes of paragraph 6 as it applies for the purposes of paragraph (5)(1)(b).

16. Paragraph 7 defines the “amount” of remuneration.

17. Paragraph 7(1) provides, subject to paragraphs 7(2) to 7(4), how the amount of relevant remuneration is to be established.

18. Paragraph 7(2) provides for a situation in which relevant remuneration is awarded to the employee under a contractual obligation and the amount is not fixed at the time of the award. In these circumstances, a reasonable assumption should be made at the time the award is made as to what the amount will be when it is paid or provided.

19. Paragraph 7(3) provides that, where the market value of any relevant remuneration at the time of award exceeds or would exceed what would otherwise be its amount, the market value figure should be used in calculating the amount of relevant remuneration.

20. Paragraph 7(4) provides that where relevant remuneration is subject to any restrictions; the amount of remuneration is calculated as if the restrictions did not exist.

21. Paragraph 7(5) defines “restriction” as any condition, restriction or other provision that causes the value of the relevant remuneration to be reduced.

22. Paragraph 8 defines the “chargeable period”. The chargeable period begins at 12.30 pm on 9 December 2009 and ends on 5 April 2010.

23. Paragraph 9 defines “relevant banking employee”.

24. Paragraph 9(1) provides, subject to paragraph 9(7), that an employee of a taxable company is a relevant banking employee if they are employed in “banking employment” and resident in the UK in the 2009-10 tax year, or their banking employment duties are performed wholly or partly in the UK in that year.

25. Paragraph 9(2) defines “banking employment”. It is employment which is wholly or mainly concerned, directly or indirectly, with activities to which paragraph 9(3) applies.

26. Paragraph 9(3) applies to activities that are “listed regulated activities” or consist of the lending of money or of dealing in currency or commodities as principal.

27. Paragraph 9(4) defines what is meant by “listed regulated activities” by reference to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

28. Paragraph 9(5) provides that an activity is not a listed regulated activity in relation to an employee of a taxable company in two situations. First, where the taxable company is an insurance company or a member of the same group as an insurance company and the activity is carried on wholly on behalf of the insurance company. Second, where the activity is such an activity by virtue of article 21 or 25 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (dealing in investments as agent or arranging deals in investments) and is carried out as part of, or wholly in support of, the taxable company or a company within the same group as a taxable company and the activities consist of being a discretionary investment manager (defined in the Handbook

of Rules and Guidance made by the Financial Services Authority ("FSA Handbook")) for clients who are not linked entities. "Linked entity" is defined by paragraph 44(11).

29. Paragraph 9(6) exempts an employee of a taxable company who spends no more than 60 days in the UK in the 2009-10 tax year from the definition of relevant banking employee of the taxable company for the purposes of BPT.

30. Paragraphs 9(7) and (8) set out whether or not any particular day should be included when calculating whether or not the individual has been present in the UK for no more than 60 days.

31. Paragraph 10 applies to a situation in which an employee has multiple employments.

32. Paragraph 10(1) provides that the £25,000 limit that applies to chargeable relevant remuneration applies whether or not the employee has more than one relevant employment with a taxable company.

33. Paragraph 10(2) provides that where relevant remuneration is awarded to a relevant banking employee during the chargeable period by a number of "associated taxable companies" the £25,000 threshold is to be divided by the number of taxable companies. This prevents employers splitting the contracts of employees in order to reduce liability to BPT.

34. Paragraph 10(3) defines what is meant by "associated taxable companies".

35. Paragraph 11 covers payments made to intermediaries. It applies where an individual personally performs banking services (services wholly or mainly concerned (directly or indirectly) with activities to which paragraph 9(3) applies) for a taxable company, but the contract for these services involves another person ("the intermediary"). If the individual would be a relevant banking employee if the contract were with the taxable company, the individual will be treated as such and any award of relevant remuneration will be chargeable to BPT.

36. Paragraph 12 applies to arrangements for future payments. If an arrangement is made during the chargeable period by reason of the employee's employment as a relevant banking employee of the taxable company for money or other benefit to be paid or provided after the chargeable period which would be relevant remuneration awarded to the employee if it were paid or provided during the chargeable period, the making of the arrangement is to be regarded as the awarding of relevant remuneration.

37. Paragraph 13 makes provisions in relation to loans. It applies where a "relevant loan" (one made to reduce a liability to BPT, any other tax, or national insurance contributions) is provided during the chargeable period to or in respect of a relevant banking employee. It also applies where a contractual obligation to provide such a loan arises during the chargeable period. In these circumstances, the amount of the loan, or the amount that is reasonable to assume will be loaned, is treated as relevant remuneration. This is an anti-avoidance measure to prevent loans being given to employees in place of a bonus.

38. Paragraph 14 sets out anti-avoidance provisions. These apply where "relevant arrangements" (either making a payment or providing a benefit outside of the chargeable period or providing any reward that equates in substance to relevant remuneration) are entered into during the chargeable period and the main purpose, or one of the main purposes of doing so is a "relevant tax avoidance purpose" (one designed to reduce the charge to BPT). In these circumstances liability to BPT is to be determined as if the amount involved were paid or provided during the chargeable period, or as if the reward were given in the form of relevant remuneration during the chargeable period.

39. Paragraph 15 provides that BPT is not deductible when computing profits or losses for income tax or corporation tax purposes.

Part 2 – Collection and Management of Tax

40. Paragraph 16 provides that the Commissioners for HM Revenue & Customs (HMRC) are responsible for the collection and management of BPT.

41. Paragraph 17 provides that BPT is payable on or before 31 August 2010.

42. Paragraph 18 imposes an obligation on a taxable company to deliver a return to HMRC for the purposes of BPT on or before 31 August 2010.

43. Paragraph 19 provides that HMRC may publish requirements as to the content, form and manner of delivery of a return and requirements as to the documents to be delivered with the return. The return must include a self-assessment of the BPT payable by the taxable company and a declaration by the person making the return that to the best of their knowledge the return is correct and complete.

44. Paragraph 20 provides that where a return does not include a self-assessment, HMRC can make an assessment on the taxable company's behalf based on the information in the return. Any such assessment is to be treated as a self-assessment and as included in the return.

45. Paragraphs 21(1)-(3) provide that taxable companies may amend their returns. Amendments are to be made by notice to HMRC in such form and containing such information as HMRC may reasonably require. The deadline for amendments is 31 August 2011.

46. Paragraph 21(4) provides that paragraph 21(1) does not allow a taxable company to correct its return merely because an amount determined under paragraph 7(2), 12(2) or 13(3) differs from the amount actually paid, provided or loaned.

47. Paragraph 22 provides for HMRC to amend a return to correct obvious errors or mistakes in the return by a notice to the taxable company (although the company can reject this notice within 30 days of the date notice was given). A correction may not be made more than nine months after the day on which the return was delivered, or if a correction is made under paragraph 21, the date of the amendment made under that paragraph.

48. Paragraph 23 provides that HMRC may commence an enquiry into a return on or before 31 August 2011 (if the return is submitted on or before 31 August 2010) or up to and including the 31 January, 30 April, 31 July or 31 October next following the first anniversary of the day on which the return was delivered, if it is submitted after 31 August 2010. The enquiry extends to anything contained in the return, or required to be contained in the return and certain provisions of Schedule 18 to the Finance Act (FA) 1998 apply for the purposes of an enquiry into a return as they do for an enquiry into a company tax return.

49. Paragraph 24 provides for HMRC to make a determination of the amount of BPT payable if a taxable company has not made a return on or before 31 August 2010. This must be served on the taxable company stating the date on which it is given and will be the amount payable by the taxable company unless it is superseded by a relevant assessment. If HMRC have started proceedings for recovery of BPT before the determination is superseded by a relevant assessment the proceedings may continue for the recovery of the amount of tax shown on the assessment which has not been paid. A relevant assessment is one included in a return delivered by the taxable company within 12 months of the date of the determination, or made by HMRC under paragraph 20 following delivery of a return. A determination may not be made after 31 August 2013.

50. Paragraphs 25 to 28 provide for HMRC to make a discovery assessment.

51. Paragraph 25 applies where HMRC discovers, in respect of a taxable company, that an amount of BPT that should have been assessed has not been assessed, that an assessment is insufficient or that a repayment has been made that should not have been repaid. In

these circumstances, HMRC may make an assessment (a "discovery assessment") of the amount that in their opinion should be charged to make good the loss of BPT. A discovery assessment may only be made where condition A (see paragraph 25(4)) or condition B (see paragraph 24(5)) is met.

52. Paragraph 26 provides that a discovery assessment must be served on the taxable company and must include the date that it is given and the time limit for an appeal.

53. Paragraphs 27(1)-(4) provide that a discovery assessment may not be made after the relevant deadline. This is:

- 5 April 2030 if the situation resulted from deliberate action or careless failure to deliver a return on or before 31 August 2010;
- 5 April 2016 if the situation resulted from the company acting carelessly (subject to paragraph 27(2)(b)); and
- 5 April 2014 in all other cases.

54. Paragraph 27(5) defines for the purposes of paragraph 27 that "the situation" means the one discovered by HMRC and provides that a reference to a taxable company is treated as including a reference to a person acting on its behalf.

55. Paragraph 28 provides that a taxable company may appeal against a discovery assessment, in writing to the officer who gave notice and within 30 days of the date the notice of assessment was given and that an objection against a discovery assessment on the grounds that paragraph 25, 26 or 27 was not complied with must be made by an appeal against the assessment.

56. Paragraph 29 provides that HMRC may publish requirements regarding the method or methods to be used by taxable companies for paying BPT and that Part 6 of the Taxes Management Act 1970 (TMA) (collection and recovery) applies for BPT as it applies to corporation tax.

57. Paragraph 30 provides for interest on late payments and repayments.

58. Paragraph 30(1) provides that paragraph 30 will apply if a Treasury order is made to bring sections 101 and 103 of FA 2009 into force. Section 101 sets out the general proposition for applying late payment interest to any sum due under or by virtue of an enactment to HMRC. Section 103 provides that the late payment and repayment rates of interest shall be specified in regulations.

59. Paragraph 30(2) provides that paragraph 4(1) of Schedule 53 to FA 2009 (special provision: late payment interest start date) has effect as if reference were also made to BPT. The interest start date in respect of BPT assessed and recoverable under paragraph 25(1)(c) of this Schedule is 31 August 2010.

60. Paragraph 30(3) provides that interest charged under section 101 of FA 2009 on BPT, may be enforced as if it were an amount of BPT.

61. Paragraph 31 makes provisions for overpaid BPT.

62. Paragraph 31(1)-(3) provide that paragraphs 50 to 51G of Schedule 18 to FA 1998 (overpaid tax) apply to BPT assessable for the chargeable period. The provisions will apply in the same way as they do for corporation tax assessable for an accounting period, with minor modifications to reflect differences between the two taxes. A claim under paragraph 51 of Schedule 18 in respect of BPT may not be made after 31 August 2014 and the relevant restrictions for making a discovery assessment are the conditions and time limits imposed by paragraphs 25(3) and 27 of this Schedule.

63. Paragraph 31(4) provides that that paragraph 31(1) does not allow a taxable company to make a claim under paragraph 51 of Schedule 18 merely because an amount determined

under paragraphs 7(2), 12(2) or 13(3) of this Schedule differs from the amount actually paid, provided or loaned.

64. Paragraphs 32 and 33 provide for appeals and other proceedings.

65. Paragraph 32 provides that Part 5 of TMA (appeals and other proceedings) applies to an appeal against a discovery assessment to BPT in the same way as it applies to an appeal against an assessment to corporation tax and that references in Part 5 to tax are to be read as applying to BPT.

66. Paragraph 33 provides that where certain provisions of other Acts are applied by this Part of this Schedule they are to be read in a way that is consistent with the application of BPT to those provisions.

67. Paragraphs 34 and 35 impose an obligation to keep records.

68. Paragraph 34 provides that each taxable company must keep any records that it may need to establish and verify the amount of BPT it is liable to pay and to deliver a correct and complete return. These and any other relevant records (as defined in paragraph 34(2)) must be maintained until 31 August 2016. Records, or the information contained within those records, may be preserved in any form and by any means.

69. Paragraph 35 provides that a taxable company that does not comply with the obligations in paragraph 34 of this Schedule is liable to a penalty not exceeding £3,000. Sections 100 to 102 of TMA apply to a penalty under paragraph 34 of this Schedule as they apply to section 12B(5) of that Act. Sections 100 to 102 TMA set out procedures for determining the amount of any penalty, provide rights of appeal against any penalty and provide a power for HMRC to mitigate penalties in appropriate circumstances.

70. Paragraph 36 applies Schedule 36 to FA 2008 (information and inspection powers) to BPT and provides that references in paragraph 21 of that Schedule to "the chargeable period" and notice of enquiry" are to be read as reference to the corresponding provisions relating to BPT.

71. Paragraphs 37 to 39 provide for penalties.

72. Paragraph 37 provides that the provisions of Schedule 24 to FA 2007 (penalties for errors) apply to BPT and that references in Schedule 24 to a tax period are to be read as a reference to the chargeable period within the meaning of this Schedule.

73. Paragraph 38 provides that the provisions of Schedule 55 to FA 2009 (penalties for failure to make payments on time etc) apply to BPT whether or not that Schedule is in force for other purposes.

74. Paragraph 39 provides that Schedule 56 to FA 2009 (penalty for failure to make payments on time) applies to BPT as if references to BPT were inserted into the relevant place in that Schedule whether or not that Schedule is in force for other purposes.

75. Paragraphs 40 to 42 contain miscellaneous provisions.

76. Paragraph 40(1) provides that the provisions in TMA about the responsibility of company officers; the loss, destruction or damage to assessments, returns, etc; the want of form or errors in assessment not to invalidate assessments, etc; and the delivery and service of documents apply to BPT.

77. Paragraphs 40(2) provides that the application of section 115 of TMA (delivery and service of documents) in relation to the delivery of BPT returns is subject to the requirements of paragraph 19(1) of this Schedule.

78. Paragraph 41 provides that Chapter 6 of Part 22 of the Corporation Tax Act 2010 (collection of tax from UK representatives of non-UK resident companies) applies to Part 2 of this Schedule as it applies to corporation tax.

79. Paragraph 42 provides the sections 118(5) to 118(7) (interpretation) of TMA apply for the purposes of BPT.

Part 3 – Definitions

80. Paragraph 43(1) defines a "UK resident bank" as a company resident in the UK that is not an excluded company (defined in paragraph 44(9)); which is authorised by the Financial Services Authority (FSA) under section 31 of the Financial Services and Markets Act 2000, to carry out regulated activities and which accepts deposits (see paragraph 44(1)(a)) or is both a BIPRU 730k firm and a full scope BIPRU investment firm (terms defined in the FSA Handbook) whose activities consist wholly or mainly of any of the regulated activities described in paragraph 44(1)(b) to (f) and which meets the capital resources condition (as set out in paragraph 44). The relevant regulated activity or activities (as defined in paragraph 44(1)) must be carried on wholly or mainly in the course of trade.

81. Paragraph 43(2) provides that "UK resident bank" also includes a company that is resident in the UK, is not an excluded company and is a member of a partnership which meets the conditions set out in sub-paragraph (1)(b) to (d).

82. Paragraph 43(3) defines "relevant foreign bank" as a company that is not resident in the UK, but which carries on a trade in the UK through a permanent establishment; is not an excluded company; is authorised by the FSA to carry out regulated activities; and which is either a deposit-taker or is both a BIPRU 730k firm and a full scope BIPRU investment firm whose activities consist wholly or mainly of any of the relevant regulated activities described in paragraph 44(1)(b) to (f) and meets the capital resources condition. The relevant regulated activity or activities must be carried on wholly or mainly in the course of the trade.

83. Paragraph 43(4) provides that "relevant foreign bank" also includes a company that is not resident in the UK and is not an excluded company but which is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (d).

84. Paragraph 44(1) defines "relevant regulated activity" by reference to certain provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. The relevant regulated activities are accepting deposits, dealing in investments as principal or agent, arranging deals in investments, safeguarding and administering investments and entering into regulated mortgage contracts.

85. Paragraph 44(2) defines the "capital resources condition". The condition is that a company (or partnership – see paragraph 44(6)) has a capital resources requirement (as defined in the FSA Handbook) of at least £100 million.

86. Paragraph 44(3) defines the "capital resources condition" where the company is a member of a group and there are other companies in that group or partnerships of which companies in that group are members which meet either of the conditions in sub-paragraph (4) and provides an aggregation rule.

87. Paragraph 44(4) sets out the conditions referred to in sub-paragraph (3) which are that the company or partnership is both a BIPRU 730k firm and a full scope BIPRU investment firm; or a company or partnership which carries out any deposit-taking activities in the UK.

88. Paragraph 44(5) provides that the capital resources requirement is that requirement as at the end of the last period of account ending no later than the end of the chargeable period.

89. Paragraph 44(6) provides that where determining whether a company which is a member of a partnership is a UK resident bank or a relevant foreign resident bank references to the company in sub-paragraph (2) are to be read as references to the partnership.

90. Paragraph 44(7) explains how to determine the capital resources requirement where the company or partnership does not prepare its accounts in sterling.

91. Paragraph 44(8) provides that where a company carries on a trade in the UK through a permanent establishment, the capital resources requirement in respect of the UK permanent establishment is to be determined in the same way as capital would be attributed to the permanent establishment for corporation tax purposes (in accordance with Chapter 4 of Part 2 of the Corporation Tax Act 2009).

92. Paragraph 44(9) defines the phrase "excluded company" for the purposes of the BPT. A company will be an excluded company if it comes within only one of sub-paragraphs (a) to (k).

93. Paragraph 44(10) defines "asset management activities" for the purposes of BPT.

94. Paragraph 44(11) defines "linked entity" for the purposes of BPT.

95. Paragraph 44(12) identifies the terms used in paragraphs 43 and 44 which have the same meaning as in the FSA Handbook.

96. Paragraph 44(13) provides that for the purposes of BPT, a company is treated as a BIPRU 730k firm and a full scope BIPRU investment firm if its activities in the UK would qualify it as such a firm if its registered office (or head office as the case may be) were not outside the UK.

97. Paragraph 44(14) to (17) provides that HM Treasury may by order amend paragraph 44 and sets out the procedure in relation to such an order. Any order may have effect in relation to any time after 9 December 2009 and will be subject to the affirmative resolution procedure.

98. Paragraph 45(1) and (2) provides that a company is a "member of a banking group" at any time if it is a member of a group at that time or immediately before the start of the chargeable period, and that group does not meet the exempt activities test (see sub-paragraphs (7) and (8)) and any of the conditions A to C as set out in sub-paragraphs (3) to (5) is met.

99. Paragraph 45(6) defines "holding company" for the purposes of sub-paragraph (5) (that is condition C). The principal company will be a holding company of another company if the principal company is an investment company and that other company is an effective 51 per cent subsidiary of the principal company and is not an effective 51 per cent subsidiary of any company that is not an investment company.

100. Paragraph 45(7) provides that a group meets the exempt activities test if at least 90 per cent of the group's trading income for the relevant period is derived from exempt activities.

101. Paragraph 45(8) defines "exempt activities" and "the relevant period" and states that "the trading income of the group" for the relevant period is to be calculated in accordance with paragraph 46.

102. Paragraph 45(9) defines "insurance activities", "lending activities" and "related activities" and provides that "related activities" does not include dealing on own account.

103. Paragraph 45(10) defines "activities" and "regulated insurer" for the purposes of sub-paragraph (9).

104. Paragraph 45(11) provides that a company ceases to be a member of a banking group if it ceases to meet the conditions of sub-paragraph (2) as a result of an arm's length transaction undertaken for wholly commercial purposes or following a recommendation of a relevant regulatory body.

105. Paragraph 45(12) provides that obtaining a tax advantage is not a commercial purpose.

106. Paragraph 45(13) defines “tax advantage” for the purposes of this Schedule and defines “tax” as including bank payroll and any other tax.

107. Paragraph 45(14) defines “relevant regulatory body” for the purposes of sub-paragraph (11) as the FSA or a comparable body in a foreign jurisdiction.

108. Paragraph 45(15) defines “dealing on own account” for the purposes of paragraph 45.

109. Paragraph 46 applies for the purposes of calculating the trading income of the group for the relevant period and defines a number of terms used within the paragraph.

110. Paragraph 47 defines “investment company” and “UK resident investment company”.

111. Paragraph 48 defines “financial trading company”, “UK resident financial trading company” and “relevant foreign financial trading company”.

112. Paragraph 49(1) contains definitions of terms used in the Schedule.

113. Paragraph 49(2) provides that section 170(2) to (11) of the Taxation of Chargeable Gains Act 1992 applies to the Schedule in respect of the terms used in connection with “group”, “principal company”, “effective 51% subsidiary”, “company” etc. in the same way as it applies to sections 171 to 181 of that Act.

114. Paragraph 49(3) provides that section 993 of the Income Tax Act 2007 applies to the Schedule in respect of the interpretation of “connected person”.

115. Paragraph 49(4) provides that questions of residency for the purposes of the Schedule are to be determined in accordance with the rules relating to corporation tax.

Background Note

116. This Schedule introduces a new tax called the bank payroll tax (BPT). The tax is payable by taxable companies, broadly banking groups, banking entities and building societies, on “relevant remuneration” as defined, awarded to, or in respect of certain banking employees.

117. The rate of the BPT is 50 per cent. It will be payable by a taxable company. The employees themselves will not be liable to pay the new tax.

118. The tax will be payable on the excess above £25,000 of the aggregate of all relevant remuneration (whether in the form of cash, shares or other benefits) awarded in respect of any “relevant banking employee” (as defined) in the period commencing at 12.30 pm on 9 December 2009 and ending on 5 April 2010. Payment will be due on or before 31 August 2010.

119. The tax is not payable on the following, none of which are “relevant remuneration”:

- regular salary or wages or regular benefits;
- shares awarded or granted under certain specified share schemes; and
- anything payable or to be provided by virtue of a contractual obligation that arose before 12.30 pm on 9 December 2009.

120. The Schedule includes collection and management provisions for the tax and anti-avoidance legislation to prevent avoidance of the BPT through the use of loans, multiple employments with the same employer and intermediaries. The Schedule also includes a general anti-avoidance provision.

Section 23Schedule 2: Pensions: High Income Excess Relief Charge

Summary

1. Section 24 and Schedule 2 introduce a restriction of pension tax relief to the basic rate for high income individuals, to be known as the "high income excess relief charge". The charge arises in respect of pension contributions and benefits for individuals whose income, including employer contributions, is £150,000 or more, subject to a floor so that only individuals whose income (excluding employer contributions) is £130,000 or more are affected.

Details of the Schedule

2. Paragraph 2 inserts a number of new sections into Part 4 of the Finance Act (FA) 2004 after section 213 of that Act as detailed below. Together these new sections set out the rules for the high income excess relief charge.

New section 213A High income excess relief charge

3. New section 213A(1) provides for a new charge to income tax for certain individuals who are members of registered pension schemes and who have pensions savings in a tax year. The charge is to be known as the high income excess relief charge.

4. New section 213A(2) provides that the high income excess relief charge applies only to the individual.

5. New section 213A(3) provides that the individual is liable to pay the high income excess relief charge including when the individual and the scheme administrator are not resident, not ordinarily resident and not domiciled in the UK.

6. New section 213A(4) sets the rate of the high income excess relief charge at the appropriate rate in respect of the total pension savings amount. The appropriate rate is determined in accordance with new section 213E.

7. New section 213A(5) provides that the total pension savings amount is not otherwise to be treated as income for the purpose of the Tax Acts.

8. New section 213A(6) provides that income tax in respect of the high income excess relief charge is part of the individual's income tax liability for the tax year.

9. New section 213A(7) signposts further sections that make provision for the high income excess relief charge.

New section 213B High Income

10. New section 213B defines an individual with a high income by reference to the individual having "gross income" (defined in section 213C) of £150,000 or more and "relevant income" (defined in section 213D) that is not less than £130,000.

New section 213C Gross Income

11. New section 213C sets out how to calculate the individual's "gross income" for the tax year. The amount of gross income is:

    - the total income of the individual for the tax year (Step 1);
    - plus any pension contributions paid by the individual and donations under payroll giving in respect of which there was a deduction in determining total income at Step 1 above (Step 2);
    - less any income tax deductions and reliefs, other than for pension contributions and gifts of qualifying investments to charities, that are deductible at Step 2 of the calculation of income tax liability in section 24 of the Income Tax Act 2007 (ITA) (Step 3);

- plus the total pension savings amount after deducting any pension contributions paid by or on behalf of the individual (Step 4).

New section 213D Relevant Income

12. New section 213D(1) sets out how to calculate the individual's "relevant income" for the tax year. The amount of relevant income is:
    - the total income of the individual for the tax year (Step 1);
    - plus any pension contributions and donations under payroll giving paid by the individual in respect of which there was a deduction in determining total income at Step 1 above (Step 2);
    - less any income tax deductions and reliefs, other than for pension contributions and gifts of qualifying investments to charity, that are deductible at Step 2 of the calculation of income tax liability in section 24 of ITA (Step 3);
    - plus taxable employment income that the individual has agreed to give up under a salary sacrifice or flexible remuneration arrangement made on or after 22 April 2009 (Step 4).
13. New section 213D(2) defines when a 'relevant' salary sacrifice or flexible remuneration arrangement made on or after 22 April 2009 exists, for the purposes of Step 4 of the relevant income calculation.
14. New section 213D(3) defines relevant pension provision (as used in the meanings of relevant salary sacrifice and flexible remuneration arrangements) by reference to pension contributions to a pension scheme in respect of the individual .
15. New section 213D(4) defines a connected person by reference to the definition in section 993 of ITA.

New section 213E The appropriate rate

16. New section 213E(1) sets out how to calculate "the appropriate rate" of the high income excess relief charge. Different rates are to be used according to the relevant amounts of the individual's total pension savings that were relieved at the basic, higher or additional rates of tax.
17. New section 213E(2) explains how calculation of "the appropriate rate" at new section 213E(1) is amended where the individual's "specified income" is less than £180,000. Adjustments are made in steps of 1 percentage point for every £1,000 change in income.
18. New section 213E(3) defines reduced net income, as used in working out the appropriate rate to be used for the high income excess recovery charge.
19. New section 213E(4) extends the basic and higher rate bands for the purposes of working out "the appropriate rate" where pension contributions have been made under relief at source or gift aid contributions have been made.

New section 213F Total pension savings amount

20. New section 213F(1) provides that the total pension savings amount is determined by aggregating all pension savings amounts in each arrangement that the individual might have under separate registered pension schemes.
21. New section 213F(2) makes reference to new sections 213G to 213N which define pension savings amounts.
22. New section 213F(3) provides for a negative pension savings amount to be treated as nil.

23. New section 213F(4) provides for the total pension savings amount to be reduced by the amount by which the total pension input amount under section 229 exceeds the annual allowance.

24. New section 213F(5) provides a power to exclude from the total pension savings amount, pension savings amounts from arrangements where the individual is a deferred member for the whole tax year and to modify the high income excess relief charge rules for individuals who are deferred members for part of the tax year through regulations if the individual meets the condition in new section 213F(6).

25. New section 213F(6) defines the condition in new section 213F(5) by reference to an individual being a deferred member of the scheme (or would be, where there is more than one arrangement, if the particular arrangement under consideration were the only arrangement under the scheme).

New section 213G Money purchase arrangements other than cash balance arrangements

26. New section 213G(1) defines the pension saving amount in respect of an "other" money purchase arrangement, i.e. one that is not a cash balance arrangement. Money purchase arrangements in general, are defined in section 152(2) and (4) of FA 2004. "Other" money purchase arrangements are simply those money purchase arrangements that are not "cash balance arrangements" (which are defined in section 152(3) and (5) of FA 2004). They are arrangements where the rate or amount of benefits is calculated by reference to an amount available for the provision of benefits, where that available amount is in turn calculated by reference to payments made under the pension scheme. The pension savings amount in respect of such an arrangement is the total of the pension contributions paid by or on behalf of the individual and the employer contributions in respect of the individual in the tax year.

27. New section 213G(2) provides that the pension savings amount in respect of an other money purchase arrangement does not include minimum payments or amounts recovered under section 8 of the Pension Schemes Act 1993 (PSA) or section 4 of the Pension Schemes (Northern Ireland) Act 1993 (PSNIA).

28. New section 213G(3) provides rules for dealing with unallocated employer pension contributions that subsequently become allocated to a particular individual.

29. New section 213G(4) provides for the pension savings amount to be treated as nil in a tax year where the individual becomes entitled to a serious ill-health lump sum or dies.

New section 213H Cash balance arrangements

30. New section 213H(1) defines the pension savings amount in respect of a cash balance arrangement as the "appropriate increase". Cash balance arrangements in relation to a member are defined in section 152(3) and (5) of FA 2004 as a subset of money purchase arrangements in general as defined in section 152(2) and (4) of FA 2004. They are money purchase arrangements where the rate or amount of benefits is calculated by reference to an amount available for the provision of benefits to or in respect of a member, but otherwise than wholly determined by reference to payments made under the arrangement.

31. New section 213H(2) defines the appropriate increase by reference to the opening and closing rights multiplied by age-related factors.

32. New section 213H(3) defines closing rights.

33. New section 213H(4) defines opening rights.

34. New section 213H(5) provides that the pension savings amount in connection with a cash balance arrangement does not include minimum payments or amounts recovered under section 8 of PSA or section 4 of PSNIA.

35. New section 213H(6) provides for the pension savings amount to be treated as nil in a tax year where the individual becomes entitled to a serious ill health lump sum or dies.

36. New section 213H(7) defines "relevant assumptions" for determining opening and closing rights and provides a power to set those through regulations.

New section 213I Adjustment of closing rights

37. New section 213I(1) provides for adjusting closing rights under cash balance arrangements.

38. New section 213I(2) provides that the closing rights are to be increased by the amount of any pension debit during the tax year.

39. New section 213I(3) provides that the closing rights are to be reduced by the amount of any pension credit during the tax year.

40. New section 213I(4) provides that the closing rights are to be increased where there is a transfer of assets or rights out of the scheme to another registered pension scheme or qualifying recognised overseas pension scheme.

41. New section 213I(5) provides that the closing rights are to be reduced where there is a transfer of assets or rights from another pension scheme into the cash balance arrangement, by the amount of the transfer.

42. New section 213I(6) provides that the closing rights are to be increased where there is any surrender made, or similar action.

43. New section 213I(7) provides that the closing rights are to be increased where the individual becomes entitled to a pension or lump sum or there is an allocation of rights of the individual under the cash balance arrangement.

New section 213J Defined benefits arrangements

44. New section 213J(1) defines the pension savings amount for a defined benefits arrangement by reference to the increase in value of the pension and any lump sum. A defined benefits arrangement relating to a member is defined in section 152(6) and (7) of FA 2004. They are arrangements where the benefits provided are not money purchase benefits, but which are instead calculated by reference to any factor other than an amount available for the provision of benefits.

45. New section 213J(2) defines the pension increase by reference to the difference between the opening and closing pension multiplied by age-related factors.

46. New section 213J(3) defines the amount of the closing pension.

47. New section 213J(4) defines the amount of the opening pension.

48. New section 213J(5) defines the lump sum increase by reference to the difference between the opening and closing lump sums multiplied by age-related factors.

49. New section 213J(6) defines the amount of the closing lump sum.

50. New section 213J(7) defines the amount of the opening lump sum.

51. New section 213J(8) provides that the pension savings amount in connection with a defined benefits arrangement does not include minimum payments or amounts recovered under section 8 of PSA or section 4 of PSNIA.

52. New section 213J(9) provides for the pension savings amount to be treated as nil in a tax year where the individual becomes entitled to a serious ill-health lump sum or dies.

New section 213K Adjustment of closing pension and lump sum

53. New section 213K(1) provides for adjustment to be made to the value of the closing pension and lump sum when working out the pension savings amount under defined benefits arrangements.

54. New section 213K(2) provides for the closing pension and/or closing lump sum to be increased by the amount of any pension debit during the year.

55. New section 213K(3) provides for the amount of the closing pension and/or closing lump sum to be reduced by any pension credit deriving from a registered pension scheme.

56. New section 213K(4) provides that where there is a transfer of rights out of the scheme to another registered pension scheme or qualifying registered overseas pension scheme that leads to a reduction in pension or lump sum payable to the individual, then the closing pension and/or closing lump sum are to be increased by the amount of the transfer.

57. New section 213K(5) provides that where there is a transfer in of rights from another pension scheme that leads to an increase in pension or lump sum, then the amount of the increase is to be subtracted from the closing pension and/or closing lump sum.

58. New section 213K(6) provides that where an individual has exercised an option to commute, allocate or otherwise surrender any of their benefits then the closing pension and/or closing lump sum are to be increased by the amount of the reduction.

59. New section 213K(7) provides that where the individual becomes entitled to a pension or lump sum, the amount of the benefits drawn apart from by commutation of lump sum or of pension is to be added back to the closing pension or closing lump sum.

New section 213L Age-related factors

60. New section 213L(1) provides a power to set the age-related factors by regulations.

61. New section 213L(2) provides for there to be different types of age-related factors.

62. New section 213L(3) provides that the age-related factors to be used are those appropriate to the individual as set out in regulations.

63. New section 213L(4) provides that the age-related factors must be set by reference to the individual's age at the end of the tax year and their relevant normal pension age.

64. New section 213L(5) and (6) provide for the time which the age-related factors should be set by reference to.

65. New section 213L(7) set out parameters for varying the age-related factors.

66. New section 213L(8) and (9) provide for the Treasury to take account of advice from the Government Actuary or their Deputy when setting the age-related factors.

67. New section 213L(10) sets the frequency of reviews of the age-related factors as occurring at intervals of no longer than five years.

68. New section 213L(11), (12) and (13) define normal pension age by reference to an individual being a deferred member of the scheme (or would be, where there is more than one arrangement, if the particular arrangement under consideration were the only arrangement under the scheme) and provide a power to modify it through regulations.

New section 213M Uprating of opening rights, pension and lump sum

69. New section 213M(1) and (2) provide for up-rating the amount of the opening rights under cash balance arrangements and the opening pension and lump sum under defined benefits arrangements.

70. New section 213M(3) and (4) provide a power for the amount to be used for up-rating to be set through regulations.

71. New section 213M(5) provides that where the amount to be used for up-rating is varied then a review of the age-related factors must be carried out.

New section 213N Hybrid arrangements

72. New section 213N(1) and (2) define the total pension savings amount in relation to hybrid arrangements. A hybrid arrangement is one under a registered pension scheme in which the ultimate form of benefits is uncertain. The ultimate form of those benefits may be either an exclusively defined benefit, an exclusively cash balance benefit, or an exclusively other money purchase benefit. Hybrid arrangements are defined in section 152(8) of FA 2004. The pension savings amount in respect of such an arrangement is the greater or greatest of the relevant amounts found by applying each of the provisions in new section 213N(3) to (5).

73. New section 213N(3) to (5) provide how to determine the pension savings amount in respect of a hybrid arrangement by applying to it whichever of the provisions in new sections 213G to 213J are appropriate.

New section 213O Anti-avoidance

74. New section 213O(1) introduces an anti-avoidance rule which applies if there is a high income excess relief charge scheme for the tax year.

75. New section 213O(2) to (5) defines a high income excess relief charge scheme by reference to there being a "scheme" to avoid the whole or part of the high income excess relief charge. The scheme has to involve the individual reducing their gross or relevant income or their total pension savings amount, but subject to such a reduction being redressed by an increase in their income or pension savings amount in a different tax year, or the provision of some other benefit at any other time. The rule also applies to connected persons.

76. New section 213O(6) provides that where the anti-avoidance rule applies, the scheme is to be ignored in determining the individual's gross or relevant income or pension savings amount.

77. New section 213O(7) clarifies the scope of 'scheme' for this purpose.

78. New section 213O(8) defines connected person by reference to the definition in section 993 of ITA.

New section 213P Power to make regulations about charge

79. New section 213P provides a power to make regulations about the high income excess relief charge, including modifications to new sections 213A to 213O. Any regulations made under this section may not increase anyone's liability to tax.

80. Paragraph 3 of the Schedule amends section 282 of FA 2004 to provide that the first regulations under new section 213L are to be laid under the affirmative resolution procedure.

81. Paragraph 4 of the Schedule amends Schedule 34 to FA 2004 by inserting a new paragraph 7B as set out below.

82. New paragraph 7B(1) and (2) provide regulation-making powers to the Commissioners for HM Revenue and Customs to modify the provisions of FA 2004, as they are amended by this Schedule, in relation to members of currently-relieved non-UK pension schemes.

83. Paragraph 5 of the Schedule provides that it shall have effect for the tax year 2011-12 and onwards.

Background Note

84. The Schedule restricts tax relief for pension contributions by or for the benefit of high income individuals. It follows a formal consultation which concluded on 3 March 2010. A consultation document "Implementing the restriction of pensions tax relief" was published on 9 December 2009 and a document summarising responses to the consultation "Implementing the restriction of pensions tax relief: a summary of consultation responses" was published on 24 March 2010.

85. This charge is on pension contributions for individuals whose gross income is £150,000 or more and whose relevant income is £130,000 or more. The charge will apply to all pension contributions to registered pension schemes (including deemed contributions to defined benefits or cash balance schemes), whether paid by or on behalf of those individuals or by their employer for their benefit. The charge restricts the level of tax relief to basic rate tax at 20 per cent. But, where the individual has gross income of £150,000 to £180,000 the amount of tax relief is tapered from their marginal rate of tax (up to 50 per cent) to 20 per cent. The charge will come into force with effect from 6 April 2011.

Section 24Schedule 3: Sideways Relief Etc

Summary

1. Section 24 and Schedule 3 provide changes to the rules for "sideways loss relief" claimable by a person who makes a loss in a trade, profession or vocation. These rules are designed to prevent tax-generated losses from being offset against the person's other taxable income or capital gains. These changes were announced on 21 October 2009 and will apply on and after that date.

Details of the Schedule

2. Paragraph 2 adds a reference to "capital gains relief" in section 60(1)(c) of the Income Tax Act 2007 (ITA) in the overview of Chapter 2.

3. Paragraphs 3 and 4 make consequential amendments in sections 64(8) and 72(5) of ITA respectively relating to the introduction of new section 74ZA of ITA and the repeal of section 81 of ITA.

4. Paragraph 5 inserts new section 74ZA (No relief for tax-generated losses).

5. New section 74ZA(1) provides that this section applies if a person makes a loss in a tax year from carrying on a trade, profession or vocation, either in a sole capacity or as a partner, and that loss arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements (as defined in new section 74ZA(3)).

6. Section 74ZA(2) provides that no sideways relief or capital gains relief may be given to the person for the loss within section 74ZA(1). This restriction is subject to section 74ZA(5).

7. Section 74ZA(3) defines "relevant tax avoidance arrangements" for the purposes of section 74ZA(1).

8. Section 74ZA(4) defines "arrangements" for the purposes of section 74ZA(3).

9. Section 74ZA(5) provides an exception where a loss derives wholly from qualifying film expenditure defined in section 74D of ITA.

10. Section 74ZA(6) defines capital gains relief for the purpose of this section. The definition of sideways relief is in section 60(4) of ITA.

11. Paragraph 6 repeals section 74B of ITA.

12. Paragraphs 7 and 8 make consequential amendments to sections 74C and 74D of ITA relating to the repeal of section 74B of ITA.

13. Paragraph 9 repeals section 81 of ITA.

14. Paragraph 10 makes consequential amendments to Schedule 6 to the Finance Act 2009 relating to the introduction of new section 74ZA of ITA and the repeal of section 81 of ITA.

15. Paragraph 11 provides commencement rules.

Background Note

16. A person who makes a loss in a trade, profession or vocation may claim for the loss to be offset against their other income and capital gains. This is commonly known as "sideways loss relief".

17. Despite previous legislative action to deter those who seek to misuse the sideways loss relief rules, the Government has continued to see evidence of avoidance activity that relies on the creation of contrived losses for use as sideways loss relief. This puts at risk substantial sums of tax.

18. The Financial Secretary to the Treasury (Stephen Timms) announced in a written statement on 21 October 2009 that legislation would be introduced with effect from that date to prevent sideways loss relief being given where the loss arises from arrangements and a main purpose of the arrangements is to obtain a tax reduction by means of sideways loss relief.

Section 25: Property Loss Relief

Summary

1. Section 25 provides for changes to the rules for property loss relief against general income, which may be claimed by persons within the charge to income tax. The changes prohibit tax-generated losses attributable to the annual investment allowance (AIA) being offset against general income. They apply to losses arising from or in connection with relevant tax avoidance arrangements entered into on or after 24 March 2010.

Details of the Section

2. Subsection (2) inserts a new subsection (3) into section 117 of the Income Tax Act 2007 (ITA) signposting the new section 127A.

3. Subsection (3) inserts a new subsection (7) into section 120 of ITA, similarly signposting the new section 127A.

4. Subsection (4) inserts new section 127A after section 127 of ITA.

5. New section 127A(1) provides that the section applies if, in a tax year, a person makes a loss in a UK or overseas property business (alone or in partnership), the loss has a capital allowances connection (as defined in section 123(2)) and the loss arises directly or indirectly in consequence of, or otherwise in connection with, "relevant tax arrangements" as defined in new subsection (4).

6. New section 127A(2) provides that the property loss cannot be set off against general income to the extent that the loss is attributable to the AIA.

7. New section 127A(3) gives a rule ensuring that the AIA is treated as the first element of a property loss in priority to other capital allowances and other expenses that may be set off against other income.

8. New section 127A(4) defines the phrase "relevant tax avoidance arrangements" as used in new subsection (1). These are arrangements to which the person is a party and the main purpose, or one of the main purposes, of which is to put the person in a position to make use of an AIA in the obtaining of a reduction in tax liability by means of property loss relief against general income.

9. New section 127A(5) defines "arrangements" as including any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

10. New section 127A(6) explains that "the applicable amount of the loss" has the meaning given to it by section 122 of ITA.

11. Subsection (5) of the section gives the commencement rule. The section only applies to property losses arising from arrangements entered into on or after 24 March 2010, or transactions forming part of arrangements entered into on or after 24 March 2010.

12. Subsection (6) excludes arrangements or transactions entered into pursuant to an unconditional obligation in a contract made before 24 March 2010.

13. Subsection (7) explains what is meant by an unconditional obligation. It is an obligation that may not be varied or extinguished by the exercise of a right (whether or not under the contract).

Background Note

14. At Budget 2010, the Government announced that the maximum amount of the AIA was to be increased from £50,000 per annum to £100,000 per annum. The AIA is a relief that is available to most businesses and covers most expenditure on plant and machinery (the main exclusion being cars).

    The AIA is available to:

    - any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary and overseas property businesses and individuals having an employment or office);
    - any partnership consisting only of individuals; and
    - any company (subject to certain restrictions).

15. There are several anti-avoidance rules in relation to losses arising from the carrying on of a trade profession or vocation. Those rules do not apply to property businesses. Property losses can only be set off against general income if the loss has a "capital allowances connection" and or "a relevant agricultural connection".

16. New section 127A of ITA is a targeted anti-avoidance rule (TAAR) which prevents relief against general income being given to a person for a loss from a UK or overseas property business which is attributable to the AIA and arises from "relevant tax avoidance arrangements". These are defined as arrangements to which the person is a party and the main purpose, or one of the main purposes, of which is to put the person in a position to make use of an AIA in the obtaining of a reduction in tax liability by means of property loss relief against general income.

17. The legislation is specifically targeted at persons who enter into tax avoidance arrangements with a main purpose of obtaining a tax reduction by way of property relief attributable to the AIA. It will have no relevance for the vast majority of taxpayers who do not enter into such arrangements.

18. The restriction applies to property losses attributable to the AIA which arise as a result of tax avoidance arrangements entered into on or after 24 March 2010.

Section 26Schedule 4: Capital Allowance Buying

Summary

1. Section 26 and Schedule 4 provide for the introduction of legislation to prevent tax avoidance through the transfer of an entitlement to benefit from capital allowances on plant and machinery used for the purpose of a trade, where the tax written down value of the plant and machinery exceeds its balance sheet value. The legislation has effect from 21 July 2009. Transfers of an entitlement to postponed allowances on ships are included within the scope of these rules but only with effect from 9 December 2009.

Details of the Schedule

2. Paragraph 2 introduces a new Chapter 16A into Part 2 of the Capital Allowances Act 2001 (CAA) consisting of new sections 212A to 212S.

Introduction

3. New section 212A gives the scope of the Chapter explaining that the Chapter restricts the ways in which a plant and machinery allowance may be given effect where there has been a "qualifying change" in relation to a company (C).

4. New section 212B explains that the Chapter applies only where C carries on a trade (alone or in partnership (P) with another person or persons). It sets three further requirements and signposts the relevant sections in new Chapter 16A in relation to each requirement.

Qualifying Change

5. New section 212C provides that where one or more of the four conditions A to D are met, then there is a qualifying change in relation to C.

6. Subsection (2)(a) provides that condition A is met where there is (in broad terms) a change of ownership of C (defined in this legislation as a change in one or more principal companies (as defined in new section 212E) on the relevant day. This includes the creation of a consortium company.

7. For example, condition A is met in the following scenarios:

   - C is a wholly owned member of the Y Group and on the relevant day C is sold to the X Group;
   - C is a consortium company equally owned by the Y Group and the X Group. On the relevant day Y Group sells its whole interest in C to the X Group (or another Group, the Z Group). Condition A is met as, at the end of the relevant day, Y Group is no longer a principal company of C.

8. Subsection (2)(b) provides that condition A is also met where C is not owned by another company or companies at the start of the relevant day, but is owned by another company or companies at the end of that day.

9. For example, C is owned by the Jones family. On the relevant day the Jones family sell their shares to the X group and condition A is met.

10. As with the majority of the legislation, new section 212C has effect from 21 July 2009, but subsection (2)(b) only has effect where the relevant day is on or after 9 December 2009.

11. Subsection (3) provides that condition B is met where a principal company of C is a consortium principal company (CPC) and CPC's ownership proportion of C is greater at the end of the relevant day than it was at the beginning of that day.

12. For example, C is a consortium company owned equally by the A and X Groups. The A group sells 30 per cent of its 50 per cent share-holding (that is, a 15 per cent share holding in C) to the X group. Condition B is met because the X Group's ownership proportion has increased from 50 per cent to 65 per cent.

13. Subsection (4) provides that condition C is met where C ceases to carry on the whole or part of the relevant trade and the trade (or part of it) begins to be carried on in partnership by two or more companies in circumstances where Chapter 1 of Part 22 of the Corporation Tax Act (CTA) 2010 applies (previously section 343 of the Income and Corporation Taxes Act 1988 (ICTA)). For Chapter 1, and therefore condition C to apply, C cannot be a member of the partnership.

14. Subsection (5) provides that condition D is met where at the beginning of the relevant day the relevant trade is carried on by C in partnership and C's relevant percentage

share in the relevant trade at the end of the day is less than at the beginning of the day (or is nil).

15. For example, condition D is met in the following scenarios:

- a partnership P carries on a trade of widget manufacturer and the partners are C, X Ltd, and W Ltd. C's percentage share at the start of the relevant day is 70 per cent and at the end of that day it is 30 per cent;
- P carries on a trade of widget manufacturer and the partners in the trade are C, X Ltd, and W Ltd. C's percentage share at the start of the day is 70 per cent and C leaves the partnership so at the end of the day its percentage share is nil.

16. New section 212D is a guide to the sections explaining the terms used in new section 212C.

17. New section 212E explains the rules for deciding if any particular company is a principal company of C and if that principal company is a consortium principal company of C. New sections 212E to 212I are based on similar provisions in Chapters 3, 4 and 5 of Part 9 of CTA 2010 (Sales of lessors).

18. Subsections (1) to (3) provide the detail for determining the principal company of C. The definitions describe a series of relationships traced upward from C until this chain of relationships can go no further because the company at the top of the chain is not a 75 per cent subsidiary of another company.

19. Subsections (4) to (7) provides the detail for determining a consortium principal company of C where C is owned by a consortium or C is a qualifying 75 per cent subsidiary of a company owned by a consortium. As with subsections (1) to (3) the definitions describe a series of relationships but the chain of relationships also includes the situation where C is a qualifying 75 per cent subsidiary of a company owned by a consortium. The chain of relationships also ends when the company at the top of the chain is not a 75 per cent subsidiary of another company.

20. New section 212F defines when a company is owned by a consortium and who the consortium members are for the purposes of new Chapter 16A. It explains the company cannot be a 75 per cent subsidiary of another company and that at least 75 per cent of the company's ordinary share capital must be owned by other companies and those other companies must each own 5 per cent or more of the ordinary share capital.

21. For example, C is a company owned by a consortium in the following scenarios:

- C's ordinary share capital is owned equally by Y Ltd, X Ltd, W Ltd and Q Ltd. The consortium members are Y Ltd, X Ltd, W Ltd and Q Ltd;
- C's ordinary share capital is owned as follows: Y Ltd - 25 per cent, X Ltd - 4 per cent, W Ltd - 55 per cent and Q (an individual) - 16 per cent. C is a company owned by a consortium but the consortium members are only Y Ltd, and W Ltd. X Ltd only holds 4 per cent of the ordinary share capital and Q is not a company.

22. New section 212G provides the definition of qualifying 75 per cent subsidiaries. The section gives three conditions, and states that a company is a qualifying 75 per cent subsidiary if Condition 3 is and either Condition 1 or 2 is met. The definitions use the same approach as is used for determining whether companies are in the same group for group relief purposes, but with a modification so that companies without share capital, such as companies limited by guarantee, can be treated as subsidiaries by extending the application of Chapter 6 of Part 5 of CTA 2010 to treat members as if they were equity holders and then applying the tests in Chapter 6.

23. New section 212H provides the rules for establishing the ownership proportion of a consortium principal company for the purposes of Condition B in new section 212C.

As for the definition of 75 per cent subsidiaries in new section 212G, provision is made for companies without share capital.

24. New section 212I provides the rules for establishing C's "relevant percentage share" in a partnership. The relevant percentage share is established on a "just and reasonable" basis but particular regard must be had to the matters that would be taken into account in determining a partner's share of the profits or losses of a trade carried on by a firm for the purpose of section 1262 of CTA 2009. This means that normally the profit sharing arrangements of the firm for the particular period will be followed but there may be instances where circumstances are such that to follow the profit sharing arrangements in force for the period would not be just and reasonable.

Relevant excess of allowances

25. New section 212J gives the calculation for establishing whether or not C or P has a relevant excess of allowances in relation to the relevant trade and provides that certain plant and machinery is to be excluded from the calculation.

26. Subsection (1) gives the formula that governs the calculation and provides that C or P has a relevant excess of allowances if the RTWDV (relevant tax written down value) is more than the BSV (balance sheet value).

27. Subsection (4) explains when plant and machinery is "excluded plant and machinery". The subsection excludes two types of assets. The first type is plant and machinery that is owned by C (or P) but is prohibited from qualifying for allowances because the plant and machinery is leased out under a long funding lease and section 34A of CAA prohibits the expenditure from being qualifying expenditure. The second type is plant and machinery that is owned by C (or P) but is prohibited from qualifying for allowances because the plant and machinery is the subject of a hire purchase contract where the person entitled to the benefit of the contract is deemed to be the owner and no other person can be by virtue of section 67 of CAA.

28. New section 212K provides that RTWDV is the "relevant tax written-down value" and explains how it is to be found. In broad terms the section works by totalling two amounts, the first of which is based on the amounts that are actually in the capital allowances pools but adjusted to include expenditure that has yet to be allocated to a pool and ignoring any disposals on the relevant day. The second amount is the amount of any allowances postponed because a notice has been given under section 130 of CAA.

29. Subsection (2) defines "amount 1" in relation to the three types of plant and machinery pools: single asset pools, class pools and the main pool. The subsection looks to the amount of unrelieved expenditure that is available to be carried forward from all pools (that is after the application of section 56 of CAA) from the "old period".

30. Subsection (3) defines "amount 2" and identifies any first-year or writing-down allowance that has been postponed because a notice has been given under section 130 of CAA, by the person entitled to the first-year or writing-down allowance, in relation to qualifying expenditure incurred on the provision of a ship and not subsequently claimed by the end of the old period. Amount 2 is only included in RTWDV where the relevant day is on or after 9 December 2009.

31. Subsection (4) provides that the amount of unrelieved qualifying expenditure contained in a pool is to be calculated on the basis of three assumptions.

32. Subsection (4)(a) sets out the first assumption which is that any qualifying expenditure that could have been allocated to the pool has been allocated to the pool by the end of the old period. Normally a person can add qualifying expenditure to a pool at any time provided the person still owns the asset at some point in the particular chargeable period in which the person wants to add the qualifying expenditure to a pool. The rule prevents any expenditure being added to any pool after the relevant day as it has already been treated as added on the relevant day.

33. Subsection (4)(b) sets out the second assumption which overrides the normal rule in section 58(5) of CAA and allocates the balance of any first-year qualifying expenditure incurred in the old period to a pool in the old period at the end of the old period.

34. Subsection (4)(c) sets out the third assumption which is that any transaction taking place on the relevant day that has the effect of reducing the amount of unrelieved qualifying expenditure in a pool had not taken place. Where this rule applies new section 212S will also be in point in relation to any transfers of plant and machinery on the relevant day and any person's ability to claim an allowance in respect of it subsequently.

35. Subsection (5) ensures that where condition C is met, i.e. C ceases to carry on the relevant trade or part of the relevant trade and the relevant trade begins to be carried on in partnership by two or more companies, then for the purposes of calculating the amount of unrelieved qualifying expenditure in any pool and the amount of postponed allowances you look at the position in C as it would have been if there had not been a qualifying change.

36. Subsection (6) prevents circularity by identifying which period is the "old period" for the purposes of the section.

37. Subsection (7) explains that the plant and machinery identified by subsections (2) and (3) is referred to as "the relevant plant and machinery" in new sections 212L to S.

38. New section 212L provides that the term BSV, used in section 212J, is the balance sheet value of "the relevant plant and machinery" and is to be found by adding together specific amounts (if any) which would be shown in respect of it in the "appropriate" balance sheet of C or P.

39. Subsection (2) identifies two amounts to be added together. These are the net book value (or carrying amount) of the relevant plant and machinery and where the relevant plant and machinery is leased to a lessee under one or more finance leases which are not long funding finance leases, the amounts shown in the appropriate balance sheet as the net investment in that lease or those leases.

40. Subsection (3) provides that where the plant and machinery is a fixture in any land and the net book value (or carrying amount) of the land would include an amount in respect of the fixture, then the net book value (or carrying amount) of the fixture is determined on a just and reasonable basis.

41. Subsection (4) provides a similar rule to subsection (3) where plant and machinery is leased under a finance lease along with any land or other assets which are not plant and machinery. The net investment in the lease in respect of the plant and machinery is determined on a just and reasonable basis.

42. Subsections (5) and (6) identify the appropriate balance sheet. The balance sheet has to be drawn up in accordance with generally accepted accounting practice so as to reflect the position at the beginning of the relevant day but adjusted for the disposal of any relevant plant and machinery that takes place on the relevant day.

Unallowable purpose

43. New section 212M sets out the unallowable purpose rule and defines the expressions used.

44. Subsection (1) gives the rule. The qualifying change has an unallowable purpose if the main purpose or one of the main purposes of the "change arrangements" is to "obtain a relevant tax advantage" for that person or any other person.

45. Subsection (2) explains what is meant by the phrase "change arrangements". It includes any arrangements connected with or made to bring about the qualifying change.

46. Subsection (3) explains what is meant by "obtain a relevant tax advantage" in the context of a claim to allowances on unrelieved qualifying expenditure or making a

claim under section 131 of CAA in respect of postponed allowances. It means a person becomes entitled to a reduction in profits or an increase in losses for tax purposes in consequence of the claim to allowances. The person becoming entitled to the reduction in profits is not limited to the person making the claim to allowances.

What happens when Chapter applies

47. New section 212N provides that when new Chapter 16A applies, an accounting period of C, or of a partnership P in which C was a member, or which succeeded to the trade previously carried on by C in circumstances in which Chapter 1 of Part 22 of CTA 2010 applies (previously section 343 of ICTA), ends and a new accounting period starts. This section defines what is meant by the terms “the old period” and “the new period”.

48. Subsection (1) gives the rule that the accounting period of C which is current on the relevant day ends with that day and a new accounting period of C begins with the following day.

49. Subsection (2) disapplies the rule in subsection (1) if condition A, B or D in new section 212C is met and the relevant trade was carried on by C in partnership with another company or other companies. In these circumstances, the rule is that the accounting period of the partnership which is current on the relevant day ends on that day. Where the partnership continues after the relevant day a new accounting period begins on the following day, or where condition D applies, and C’s share in the relevant trade is nil after the qualifying change, and the relevant trade is carried on by a company, a new accounting period of that company begins on the following day.

50. Subsection (3) explains that the accounting period which ends on the relevant day is the “old period” when considering the application of new section 212O.

51. Subsection (4) explains that accounting period which begins on the day following the relevant day is the “new period” when considering the application of new section 212P.

52. New section 212O explains how the amount of the excess of allowances in a pool is to be calculated – this is in order to consider the application of new section 212P. The calculation is done in two stages. The first stage requires a comparison of the unrelieved expenditure in each pool with the balance sheet value of the assets in that pool. The unrelieved expenditure is as specified in new section 212K(2) for each single asset pool or class pool (not the total of such pools in either case) and in the main pool. This amount is referred to as “PA” in relation to each pool. The PA value is then compared to the BSVP - a just and reasonable apportionment of the total BSV, calculated under new section 212L - which is appropriate to attribute to that particular pool. If, on a pool by pool basis, PA is more than BSVP, then C or P has an excess of allowances in that pool (called a “relevant pool” in this section and in new section 212P) and the amount of the excess is the difference between PA and BSVP.

53. However, if for any other pool BSVP is greater that PA, then section 212O(5) provides that what would otherwise be the excess in a relevant pool may be reduced by the difference between BSVP and PA provided that difference has not already been taken into account in relation to another relevant pool or under new section 212Q(8). This is the second stage of the calculation. This ensures that the total of excess of allowances in each individual pool does not exceed the figure given by new section 212J.

54. New section 212P is the main provision that sets out what happens when C or P has an amount of excess allowances. Essentially the excess of allowances is treated as qualifying expenditure in a new pool. The way in which relief for allowances in respect of expenditure in new pools, or losses attributable to such allowances, can be claimed is then restricted.

55. Subsection (1) provides that the unrelieved expenditure in each relevant pool is taken to be reduced at the beginning of the new period by the amount of the excess of allowances in relation to the pool.

56. Subsection (2) then provides that the amount of excess is to be treated from the beginning of the new period as if it were qualifying expenditure in a new pool of the same description as the relevant pool.

57. Subsection (3) provides that after a qualifying change has taken place, as defined in new section 212C, any trade or part of a trade transferred into C or P is treated as a separate trade (from C's or P's original trade) for the purposes of claiming capital allowances in respect of qualifying expenditure in a new pool. As a result, capital allowances in respect of new pools cannot be claimed against C's or P's newly acquired trade (or part trade) activities.

58. Subsection (4) provides that where a claim to capital allowances in respect of a new pool creates or increases a loss, that loss may only be set off under section 37 of CTA 2010 against the profits from qualifying activities carried on by C, or by a company that is a member of P, at the start of the relevant day.

59. Subsection (5) provides also that the amount of loss (created or increased by capital allowances claimed in respect of expenditure in a new pool) set off under section 37 of CTA 2010 cannot exceed the amount that could have been set off in the absence of the qualifying change.

60. Subsection (6) provides that a loss attributable to capital allowances claimed in respect of new pool expenditure cannot be surrendered as group relief unless it could have been so surrendered but for the qualifying change.

61. Subsection (7) provides that the amount of loss surrendered as group relief under subsection (6) cannot exceed the amount that could have been set off in the absence of the qualifying change.

62. Subsection (8) is an anti-avoidance rule that prohibits a qualifying activity not actually carried on by C, or a company that is a member of P, at the start of the relevant day, but which would otherwise be regarded, for corporation tax purposes, as forming part of C or the company's qualifying activity at that time, from being so regarded for the purposes of subsection (4) above.

63. Subsection (9) provides that where condition C in new section 212C is met, then the reduction of qualifying expenditure in the relevant pools and the allocation of the excess of allowances looks at the pools transferred under section 948 of CTA 2010 (previously section 343 of ICTA) from C.

64. New section 212Q provides comparable rules (to those in new section 212P) in relation to postponed allowances. The legislation starts by treating all postponed allowances as being an excess of allowances (see paragraph 30 above) and calls them relevant postponed allowances. However, the excess of postponed allowances can be reduced if in any pool BSVP is more than PA and the difference between BSVP and PA has not been used to reduce the excess in any relevant pool (see paragraph 53 above). The section only has effect where the relevant day is on or after 9 December 2009.

65. The rules on restricting the set-off of excess postponed allowances are exactly the same as those for allowances from new pools. Subsections (4) to (7) provide that the postponed allowances cannot be included in any section 37 of CTA 2010 loss claim, nor can they be included in any amount surrendered as group relief, unless the amounts would have been available for set off or surrender but for the qualifying change.

66. New section 212R provides a rule that requires the disposal proceeds from the sale of any relevant plant and machinery to be apportioned between the new pool and the relevant pool on a just and reasonable basis.

67. New section 212S is an anti-avoidance provision that stops any person, other than C or P, claiming plant and machinery allowances on any asset acquired from C on the relevant day. This is because new section 212K(4)(c) provides that the disposal is

ignored not only when calculating RTWDV, but also for the purposes of Part 2 of CAA. Without this provision it would have been possible for both C and the person acquiring the asset to get relief. The section only has effect where the relevant day is on or after 9 December 2009.

68. Paragraph 4 amends section 247 of CAA by introducing a new subsection that refers to the anti-avoidance rules in new Chapter 16A and so limits the ways in which effect may be given to an allowance.

69. Paragraph 5 explains that the amendments have retrospective effect where the relevant day is on or after 21 July 2009.

70. Paragraph 6 however provides that certain provisions only have effect from 9 December 2009. The provisions are those relating to companies with no principal company at the start of the relevant date, postponed allowances, transactions taking place on the relevant day that reduce the amount of unrelieved expenditure in a pool, and the denial of allowances where a person has acquired plant and machinery from C or P on the relevant day.

Background Note

71. Depreciation of fixed assets charged in the commercial accounts of a business is not allowed as a deduction in computing the taxable profits. Instead capital allowances may be given at prescribed rates on certain assets, including plant and machinery. The annual investment allowance provides an annual 100 per cent allowance for the first £100,000 of investment in plant and machinery to all businesses. There are also 100 per cent first-year allowances available for certain types of expenditure. Otherwise expenditure on plant and machinery attracts writing-down allowances (WDA).

72. Qualifying expenditure has to be allocated to the appropriate pool for the purpose of determining entitlement to WDA. A pool may cover a single asset (for example ships or short-life assets) or a class of assets (special rate pools and overseas leasing pools are examples of class pools). Any expenditure qualifying for plant and machinery allowances that does not fall to be allocated to a single asset pool or a class pool is allocated to the main pool. The rate of WDA for expenditure in the special rate pool is 10 per cent per annum, otherwise WDA is given at 20 per cent per annum.

73. Pooling works by keeping a running total of available qualifying expenditure in a pool. WDA is given on the balance of expenditure incurred in previous periods as yet unrelieved, plus any new expenditure in the period less any disposal proceeds to be brought into account for that period. This is the reducing balance basis. Plant and machinery allowances are broadly intended to give relief for the reduction in value of an asset while a company owns it. It is unlikely that WDA alone will achieve exactly this and balancing allowances or balancing charges are given to adjust the relief to give this result.

74. Capital allowances are deducted from profits and they may create or enhance a loss. Trading losses may be utilised in several ways. They may be surrendered as group relief, and so used to reduce the profits of companies other than the one that incurred the expenditure. They may also be set sideways against other profits (of the company incurring the losses) of the same year or carried backwards to reduce the profits of the company for an earlier year. Any remaining losses are carried forward to reduce the company's profits from the same trade in subsequent years; they cannot be set against other profits of the company or against the profits of other companies in these subsequent years.

75. A company does not have to claim its maximum entitlement to capital allowances in any period, but instead may preserve the amount on which they may be claimed for a later period. This allows the company, and indeed its group, to decide when to make a claim in order to maximise the value of the capital allowances in reducing other profits.

76. There have been a number of transactions in which companies with large pools of unclaimed capital allowances have been sold into a new group principally to enable the new group to access the allowances in the form of group relief. While there is flexibility in the capital allowances code over the timing of a claim as described above, (paragraph 31) it is not the intention that tax assets in the form of unclaimed allowances be sold .

77. If a company claims its maximum entitlement to capital allowances each year and, in doing so, creates or enhances a loss that cannot be relieved, a group acquiring the company would not be able to access the losses as group relief, as explained in paragraph 74 above. There is also specific legislation to counter loss buying where a person buys a trading company wholly or partly for its unused losses rather than solely for the inherent value of its trade or assets; this legislation prohibits the losses being utilised against any new activities introduced into the company.

78. The legislation introduced by this Schedule is consistent with the rules to deter loss buying transactions and will restrict the way in which capital allowances can be utilised following a transfer of entitlement to benefit from those capital allowances. Capital allowances or any loss attributable to a capital allowances claim will only be available to reduce the profits that they would have been able to reduce before the transaction took place. The legislation will, however, only apply where the main purpose or one of the main purposes of the transaction is to obtain a tax advantage.

79. There are three other conditions that must be met for the legislation to take effect (that is, in addition to the unallowable purpose test). A company must carry on a trade or carry on a trade in partnership with others, that company (or that partnership) must have an excess of capital allowances and there must be a qualifying change in relation to the company.

80. Broadly, a qualifying change is either the sale or partial sale (to create a consortium) of a company, a change in the ownership proportions of a consortium company, a change in the profit sharing ratio of a partnership or a transfer of the trade (with the excess of allowances) in circumstances such that the *Transfers of a trade without a change of ownership* provisions (in Chapter 1 of Part 22 of CTA 2010) apply. Any of these transactions could be used to transfer an entitlement to capital allowances.

81. If a company has not claimed its maximum entitlement to capital allowances it is likely that the tax written down value (that is, the expenditure in a pool unrelieved) of the plant and machinery will be greater than its value shown on the balance sheet. The amount by which the tax written down value exceeds the balance sheet value is the excess of allowances.

82. The legislation operates by allocating an amount of expenditure equal to the excess of allowances in each pool to a new separate pool of the same type (i.e. a new single asset, class or main pool). WDA are calculated on the old and the new pools separately but at the same rate. If, however, in respect of another pool the balance sheet value of plant and machinery is greater than its tax written down value, then this difference can be used to reduce the excess of allowances in a pool. There are anti-avoidance rules to prevent the manipulation of the tax written down value and the balance sheet value used in the calculation to contrive a reduced excess of allowances.

83. To enable the excess of allowances to be calculated the company's (or the partnership's) accounting period is brought to an end on the day of a qualifying change and a new accounting period begins on the following day.

84. Capital allowances claimed in respect of expenditure in the new pools may only be used to reduce the profits (or increase the losses) from the trade as it was carried on, and to the extent that it was carried on, before the qualifying change. Any trading activities transferred in to the company or the partnership will be treated as a separate trade for these purposes.

85. Any losses attributable to capital allowances on new pool expenditure may not be surrendered as group relief or set against other profits of the company for the year, unless they could have been used to reduce those profits before the qualifying change.

86. There are special capital allowances rules for ships that allow capital allowances to be claimed and then postponed so that the capital allowances are given in a subsequent year. Postponed allowances that have not yet been relieved will be subject to the same rules as the amounts of excess allowances.

87. In summary, this legislation is designed to prevent a company or group acquiring a company, or an increased share in a company or partnership, or a trade for the purpose of accessing the capital allowances, actually obtaining relief for those capital allowances against its existing profits. Relief for the capital allowances can, however, still be given after the change in ownership transaction but only to reduce the same profits and to the same extent that they could have reduced before the change. The benefit of the avoidance transaction is thus removed in a fair and proportionate way.

Section 27Schedule 5: Leased Assets

Summary

1. Section 27 and Schedule 5 introduce legislation to tackle two avoidance schemes involving the leasing of plant or machinery in relation to which HM Revenue & Customs (HMRC) have received disclosures.

2. The first scheme involves arrangements intended to create a company that is taxed on very little income from the leasing of an asset, but which is potentially able to claim capital allowances on the full cost of the asset, creating tax losses where there is a commercial profit. The first scheme may, alternatively or additionally, rely on obtaining a deduction for a rebate of rentals to generate a tax loss where there is a commercial profit.

3. The second scheme involves arrangements where a lessor that has claimed capital allowances in the initial loss-making phase of a lease of plant or machinery avoids tax on the income that arises once the lease moves into its tax-profitable phase. The intended effect is to turn a tax-timing advantage into a permanent loss of tax on a transaction that is commercially profitable.

Details of the Schedule

4. Paragraph 1 of the Schedule is concerned with the restriction of qualifying expenditure in case of certain leased assets

5. Paragraph 1(1) inserts new section 228MA (Restriction of qualifying expenditure) into the Capital Allowances Act 2001 (CAA).

6. Section 228MA of CAA is the main new substantive section. It limits the amount of capital expenditure that is treated as qualifying expenditure and so limits the amount on which a lessor may claim capital allowances.

7. Subsection (1) provides that the section applies where there are arrangements under which plant or machinery is to be leased and there are arrangements under which the value of the asset to the lessor ("V") is reduced. Subsection (1) will apply when the lessor is treated as incurring capital expenditure under section 67 of CAA (hire purchase etc) or under section 70A of CAA (long funding leases).

8. Subsection (2) restricts the amount of the lessor's qualifying expenditure to "V".

9. Subsection (3) defines "V" as the aggregate of the amount of the present value of the lessor's income from the asset and the amount of the present value of the residual value of the asset after any rental rebate.

10. Subsection (4) defines the lessor's income from the asset for the purposes of determining "V", to include all amounts that it is reasonable to expect the lessor will receive in connection with the lease and which will be taxed as income (this includes amounts treated as income, for example under section 890 of the Corporation Tax Act (CTA) 2010). The subsection also defines the residual value as the market value (which is defined in section 577 of CAA) of the lessor's interest in the asset immediately after the termination of the lease. The reference to "lessor's interest" caters for the situation where the lessor is the beneficiary of a contract under section 67 of CAA or a lessee under a long funding lease.

11. Subsection (5) excludes from the lessor's income amounts which have been brought into account as disposal receipts for capital allowances purposes, charges made by the lessor for services supplied in connection with the leased asset and qualifying UK and foreign tax paid by the lessor.

12. Subsection (6) caters for the possibility that the lessor incurs the capital expenditure in instalments and ensures it operates in a cumulative fashion.

13. Subsection (7) introduces new sections 228MB and 228MC of CAA.

14. Subsection (8) defines a "lease" for the purposes of this section and new sections 228MB and 228MC.

15. New section 228MB of CAA explains how the present value is to be calculated. In the case of both the amounts receivable in connection with the lease and the residual value at the end of the lease term the present value is based on the interest rate implicit in the lease, but it provides for an alternative (London interbank offered rate plus 1 per cent) if the rate cannot otherwise be established.

16. New section 228MC of CAA defines rental rebate for the purpose of new section 228MA. The definition is largely based on the definition in section 70YH of CAA.

17. Paragraph 2 of the Schedule is concerned with the restriction of deduction for rental rebate.

18. Paragraph 2(1) inserts new section 55B into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

19. New section 55B of ITTOIA applies for the purpose of income tax and operates in essentially the same way as the new rules for corporation tax. Section 55B is drafted in materially identical terms to new section 60A of CTA 2009 (inserted by paragraph 2(2) of the Schedule). HM Revenue & Customs anticipates that the new rules are more likely to apply to companies and so the detailed explanatory notes are provided for new section 60A of CTA 2009.

20. Paragraph 2(2) of the Schedule inserts new section 60A (rental rebates) into CTA 2009.

21. New section 60A of CTA 2009 restricts the amount of deduction allowed for a rebate of rentals.

22. Subsection (1) limits the deduction to the amount of the lessor's income from the lease, which is defined in subsection (4), excluding the finance charge element of finance lease rentals.

23. Subsections (2) and (3) explain what is meant by a rental rebate. The definition is largely based on the definition in section 70YH of CAA.

24. Subsection (4) defines the lessor's income from the lease to include all amounts that it is reasonable to expect the lessor will receive in connection with the lease and which will be taxed as income (this includes amounts treated as income, for example under section 890 of CTA 2010 but it excludes any amount brought in as a disposal receipt.

The subsection also defines the finance charge element of the lease rentals which is excluded from income for the purpose of this section.

25. Subsection (5) provides that where there has been a transfer to which section 948 of CTA 2010 applies, or where an election has been made under section 266 of CAA, new section 60A applies as if the successor had done everything done by the predecessor.

26. Subsection (6) provides that all or part of the amount of a rental rebate that has been disallowed may be treated as an allowable loss for chargeable gains purposes. The amount which may be treated that way is the lower of the amount which has been disallowed and the amount by which the rental rebate exceeds the capital expenditure incurred by the lessor.

27. Paragraph 3 of the Schedule concerns arrangements reducing the disposal value of an asset.

28. Paragraph 3(1) inserts new section 64A (leased assets: arrangements reducing disposal value of asset) into CAA.

29. New section 64A provides that arrangements which reduce the value of leased plant or machinery are to be ignored for the purpose of establishing items 1, 2 and 7 in the table in section 61(2) of CAA.

30. Subsection (1) provides that the section applies only where there are arrangements that have the effect of reducing the disposal value insofar as it is attributable to rentals payable under the lease.

31. Subsection (2) ensures that arrangements that reduce the disposal value are not ignored where the arrangements comprise the transfer of an income steam, the value of which is taxed as income under section 809AZA of the Income Tax Act 2007 or section 752 of CAA 2010.

Background Note

32. This legislation addresses two types of avoidance relating to the taxation of leasing of plant or machinery as disclosed to HMRC as briefly described in the summary above.

33. For the first scheme the avoidance is countered by, in broad terms, limiting the amount on which capital allowances may be claimed to the present value of the amounts that it is reasonable to expect will be brought into account as income in connection with the lease. This includes rents and, for example, amounts treated as income under section 785B of ICTA, but excludes any capital allowances disposal receipts plus the present value of the residual value at the end of the lease less any amount of rental rebate.

34. Where the avoidance in the first scheme is centred on or includes the amount of deduction claimed for rental rebate the legislation counters this. In broad terms, the effect of the rules is that the amount of a rental rebate which may be claimed as a deduction in computing profits is limited to the amount receivable in connection with the lease that has been brought into account in computing the lessor's income. In calculating this amount, however, the finance charge element of rentals paid under a finance lease is excluded, as are any elements that represent charges for service or tax (section 60A(1) and (4) of CTA 2009).

35. For the second scheme, the legislation addresses the avoidance by ensuring that the disposal value for capital allowance purposes at the time that the lessor disposes of the leased assets, or otherwise ceases to be within the charge to tax in respect of that activity, is computed as if the arrangements had not been entered into.

Section 28: Cushion Gas

Summary

1. Section 28 amends Part 2 of the Capital Allowances Act 2001 (CAA) in relation to expenditure on cushion gas used in a gas storage facility. The section provides that all new leases of cushion gas effective from 1 April 2010, will be treated as funding leases and that all capital expenditure on cushion gas, incurred on or after the same date, will be treated as special rate expenditure, qualifying for writing-down allowances (WDAs) at 10 per cent a year.

Details of the Section

2. Subsection (3) inserts new subsection (1A) into section 70J of CAA. The new subsection provides that a lease of "cushion gas" is also a "funding lease" whether or not it would otherwise be so regarded. Previously, a lease of plant or machinery was only a "funding lease" if it met the tests in section 70J(1).

3. Subsection (5) inserts new subsection 7 into section 70J. The new subsection explains what is meant by "cushion gas" and defines it as gas that functions or is intended to function as plant in a particular gas storage facility. The meaning also applies for the amended section 104A of CAA (see paragraph 4 below) and new section 104G.

4. Subsection (6) amends section 104A of CAA by adding a new paragraph in subsection (1). The new paragraph provides that expenditure incurred on or after 1 April 2010 on the provision of cushion gas is to be treated as special rate expenditure.

5. Subsection (7) inserts new section 104G after section 104F of CAA.

6. New section 104G gives the rules in relation to disposal events in respect of cushion gas that consists of both "new" and "old" expenditure. "New" and "old" expenditure are later defined in new section 104G(5).

7. New section 104G(1) explains that the section applies only if a person has incurred expenditure on the provision of cushion gas in a particular gas storage facility both before 1 April 2010 (old expenditure) and on or after 1 April 2010 (new expenditure).

8. New section 104G(2) provides that any disposal event in relation to the cushion gas is to be treated as a disposal event in relation to the "new expenditure" before it is treated as relating to the "old expenditure". The rule effectively ensures that if the "old expenditure" was in the main pool, then that expenditure is retained, and will continue to attract allowances at 20 per cent, in preference to later expenditure which has been allocated to the special rate pool.

9. New section 104G(3) sets out the consequences of the rule in new section 104G(2).

10. New section 104G(4) provides and clarifies that disposals of cushion gas that qualified for relief under the pre 1 April 2010 rules are treated as separate from disposals of cushion gas that qualified for relief under the post 1 April 2010 rules, even if there is, in fact, only one event, such as a single contract for sale.

11. Subsection (8) gives the commencement provision in respect of subsections (2) to (5). Any lease whose inception is on or after 1 April 2010 will be a funding lease. There is a definition of "inception" in section 70YI(1) of CAA.

12. Subsections (9) and (10) give the commencement provisions in respect of subsections (6) and (7) respectively, and provide that the amendments made relate to expenditure incurred or disposal events taking place on or after 1 April 2010.

Background Note

13. At Budget 2009 the Government announced that capital expenditure on cushion gas that functions as plant in a gas storage facility qualifies for plant and machinery capital allowances, but said it would discuss, with the industry, certain technical and revenue protection issues arising from this treatment.

14. A number of points in relation to cushion gas were discussed with stakeholders. After considering the stakeholders' views and helpful comments the Government decided that no action (other than a watching brief) would be taken in relation to some points but that the matters (now addressed by this section) did require specific legislation.

Rate of WDAs

15. In the prior discussions with the industry, it was accepted that, in the main, expenditure on cushion gas would normally qualify for 10 per cent allowances as "long-life asset expenditure" (that is, expenditure on an asset that may reasonably be expected to have a useful economic life of at least 25 years when new, as defined in section 91 of CAA). However, the industry also suggested that the expected use of cushion gas in certain gas storage facilities might be less than 25 years if the facility itself had an expected useful life of less than 25 years and, in these circumstances, the gas should qualify for main rate WDAs. The Government decided that as cushion gas does not wear out, nor necessarily lose its value by the mere passage of time, the 10 per cent "special rate" of WDA is the more appropriate rate for expenditure on an unusual asset of this kind.

16. The legislation, therefore, specifies that expenditure on cushion gas will be a further type of special rate expenditure in order to fix the rate of WDA at 10 per cent a year.

Leases of cushion gas

17. As it is accepted that cushion gas in a gas storage facility constitutes plant, it may be leased under a plant and machinery lease. However, cushion gas is different from most other plant and machinery in that it does not wear out. It would, therefore, have been possible to write very long operating leases of cushion gas, without ever triggering the application of the long funding lease rules. This could have meant that leases of cushion gas would have been taxed by reference to their legal form, rather than commercial substance, which would have been at variance with the 2006 leasing reforms.

18. The legislation therefore specifies that all leases of cushion gas are to be funding leases for the purposes of the Taxes Acts. This means that, from the perspective of the lessor, any lease of cushion gas for five years or more will be taxed by reference to the commercial substance rather than the legal form. The lessee, where UK resident, will have the choice of claiming a deduction for the lease rentals in accordance with the accounting treatment, or of opting to claim capital allowances with a restricted deduction in respect of the lease rentals. Overseas lessees will be entitled to claim under the rules applicable to their particular jurisdiction and will not be affected by these changes.

Section 29: Sale of Lessors: Consortium Relationships

Summary

1. Section 29 makes a number of changes to the operation of the rules determining whether a company is owned by a consortium as set out in Chapters 3 and 4 of Part 9 of the Corporation Tax Act (CTA) 2010 (formerly Schedule 10 to the Finance Act (FA) 2006). The effect of the change is that an indirect 75 per cent subsidiary of a company owned by a consortium will be treated as "a company owned by a consortium". This change is achieved by removing the requirement that the lessor company be a direct 90 per cent subsidiary of the company owned by the consortium.

Details of the Section

2. Subsection (4) removes subsections (5) and (6) of section 398 and makes a consequential amendment to the heading. These subsections prevent a lessor company that is an indirect 75 per cent subsidiary of a company owned by a consortium from being treated as a company owned by a consortium.

3. Subsection (8) makes changes to the table of definitions in Schedule 4 to CTA 2010 to omit the entry relating to “qualifying 90 per cent subsidiary”.

4. Subsection (9) provides that these changes have effect where the relevant day, the day on which there is a qualifying change in ownership, is on or after 9 December 2009.

5. Subsection (10) ensures that corresponding amendments are made to Schedule 10 to FA 2006.

Background Note

6. Changes to Chapters 3 and 4 of Part 9 of CTA 2010 (formerly Schedule 10 to FA 2006) will ensure that legislation dealing with a lessor company owned by a consortium will trigger the appropriate charge and relief.

7. Schedule 10 was introduced in response to a well-established pattern of avoidance involving the sale of a lessor company to a loss-making concern as it was about to turn tax profitable. The effect of the legislation is triggered when there is a change in the ownership of the lessor company. When the lessor company is owned by a consortium, a change in a member’s interest in the lessor company triggers a proportionate charge.

8. Schedule 10 defines "a company owned by a consortium" in line with definitions used for the purpose of group relief. The group relief provisions permit members of a consortium to access group relief from a trading company owned directly by the members and where shares in the trading company are held by a holding company that is owned by the members of the consortium. The group relief provisions do not permit access to group relief when the trading company is owned indirectly by a holding company that is owned by the consortium members. Schedule 10 copies this approach and it is therefore possible to prevent a company from being treated as “a company owned by a consortium” for the purposes of Schedule 10 by inserting an intermediate holding company between the lessor company and the company owned by the consortium.

9. The insertion of the intermediate holding company does not trigger a Schedule 10 charge because there is no change of economic ownership, but, as a consequence of the restructuring the lessor company is taken outside the definition of a company owned by a consortium. A subsequent change in ownership would fail to trigger a Schedule 10 charge.

10. This section changes the way the definition of a company owned by a consortium operates to include a company that is a direct or indirect 75 per cent subsidiary of a company owned by a consortium. As a consequence, a Schedule 10 charge will be triggered when there is a change in the economic ownership of a lessor company owned by a consortium.

Section 30Schedule 6: Charities and Community Amateur Sports Clubs: Definitions

Summary

1. Section 30 and Schedule 6 introduce a new definition of a charity for tax purposes following the extension of UK charitable tax reliefs to bodies equivalent to charities and community amateur sports clubs (CASCs) in Europe.

Details of the Schedule

Part 1 - Definition of "charity", "charitable company" and "charitable trust"

2. Paragraph 1 sets out the broad conditions an organisation must meet if it is to be defined as a charity.

3. Sub-paragraph (1) requires a charity to be established for charitable purposes only and, in addition, to meet three further conditions: the jurisdiction condition (defined in paragraph 2 of the Schedule), the registration condition (defined in paragraph 3 of the Schedule)) and the management condition (defined in paragraph 4 of the Schedule)).

4. Sub-paragraph (2) defines a charity that is a body of persons as a charitable company and a charity that is a trust as a charitable trust.

5. Sub-paragraph (3) makes plain that the new definitions of "charity", "charitable company" and "charitable trust" are subordinate to any definitions already in the statute. The effect of this provision is that the new definitions will not apply unless the previous definitions are expressly repealed.

6. Sub-paragraph (4) refers to section 2 of the Charities Act 2006 for the meaning of "charitable purpose". The charitable purpose must fall within a list of descriptions of purposes set out in the 2006 Act and must also be for the public benefit. The reference to public benefit is to that term as understood for the purposes of the law relating to charities in England and Wales.

7. Sub-paragraph (4)(a) makes it plain that charitable tax reliefs and exemptions are available to organisations only if they meet the definition of charitable purposes as defined in section 2 of the Charities Act 2006, wherever the organisation is established.

8. Sub-paragraph (4)(b) makes plain that in the context of tax the definition of "charitable purposes" applies also for the purposes of the law of Scotland and of Northern Ireland.

9. Paragraph 2 sets out the details of the jurisdiction condition (paragraph 1(1)(b)). Under sub-paragraph (1), in order to meet the jurisdiction condition a body of persons or trust must be subject to the control of a relevant court in the UK with respect to charities or a corresponding jurisdiction outside the UK in the EU or a specified relevant territory.

10. Sub-paragraph (2) defines what is meant by a "relevant court in the UK". The courts are the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.

11. Sub-paragraph (3) defines a "relevant territory" as being a member State of the EU other than the UK or a territory specified in regulations made by the Commissioners for HMRC.

12. Sub-paragraphs (4) and (5) provide that regulations specifying a relevant territory are to be made by statutory instrument. Such regulations will be subject to the negative resolution procedure.

13. Paragraph 3 sets out the details of the registration condition (paragraph 1(1)(c)). Sub-paragraph (1) introduces two conditions, condition A and condition B which a body of persons or trust must meet in order to meet the registration condition. Condition A applies to organisations in England and Wales, and condition B applies to organisations outside England and Wales.

14. Sub-paragraph (2) sets out the details of condition A. If the charity is required to be registered under the Charities Act 1993 then it must be so registered.

15. Sub-paragraph (3) sets out the details of condition B. Where the law of the territory requires a charity to be registered in a register corresponding to the register of charities

held by the Charity Commission in England and Wales then the charity must be registered in order to meet the registration condition.

16. Paragraph 4 sets out the details of the management condition (paragraph 1(1)(d)). Sub-paragraph (1) requires managers of a body of persons or trust to be "fit and proper" persons in order to meet the management condition. "Fit and proper" is not defined in the legislation so takes its natural meaning. HMRC will issue guidance on how it will apply this test. Sub-paragraph (2) defines a "manager" as a person having general control and management of the administration of the body or trust.

17. Paragraph 5 introduces a relaxation to paragraph 4 such that, depending on the circumstances, the Commissioners for HMRC may treat a charity as having met the management condition throughout the period of appointment of a manager who is not "fit and proper".

18. There are two circumstances where the relaxation under paragraph 5 may apply:

- where the manager is not in a position to prejudice the charity's delivery of its charitable objects then sub-paragraph (2)(a) may apply and the charity may be treated as meeting the management condition; or
- where, taking account of all the circumstances, it is just and reasonable for the charity to be treated as meeting the management condition then sub-paragraph (2)(b) may apply.

19. Paragraph 6 allows HMRC to publish a list of the names and addresses of organisations who have claimed, and appear to be, or to have at some time been, eligible for, charitable tax reliefs.

20. Paragraph 7 applies the new definition of a charity in Part 1 of the Schedule to income tax, capital gains tax, corporation tax, value added tax, inheritance tax, stamp duty, stamp duty land tax and stamp duty reserve tax.

Part 2 - Repeals of superseded definitions and other consequential amendments

21. Paragraphs 8-28 repeal the definitions of a charity, charitable company and charitable trust in various Acts. These will be superseded by the new definitions of "charity", "charitable company" and "charitable trust" in Part 1 of the Schedule and makes a number of further consequential amendments.

22. Paragraph 29 provides for the Commissioners for HMRC to make amendments, by order, to enactments relating to income tax, capital gains tax, corporation tax, value added tax, inheritance tax, stamp duty, stamp duty land tax and stamp duty reserve tax to align those statutes with the new definitions of "charity", "charitable company" and "charitable trust" in Part 1 of the Schedule. Such orders will be subject to the negative resolution procedure.

Part 3 - Meaning of "community amateur sports club"

23. Part 3 of the Schedule broadly applies the location and management conditions in Part 1 of the Schedule to community amateur sports clubs (CASCs). CASCs are eligible to some, but not all, charitable tax reliefs.

24. Paragraph 31 amends section 658(1) of the Corporation Tax Act 2010 (CTA) to require a CASC to meet the location condition and the management condition.

25. Paragraph 32 introduces three new sections into CTA: section 661A (the location condition); section 661B (the management condition); and section 661C (periods over which management condition is to be met).

26. New section 661A sets the location condition for CASCs. Subsection (1) provides that a CASC will meet the location condition if the club is established in a member State

of the EU or in a relevant territory (subsection (1)(a)), and the facilities it provides for eligible sports are all located in a single member State of the EU or relevant territory (subsection (1)(b)). Subsection 2 defines a relevant territory as being one specified under paragraph 2(3)(b) of this Schedule (see paragraph 11 above).

27. New section 661B sets the management condition for CASCs. It is the same as that for charities, suitably amended as set out in paragraph 4 of this Schedule (see paragraph 16 above).

28. New section 661C sets out the circumstances for CASCs when the management condition is treated as being satisfied even where a manager of the CASC is not or was not a "fit and proper person". Subsections (1) and (2) follow the same form as for charities in paragraph 5 of this Schedule (see paragraphs 17 and 18 above). The same comments on the application of this section to CASCs apply as for charities.

Part 4 - Commencement

29. Paragraph 33 provides for the commencement of Part 1 of this Schedule. Under sub-paragraph (1), Part 1 is treated as coming into force on 6 April 2010. However, under sub-paragraph (2), the new definitions in Part 1 will not apply to a provision until the provision it replaces, set out in Part 2 of the Schedule, is repealed.

30. Paragraph 34 sets out the provisions for repealing the current definitions of a charity, charitable company and charitable trust.

31. Sub-paragraph (1)(a) repeals the current definition of a charity as it applies to Gift Aid donations made by individuals for the purposes of Chapter 2 Part 8 of ITA for gifts made on or after 6 April 2010.

32. Sub-paragraph (1)(b) and sub-paragraph (2) provides HM Treasury with the power to apply the new definitions in Part 1 of the Schedule to the provisions in Part 2 by order.

33. Sub-paragraphs (3) and (4) set out the conditions for the order making powers in sub-paragraph (1)(b) and sub-paragraph (2).

34. Paragraph 35 provides for the provisions in Part 3 of this Schedule (CASCs) to be treated as applying from 6 April 2010

Background Note

35. UK charitable tax reliefs are being extended to organisations equivalent to charities and CASCs in the EU and in the European Economic Area (EEA) countries of Norway and Iceland following a judgment in the European Court of Justice (ECJ) in January 2009.

36. A new statutory definition of a charity entitled to UK charity tax reliefs is introduced. The definition is based on that of a charity under the law of England and Wales which is already used for UK tax purposes. New statutory definitions of a "charitable company" and a "charitable trust" are also introduced.

37. The definition introduces a four stage test to determine if an organisation is eligible for UK charity tax reliefs.

38. First, under paragraph 1 of the Schedule, the organisation must be established for charitable purposes only. The definition of charitable purposes is that under the law of England and Wales and is found in section 2 of the Charities Act 2006.

39. Second, under paragraph 2 of the Schedule, the organisation must meet the jurisdiction condition. It must be located in the UK or a member State of the EU or a specified country. The Commissioners for HMRC will have the power to specify countries outside the EU by statutory instrument. The countries of Iceland and Norway will be specified as soon as practicable.

40. Third, under paragraph 3 of the Schedule, the organisation must meet the registration condition. Where the organisation is required under the law of its home country to be registered with a charity regulator similar to the Charity Commission for England and Wales, it must be so registered. The purpose of this condition is to ensure that only organisations that comply with their charity obligations in their home country are eligible for UK charity tax reliefs.

41. Fourth, under paragraph 4 of the Schedule, the organisation must meet the management condition. All persons in the organisation having control and management responsibilities must be "fit and proper" persons. The term "fit and proper" is not further defined. "Persons" include corporate bodies and individuals who are trustees, directors, managers or any other officer of the organisation in a management position.

42. While a properly run charity always seeks to appoint persons of integrity to key management positions there is always a chance that a charity may unknowingly appoint a person who is not "fit and proper". In such a case, under paragraph 4, the charity would cease to meet the management condition and would no longer be eligible to charitable tax reliefs even where it meets all the other conditions. However paragraph 4 is subject to the relaxation in paragraph 5.

43. Paragraph 5 relaxes the strict conditions under paragraph 4 in certain circumstances:

- where the manager is not in a position to prejudice the administration of the charity. For example, some charities appoint ex-offenders to positions of trust within a charity. If the ex-offender is not involved in the financial administration of the charity then sub-paragraph (2)(a) may apply and the charity may be treated as meeting the management condition; or

- where a person has been appointed to a management position within the charity and it is subsequently found that the person is not a "fit and proper person". In such a case, where the charity has not colluded with the manager and works with HMRC to rectify the position, the Commissioners for HMRC may consider sub-paragraph (2)(b) applies and the charity to have met the management condition throughout the period the person was in post.

HMRC will use its discretion under this paragraph to ensure this test does not impose an undue burden on existing charities.

44. Whether either of the relaxations in paragraph 5(2)(a) or (b) applies will depend upon the circumstances of each case. A charity may challenge a decision by the Commissioners for HMRC not to apply paragraph 5 by appealing against the refusal of a claim to a tax Tribunal.

45. Paragraph 6 allows HMRC to publish a list of the names and addresses of organisations that have claimed, and appear to be eligible to, charitable tax reliefs. The list would be a guide only to an organisation's eligibility, which may change from time to time, depending upon whether it meets all the conditions in paragraph 1 at any given time. The omission of an organisation will not necessarily signify that the organisation is not eligible to charitable tax reliefs; it is possible that an organisation that is eligible for charitable tax reliefs will not have made a claim for relief or exemption from tax to HMRC.

46. Part 2 makes a number of repeals and consequential amendments to enactments which use various definitions so as to substitute the new definitions of "charity", "charitable company" and "charitable trust". Together, the repeals and amendments apply the new definitions of these terms in Part 1 of the Schedule to the enactments.

47. Paragraph 29 enables additional minor amendments to be made to references in the statutes that may have been overlooked, without requiring primary legislation, for example, substituting "charitable company" for "body of persons established for charitable purposes".

48. Part 3 applies the location condition and the management condition in Part 1, suitably amended, to CASCs. CASCs are eligible to certain charity reliefs, including Gift Aid.

49. Part 4 provides the commencement provisions. The new definitions in Part 1 will not apply to most provisions until HM Treasury make a commencement order. However the new definitions will apply with effect from 6 April 2010 to donations by individuals under Gift Aid.

Section 31Schedule 7: Gifts of Shares Etc to Charity

Summary

1. Section 31 and Schedule 7 introduce new rules to the calculation of relief for the disposal of qualifying investments to charities under section 431 of the Income Tax Act 2007 (ITA) and Chapter 3 of Part 6 of the Corporation Tax Act 2010 (CTA). Qualifying investments consist of certain shares, securities and land.

Details of the Schedule

2. Paragraph 1 introduces the new rules in relation to gifts of qualifying investments to charities by individuals.

3. Paragraph 2 amends section 437 of ITA.

4. Paragraph 2(2) substitutes the term "relevant value" for "market value" in section 437(1) of ITA. This allows for the new rule to adjust the relief due to the donor to the economic cost of the acquisition of the investment by the donor.

5. Paragraph 2(3) inserts three new subsections, (1A) (1B) and (1C), into section 437 of ITA.

6. New subsection (1A) of section 437 of ITA defines the new term "relevant value" as being the market value at the date of disposal of the qualifying investment unless new subsection (1B) applies. Where new subsection (1B) applies, the relevant value is the market value of the gift at the date of disposal or the cost of acquisition to the donor, whichever is the lower.

7. New subsection (1B) of section 437 of ITA sets the conditions for when the relevant value of the qualifying investment (or anything from which it partly or wholly derives) is to be determined by the cost to the donor of its acquisition, rather than by its market value at the date of disposal to the charity:

   - first, the period between the acquisition of the qualifying investment (or anything from which the qualifying investment derives) and its disposal to a charity must be four years or less;
   - second, the acquisition must be made as part of a scheme; and
   - third, the purpose or one of the main purposes of the individual in entering the scheme was to obtain relief or an increased amount of relief.

8. New subsection (1C) of section 437 of ITA defines a scheme for the purposes of new subsection (1B).

9. Paragraph 2(4) applies the provisions of new section 438A of ITA (acquisition value of qualifying investments) to section 437 of ITA.

10. Paragraph 3 inserts new section 438A in ITA.

11. New section 438A defines the acquisition value of a qualifying investment. New subsection (1)(a) provides that where there is no change in the asset disposed of to the charity and the period between acquisition and disposal is four years or less, then the acquisition value is the consideration given by the donor for acquiring the asset. New

subsection (1)(b) provides that where the asset disposed of is not exactly the same as the asset initially acquired then the acquisition cost is the just and reasonable proportion of the acquisition cost of the asset initially acquired.

12. New section 438A(2) defines acquisition cost.

13. Paragraph 4 inserts the term "acquisition value of a qualifying investment" in Schedule 4 to ITA (index of defined expressions).

14. Paragraph 5 introduces the new rules in relation to gifts of qualifying investments to charities by companies.

15. Paragraph 6 amends section 209 of CTA.

16. Paragraph 6(2) substitutes the term "relevant value" for "market value" in subsection (1) of section 209 of CTA. This allows for the new rule to adjust the relief due to the donor to the economic cost of the acquisition of the investment by the donor.

17. Paragraph 6(3) inserts three new subsections into section 209 of CTA.

18. New subsection (1A) of section 209 of CTA defines the new term "relevant value" as being the market value at the date of disposal of the qualifying investment unless new subsection (1B) applies. Where new subsection (1B) applies, the relevant value is the market value of the gift at the date of disposal or the cost of acquisition to the donor, whichever is the lower.

19. New subsection (1B) of section 209 of CTA sets the conditions for when the relevant value of the qualifying investment (or anything from which it partly or wholly derives) is to be determined by its value at the time of acquisition rather than by its market value at the date of disposal to the charity:

    - first, the period between the acquisition of the qualifying investment (or anything from which the qualifying investment derives) and its disposal must be four years or less;
    - second, the acquisition must be made of part of a scheme; and
    - third, the purpose or one of the main purposes of the company in entering the scheme was to obtain relief or an increased amount of relief.

20. New subsection 1(C) of section 209 of CTA defines a scheme for the purposes of new subsection 1(B)

21. Paragraph 6(4) applies the provisions of new section 210A of CTA (acquisition value of qualifying investments) to section 209 of CTA.

22. Paragraph 7 inserts new section 210A (acquisition value of qualifying investments) into CTA.

23. Subsection (1) of new section 210A of CTA defines the acquisition value of a qualifying investment for the purposes of section 209 of CTA. New subsection (1)(a) provides that where there is no change in the asset disposed of to the charity and the period between acquisition and disposal is four years or less, then the acquisition value is the consideration given by the donor for acquiring the asset. New subsection (1)(b) provides that where the asset disposed of is not exactly the same as the asset initially acquired then the acquisition cost is the just and reasonable proportion of the acquisition cost of the asset initially acquired.

24. Subsection (2) of new section 210A of CTA defines the cost to the company of acquiring the asset disposed of.

25. Paragraph 8 inserts the term "acquisition value of a qualifying investment" in Schedule 4 to CTA (index of defined expressions).

26. Paragraph 9 applies the provisions in this Schedule to disposals on or after 15 December 2009.

27. Paragraph 10 applies the provisions in this Schedule to section 587B of the Income and Corporation Taxes Act 1988 for the period 15 December 2009 to 3 March 2010, the date CTA came into force.

Background Note

28. The clause and Schedule introduce new rules to block tax avoidance schemes that exploit the rules for tax relief on gifts of qualifying investments to charities. The legislation does not affect charities; it operates by restricting tax relief to a donor on gifts of qualifying investments to charities.

29. The avoidance depends on the donor receiving tax relief at their highest marginal rate of tax on the full market value of the qualifying investments at the date of the gift where:

- the donor acquired the investments at below market value as part of a scheme or arrangement; or
- the market value of the investment is artificially inflated at the date of the gift to charity.

30. The new rules adjust the amount of relief to the donor to the economic cost of acquisition of the gift to the donor where:

- the qualifying investment gifted to the charity (or anything from which the investment derives) was acquired within four years of the date of disposal; and
- the main purpose, or one of the main purposes, of acquiring the qualifying investment was to dispose of it to a charity and claim the tax relief.

31. The following examples show how the new rules are intended to work for individuals; the same principles apply for companies:

Example 1

Mr Jones enters into an agreement with Company X to buy £200,000 of shares in a FTSE 100 company from Company X for £30,000. The shares come with an option attached for Company X to buy them back after three years for £1.

Two days after purchasing the shares Mr Jones donates them to Charity B and claims under section 431 of ITA that this is a donation of £200,000 – the market value of the shares. He claims that the fact that the option to buy the shares back for £1 exists is not taken into account in valuing the shares because the option is a contingent liability which is ignored under section 440(2)(b) of ITA.

However new section 437(1A), (1B) & (1C) of ITA will apply because the shares were acquired within four years of the date of disposal and the reason Mr Jones purchased them was so he could donate them to Charity B and claim tax relief. As the cost of buying the shares was only £30,000, compared to their market value of £200,000, Mr Jones is only entitled to relief of £30,000 under section 431 of ITA.

Example 2

Mr Blake is a successful IT entrepreneur who buys a controlling stake in a small listed IT company in 2009 for £5 million. He has seen an opportunity to turn the company round and make a significant profit on his investment. He is successful and by 2011 the company is thriving and his shares are now worth £25 million.

In 2012 Mr Blake visits a hospice to see an old friend and is so impressed by what he sees he decides to donate £1 million of those company shares to the charity that runs the hospice to pay for a new treatment room and some equipment they need.

Although Mr Blake has donated shares to a charity less than four years after he purchased those shares, new section 437(1B) of ITA does not apply as when he purchased those shares in 2009 the main purpose, or one of the main purposes, of making that acquisition was not to obtain tax relief by donating the shares to a charity.
Example 3

Miss Smith inherited 10,000 shares in a listed company from her father in 1982.

In 2010 she decides to donate half the shares to a local animal shelter which is run by a charity. At the time of the donation the 10,000 shares are worth £80,000 so her donation is worth £40,000.

Miss Smith is entitled to relief on £40,000 under section 431 of ITA. The shares were acquired by her over four years ago so the new provisions do not apply.

Even if Miss Smith had inherited the shares in 2008 the new provisions would not apply as although the gap between acquisition and donation is less than four years, the shares were not acquired by her in circumstances where the main purpose, or one of the main purposes, of that acquisition was to obtain tax relief by donating those shares to a charity.
Example 4

Mrs Jackson lives in a small village in Suffolk and farms a 1,000 acre arable farm around the local village. A fellow farmer decides to sell 10 acres of land on the edge of the village next to the village hall. The village hall (a charity) would like to acquire two acres for a sports field but don't have sufficient funds.

Mrs Jackson agrees to buy the 10 acres for £40,000 (market value) and then donates two acres of the land to the village hall and claims the tax relief available. She keeps the remaining eight acres and incorporates the land into her farm.

Mrs Jackson only purchased the land so she could donate the two acres to the village hall. She did not particularly need another eight acres for her farm, although she will use it to grow wheat.

Mrs Jackson can claim relief under section 431 of ITA for the two acres donated to the charity. New section 437(1B) of ITA will apply because the land has been purchased and donated within four years and was purchased so she could donate the two acres to the village hall and claim the tax relief available. Therefore the amount of relief is limited under new section 438A of ITA to a "just and reasonable" apportionment of the acquisition cost of £40,000. Given 2/10ths of the land has been donated then a similar proportion of the acquisition costs would qualify for relief - £8,000.

If the situation had been a little more complex, say half of the 10 acres had just been re-zoned by the local Council for housing and so the cost of the 10 acre parcel was £5 million, then in apportioning how much of the £5 million relates to the two acres given to the village hall would be more complex. For example if the two acres were not within the re-zoned area the cost would probably still be £8,000 as the vast majority of the £5 million cost will relate to the five acres which can now have housing built on it. Such a case may require valuations to be agreed with HM Revenue & Customs to determine the amount of relief due under section 431 of ITA.

Section 32Schedule 8: Miscellaneous Amendments

Summary

1. Section 32 and Schedule 8 introduce miscellaneous provisions relating to charities, community amateur sports clubs (CASCs) and other organisations entitled to charitable tax reliefs.

Details of the Schedule

Payroll giving

2. Paragraph 1 amends the provisions in relation to payroll giving. A new charge to tax will be applied to income received by charitable trusts and charitable companies on donations received through the Payroll Giving scheme (Part 12 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (payroll giving)), in line with the charge on charities on donations received through other means.

3. Sub-paragraph (1) provides for the insertion into the Income Tax Act 2007 (ITA) of new section 521A (Gifts under payroll deduction schemes: income tax liability and exemption).

4. New section 521A(1) of ITA provides that new section 521A applies to charitable trusts that receive donation income through the payroll giving scheme.

5. Subsection (2) introduces a new charge to income tax on donation income received by charitable trusts through the payroll giving scheme.

6. Subsection (3) confirms that the charge to income tax applies to the total amount of donations received under subsection (1) during the tax year (from 6 April in a calendar year to 5 April of the following calendar year).

7. Subsection (4) provides that, where donation income that is brought into charge under subsection (2) is applied for charitable purposes only, it is to be excluded from the calculation of total income, for the purposes of applying the new income tax charge.

8. Subsection (5) provides that the trustees of the charitable trust are liable for any tax that arises under the new charge.

9. Sub-paragraph (2) provides for the insertion into the Corporation Tax Act 2010 (CTA) of new section 472A (Gifts under payroll deduction schemes: corporation tax liability and exemption).

10. New section 472A(1) of CTA provides that the new section applies to charitable companies that receive donations from individuals through the payroll giving scheme, and treats these donations as income subject to corporation tax.

11. Subsection (2) provides that, where donation income that is brought into charge under subsection (1) is applied for charitable purposes only, it is to be excluded from the calculation of total income, for the purposes of applying the new corporation tax charge.

12. Subsection (3) requires that a charitable company must make a claim for exemption under subsection (2).

Payments to bodies outside the UK: non-charitable expenditure

13. Paragraph 2 changes a specific condition that disqualifies a payment, made by a charity to a body outside the UK, from qualifying as charitable expenditure. If the condition applies, the expenditure is considered to be non-charitable under section 543(1)(f) of ITA for charitable trusts, or section 496(1)(d) of CTA for charitable companies, and tax relief is restricted accordingly.

14. Sub-paragraph (1) inserts the new requirement in section 547(b) of ITA that, for a payment to an overseas body to qualify as charitable expenditure, the Commissioners for HM Revenue & Customs (HMRC) must consider that the charity's trustees took reasonable steps to ensure the money would be used for charitable purposes.

15. Sub-paragraph (2) inserts the new requirement in section 500(b) of CTA that, for a payment to an overseas body to qualify as charitable expenditure, the Commissioners for HMRC must consider that the charity's directors took reasonable steps to ensure the money would be used for charitable purposes.

Gift Aid: disqualifying overseas gifts

16. Paragraph 3 amends the rules that apply to donations made by non-UK resident donors under Gift Aid where the donor has not been charged with sufficient UK tax to cover the repayment of tax to the charity.

17. Sub-paragraph (1) provides for Chapter 2 of Part 8 of ITA (gift aid) to be amended,

18. Sub-paragraph (2)(a) substitutes "F" for "G" in section 416(1)(a) of ITA, reducing by one the number of conditions that are to apply to a donation before it qualifies for Gift Aid.

19. Sub-paragraph (2)(b) repeals section 416(8) of ITA which was previously condition "G" and required that a gift was not to be a disqualified overseas gift.

20. Sub-paragraph (3) repeals section 422 of ITA (disqualified overseas gifts).

21. Sub-paragraph (4) substitutes "F" for "G" in section 429(3) of ITA (giving through self-assessment return). Section 429 allows an individual who donates a tax repayment to charity to direct that Gift Aid should apply to the donation. In order for Gift Aid to apply, the donation must be a "qualifying donation" (under section 416 of ITA) and therefore reference to the now redundant condition "G" must be removed.

Gift Aid administration

22. Paragraphs 4 to 7 amend the rules for charitable trusts and charitable companies to make claims for the repayment of tax. Currently:

    - charitable trusts that have been issued with a notice to file a tax return can claim a repayment of income tax under Gift Aid only on the tax return (section 42(2) of the Taxes Management Act 1970 (TMA)); and

    - charitable companies, and CASCs that are subject to corporation tax, can claim a repayment of income tax under Gift Aid only after delivery of a company tax return for the period to which the claim relates (paragraphs 9(1) and (2) of Schedule 18 to the Finance Act (FA) 1998).

23. Paragraph 4 removes the restrictive condition on claims to Gift Aid outside a return in respect of charitable trusts.

24. Paragraph 4(2) substitutes "(3ZA)" for "(3A)" in section 42(2) of TMA.

25. Paragraph 4(3) provides for the insertion into section 42 of TMA of new subsection (3ZA). This new subsection disapplies the requirement in subsection 42(2) for charitable trustees to make claims for repayment of tax in respect of Gift Aid donations in a tax return if they have been given notice to file a tax return.

26. Paragraph 5(1) provides for ITA to be amended.

27. Paragraph 5(2) substitutes "sections 538 and 538A" for "section 538" in section 518(4) (overview of Part 10) of ITA.

28. Paragraph 5(3) provides for the insertion into ITA of new section 538A (Claims in relation to Gift Aid relief).

29. New section 538A(1) of ITA provides that the new section applies to charitable trusts that claim exemption from tax on donations received under Gift Aid.

30. Subsection (2)(a) and (b) of new section 538A of ITA provides that a claim may be made to an officer of HMRC or by inclusion on a trustee's self assessment return.

31. Subsection (3) of new section 538A of ITA defines a "free-standing claim" as a claim made to an officer of HMRC under subsection 2(a) of the new section 538A of ITA, and defines "tax return claim" as a claim included in a tax return under subsection (2)(b) of the new section 538A of ITA.

32. Subsection (4) of new section 538A of ITA provides a regulation making power for HMRC to make provision in relation to claims that are allowed under new section 538A of ITA.

33. Subsection (4)(a) of new section 538A of ITA provides that the number of "free-standing claims" made by a charitable trust may be limited by regulations.

34. Subsection (4)(b) of new section 538A of ITA enables an amount to be specified in regulations below which a claim has to be made as a tax return claim.

35. Subsection (5) of new section 538A of ITA provides that the regulations made under subsection (4) can make different provisions for different cases or purposes.

36. Paragraph 6 removes the restrictive condition on claims to Gift Aid outside a return, as explained in paragraph 22 above, in respect of charitable companies.

37. Sub-paragraph (2) inserts new sub-paragraph (2A) in paragraph 9 of Schedule 18 to FA 1998 (claims that cannot be made without a return) which disapplies the provisions contained in paragraph 9(1) and (2) of Schedule 18 to FA 1998, where a charitable company or eligible body makes a claim in respect of gifts that qualify for Gift Aid relief (under section 472 or 475 of CTA).

38. Sub-paragraph (3) inserts new sub-paragraph (1A) in paragraph 57 of Schedule 18 to FA 1998 (claims or elections affecting a single accounting period) which disapplies paragraph 57 for charitable companies enabling claims for relief in respect of Gift Aid (under section 472 or 475 of CTA) to be made outside a return.

39. Paragraph 7 provides for the insertion into CTA of new section 477A (Claims in relation to gift aid relief).

40. New section 477A(1) of CTA provides that the new section applies to charitable companies and eligible bodies that claim exemption from tax on donations received under Gift Aid.

41. Subsection (2)(a) and (b) of new section 477A of CTA provides that a claim may be made to an officer of HMRC or by inclusion on a company self assessment tax return.

42. Subsection (3) of new section 477A of CTA defines as a "free-standing claim" a claim made to an officer of HMRC under subsection 2(a) of the new section 477A of CTA, and defines "tax return claim" as a claim included in a tax return under subsection 2(b) of the new section 477A of CTA.

43. Subsection (4) of new section 477A of CTA provides a regulation making power for HMRC to make provision in relation to claims that are allowed under new section 477A of CTA.

44. Subsection (4)(a) of new section 477A of CTA provides that the number of "free-standing claims" made by a charitable company or CASC may be limited by regulations.

45. Subsection (4)(b) of new section 477A of CTA enables an amount to be specified in regulations below which a claim has to be made as a tax return claim.

46. Subsection (5) of new section 477A of CTA provides that the regulations made under subsection (4) can make different provisions for different cases or purposes.

Commencement

47. Paragraph 8 sets out the commencement provisions for this Schedule.

48. Sub-paragraph (1) provides that the changes made by paragraph 1 to the rules on gifts made through payroll giving apply to donations made on or after 24 March 2010.

49. Sub-paragraph (2) provides that an amendment corresponding to an amendment made to CTA by paragraph 1(2) of this schedule is treated as applying also to the predecessor

legislation in the Income and Corporation Taxes Act 1988 (ICTA). This only applies to an amendment affecting a gift made on or after 24 March 2010.

50. Sub-paragraph (3) provides that the changes in paragraph 2 to the rules on payments to bodies outside the UK apply to expenditure incurred on or after 24 March 2010.

51. Sub-paragraph (4) provides that an amendment corresponding to an amendment made to CTA by paragraph 2(2) of this Schedule is treated as applying also to the predecessor legislation in ICTA. This only applies to an amendment affecting payments representing expenditure incurred on or after 24 March 2010.

52. Sub-paragraph (5) provides that the amendments in paragraph 3 to the rules on Gift Aid donations by non-UK resident donors apply in relation to gifts made on or after 6 April 2010.

53. Sub-paragraph (6) provides that the amendments made by paragraphs 4 and 6 apply to claims outside a return as if they had always applied.

Background Note

54. Payroll Giving is a scheme through which an employee may authorise their employer to make a payment out of the employee's salary to a payroll giving agent. For a small fee, the agent makes the payment to the charity or charities specified by the employee. The amount of the donation by the employee is exempt from tax.

55. Paragraph 1 aligns the treatment of donation income under payroll giving in the hands of a charitable trust or charitable company with the treatment of other donation income. Gifts made under payroll giving on or after 24 March 2010 will be exempt from tax in the hands of the charity only to the extent the income is spent on charitable purposes.

56. A charity may claim relief from tax on overseas expenditure provided the money is spent on charitable purposes. In order to show that the overseas expenditure is for charitable purposes, section 547(b) of ITA (for charitable trusts) and section 500(b) of CTA (for charitable companies) require the trustees to take "such steps as are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes".

57. Paragraph 2 amends section 547(b) of ITA (for charitable trusts) and section 500(b) of CTA (for charitable companies) to make clear that any claim that a payment overseas qualifies for relief as charitable expenditure must be supported by evidence sufficient to satisfy the Commissioners for HMRC that the charity's trustees took reasonable steps to ensure the money would be spent charitably.

58. In practice that means charities will be required to maintain records of how charitable funds are spent overseas and be able to produce evidence of charitable works undertaken. The level of record-keeping required will depend upon the circumstances relating to the expenditure. For example, it may not be possible for a charity providing aid during an emergency to maintain the same level of record-keeping as for routine overseas expenditure.

59. Paragraph 3 amends the Gift Aid rules that apply to donations made by non-UK resident donors under Gift Aid where the donor has not paid enough tax to cover the repayment of tax to the charity. Under the old rules, where a non-UK resident donor has not paid enough UK tax to cover the tax repayment due to a charity on a Gift Aid donation, the whole of the donation is disqualified from Gift Aid under section 422 of ITA. The donation is not a qualifying donation and the charity is required to repay any repayment of tax claimed under Gift Aid. This is different from the approach applied to a UK resident donor who, in the same situation, is entitled to apply Gift Aid to the whole donation, but is liable themselves to make good the shortfall in tax.

60. The repeal of section 422 of ITA aligns the position for both UK and non-UK resident donors: where an individual donor has not paid enough UK tax to cover a donation

under Gift Aid, then Gift Aid may apply to the whole donation and the donor is liable to make up any shortfall in tax.

61. HMRC have allowed charitable trusts and charitable companies to submit tax repayment claims in advance of filing a tax return under their powers of care and management, although in law some trusts and all companies are allowed to make a claim only in a return. Paragraphs 4 to 7 of this Schedule put on a statutory footing HMRC's procedure of making Gift Aid tax repayments on claims outside a return. They also give HMRC the power to prescribe the Gift Aid claim process.

Section 33: "Relevant Person"

Summary

1. Section 33 provides for a minor amendment to the definition of a "relevant person" for the purposes of the remittance basis of taxation.

Details of the Section

2. Subsections (1) to (3) amend the definition of a relevant person in section 809M of the Income Tax Act 2007 to include subsidiaries of non-resident companies which would be close companies if they were resident in the UK.

3. Subsection (4) provides that this amendment comes into force on 6 April 2010.

Background Note

4. Individuals who are resident but not ordinarily resident or not domiciled in the UK can choose to use the remittance basis of taxation. The remittance basis is an alternative method of taxation which requires qualifying individuals to pay UK tax on their offshore income and gains only to the extent which they are brought - or remitted - into the UK.

5. Section 25 of and Schedule 7 to the Finance Act (FA) 2008 introduced significant changes to the remittance basis which came into effect from the start of the 2008-09 tax year. Minor amendments to the rules were made by sections 51 and 52 of and Schedule 27 to FA 2009.

6. This section makes a further minor amendment in order to prevent potential abuse of the rules. It makes clear that the definition of a relevant person includes subsidiaries of non-resident companies which would be close companies if they were resident in the UK.

Section 34Schedule 9: Foreign Currency Bank Accounts

Summary

1. Section 34 and Schedule 9 prevent the interaction of the remittance basis of taxation and certain capital gains tax (CGT) rules from producing allowable capital losses on disposals of amounts in foreign currency bank accounts where there has been no economic loss. The changes were announced in a Ministerial statement on 16 December 2009, and take effect from that date.

Details of the Schedule

2. Paragraphs 1 and 2 of the Schedule together insert a new section 252A and Schedule 8A into the Taxation of Chargeable Gains Act 1992 (TCGA). The new section 252A of TCGA introduces the new Schedule 8A.

3. Paragraph 3 of the Schedule provides that the changes made have effect for disposals on or after 16 December 2009.

Schedule 8A TCGA

4. Paragraph 1 provides the conditions for Schedule 8A to apply. These are that:

   - an individual makes a "relevant disposal", a disposal of a debt that is represented by a balance in a bank account denominated in a currency other than sterling (described as a "section 252 debt");
   - the bank account is not situated in the UK; and
   - part or all of the proceeds of the disposal are charged to income tax under the remittance basis as foreign income, and the amount which is liable to income tax (referred to as a "section 37 amount") is therefore excluded from the consideration taken into account in computing the chargeable capital gain on the disposal of the section 252 debt.

5. Paragraph 2(1) provides that paragraph 2 applies where the whole value of the consideration received for a relevant disposal is excluded from the computation of the chargeable gain or loss arising as a result of that disposal.

6. The relevant disposal may be of the whole balance in the foreign currency bank account, or of part only of that balance. In the latter case, paragraph 2(2) provides that, in applying the rules for determining the expenditure deductible in arriving at the chargeable gain or loss on a part-disposal, the amount to be excluded from the consideration ("the section 37 amount") is included in the amount of consideration received.

7. This rule has the effect that the whole of the expenditure related to the part of the debt disposed of is included in the computation of the gain or loss on the disposal. As the whole of the consideration received is excluded from the computation, this means that the computation is certain to give rise to a loss.

8. Paragraph 2(3) provides that any loss arising on a disposal to which paragraph 2 applies is not an allowable loss for the purposes of CGT, so that it cannot be deducted from chargeable gains to reduce the individual's net amount chargeable to CGT. This is the case whether the disposal is of the whole balance in the account or only part of the balance.

9. Paragraph 3(1) provides that paragraph 3 has effect where only part of the value of the consideration for the relevant disposal constitutes a section 37 amount excluded from the consideration used in computing the chargeable gain or loss on the relevant disposal.

10. Paragraphs 3(2) and (3) provide that in this case the relevant disposal is treated for the purposes of the TCGA as two separate disposals, one of the amount of the section 252 debt ("debt A") in respect of which the section 37 amount is received, and the other in respect of the balance of the amount disposed of ("debt B").

11. Sub-paragraphs (4) to (9) of paragraph 3 provide rules for computing the chargeable gain or loss arising on these separate disposals of debt A and debt B.

12. Sub-paragraph (5) provides that the consideration for the relevant disposal is allocated between the deemed disposals of debt A and debt B so that the section 37 amount is allocated to debt A and the balance to debt B.

13. Sub-paragraph (6) provides for the case where the relevant disposal is of the whole of the section 252 debt. The allowable expenditure is allocated between debt A and debt B pro rata to the division of the disposal consideration made under sub-paragraph (5).

14. Sub-paragraphs (7) to (9) provide for the case where the relevant disposal is of part only of the section 252 debt. In this case, the total allowable expenditure in respect of the section 252 debt is allocated among debt A, debt B, and the balance of the section 252 debt not disposed of in proportion to their respective amounts. Incidental costs of the disposal are allocated between debt A and debt B in proportion to the amounts of those debts.

15. The result of the apportionments provided for in sub-paragraph (6) or in sub-paragraphs (7) to (9) is that in computing the TCGA consequences of the deemed disposal of debt A, the consideration will be nil, because the section 37 amount is the entire consideration. The expenditure relevant to debt A will be deductible, so that there is certain to be a loss. Paragraph 3(10) provides that this loss is not an allowable loss for CGT purposes. Any gain on the disposal of debt B remains chargeable, and if a loss arises on that disposal it is allowable provided that the proper notice is given in accordance with section 16(2A) of TCGA.

16. Paragraph 4 of Schedule 8A provides interpretation for various terms used in that Schedule.

Background Note

17. This section and Schedule prevent the interaction of the CGT rules and the rules for the remittance basis of taxation from resulting in allowable losses for CGT purposes that do not reflect economic losses.

18. The remittance basis is an alternative tax treatment under which the foreign income of an individual who is not domiciled, or not ordinarily resident, in the United Kingdom is not charged to income tax until it is remitted to the UK.

19. Since a credit balance in a foreign currency bank account (FCBA) is an asset for CGT purposes, a withdrawal, or other disposal, of all or part of such a balance can give rise to a chargeable gain or loss. This gain or loss arises as a result of changes in the sterling rate of exchange with the foreign currency during the period that the foreign currency amount in question is in the FCBA.

20. The TCGA contains rules that prevent the same receipt being taken into account for both income tax and CGT purposes. Section 37 of TCGA (from which the reference in Schedule 8A to a "section 37 amount" derives) has the effect that a receipt that is taken into account for income tax purposes is not included in the figure of consideration received used for computing a gain for CGT purposes. There is a similar rule at section 39 in respect of expenditure to prevent the same sum being deducted for both income tax and CGT purposes.

21. An FCBA may include sums that represent foreign income and that would, if the account holder is taxed on the remittance basis, be charged to income tax if withdrawn and remitted to the UK. If there were a withdrawal and remittance of such a sum, the amount chargeable to income tax under the remittance basis would be excluded from the consideration taken into account in computing any chargeable gain or loss arising as a result of the withdrawal of the foreign currency amount.

22. However, there is no corresponding adjustment of the allowable expenditure for CGT purposes, because the "cost" of the foreign currency balance in the FCBA is not deducted or taken into account for income tax purposes. The result of excluding the section 37 amount from the figure of consideration received, while not reducing the allowable expenditure, is that a loss may arise because the cost is allowable but the corresponding receipt is excluded from the computation.

23. Schedule 8A therefore amends the rules for computing the chargeable gain or loss in relation to a balance in an FCBA where section 37 applies because of the operation of the remittance basis. The effect of the Schedule is that the costs of the foreign currency balance that gives rise to the section 37 amount are prevented from producing an allowable loss for CGT purposes.

24. The intention to introduce this legislation was announced by the Financial Secretary to the Treasury in a written statement on 16 December 2009. On 23 December 2009 HM Revenue & Customs (HMRC) issued a technical note explaining in more detail how the new rules operate. That technical note, which includes a copy of the Minister's

statement of 16 December 2009, is on the HMRC website at http://www.hmrc.gov.uk/cnr/fcba-technical-note.pdf.

Section 35 and Schedule 10: Penalties: Offshore Income Etc

Summary

1. Section 35 and Schedule 10 amend the level of penalties that may be charged in cases where certain offshore income, gains or assets have not been declared to HM Revenue & Customs (HMRC). The existing penalty levels apply where the offshore matter concerns a jurisdiction which automatically exchanges information with the UK. For other jurisdictions, for income tax and capital gains tax (CGT) only, the penalties are increased by a factor of 1.5 or 2 depending on the tax transparency of the jurisdiction concerned.

Details of the Section

2. Subsection (2) provides for the Schedule to come into force on a day appointed by the Treasury by order.

3. Subsection (3) provides that an appointed day order may contain different provisions for different purposes as well as transitional provisions and savings.

4. Subsection (4) provides that the Treasury may make orders containing provisions that supplement the Schedule.

5. Subsection (5) provides that an order under subsection (4) may make different provision for different purposes as well as provision amending, revoking or repealing other legislation.

6. Subsection (6) provides that orders under subsection (2) or (4) must be made by statutory instrument and subsection (7) that they are made subject to the negative resolution procedure.

Details of the Schedule

7. Paragraph 1 provides for Schedule 24 to the Finance Act (FA) 2007 to be amended. That Schedule imposes penalties for errors in a tax return or other document submitted to HMRC that leads to a loss of tax.

8. Paragraph 2 substitutes new paragraphs 4, 4A, 4B, 4C and 4D for existing paragraph 4 of Schedule 24 to FA 2007. New paragraphs 4 and 4A relate to penalties incurred under paragraph 1 of Schedule 24 (errors in taxpayer's document). New paragraphs 4B, 4C and 4D relate to penalties under paragraphs 1A and 2 of Schedule 24 (error in taxpayer's document attributable to another person and under-assessment by HMRC).

9. Sub-paragraph (1) of new paragraph 4 provides for the following sub-paragraphs to set out the revised penalty structure for penalties under paragraph 1 of Schedule 24. In place of one category of inaccuracy with a penalty level for each of three types of behaviour (careless action, deliberate but not concealed action and deliberate and concealed action), there are now three categories of inaccuracy each with a penalty level reflecting behaviour. So, in total there are nine distinct penalty levels.

10. Sub-paragraph (2) sets out three levels of penalty for a category 1 inaccuracy.

11. Sub-paragraph (3) sets out three levels of penalty for a category 2 inaccuracy. They are 1.5 times the levels in category 1.

12. Sub-paragraph (4) sets out three levels of penalty for a category 3 inaccuracy. They are double the levels in category 1.

13. Sub-paragraph (5) refers to new paragraph 4A which defines the three new categories of inaccuracy.

14. Sub-paragraph (1) of new paragraph 4A defines a category 1 inaccuracy. It includes all errors involving either a domestic matter, or an offshore matter relating to a category 1 territory or relating to taxes other than income tax and CGT.

15. Sub-paragraph (2) defines a category 2 inaccuracy. It must involve an offshore matter relating to a category 2 territory and one of the specified taxes (income tax and CGT)

16. Sub-paragraph (3) defines a category 3 inaccuracy. It must involve an offshore matter relating to a category 3 territory and one of the specified taxes. The taxes specified are the same for both category 2 and 3.

17. Sub-paragraph (4) explains what is meant by an inaccuracy which “involves an offshore matter”. It includes offshore income, assets and activities.

18. Sub-paragraph (5) explains what is meant by the phrase “involves a domestic matter”.

19. Sub-paragraph (6) provides that a single inaccuracy is to be treated as separate inaccuracies where it relates to more than one category (the relevant category). This is so the total tax attributable to the inaccuracy may be apportioned between the relevant categories.

20. Sub-paragraph (7) cross-refers to the definitions of “category 1 territory”, “category 2 territory” and “category 3 territory” that are inserted into Schedule 24 to FA 2007 by paragraph 5 of this Schedule.

21. Sub-paragraph (8) defines the term “assets” which is used in the definition of an offshore matter.

22. New paragraphs 4B, 4C and 4D simply repeat what is in paragraph 4(1A), (2) and (3) of Schedule 24 which are replaced by paragraph 2 of this Schedule. These provisions relate to penalties under paragraphs 1A and 2 of Schedule 24 to FA 2007 which are unaffected by the other material in this Schedule.

23. Paragraph 3 substitutes new paragraph 10 for existing paragraph 10 of Schedule 24 to FA 2007. This sets out the amount by which the penalties under new paragraph 4 are to be reduced to take account of disclosure. Paragraph 9 of Schedule 24 explains what is meant by disclosure and whether a disclosure is prompted or unprompted.

24. Sub-paragraph (1) of new paragraph 10 introduces a Table which in the first column sets out the nine possible penalty levels mentioned in paragraph 4. These are called “standard percentages”. The standard percentages must be reduced to take account of disclosure.

25. Sub-paragraph (2) explains that the second and third column in the Table set out the minimum percentage level for a prompted and unprompted disclosure respectively.

26. Paragraph 4 substitutes new paragraph 12(4) and (5) for existing paragraph 12(4). These provisions concern how penalties under paragraph 1 of Schedule 24 to FA 2007 (as revised) interact with penalties under paragraph 1A of Schedule 24.

27. New paragraph 12(4) provides that where penalties under both paragraphs 1 and 1A are imposed for the same inaccuracy then the total penalties must not exceed the “relevant percentage” of the potential lost revenue.

28. New paragraph 12(5) defines “relevant percentage”. The three levels of relevant percentage correspond to the maximum penalty for each category of inaccuracy.

29. Paragraph 5 inserts new paragraphs 21A and 21B into Part 5 of Schedule 24 to FA 2007 which contains definitions.

30. Sub-paragraph (1) of new paragraph 21A defines a category 1 territory as one so designated by Treasury order.

31. Sub-paragraph (2) defines a category 2 territory. Category 2 is a sweep-up of territories that are neither category 1 nor category 3.

32. Sub-paragraph (3) defines a category 3 territory as one so designated by Treasury order.

33. Sub-paragraph (4) sets out factors that the Treasury must have regard to in classifying territories.

34. Sub-paragraph (5) provides that an order under paragraph 21A is to be made by statutory instrument.

35. Sub-paragraph (6) provides that, subject to sub-paragraph (7), orders will be made subject to the negative resolution procedure.

36. Sub-paragraph (7) provides that the first such order under both sub-paragraphs (1) and (2) is subject to the affirmative resolution procedure.

37. Sub-paragraph (8) provides that an order only applies to inaccuracies from the date on which the order comes into force.

38. Sub-paragraph (1) of new paragraph 21B provides that the Treasury may make regulations concerning the location of assets, income or activities for the purposes of Schedule 24 to FA 2007. This power would be used, for example, in circumstances where there may uncertainty as to the territory in which an asset is located.

39. Sub-paragraph (2) allows regulations made under this paragraph to provide different rules for different cases and taxes.

40. Sub-paragraph (3) provides for regulations to be made by statutory instrument and sub-paragraph (4) says that regulations will be made subject to the negative resolution procedure.

41. Paragraph 6 inserts a new paragraph 23B into Schedule 24 to FA 2007. It defines the term “UK”.

42. Paragraph 7 provides for Schedule 41 to FA 2008 to be amended. That Schedule imposes penalties for failing to notify liability to tax. The changes made to Schedule 41 mirror the changes made to Schedule 24 to FA 2007 by creating increased penalties for failures involving certain offshore matters.

43. Paragraph 8 substitutes new paragraphs 6, 6A, 6B, 6C and 6D for existing paragraph 6 of Schedule 41. New paragraphs 6 and 6A relate to penalties incurred under paragraph 1 of Schedule 41 to FA 2008 (failure to notify). New paragraphs 6B, 6C and 6D relate to penalties under paragraphs 2 (issue of invoice showing VAT by unauthorised person), 3 (putting product to use that attracts higher duty) and 4 (handling goods subject to unpaid excise duty) of Schedule 41.

44. Sub-paragraph (1) of new paragraph 6 provides for the following sub-paragraphs to set out the revised penalty structure. In place of one category of failure with a penalty level for each of three types of behaviour (deliberate and concealed failure, deliberate but not concealed failure and other cases), there are now three categories of failure each with a penalty level reflecting behaviour. So, in total there are nine distinct penalty levels.

45. Sub-paragraph (2) sets out three levels of penalty for a category 1 failure.

46. Sub-paragraph (3) sets out three levels of penalty for a category 2 failure. They are 1.5 times the levels in category 1.

47. Sub-paragraph (4) sets out three levels of penalty for a category 3 failure. They are double the levels in category 1.

48. Sub-paragraph (5) refers to new paragraph 6A which defines the three categories of failure in a similar way to that done by paragraph 2 above.

49. Sub-paragraph (1) of new paragraph 6A defines a category 1 failure. It includes all failures involving either a domestic matter, or an offshore matter relating to a category 1 territory or relating to taxes other than income tax and CGT.

50. Sub-paragraph (2) defines a category 2 failure. It must involve an offshore matter relating to a category 2 territory.

51. Sub-paragraph (3) defines a category 3 failure. It must involve an offshore matter relating to a category 3 territory.

52. Sub-paragraph (4) explains what is meant by the phrase "involves an offshore matter".

53. Sub-paragraph (5) explains what is meant by the phrase "involves a domestic matter".

54. Sub-paragraph (6) provides that a single failure is to be treated as separate failures where it relates to more than one category. This is so the total tax attributable to the failure may be apportioned between the relevant categories on a just and reasonable basis.

55. Sub-paragraph (7) attracts the classification of territories set out in new paragraph 21A of Schedule 24 to FA 2007. It also provides that an order under that paragraph does not apply where the obligations are to be complied with before the order comes into force.

56. Sub-paragraph (8) provides that regulations under new paragraph 21B of Schedule 24 to FA 2007 apply to this Schedule.

57. Sub-paragraph (9) defines the terms "assets" and "UK".

58. New paragraphs 6B, 6C and 6D simply repeat what is in paragraph 6(1) (except so far as it relates to paragraph 1), (2) and (3) of Schedule 41 to FA 2008 which are replaced by paragraph 8 of this Schedule. These provisions relate to VAT and excise penalties under paragraphs 2, 3 and 4 of Schedule 41 which are unaffected by the other material in this Schedule.

59. Paragraph 9 substitutes new paragraph 13 for existing paragraph 13 of Schedule 41 to FA 2008. This sets out the amount by which the penalties under new paragraph 6 are to be reduced to take account of disclosure. Paragraph 12 of Schedule 41 explains what is meant by disclosure and whether a disclosure is prompted or unprompted.

60. Sub-paragraph (1) of new paragraph 13 introduces a Table which in the first column sets out the nine possible penalty levels mentioned in new paragraph 6. These are called "standard percentages". The standard percentages must be reduced to take account of disclosure.

61. Sub-paragraph (2) explains that the second and third column in the Table set out the minimum percentage level for a prompted and unprompted disclosure respectively.

62. Sub-paragraph (3) provides that the minimum percentage levels in the case of non-deliberate failures vary according to whether HMRC become aware of the failure less or more than 12 months after the relevant tax first becomes unpaid.

63. Paragraph 10 provides for Schedule 55 to FA 2009 to be amended. That Schedule imposes penalties for failing to make returns within the required period. The changes made to Schedule 55 broadly mirror the changes made to Schedules 24 to FA 2007 and Schedule 41 to FA 2008 by creating increased penalties for the withholding of information involving certain offshore matters.

64. Sub-paragraph (1) of paragraph 11 provides for the following sub-paragraphs to set out the revised penalty structure in cases where the failure continues for 12 months after the penalty date. In place of one category of withholding information there are now three, relating to jurisdiction to which the information relates. For each category (1,

2 and 3) there is a penalty level for each of three types of behaviour (deliberate and concealed withholding, deliberate but not concealed withholding and other cases). In contrast to Schedules 24 to FA 2007 and 41 to FA 2008 the percentage penalty level for non-deliberate cases is fixed at 5 per cent of the tax (or £300 if greater). So there is one penalty level for non-deliberate behaviour and six penalty levels for deliberate behaviour.

65. Sub-paragraph (2) replaces "100 per cent" in paragraph 6(3)(a) of Schedule 55 with "the relevant percentage".

66. Sub-paragraph (3) inserts sub-paragraph (3A) into paragraph 6 of Schedule 55 to FA 2009. It sets out the three relevant percentages for the purposes of paragraph 6(3)(a), one for each category of information withheld.

67. Sub-paragraph (4) replaces "70 per cent" in paragraph 6(4)(a) of Schedule 55 with "the relevant percentage".

68. Sub-paragraph (5) inserts sub-paragraph (4A) into paragraph 6 of Schedule 55 to FA 2009. It sets out the three relevant percentages for the purposes of paragraph 6(4)(a), one for each category of information withheld.

69. Sub-paragraph (6) refers to new paragraph 6A which defines the three categories of information.

70. Paragraph 12 inserts new paragraph 6A into Schedule 55 to FA 2009.

71. Sub-paragraph (1) of new paragraph 6A says that category 1 includes all information involving either a domestic matter, or an offshore matter involving a category 1 territory or relating to taxes other than income tax and CGT.

72. Sub-paragraph (2) defines category 2 information. It must involve an offshore matter relating to a category 2 territory.

73. Sub-paragraph (3) defines category 3 information. It must involve an offshore matter relating to a category 3 territory.

74. Sub-paragraph (4) explains what is meant by the phrase "involves an offshore matter".

75. Sub-paragraph (5) explains what is meant by the phrase "involves a domestic matter".

76. Sub-paragraph (6) provides that if the information withheld relates to more than one category then the failure is treated as if it were separate failures. This is so the total tax attributable to the failure may be apportioned between the categories on a just and reasonable basis.

77. Sub-paragraph (7) attracts the classification of territories set out in new paragraph 21A of Schedule 24 to FA 2007. It also provides that an order under that paragraph does not apply to a failure if the filing date is before the date on which the order comes into force.

78. Sub-paragraph (8) provides that regulations under new paragraph 21B of Schedule 24 to FA 2007 apply to this Schedule.

79. Sub-paragraph (9) defines the terms "assets" and "UK".

80. Sub-paragraph (1) of paragraph 13 provides for paragraph 15 of Schedule 55 to FA 2009 to be amended.

81. Sub-paragraph (2) substitutes new sub-paragraphs (1) and (2) for existing sub-paragraphs (1) and (2). This sets out the amount by which the penalties under paragraph 6 of Schedule 55 to FA 2009 are to be reduced to take account of disclosure. Paragraph 14 of Schedule 55 explains what is meant by disclosure and whether a disclosure is prompted or unprompted.

82. New sub-paragraph (1) introduces a Table which in the first column sets out the six possible penalty levels mentioned in paragraph 6(3A) and (4A). These are called "standard percentages". The standard percentages must be reduced to take account of disclosure.

83. New sub-paragraph (2) explains that the second and third column in the Table set out the minimum percentage level for a prompted and unprompted disclosure respectively.

84. Sub-paragraph (3) omits paragraph 15(3) and (4).

85. Paragraph 14 amends paragraph 17 of Schedule 55 to FA 2009. It provides that where penalties under more than one paragraph of Schedule 55 are imposed then the total penalties must not exceed the "relevant percentage" of the tax according to the category of information which is defined in new sub-paragraph (4).

Background Note

86. HMRC may charge penalties in cases where income, gains etc are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. Schedule 24 to FA 2007 (errors in tax returns etc), Schedule 41 to FA 2008 (failure to notify liability) and Schedule 55 to FA 2009 (returns not filed on time) set out the minimum and maximum penalties that may be charged.

87. In each case the penalty is a percentage of the amount of tax that has been lost. For example, where income in omitted from a return, then in addition to recovering the tax and interest thereon, a penalty may be charged in the range 0 per cent to 30 per cent where the error is due to a failure to take reasonable care, 20 per cent to 70 per cent where the understatement is deliberate and 30 per cent to 100 per cent where a deliberate understatement is aggravated by concealment.

88. The percentage ranges set out above will continue to apply where the tax involved is not income tax or CGT. They will also continue to apply where the non-compliance either relates to a domestic matter (UK income, gains etc), or to non-compliance involving an overseas jurisdiction with automatic exchange of information with the UK (a "category 1 territory").

89. Where the non-compliance involves either a jurisdiction that only exchanges information with the UK on request or has no arrangements to exchange information with the UK, then the percentages will be increased by a factor of either 1.5 or 2 depending on whether a category 2 or 3 territory is involved. Jurisdictions will be classified by Treasury order into category 2 or 3 taking account of the existence and quality of arrangements to exchange information and whether the UK would benefit from arrangements in cases where none exist.

90. This means, for example, that in a case involving income tax or CGT, a penalty of 200 per cent of the tax lost could be charged for a serious case of failing to declare income or assets in a jurisdiction without information exchange arrangements. The higher penalties reflect the fact HMRC is less likely to detect the non-compliance and that the choice of jurisdiction may well have been influenced by that factor.

Section 36Schedule 11: Reliefs and Reductions for Foreign Tax

Summary

1. Section 36 and Schedule 11 introduce legislation (i) to prevent the use of manufactured payments instead of real overseas dividends in order to sidestep existing anti-avoidance defences in the double tax relief (DTR) legislation, (ii) to ensure that a person may only deduct foreign tax from any foreign income where he has not already reduced his income by reference to the foreign tax, and (iii) to reaffirm the scope of the targeted DTR anti-avoidance rule.

Details of the Schedule

2. Paragraph 1(2)(a) amends paragraph 3(2)(a) of Schedule 28AB to the Income and Corporation Taxes Act 1988 (ICTA) by expressly including amounts of foreign tax payable by the person claiming credit relief. This is to ensure consistency with the provisions which allow relief for double taxation by way of credit in respect of tax which is payable under the law of any territory outside the UK.

3. Paragraph 1(2)(b) and 1(3) introduce consequential amendments.

4. Paragraph 2(2)(a) amends section 85(2) of the Taxation and (International and Other Provisions) Act 2010 (TIOPA) by expressly including amounts of foreign tax payable by the person claiming credit relief. This is also to ensure consistency with the provisions which allow credit relief.

5. Paragraph 2(2)(b) and 2(3) introduce consequential amendments.

6. Paragraph 3 contains provision about commencement.

7. Paragraph 4(1) inserts into TIOPA new section 85A which prescribes a scheme or arrangement where there is an amount of deemed foreign tax and either condition A or condition B is met.

8. New section 85A(2) provides that condition A is met where it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant in the scheme or arrangement.

9. New section 85A(3) provides that condition B is met where it could reasonably be expected that, under the scheme or arrangement, real foreign tax would be paid or payable by a participant in the scheme or arrangement but the foreign-tax total would be increased by less than the amount of credit allowable to the claimant in respect of the amount of deemed foreign tax.

10. New section 85A(4) contains a number of definitions. The "real foreign tax" definition sets out that, in relation to section 10 of TIOPA, account is taken of the foreign tax chargeable in respect of the interest payable on the securities referred to in section 10(1)(c) of TIOPA and, in relation to the manufactured overseas dividend (MOD) rules, account is taken of the foreign tax chargeable on the overseas dividend of which the MOD is representative. The definition also includes a sweep-up for other deeming provisions.

11. Paragraph 4(2) and (3) contain provision about commencement.

12. Paragraph 5(1)(b) replaces the existing section 85(2) of TIOPA with a new subsection which removes the condition that an amount of foreign tax is paid or payable by C. The new subsection looks to the effect of the "the FT amount" (now defined in section 85(1)) being paid or payable.

13. Paragraph 5(3) contains provision about commencement.

14. Paragraph 6(1)(a) deletes the words "under the scheme or arrangement" from section 86(1) of TIOPA, making clear that it is immaterial whether a pre-execution step was under a scheme or arrangement.

15. Paragraph 6(1)(b) inserts new sections 86(3A) and (3B) into TIOPA. New section 86(3A) confirms that a step taken or not taken by a participant in a scheme or arrangement can be a step taken or omitted from being taken before a scheme or arrangement comes into existence.

16. New section 86(3B) provides that the reason for taking or not taking the step does not matter provided the effect is to increase, or give rise to, a credit claim by a participant.

17. Paragraph 6(2) contains provision about commencement.

18. Paragraph 7(1) inserts new sections 112(2A) and 112(2B) into TIOPA. New section 112(2A) reduces the deduction from income for foreign tax by the difference between X and Y where X is less than Y.

19. New section 112(2B) defines X as the amount of the foreign income which the person would actually have to bring into account for the purposes of computing his tax liability (absent section 112), taking into account any deductions. Y is the amount of income arising outside the UK on which an amount of foreign tax has been paid.

Background Note

20. The current MOD rules and regulations aim to give the recipient of a MOD (or any payment deemed to be a MOD) the same relief for foreign tax as the recipient of the real dividend.

21. Sections 81 and 82 of TIOPA reduce or eliminate claims to double tax relief where there is an avoidance scheme or arrangement. The scheme must fall within one of the prescribed schemes in sections 84 to 88 of TIOPA. Section 85 of TIOPA prescribes a scheme where the person claiming credit for foreign tax has not suffered the full economic cost of the foreign tax for which it is claiming relief. The amendment to section 85 removes the condition that the person claiming the credit has paid the foreign tax.

22. Section 85 does not work effectively where the claim is for foreign tax which is treated by tax law (for example the MOD rules) as having been paid. The new measure will insert a new section 85A into TIOPA so that sections 81 and 82 will apply to deemed overseas tax deducted from MODs in the same way that they apply to real overseas dividends. The amendment will ensure that the provision can also apply in other circumstances where the UK Tax Acts deem income to be received under deduction of overseas tax. These changes will prevent credits for notional overseas tax from being treated more favourably than tax credits on real dividends.

23. This will not result in the automatic denial of DTR in relation to deemed overseas tax, since it will still be necessary for that tax to arise as part of a scheme or arrangement one of the main purposes of which is to cause that tax to be taken into account for double tax relief purposes.

24. Section 86 of TIOPA prescribes a scheme where a person who is a party to a scheme takes a step, or omits a step, and the effect is to increase a double tax relief claim. The amendment ensures that the provision can apply to any steps taken, or not taken, before the scheme is implemented which have the effect of increasing a credit claim.

25. Section 112 of TIOPA provides that, where foreign tax is paid and no credit is claimed, double tax relief may be given as a deduction to reduce the foreign income assessable to UK tax. The amendment ensures that a person may only deduct foreign tax where that person has not already reduced his income by reference to the foreign tax, so ensuring the foreign tax is only deducted once.

Section 37: Asset Transfer to Non-Resident Company: Recovery of Postponed Charge

Summary

1. Section 37 amends section 140 of the Taxation of Chargeable Gains Act 1992 (TCGA). Where a gain has been postponed on the transfer of an overseas branch's assets to a non-resident company in exchange for securities consisting of shares and loan stock, the change will ensure that the disposal of any of these securities will create a deemed chargeable gain that is subject to corporation tax (CT). The postponed gain is currently brought back into charge by treating it as additional consideration on a subsequent disposal of securities. This creates a problem relating to disposals of securities in the

form of Qualifying Corporate Bonds (QCBs) which are exempt from tax on chargeable gains. As a result any postponed gain is also exempt on the subsequent disposal of the QCB. The changes will have effect in relation to disposals of securities on or after 6 January 2010.

Details of the Section

2. Subsection (1)(a) amends subsection (4) of section 140 of TCGA to deem a chargeable gain to accrue to the transferor company on a disposal of securities received in exchange for the transfer of an overseas branch's assets to a non-resident company. This replaces the previous mechanism for charging a postponed gain which increased the consideration received on a subsequent disposal of securities. The effect is to ensure that a charge will arise on the disposal of any securities, whether or not they are otherwise exempted from the charge to corporation tax on chargeable gains.

3. Subsection (1)(b) inserts new subsection (4A) into section 140. This clarifies that any postponed chargeable gain that is deemed to accrue is in addition to any gain or loss that accrues to a transferor company on a disposal of the securities themselves.

4. Subsection (2) provides a consequential amendment by omitting paragraph 35 to Schedule 7AC to TCGA. Paragraph 35 currently provides for a charge to arise on securities that are otherwise exempted from CT on chargeable gains under the substantial shareholdings exemption. Where a company disposes of shares that are exempt from chargeable gains under the Schedule, and which were received in exchange for a transfer of overseas assets to which section 140 applied, a gain is deemed to accrue to the transferor under the amended section 140(4) TCGA. Paragraph 35 of Schedule 7AC achieved this same result and is not now required.

5. Subsection (3) provides that changes made by the section will have effect in relation to any disposal of securities that takes place on or after 6 January 2010.

Background Note

6. The amended and new provisions are intended to ensure that a postponed charge on gains arising where assets of an overseas branch are transferred to a non-resident company is brought back into charge at the appropriate time.

7. The existing section 140 of TCGA creates unintended outcomes in the treatment of postponed gains where, in exchange for a transfer of assets of an overseas branch, a UK company receives securities which are themselves exempt (such as QCB's which are exempted by section 115 of TCGA), and for which there was no other provision which brought the postponed gain back into charge to tax. The changes deem a separate chargeable gain equal to the postponed gain to accrue to the transferor at the time of disposal of the securities. This replaces the existing treatment of bringing a postponed gain back into charge by treating the postponed chargeable gain as additional consideration on a subsequent disposal of securities.

8. The changes were announced in a Written Ministerial Statement on 6 January 2010. An HM Revenue & Customs (HMRC) Technical Note and draft legislation were also published on that date on the HMRC website (http://www.hmrc.gov.uk/drafts/transfer-assets.htm).

Section 38Schedule 12: Transactions in Securities

Summary

1. Section 38 and Schedule 12 introduce legislation to replace existing legislation that counters tax advantages arising from certain transactions in securities. The scope has been widened to include all close companies where there has not been a fundamental

change in ownership but is targeted more effectively at arrangements involving tax avoidance.

Details of the Schedule

Income tax

2. Paragraphs 1 and 2 amend Chapter 1 of Part 13 of the Income Tax Act 2007 (ITA), by replacing sections 682 to 694 with new sections 682 to 687 inclusive. The scope of the legislation is changed to focus more effectively on those instances where there is a tax advantage that needs to be countered, although there is no change in the effect of the legislation.

3. New section 684 requires that the main, or one of the main purposes, of the transaction is to obtain an income tax advantage, and that an income tax advantage is actually obtained as a result of the transaction. This replaces the previous exception for transactions in securities made for genuine commercial reasons or in the ordinary course of making or managing investments, and where obtaining an income tax advantage was not the main, or one of the main objects of the transaction.

    a. New subsection (1) sets out the four positive conditions for a person to be liable to a counteraction of their income tax advantage.

    b. New subsection (1)(a) sets out the first condition. This provision is designed to be deliberately wide such that any person who enters into or is involved in any transaction in securities would meet this condition. The meaning of a transaction in securities is defined in subsection (2).

    c. New subsection (2) defines "transaction in securities" for the purposes of Chapter 1 of Part 13 of ITA (Chapter 1). This definition is the same as that in the legislation it replaces.

    d. New subsection (4) makes it clear that this provision is subject to sections 696(3) and 697(5) of Chapter 1 which are unchanged. Section 696(3) involves a person making a statutory declaration that section 684 does not apply, and section 697(5) involves a decision by a tribunal on an opposed notification that section 684 does not apply.

4. New section 685 merges the two provisions previously contained in section 689 and 690 of ITA. If either of two conditions are met the section will apply. The only substantive change is that the reference to a "relevant company" that was previously defined in section 691 of ITA is replaced with the term "close company".

    a. New subsection (2) sets out the first condition (A). It covers three situations where a person receives "relevant consideration" as a result of the transactions in securities or any one or more such transactions and does not pay or bear income tax on that consideration other than under Chapter 1. "Relevant consideration" for these purposes is defined in new subsections (4) and (5).

    b. New subsection (3) provides the rules relating to Condition B. It requires all of the positive conditions in new subsections (3)(a), (3)(b) and (3)(c) to be met. These replicate the previous legislation except that they apply to "close companies" rather than the "relevant company".

    c. New subsection (4) provides the meaning of "relevant consideration" for the purposes of new subsections (2)(a) and (2)(b). Relevant consideration is consideration that falls within the meaning of either new subsection (4)(a) or (4)(b) or (4)(c) which replicate the legislation at section 689(3) of ITA that is substituted by this new legislation.

    d. New subsection (5) provides the meaning of "relevant consideration" for the purposes of new subsections (2)(c) and (3). It defines "relevant consideration" as

consideration which consists of any share capital or any security issued by a close company and which is or represents the value of assets that fall within the meaning of either new subsection (5)(a) or (5)(b) or (5)(c). This subsection replicates the provisions previously contained within sections 690(3) and 690(4) of ITA but in relation to close companies.

e. New subsections (6) and (7) replicate the position previously set out in section 689(5) of ITA.

f. New subsection (8) replicates the position previously set out in section 690(8) of ITA and defines consideration as including any money or money's worth.

g. New subsection (9) replicates the position as to the meaning of "security" and "share" that were previously set out in section 713 of ITA.

5. New section 686 excludes from the ambit of the transactions in securities legislation transactions that are immediately preceded by a fundamental change of ownership in the close company.

a. New subsection (1) introduces a new exclusion from Chapter 1 covering circumstances involving a fundamental change of ownership as set out in new subsections (1)(a) and (1)(b).

b. New subsection (2) explains that there is a fundamental change of ownership for the purpose of this Chapter if both of the conditions in new subsections (2)(a) and (2)(b) are met.

c. New subsection (2)(a) requires that, as a result of the transaction or transactions in securities, conditions A, B and C in new subsections (3), (4), and (5) respectively are met.

d. New subsection (2)(b) provides that for a fundamental change of ownership to exist for the purpose of Chapter 1, all of the conditions set out in new subsection (2)(a) must be met for a continuous period of two years following the fundamental change of ownership.

e. New subsection (3) sets out condition A which is that at least 75 per cent of the ordinary share capital of the close company must be held beneficially by a person as set out in new subsections (3)(a) or 3(b).

6. Subsection (1) of new section 687 introduces a new definition of income tax advantage for the purposes of Chapter 1. A person obtains an income tax advantage if there is an amount falling due under either new subsection (1)(a) or (1)(b).

a. New subsection (2) introduces a limit on the amount of relevant consideration that may be included in determining whether an income tax advantage has been obtained by a person. Any amount of relevant consideration in excess of the amount of qualifying distributions that could in any circumstances be paid to the person is not to be taken into account for the purposes of calculating an income tax advantage under new subsections (1)(a) or (1)(b).

7. Paragraph 3 of the Schedule makes consequential amendments to section 698 of ITA.

8. Paragraph 4 repeals section 699 of ITA.

9. Paragraphs 5 and 6 make consequential amendments to sections 700 and 701 of ITA.

10. Paragraph 7(2) adds to section 713 of ITA a definition of "close company" that includes a company that would be a close company if it were resident in the UK. This amended definition is intended to bring non resident companies that would be close companies if they were resident in the UK within the scope of Chapter 1.

11. Paragraph 7(3) removes the definition of a transaction in securities from section 713 of ITA because it is now defined in new section 684(2).

Corporation Tax

12. Paragraph 9 makes a consequential amendment to section 733(2) of the Corporation Tax Act 2010 (CTA).

13. Paragraph 10 repeals section 735 of CTA. This section covers abnormal dividends used for exemptions or reliefs. Section 735 contained circumstance A of section 704 of the Income and Corporation Taxes Act 1988. This part of section 704 has been deleted from both the income tax and corporation tax codes. Amendments to ensure that the shadow advance corporation tax (ACT) regime continues to work appropriately for abnormal dividends paid in these circumstances will be made to SI 1999/358.

Consequential amendments

14. Paragraphs 11 and 12 make consequential amendments to ITA.

15. Paragraph 13 makes a consequential amendment to the Finance Act (FA) 2007

16. Paragraph 14 amends Schedule 1 to CTA, by omitting paragraphs 545 and 546. That paragraph amended section 690(8) of ITA which is substituted by this new legislation. The amendment is therefore no longer necessary.

Commencement

17. Paragraph 15 sets out the commencement provisions for income tax and corporation tax. The amendments made by paragraphs 2 to 5, 7 and 11 to 13 (and paragraph 1 in relation to them) have effect in relation to income tax advantages obtained on or after 24 March 2010. The amendment made by paragraph 6 (and paragraph 1 as far as it relates to it) are treated as having come into force on 1 April 2009. And the amendments to CTA will have effect in relation to corporation tax advantages obtained on or after 1 April 2010.

Background Note

18. An Anti-Avoidance Simplification Review was launched at the 2007 Pre-Budget Report. The aim was to simplify anti-avoidance legislation whilst protecting tax revenues.

19. In July 2008, the transactions in securities legislation was identified as a candidate for simplification. This culminated in a set of proposals, including draft legislation to amend ITA, that were subject to public consultation in July 2009. This Schedule is the outcome of those consultations.

20. This Schedule provides for amendments to be made to the transactions in securities legislation. The existing legislation in ITA is replaced with simplified legislation that will ensure that all relevant transactions that involve tax avoidance are within its scope.

21. This is achieved by using a new narrower definition of an income tax advantage; by replacing the current definition of a “relevant company” with that of a “close company”; and by including a new exemption covering fundamental changes in ownership of shares in a close company.

22. This Schedule also amends CTA in relation to certain circumstances where the cancellation of a corporation tax advantage may arise in connection with a transaction in securities.

Section 39: Approved Csop Schemes: Eligible Shares

Summary

1. Section 39 counters avoidance arrangements which are being used to circumvent the financial limit in the Company Share Option Plan (CSOP) legislation. The avoidance

involves arrangements being used which fall under the general description of "geared growth" and which can be used to deliver additional reward to individuals, beyond that intended under the CSOP legislation.

2. Section 39 amends paragraph 17 of Schedule 4 to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) so that share options can no longer be granted under CSOP over shares in an unlisted company which is under the control of a listed company.

3. This change has effect from 24 March 2010, so that options granted on or after that date will no longer qualify for exemption from the charge to income tax and National Insurance contributions in respect of the exercise of the option.

4. Options over shares in an unlisted company which is under the control of a listed company which were granted before 24 March 2010 in accordance with the provisions of an approved CSOP scheme will continue to qualify for the exemption from the charge to income tax in respect of the exercise of the option, provided the other requirements of the CSOP code are met.

5. Where the rules of an approved CSOP scheme provide that a company may grant options over shares in an unlisted company which is under the control of a listed company, a six month transitional period will be allowed for the scheme rules to be amended in order to meet these changes to the legislation. However, any options granted over shares in an unlisted company which is under the control of a listed company during that six month transitional period will not qualify for the exemption from the charge to income tax in respect of the exercise of the option.

Details of the Section

6. Subsection (1) provides for paragraph 17(1)(c) of Schedule 4 to ITEPA to be omitted.

7. Subsection (2) provides for consequential changes to sub-paragraph (1) of paragraph 17, and the omission of sub-paragraph (2) (definition of a "listed company") from paragraph 17. It also provides for the omission of paragraph 20(3)(c), which defines "open market shares" where the shares in question are not listed on a recognised stock exchange and are under the control of a "listed company" (as that term is defined in the legislation).

8. Subsection (3) provides that the changes made by this section will come into force on 24 September 2010, after a six month transitional period from 24 March 2010 and will have effect in relation to options granted on or after 24 September 2010.

9. Subsection (4) provides that options granted to individuals in accordance with the provisions of an approved CSOP scheme during the transitional period from 24 March 2010 to 23 September 2010 will be treated for the purposes of the CSOP code as not granted in accordance with the provisions of an approved CSOP scheme, if the shares which may be acquired by the exercise of the option are those of a company which is under the control of a listed company, unless the shares in question are in a company which is itself listed on a recognised stock exchange.

10. Subsection (5) provides that any alteration made to a CSOP scheme during the transitional period so as to meet the requirements of the amended paragraph 17 will be treated as an alteration to a key feature of the CSOP scheme for the purposes of paragraph 30 of Schedule 4 to ITEPA (withdrawal of approval).

11. Subsection (6) provides that if the amended paragraph 17 requirement is not met at the end of the transitional period, the requirement is to be treated for the purposes of paragraph 30(2)(a) of Schedule 4 to ITEPA (disqualifying events) as ceasing to be met immediately after that time.

12. Subsection (7) provides that if approval for a scheme is withdrawn under Part 7 of Schedule 4 to ITEPA as a result of subsection (6) above, the withdrawal will be from

the time determined in accordance with paragraph 30(1) of Schedule 4 to ITEPA and will apply to options granted on or after 24 September 2010.

13. Subsection (8) provides that references to options having been granted in subsections (3) to (7) include new share options granted under the terms of a provision included in a scheme under paragraph 26 of Schedule 4 to ITEPA (exchange of shares on company reorganisation). However, paragraph 27(5) of Schedule 4 (new share options treated as granted at the same time as old share options) does not apply for the purposes of subsections (3) to (7).

14. Subsection (9) provides definitions of terms used in this section.

Background Note

15. CSOP is a discretionary share scheme, which allows companies to award share options to selected employees and directors. The granting of options allows eligible employees or directors to buy the company's shares from a date in the future at a price set on the date of grant.

16. Under CSOP, companies can award employees or directors options over shares with a market value of up to £30,000 at the time of grant. Provided the requirements of the scheme are met, there will be no charge to income tax or National Insurance contributions on the exercise of the CSOP option. However, capital gains tax may be due on a subsequent disposal of the shares.

17. Until 1980, shares in unlisted companies could not be used in approved share option schemes. However, this rule was changed to allow shares in unlisted subsidiaries of listed companies to be used in approved schemes, provided the parent company was listed on a recognised stock exchange and was not a close company (or would not be a close company if it were UK resident).

18. However, avoidance arrangements have been used recently in which CSOP options are granted over shares which are subject to "geared growth" arrangements. Under these arrangements, the shares which are subject to the option have no rights, or limited rights, over the value of the company at the time the options are granted, but have rights over all subsequent growth from that time onwards. This allows a large number of low value shares to be issued within the £30,000 limit, with potentially high growth in the future, which can thereby circumvent that limit.

19. These avoidance arrangements involve share options granted over shares in unlisted companies which are under the control of a listed company. The rules of CSOP are therefore being amended to prevent the use of options over shares in an unlisted company which is under the control of a listed company, to ensure that the effectiveness of the £30,000 limit is not weakened.

20. Where the rules of an approved CSOP scheme provide that a company may grant options over shares in an unlisted company which is under the control of a listed company, such a scheme will no longer meet the requirements of Schedule 4 to ITEPA. The new legislation provides for a transitional period of six months during which the rules of such a scheme may be amended to meet the newly amended requirements of paragraph 17. If schemes are not amended by the end of that period, HM Revenue & Customs may withdraw approval of the scheme.

21. The changes will take effect for all options granted on or after 24 March 2010, with the result that no options granted during the six month transitional period over shares in an unlisted company under the control of a listed company will qualify for the exemption from the charge to income tax in respect of the exercise of the option.

22. Options granted before 24 March 2010 are not affected by this change, and will continue to qualify for the exemption in respect of the exercise of the option, provided the other requirements of the CSOP code are met.

Section 40Schedule 13: Unauthorised Unit Trusts

Summary

1. Section 40 and Schedule 13 introduce legislation to prevent unauthorised unit trusts (UUTs) from being used to generate "repayment" of tax that the UK Exchequer has not received or to avoid certain restrictions on the use of credits for foreign tax.

Details of the Schedule

2. Paragraph 1(2) amends section 941(6) of the Income Tax Act 2007 (ITA) to provide a definition of "deemed income" (see section 943A(3)(b)).

3. Paragraph 1(3) amends section 942 ITA by inserting a new subsection (6) to make clear that double tax relief does not apply to income tax collectable by reference to the amount of deemed payments.

4. Paragraph 1(4) inserts new sections 943A to 943D into ITA.

5. New section 943A(1) provides that the legislation will apply where the following conditions are met:

   - the trustees of a UUT are treated under section 941(2) of ITA as making a distribution ("deemed income") in a tax year;
   - there is a reduction in the income pool in that tax year. This will happen by virtue of Step 1 in section 942(5) of ITA; and
   - the "double tax relief pool" at the start of the tax year is greater than zero (see new section 943C).

6. New sections 943A(2) and (3) provide that where these conditions are met, the "foreign element" of the deemed income is not treated as UK income, but as foreign income. Additionally, the foreign element of the deemed deduction - that is, the amount of tax that is treated as having been deducted from the distribution – is treated as overseas tax, instead of UK tax. The overseas income is treated as arising from a territory with which the UK has no double taxation agreement.

7. New section 943A(4) explains that there is a reduction in the income pool in a tax year when the amount of the pool at the start of the tax year is greater than at the start of the following tax year.

8. New section 943A(5) contains signposts to the sections that contain provisions about the "foreign element" of deemed deductions and deemed income, and the calculation of the double tax relief pool.

9. New section 943B defines what is meant by the foreign element of the deemed income or deemed deduction. It is that proportion of the deemed income or deemed deduction that corresponds to the ratio of A to B.

10. New section 943B(2) provides that "A" is the lesser of the reduction in the amount of the income pool mentioned in section 943A(1) multiplied by the basic rate of tax and the amount of the "double tax relief pool" at the start of the tax year. "B" is the total of the deemed deduction – the tax treated as deducted from the deemed income – referable to that tax year.

11. New section 943C explains how to calculate the foreign tax pool at the start of the tax year for the purposes of section 943A(1). It is the sum of A+B-C, where:

    - A is the amount of the double tax relief pool at the start of the previous tax year. This is taken to be nil if the UUT is established in the current tax year or if the current tax year is the first tax year in which the trustees have been UK resident;

- B is the amount of double tax relief claimed by way of credit by the trustees in the previous tax year; and
- C is the sum of the foreign elements of the deemed deductions made in the previous tax year.

12. This rule is subject to a transitional rule in paragraph 4 for determining the amount of the double tax relief pool as at the start of the tax year 2009-10.

13. New section 943D places a duty upon the trustees of the UUT to provide information to enable unit holders to calculate their tax liabilities or repayments based upon the treatment of some or all of the deemed deduction (treated as made from the deemed payment(s)) as foreign tax, and of some or all of the deemed payments as foreign income.

14. Paragraph 2 of the Schedule provides for consequential amendments to legislation.

15. Paragraph 3 provides for a commencement date of 21 October 2009 – the date the legislation was announced.

16. Paragraph 4 is a transitional rule used for calculating the amount of the double tax relief pool as at the start of the tax year 2009-10. Where amounts A and B are both greater than £20,000 the pool is the lower of amounts A and B; in all other cases it is nil. Paragraph 4 therefore applies a de minimis limit for the purposes of calculating the double tax relief pool at the start of the tax year 2009-10, and only for that year. Amounts A and B are:

- Amount A is the sum of the amounts of double tax relief that has been claimed by way of credit in the tax years 2007-08 and 2008-09; and
- Amount B is 20 per cent of the income pool at the start of 2009-2010.

Background Note

17. The legislation responds to schemes notified to HM Revenue & Customs (HMRC) that seek to take advantage of the tax rules applicable to unauthorised unit trusts by using them to convert foreign income subject to withholding tax into receipts of UK income with an associated UK tax credit.

18. The aim of the schemes is to generate repayment of the tax credit or to avoid restrictions on the use of credits for foreign tax.

19. The legislation ensures that the income is treated as foreign income from which foreign tax has been deducted, to the extent that it is identified as deriving from a foreign source.

20. More information on the amendments can be found in the Technical Note published on the HMRC website on 21 October 2009 and the Written Ministerial Statement ("Anti-Avoidance") made by the Financial Secretary to the Treasury on the same day.

Section 41Schedule 14: Index-Linked Gilt-Edged Securities

Summary

1. Section 41 and Schedule 14 ensure that companies and groups that hold index-linked gilt-edged securities (ILGs) will not be able to benefit from the tax exemption relating to any increase in the carrying value of the ILGs, to the extent that the company or group is not exposed to the inflationary aspect of holding an ILG because of the existence of a linked hedging arrangement.

Details of the Schedule

2. Paragraphs 2 to 5 are consequential amendments. The amendment at paragraph 5(3) is for clarification only.

3. Paragraph 6 inserts new sections 400A, 400B and 400C into the Corporation Tax Act 2009 (CTA).

4. New section 400A of CTA sets out that under certain circumstances an increase to the carrying value of an ILG, by virtue of section 400(2) of CTA, will be reduced.

5. New subsection (1) provides that section 400A of CTA will apply where section 400 of CTA applies in an accounting period and three Conditions (defined in new subsections (2)-(4)) are all met.

6. New subsection (2) is Condition 1. This is that a company ("company A") is party to a "relevant hedging scheme" at any time in an accounting period. "Relevant hedging scheme" is defined at new subsection (6).

7. New subsection (3) is Condition 2. This is that there is an increase in the Retail Prices Index (RPI) between the two times mentioned in section 400(1) of CTA.

8. New subsection (4) is Condition 3. This is that the index-linked capital return on the security, or a proportion of it, is hedged. "Index-linked capital return" is defined at new subsection (7). "Hedged" is defined at new subsection (8).

9. New subsection (5) sets out that where section 400A of CTA applies, the increase in carrying value between the relevant times made under section 400(1) of CTA will be reduced in line with the proportion of the return that is hedged. Where the return is wholly hedged the increase in carrying value will be reduced to nil.

10. New subsection (6) defines "a relevant hedging scheme" as a scheme that has the purpose, or one of the main purposes, of any party to that scheme as being to secure that the index-linked capital return from the security (or a proportion of it) is hedged. There must, therefore, be an intention at the start to hedge the relevant return from the security (even if the security is not immediately held).

11. New subsection (7) defines the "index-linked capital return" as being so much of the return from the relevant security that would cause an increase in the carrying value of the security over the relevant time (disregarding the operation of section 400 of CTA) and that increase is attributable to an increase in the RPI.

12. New subsection (8) explains the circumstances when the index-linked capital return will be considered to be "hedged". This is where (because of the operation of a swap or otherwise) the return, or a proportion of the return, will not affect the pre-tax economic profit or loss made by the relevant group or company. The concept of "economic profit or loss" is defined in new section 400B of CTA (see paragraph 14).

13. New subsection (9) defines "the relevant group or company" as being company A and any other company that is associated with company A that is also party to the relevant hedging scheme. The phrase "associated with" is defined at new section 400C (see paragraph 19). This subsection also makes it clear that if there is no company other than company A that is party to the relevant hedging scheme then the "relevant group or company" refers solely to company A.

14. New section 400B of CTA defines references to "profits and losses" for the purposes of new section 400A of CTA.

15. New subsection (1) sets out that any reference to an "economic" profit or loss includes profits and losses that are unrealised as well as realised profits and losses.

16. New subsection (2) sets out that the economic profit or loss made by a relevant group is made by the members of the relevant group, when considered together.

17. New subsection (3) deals with calculating the economic profit and loss made by a group of companies when they do not have coterminous year-ends. It sets out that the economic profits and loss made by a group that are to be computed over a period should

be computed over that period regardless of whether that period is an accounting period of the member of the group.

18. New subsection (4) sets out that a “pre-tax” economic profit refers to the economic profit without any regard to any profit or loss made as a result of the Corporation Tax Acts.

19. New section 400C of CTA defines the term “associated with” for the purposes of new section 400A of CTA.

20. New subsection (1) sets out that another company (“company B”) is associated with company A at any time during an accounting period of company A where any of five conditions is met. These are defined in new subsections (2)-(6).

21. New subsection (2) is the first condition. This is that the financial results of company A and company B meet the “consolidation condition”. The “consolidation condition” is defined in subsection (7) (see paragraph 26).

22. New subsection (3) is the second condition. This is that company A and company B are connected. As per new subsection (8), section 466 of CTA applies for the purposes of establishing connection.

23. New subsection (4) is the third condition. This is that company A has a major interest in company B or vice-versa.

24. New subsection (5) is the fourth condition. This is that company A and a third company meet the “consolidation condition” (see paragraph 26) and that third company has a major interest in company B.

25. New subsection (6) is the fifth condition. This is that company A and a third company are connected (see paragraph 27) and that third company has a major interest in company B.

26. New subsection (7) sets out the “consolidation condition”. This is that the financial results of any two companies are required to be consolidated into accounts prepared under section 399 of the Companies Act 2006 or, if they are not to be consolidated in such accounts, then this is due to the exemption at section 399(3) of the Companies Act 2006.

27. New subsection (8) sets out that, for the purposes of this section, section 466 of CTA applies for the purposes of establishing connection.

28. Paragraph 9 provides a transitional rule where an adjustment is to be made under section 400(2) of CTA and the earlier time is before 9 December 2009 and the later time is on or after that date. Where this is the case, the company should split the relevant accounting period into two periods; the first being that part that falls up to 9 December 2009 and the second being that part that falls on or after 9 December 2009. The amounts that are brought into account in each period should be calculated on the basis that they are separate periods of account.

Background Note

29. Index-linked gilt-edged securities (ILGs) are securities issued by the Government. They differ from conventional gilts in that both the interest payments and the principal payment are adjusted periodically in line with movements in inflation (as measured by RPI). Consequently, the holder is provided with inflation proofed income.

30. The corporation tax rules for ILGs ensure that their inflation proof quality is not impacted by tax. They achieve this by exempting from tax the adjustment in the accounts carrying value of an ILG to the extent that the adjustment relates to inflation (i.e. movements in RPI).

31. Some companies and groups in the financial sector have entered into avoidance schemes whereby a prima-facie exposure to ILGs is created, thereby triggering the exemption from tax, while ensuring that the exposure to the ILG is fully hedged in the market. The hedge is commonly a derivative, such as a total return swap that effectively eliminates all risk and reward in respect of holding the ILG. This means that while the company or group entering into the scheme remains economically flat, it manages to retain the tax advantage inherent in holding the ILG.

32. The purpose of these new provisions is to ensure that companies and groups undertaking transactions involving ILGs cannot benefit from the tax exemption to the extent that they are not economically exposed to the inflationary aspect because of the existence of a linked hedging arrangement.

Section 42: Approved Share Incentive Plans

Summary

1. Section 42 counters avoidance arrangements which exploit the corporation tax (CT) reliefs available to approved Share Incentive Plans (SIPs). The avoidance involves companies making corporation tax-deductible payments to SIP trustees, for them to buy shares from existing shareholders for use in the SIP. However, few if any shares with real value are ever issued to employees under the SIP. Transactions by the company altering the share capital or rights attaching to SIP shares have the effect of stripping away the value of shares held in the SIP trust.

2. This section amends the current legislation, so that CT deductions will not be available where a payment to SIP trustees is made as part of tax avoidance arrangements, where the main purpose or one of the main purposes of the company making the payment is to obtain the CT relief.

3. It also closes potential loopholes in the provisions allowing HM Revenue & Customs (HMRC) to withdraw approval of a SIP where there are no participants in the SIP, or where no shares have been awarded under the SIP, at the time when alterations are made to the company's share capital or to rights attaching to its shares, or when differences in the treatment of shares within a class of shares occur.

4. The changes will have effect in relation to payments made, alterations to share capital or rights attaching to shares taking place, and differences in the treatment of shares within a class of shares occurring, on or after 24 March 2010.

Details of the Section

5. Subsection (1) introduces amendments to the provisions for SIPs in Schedule 2 (Approved Share Incentive Plans) to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

6. Subsection (2) amends paragraph 84(1) of Schedule 2, which sets out various "disqualifying events" allowing HMRC to withdraw approval of a SIP. It substitutes a revised provision for the current sub-paragraph (d), which is concerned with alterations to the share capital of a company or to the rights attaching to a company's shares that materially affect the value of SIP shares.

7. The key element of the new sub-paragraph (d) is that it applies to alterations materially affecting the value of shares "that are subject to the plan trust". This puts it beyond doubt that the provision is effective even if no shares have been appropriated to participants under the SIP at the time the alterations occur.

8. Subsection (3) amends sub-paragraph (e) of paragraph 84(1), which is concerned with SIP shares receiving different treatment from other shares of that class. The condition that shares "have been awarded to participants" is replaced by "are subject to the plan trust". This puts it beyond doubt that there is a disqualifying event even if no shares

have been awarded to participants under the SIP at the time the difference in treatment occurs.

9. Subsection (4) introduces amendments to section 989 of the Corporation Tax Act 2009 (CTA), which sets out the conditions for companies to receive CT deductions for payments made to SIP trustees to acquire shares for use in the SIP.

10. Subsection (5) inserts a new paragraph (aa) in section 989(1). A further condition for a CT deduction to be allowed is that the payment is not made as part of "tax avoidance arrangements".

11. Subsection (6) inserts new subsections (6A) and (6B) in section 989. These explain the meaning of "tax avoidance arrangements" in the new section 989(1)(aa).

12. New subsections (6A) and (6B) provide that a payment is made as part of "tax avoidance arrangements" if it is made as part of arrangements entered into by the paying company, and the main purpose, or one of the main purposes, of the company in entering into the arrangements was to obtain a deduction or increased deduction for CT. The term "arrangements" is given a wide meaning.

13. Subsections (7) and (8) provide for the amendments made by subsections (1) to (3) of the section have effect in relation to events taking place on or after 24 March 2010, and those made by subsections (4) to (6) to have effect in relation to payments made on or after that date.

Background Note

14. SIPs are tax-advantaged employee share schemes that allow employees to obtain shares in the company they work for (or, in the case of a group scheme, shares in the parent company of their employing company). Subject to limits, employees may receive shares free of charge; they may use their own money to buy shares; or there may be a combination of free and bought shares. If the shares are held in the SIP for five years, there is no income tax or National Insurance contributions liability for employees.

15. Section 989 of CTA allows a CT deduction where (subject to conditions) a company pays money to the trustees who operate the SIP, for them to acquire shares from non-corporate shareholders for use in the plan. HMRC may withdraw the deduction (under section 990 of CTA) if shares are not appropriated to employees under the SIP within certain time limits - 30 per cent of the shares within five years of their acquisition and 100 per cent within 10 years.

16. Some companies are using avoidance arrangements involving a SIP to obtain a CT deduction for money paid to SIP trustees, where it is clear that they have no intention of passing shares with real value to their employees under the SIP.

17. These avoidance arrangements involve companies entering into transactions which alter the share capital or the rights attached to the shares, with the effect of stripping away the value of shares held in the SIP trust.

18. The amendments under this section will allow HMRC to deny the CT deduction if it was the main purpose or one of the main purposes of the company making the payment to obtain the deduction. This will apply in those cases where there is evidence that the company was involved in avoidance arrangements of this type. It will not affect companies (the great majority) that make payments to SIP trustees with the intention of genuinely providing shares to their employees under the SIP.

19. The section also ensures that HMRC can withdraw approval of the SIP where 'value shifting' transactions involving the company's share capital or the rights attaching to the shares materially affect the value of participants' plan shares. This change is a limited one, designed to put it beyond doubt that approval may be withdrawn even where there

are no participants in the SIP, or where no shares have been awarded under it, at the time the transactions take place.

Section 43 Close Companies: Release of Loans to Participators Etc

Summary

1. Section 43 amends the corporation tax (CT) rules on loan relationships by providing that a close company is not entitled to a deduction for the release or writing off of a loan to a participator in that company.

Details of the Section

2. Section (1) inserts new section 321A into the Corporation Tax Act (CTA) 2009.

3. New section 321A(1) applies where a loan giving rise to a charge under section 455 of CTA 2010 is released or written off in whole or in part. Section 455 of CTA 2010 applies where a close company makes a loan or advances money to a relevant person who is a participator in that company or an associate of such a participator. A relevant person is defined as an individual, or a company receiving a loan or advance in a fiduciary or representative capacity.

4. New section 321A(2) prohibits a debit arising from the circumstances described in subsection (1) from being brought into account for the purposes of the CT rules on loan relationships.

5. Section (2) gives the commencement date for the new section, which has effect for debt (or part debt) releases or write-offs on or after 24 March 2010.

Background Note

6. Close companies are defined in section 439 of CTA 2010. In general a company is a close company if it is under the control of five or fewer participators or of participators who are directors. A participator is defined in section 454 of CTA 2010 as "a person having a share or interest in the capital or income of the company".

7. Special CT rules for close companies aim to address the tax advantages that may arise from the fact that such companies are controlled by its participators. The release of loans made to participators is an example of such an advantage.

8. A participator will normally extract profits from a company by receiving employment income or dividends/distributions.

9. If taken as dividend it is taxed as investment income on the recipient who is entitled to a tax credit. There will be no further income tax liability unless they are a higher rate taxpayer. However, the company receives no CT deduction for the dividend paid.

10. If taken as employment income the participator is charged to income tax with no tax credit. However, the company will receive a CT deduction for the amount paid.

11. Where a company makes a loan to the participator and releases it, the recipient of the released loan is charged to income tax but is treated as having paid income tax at the dividend ordinary rate. As with the receipt of a dividend, there will be no further liability to income tax unless they are a higher rate taxpayer. However, under the CT rules governing corporate debt (the 'loan relationships' rules) a loan released will normally give rise to an expense recognised in the company's accounts and be allowable for corporation tax purposes.

12. This section broadly restores the tax treatment of loans made to close company participators to the position that existed until 2002, when changes were made to the definition of connected party in the loan relationships rules. It does not re-impose the pre-2002 rules on connection, but it does prevent close companies from obtaining a tax

deduction for what is in effect a distribution to the participator. It does not change the income tax treatment on the person to whom the released or written off loan was made.

Section 44Schedule 15: Connected Companies: Release of Debts

Summary

1. Section 44 and Schedule 15 amend the corporation tax rules on loan relationships that apply to impaired debts between connected companies. Under the current rules, where a company ("C") acquires debt owed by a connected company ("D") to a third party, which has been written down in value ("impaired"), an amount is taxable on D in respect of a "deemed release". This deemed release is equal to the discount to the face value of the debt at which D acquires the debt. There is an exemption from this deemed release in certain corporate rescue situations. The amendments to these rules change the conditions under which exemption from a deemed release is available, for transactions occurring on or after 14 October 2009. They also ensure that releases of debt bought back that benefited from the new corporate rescue and debt for debt exemption will result in the discount being taxed on the debtor. Where the subsequent release involves a debt equity swap there is a further amendment that applies to releases made on or after 9 November 2009 to ensure such releases under a debt equity swap will also result in the discount being taxed on the debtor.

Details of the Schedule

2. Paragraph 1 amends section 322(4) of the Corporation Tax Act 2009 (CTA), and inserts a new subsection (4A).

3. Section 322(4) of CTA ensures that loan relationship credits are not brought into account where a debt is released in consideration of the issue of ordinary shares by the debtor company. The effect of the amendment to section 322(4) and new section 322(4A) is to disapply this rule where the release in question is a "release of relevant rights". The term "relevant rights" is defined in section 358 of CTA.

4. Paragraph 2 makes a number of changes to Chapter 6 of Part 5 of CTA, by amending sections 358 and 361 of CTA, and inserting new sections 361A, 361B and 361C of CTA.

5. Section 358 of CTA currently provides that a loan relationship credit arising from the release of a debt by a connected creditor company is only taxable if it is a "deemed release" within sections 361 and 362 of CTA. The section is amended so that a taxable credit also arises from a "release of relevant rights".

6. New subsections (4) to (6) of section 358 define the term "relevant rights" as rights that would have been taxable as a "deemed release" but for the application of new sections 361A and 361B. The amount of the credit in such cases is the amount of any discount at which the connected creditor acquired the impaired debt from a third party, less any amounts in respect of which the connected creditor was taxed before the release.

   Example

   Company D owes 100 to unconnected company A. Company C, which is connected with company D acquires the debt for 80. A deemed release of 20 would have been taxable in company D but for the fact that one of the exemptions in sections 361A or 361B applied. If company C then releases D from the debt, a credit of 20 will be taxable on company in respect of the release of relevant rights.

7. Section 361 CTA is amended to substitute new subsection 361(1)(f) and new subsection 361(2). These changes have the effect of replacing the current exemption from the charge on a "deemed release" under section 361 of CTA with three new exemptions – the "corporate rescue exception", the "debt-for-debt" exception, and the "equity-for-debt" exception. These are set out in new sections 361A, 361B and 361C.

8. New section 361A provides the "corporate rescue exception". No loan relationships credit will arise on a deemed release under section 361 where a connected company acquires the debt owed by a connected debtor company to a third party company provided:

   - the acquisition by the new creditor is at arm's length;
   - there has been a change in ownership of the debtor company in the period beginning one year before and ending 60 days after the acquisition of the debt;
   - it is reasonable to assume that but for the change in ownership the debtor company would have met the insolvency conditions in section 322(6) of CTA; and
   - it is reasonable to assume that the new creditor would not have acquired the debt but for the change in ownership.

9. The term "change in ownership" takes its meaning from section 769 of the Income and Corporation Taxes Act 1988 (ICTA), subject to some specific rules for building societies.

10. New section 361B provides the "debt-for-debt" exception. No loan relationships credit will arise on a deemed release under section 361 where a connected company issues a new security in consideration of the acquisition of an old security or enters into an unsecured loan in consideration of the acquisition of an old unsecured loan of a connected debtor company provided certain conditions are met.

11. Where the consideration given for the old security is a new security, the acquisition by the new creditor must be at arm's length and the new security must have the same nominal and substantially the same market value as the old security.

12. Where the consideration given for the old unsecured loan is a new unsecured loan, the acquisition by the new creditor must be at arm's length and the terms of the new unsecured loan must be substantially the same as that of the old unsecured loan.

13. New section 361C provides the "equity-for-debt" exception. No loan relationships credit will arise on a deemed release under section 361 where a connected company acquires the debt owed by a connected debtor company to a third party company provided:

   - the acquisition by the new creditor is at arm's length; and
   - the consideration given by the new creditor consists of its own ordinary shares or those of another connected company.

14. Paragraph 3 provides for the commencement of the new rules. The new conditions for the exemption from a credit on a deemed release under section 361 of CTA have effect for acquisitions of debt on or after 14 October 2009. The imposition of a credit on a "release of relevant rights" has effect only where it relates to a release of debt acquired on or after that date. Accordingly, where a creditor releases a connected debtor from a debt acquired before that date, no credit will arise under section 358 of CTA. Where the "release of relevant rights" takes place under a debt equity swap the new condition in section 322(4A) has effect in relation to releases that take place on or after 9 November 2009.

15. Paragraphs 4 and 5 provide transitional rules. These changes do not have effect where there was an agreement to acquire the debt in question in place before 14 October, or where the there was not actually an agreement in place provided one of the following conditions are met. The conditions are that:

   - before 14 October there must have been a proposal (made either by the old creditor or new creditor (or persons acting on their behalf or persons who control them) that the new creditor will acquire the debt;

- if the debt is in the form of securities, a proposal for the new creditor to acquire them must have been made to or by the holders of at least 50 per cent of the securities before 14 October; and
- before 14 October the Financial Services Authority (FSA) gave its agreement to the acquisition of the debt by the new creditor, and where this agreement was subject tot the agreement of any other party that agreement had also been given and not withdrawn before 14 October, and one of the two conditions in the previous bullets would have been met but for one or other of the parties complying with terms on which the FSA agreement was given.

16. For these conditions to apply, the acquisition must have been completed before 31 January 2010.

Background Note

17. The rules that apply to loan relationships work on the principle that amounts taxed and relieved as credits and debits under those rules are the profits and losses arising in accounts drawn up in accordance with generally accepted accounting practice. When a debt is impaired or written off by a creditor company its expense will normally be allowable as a loan relationships debit. When a debtor company is released from a debt it owes, its profit will be taxable as a loan relationships credit.

18. Where a debt exists between connected companies, such credits and debits are not normally brought into account for tax purposes. Exceptions to this approach prevent its exploitation when companies become connected. In particular, when debt that has been impaired by an unconnected company is then acquired by a company connected to the debtor, the tax rules impose a deemed release on the debtor. There is, in turn, an exemption from this deemed release to cater for "corporate rescues" where the debtor is in financial distress and a third party acquires the company and the debt it owes to unconnected companies.

19. This exemption has been used by companies to buy back publicly-issued debt that has been trading at a discount in the financial markets, in order to avoid the tax charge that would normally arise when debt is redeemed for less than the amount originally paid for it. The changes to these rules restricts the exemptions available to cases where there is a genuine corporate rescue, and to certain cases where a group engages in a self-rescue by way of issuing new debt or shares in exchange for old debt.

Section 45: Relationships Treated as Loan Relationships Etc: Repos

Summary

1. Section 45 clarifies that manufactured payments received by companies in the course of certain sale and repurchase ("repo") transactions must be taken into account in calculating profits chargeable to corporation tax if they are taken into account in computing accounting profits. The clarification follows a recent challenge to the repo legislation in Chapter 10 of Part 6 of the Corporation Tax Act 2009 (CTA) – and its predecessor Schedule 13 to the Finance Act (FA) 2007 – that manufactured payments received by companies may not have to be taken into account for tax purposes if the securities to which they relate are not recognised on the companies' balance sheets.

Details of the Section

2. Subsection (1) amends paragraph 4 of Schedule 13 to FA 2007 by inserting additional wording into the rules dealing with manufactured payments received by companies to put beyond doubt that where such amounts are received in the course of a repo, those payments must be taken into account for tax to the extent they are taken into account in accordance with generally accepted accounting practice (GAAP).

3. Subsection (2) makes an equivalent change to section 550 of CTA, which is identical to paragraph 4 of Schedule 13, to ensure that repos to which that Act applies are also covered by the change.

4. Subsection (3) contains the commencement rule, which is that the amendments are to be treated as always having had effect. In practice this means that they are treated as having effect from the date the legislation in respect of repos came into force – 1 October 2007.

Background Note

5. Manufactured payments arise where under an arrangement for the transfer of securities one party is required to pay to the other an amount that is representative of real income on those securities.

6. The changes made by subsections (1) and (2) are a response to an assertion that the legislation in respect of repos is defective in its treatment of manufactured payments received by companies in the course of repos involving securities not recognised on the balance sheet. In these cases, it has been suggested that the implicit fiction in section 550(3)(a) of CTA (and for earlier transactions to which CTA does not apply paragraph 4(3)(a) of Schedule 13 to FA 2007) that the seller of the securities receives the real income from those securities is overridden by an alleged requirement in section 550(5)(a) (paragraph 4(4)(a) of Schedule 13 to FA 2007) that the real income must actually be taken into account under GAAP.

7. HM Revenue & Customs does not accept that this is the case, but the amendments put beyond doubt that the GAAP result must be respected for tax even if the accounts take into account manufactured payments instead of real income.

Section 46Schedule 16: Risk Transfer Schemes

Summary

1. Section 46 and Schedule 16 provide legislation that restricts Exchequer exposure to losses from overhedging and underhedging structures (“risk transfer schemes”) to the real economic loss from those transactions. This is achieved by ensuring that any losses from these arrangements, other than the real economic loss at group level, are ring-fenced and can only be offset against profits from the same arrangements.

Details of the Schedule

2. Paragraphs 1 and 2 are consequential amendments to the Corporation Tax Act (CTA) 2010.

3. Paragraph 3 inserts new sections 937A to 937O into CTA 2010.

4. New section 937A contains an overview of the provisions relating to risk transfer schemes.

5. New section 937B identifies risk transfer schemes that are group schemes or single company schemes.

6. New subsection (1) sets out that a risk transfer scheme can be a “group scheme” or, if it is not, is a “single company scheme”. The risk transfer scheme provisions apply to single company schemes with modification; as per new subsection (4).

7. New subsection (2) defines risk transfer schemes that are a “group scheme” This is that at least one other company is both associated with the relevant company and also party to the same scheme. The term “associated with” is defined at new section 937K.

8. New subsection (3) defines “the relevant group” for the purposes of these provisions. This the company that is party to the risk transfer scheme along with any other company

that is associated with that company and is party to the same scheme (as per new subsection (2)).

9. New subsection (4) sets out that the risk transfer scheme provisions are modified in the case of single company schemes. These modifications are set out at new subsection (5).

10. New subsection (5) sets out the modifications that are made to the risk transfer scheme provisions where the relevant scheme is a single company scheme. These are that all references to the "relevant group", or members of the relevant group, are taken as being a reference to "company A". Additionally, new sections 937E(2) and 937L(2) are to be treated as omitted.

11. New section 937C sets out the meaning of a "risk transfer scheme".

12. New subsection (1) sets out that in order for a company to be party to a "risk transfer scheme" then three conditions (defined in new subsections (2), (4) and (5)) must all be met.

13. New subsection (2) is Condition 1. This is that the main purpose, or one of the main purposes, of any member of the relevant group on entering into the scheme is to obtain a "financial advantage" for the relevant group. It must be reasonable to assume that the "financial advantage" could not otherwise have been obtained without the relevant group becoming subject to (or incurring the cost of avoiding) a "relevant risk". The terms "financial advantage" and "a relevant risk" are defined at new subsections (6) and (3) respectively.

14. New subsection (3) defines the term "a relevant risk". This is that, due to fluctuations in any sort of price or value (including rates of currency exchange between two currencies and the retail price index) the relevant group is subject to the risk of making an "economic loss". "Economic loss" is defined at new section 937L.

15. New subsection (4) is Condition 2. This is that the result of the scheme (ignoring the operation of these provisions) causes the relevant group not to be subject to the relevant risk, or is subject only to a negligible proportion of that risk.

16. New subsection (5) is Condition 3. This is that if it were not for the operation of the Corporation Tax Acts, Condition 3 would be failed. In other words, that it is the operation of the Corporation Tax Acts that allows the relevant group not to be subject to (or only subject to a negligible proportion of) the relevant risk.

17. New subsection (6) defines the term "financial advantage". This is that, combining the impact of the scheme on each member of the relevant group, the effect of the scheme is to increase returns on an investment, reduce the cost of borrowing or have an effect economically equivalent to either of those effects.

18. New section 937D provides the meaning of "the scheme, rate, index or value". This is the rate, index or value that is relevant to the risk transfer scheme i.e. the one that is mentioned at new sections 937(3)(a), (b) or (c).

19. New section 937E provides the meaning of "scheme loss" and "scheme profit".

20. New subsection (1) explains that a loss or profit made by a company is a "scheme loss" or "scheme profit" in relation to a risk transfer scheme if the scheme loss or profit is from a loan relationship or derivative contract that is part of the scheme and would, apart from the operation of these rules, be brought into account under the loan relationship rules (part 5 of CTA 2009) or derivative contract rules (part 7 of CTA 2009). The profit or loss must also have arisen due to fluctuations in the relevant rate, index or value pertaining to the scheme.

21. New subsection (2) clarifies that where a scheme profit or loss is required to be calculated over a period that is not an accounting period of the relevant company, then

any reference to scheme profit or scheme loss would be that arising on the basis that the relevant period was an accounting period of the company.

22. New subsection (3) clarifies that the reference in new subsection (1) to a loss or profit from a loan relationship or derivative contract includes a loss or profit from a related transaction or one that is capital in nature.

23. New subsection (4) defines "related transaction" for the purposes of new subsection (3)(a) as being in accordance with its normal meaning in the loan relationship and derivative contract rules, as provided in sections 304 and 596 of CTA 2009 respectively.

24. New section 937F makes provision for how to calculate "ring-fenced scheme losses" and "relevant scheme profits".

25. New subsection (1) provides that new subsection (2) will apply if a company makes one or more scheme losses in an accounting period in relation to a risk transfer scheme and, ignoring profits and losses made by the group not as a result of the scheme, then the relevant group makes a pre-tax economic loss in the relevant period as a result of movements in the relevant rate, index or value pertaining to the scheme.

26. New subsection (2) provides that the "relevant proportion" of each scheme loss made by a company is a "ring fenced scheme loss". The relevant proportion is calculated as per new subsection (3)

27. New subsection (3) defines the "relevant proportion" as being the total of "A" less "B" less "C" expressed as a proportion of "A". "A" is the total of the scheme losses made in the period in relation to the scheme by members of the relevant group. "B" is the total of the scheme profits made in the period in relation to the scheme by members of the relevant group. "C" is the pre-tax economic loss referred to in new subsection (1)(b).

28. New subsection (4) provides that new subsection (5) will apply if a company makes one or more scheme profits in an accounting period in relation to a risk transfer scheme and, ignoring profits and losses made by the group not as a result of the scheme, the relevant group makes a pre-tax economic profit in the relevant period as a result of movements in the relevant rate, index or value pertaining to the scheme.

29. New subsection (5) provides that the relevant proportion of each scheme profit made by the company in the accounting period is a "relevant scheme profit".

30. New subsection (6) defines the relevant proportion as being the total "A" less "B" less "C" expressed as a proportion of "A". "A" is the total of the scheme profits made in the period in relation to the scheme by members of the relevant group. "B" is the total of the scheme losses made in the period in relation to the scheme by members of the relevant group. "C" is the pre-tax economic profit referred to in new subsection (4)(b).

31. New section 937G deals with the treatment of ring-fenced scheme losses in the accounting period in which they are made.

32. New subsection (1) provides that this section applies when a company is required to calculate the amount of ring-fenced scheme loss that can be brought into account by a company in the same accounting period in which that loss arose.

33. New subsection (2) provides that no ring-fenced scheme loss can be brought into account if the company's profits pool, for the same scheme, at the start of the accounting period is nil.

34. New subsection (3) applies where there are amounts in the company's profits pool at the beginning of the relevant accounting period but that amount is less than the amount of the ring-fenced scheme losses made by the company in the relevant period in relation to the same scheme. Where that is the case, only the "relevant proportion" of the ring-fenced scheme loss may be brought into account. The "relevant proportion" is calculated as per new subsection (4).

35. New subsection (4) provides the calculation of the “relevant proportion” for the purposes of new subsection (3). This is the amount of the company’s profits pool at the start of the accounting period divided by the total of the ring-fenced scheme losses in the period made by that company that relate to the same scheme.

36. New subsection (5) provides that the full amount of scheme loss will be brought into account in a period where the company’s profits pool, at the beginning of the period, is greater than, or equal to, the total of ring-fenced scheme losses made by the company in that period in relation to the same scheme.

37. New subsection (6) clarifies that references to bringing a ring-fenced scheme loss into account refer to bringing it into account for the purposes of the loan relationship (Part 5 of CTA 2009) or derivative contract (Part 7 of CTA 2009) rules.

38. New section 937H deals with the treatment of ring-fenced losses in periods later than the accounting period in which they arose.

39. New subsection (1) provides that this section will apply where there are amounts in a company’s losses pool at the beginning of an accounting period. In addition, the company must have made a scheme profit in relation to the same risk transfer scheme and, ignoring profits and losses made by the group not as a result of the scheme, then the relevant group makes a pre-tax economic profit in the relevant period as a result of fluctuations in the relevant rate, index or value that pertains to the scheme.

40. New subsection (2) sets out the amount of the losses pool at the beginning of the period that is now brought into account as though it arose from a loan relationship. This is the amount of the losses pool, up to a maximum of the relevant scheme profits made in the period, in proportion to the amount of the relevant scheme profits in that period that arose from loan relationships.

41. New subsection (3) sets out the amount of the losses pool at the beginning of the period that is now brought into account as though it arose from a derivative contract. This is the amount of the losses pool, up to a maximum of the relevant scheme profits made in the period, in proportion to the amount of the relevant scheme profits that arose from derivative contracts.

42. New subsection (4) clarifies that references to bringing a ring-fenced loss into account is to bringing it into account for the purposes of determining debits and credits under the rules relating to loan relationships or derivative contracts (Part 5 and Part 7 of CTA 2009 respectively).

43. New section 937I deals with calculating the amounts of a company’s losses pool and profits pool.

44. New subsection (1) provides that a company’s losses pool for a risk transfer scheme, at the beginning of an accounting period, is the total of the amount of the loss pool at the beginning of the previous accounting period plus the scheme loss made in the previous accounting period that was not brought into account in that period. From this any scheme losses that were brought into account as a result of the rules relating to offsetting losses in later periods would be deducted. Where a risk transfer scheme starts in the current accounting period, it is assumed that the loss pool at the start of the period is nil.

45. New subsection (2) provides that a company’s profits pool for a risk transfer scheme, at the beginning of an accounting period, is the total of the amount of the profits pool at the beginning of the previous accounting period plus the scheme profits made by the company in the previous accounting period that were not offset by a scheme loss in that previous period. From this any scheme losses that were brought into account in the previous accounting period as a result of the rules relating to offsetting loss in the period in which they arose would be deducted. Where a risk transfer scheme starts

in the current accounting period, it is assumed that the profits pool at the start of the period is nil.

46. New section 937J sets out the tax capacity assumption.

47. New subsection (1) sets out that the tax capacity assumption applies for the purposes of determining whether condition 2 in new section 937C is met.

48. New subsection (2) sets out that the tax capacity assumption is that economic profits and losses must be calculated, when there is a scheme loss, on the basis that the company obtained the "full tax benefit" of the loss. The concept of the "full tax benefit" is defined at new subsection (3).

49. New subsection (3) defines the "full tax benefit" as being the reduction in corporation tax liability that would result if the scheme loss is fully deductible from an equivalent amount of taxable profits.

50. New subsection (4) clarifies that references to bringing a loss into account is to bringing it into account for the purposes of determining debits and credits under the rules relating to loan relationships or derivative contracts (Part 5 and Part 7 of CTA 2009 respectively).

51. New section 937K provides the meaning of "associated with".

52. New subsection (1) sets out that in order for two companies ("company A" and "company B") to be associated at any time then any of five conditions (set out at new subsections (2) to (6)) need to be met.

53. New subsection (2) is the first condition. This is that the financial results of company A and company B meet the "consolidation condition". The "consolidation condition" is defined in new subsection (7).

54. New subsection (3) is the second condition. This is that company A and company B are connected for the accounting period of A in which the relevant time falls. As per new subsection (8), the definition of connection used for the purposes of loan relationships at sections 466 to 471 of CTA 2009 will apply.

55. New subsection (4) is the third condition. This is that company A has a major interest in company B, or vice-versa. As per new subsection (8), the definition of "major interest" used for the purposes of loan relationships at sections 473 and 474 of CTA 2009 will apply.

56. New subsection (5) is the fourth condition. This is that company A and a third company meet the "consolidation condition" and that the third company has a major interest in company B.

57. New subsection (6) is the fifth condition. This is that company A and a third company are connected (as per new subsection (8)) and that third company has a major interest in company B.

58. New subsection (7) sets out the "consolidation condition". This is that the financial results of any two companies are required to be consolidated into account prepared under section 399 of the Companies Act 2006 or, if that are not to be consolidated into such accounts, then this is due to the exemption at section 399(3) of the Companies Act 2006.

59. New subsection (8) imports the definitions of "connection" and "major interest" from the loan relationships legislation at sections 466 to 471 and sections 473 and 474 of CTA 2009 (respectively) into new section 937K.

60. New section 937L provides interpretation of the references in the risk transfer rules to "economic" losses and profits.

61. New subsection (1) sets out that any reference to an "economic" profit or loss includes profits and losses that are unrealised as well as realised profits and losses.

62. New subsection (2) sets out that the economic profit or loss made by a relevant group is made by the members of the relevant group, when considered together.

63. New subsection (3) deals with situations where any member of the group makes a scheme loss or profit in an accounting period that, under generally accepted accounting practice, is calculated by reference to fluctuations in the relevant rate, index or value over a longer period. In any such case the economic profit or loss of the group insofar as it relates to that scheme loss or profit is to be computed over that longer period.

64. New subsection (4) sets out that when calculating an economic profit or loss made by a group of companies that do not have coterminous accounting periods then the amounts are still to be calculated over the accounting period of the company whose scheme profit or loss is being considered. This is subject to the rule at new subsection (3) regarding scheme profits or losses computed over longer periods. However, amounts are only to be taken into account to the extent that they relate to the times when the relevant company is party to the risk transfer scheme.

65. New subsection (5) clarifies that a "pre-tax" economic loss or profit refers to the economic profit without any regard to any profit or loss made as a result of the Corporation Tax Acts.

66. New section 937M deals with foreign currency accounting.

67. New subsection (1) clarifies that, when calculating amounts for the purposes of the risk transfer scheme provisions in relation to a particular company, then economic profits and losses are to be calculated in the "tax calculation currency" of that company in that accounting period.

68. New subsection (2) defines "tax calculation currency" for the purposes of new subsection (1) as having the same meaning as that in section 17(5) of CTA 2010.

69. New section 937N provides a definition of "scheme" for the purposes of the risk transfer scheme provisions.

70. New section 937O provides for a regulation-making power in connection with the application of the risk transfer scheme provisions to dealers in securities.

71. New subsection (1) provides the Treasury with the power to amend, by way of order, the rules in the risk transfer scheme provisions such that they can apply to losses and profits made in a trade. As per section 1171 of CTA 2010, such an order would be exercisable by way of statutory instrument and subject to negative procedure.

72. New subsection (2) limits the regulation-making power in new subsection (1) to losses and profits made by a company that carries on a banking business, an insurance business, or a business consisting wholly or partly of dealing in securities.

73. New subsection (3) defines "securities" for the purposes of new subsection (2).

74. New subsection (4) clarifies that any order made under the power in new subsection (1) may make different provisions for different cases or purposes and that incidental, consequential, supplementary or transitional provision may be included.

75. Paragraph 4 of the Schedule contains an index of defined expressions.

76. Paragraph 5 provides for commencement and transitional rules.

77. Sub-paragraph (1) sets out that the commencement date for the risk transfer scheme provisions is 1 April 2010.

78. Sub-paragraph (2) sets out that an accounting period is to be treated as split where it begins before the commencement date and ends on or after the commencement date.

79. Sub-paragraph (3) sets out that where an accounting period is to be treated as split (as per sub-paragraph (2)) then that part of the accounting period that falls before the commencement date and that part of the accounting period that falls on or after the commencement date are to be treated as though they are separate accounting periods.

80. Sub-paragraph (4) sets out that in relation to the first accounting period to which the risk transfer scheme provisions apply then rules relating to the calculation of a company's losses pool or profits pool at the start of an accounting period (new section 937I) will not apply. Similarly, at the beginning of the period, the company's losses pool and profits pool are to be nil.

Background Note

81. Overhedging and underhedging arrangements ("risk transfer schemes") primarily seek to exploit the tax provisions in order to achieve better returns or lower borrowing costs available where there is an exposure to a risk, such as foreign exchange, while effectively passing that exposure on to the Exchequer.

82. This is achieved by fragmenting transactions amongst different group companies to ensure that an individual company can get tax relief for a larger loss than the economic loss to the group as a whole. It is structured to ensure that the tax relief on the loss at entity-level fully offsets the economic loss to the group as a whole.

83. The purpose of these provisions is to ensure that any losses from risk transfer scheme arrangements are ring-fenced such that they can only be relieved against profits from the same risk transfer scheme. This will prevent such losses from reducing the group's tax liabilities except to the extent that the same scheme has generated previous taxable profits.

84. The rules will apply to instruments that are treated, for tax purposes, as loan relationships or derivative contacts. There is also a regulation-making power to extend these provisions, if considered necessary, to include trading profits and losses made by certain types of business within the financial sector.

Section 47: Apportionment of Asset Value Increases

Summary

1. Section 47 amends the operation of the apportionment provisions of section 432C of the Income and Corporation Taxes Act 1988 (ICTA) in certain specific circumstances. Where the section applies, the apportionment of the increase in the value of non-linked assets brought into account to a particular category of life insurance business is modified.

Details of the Section

2. Subsection (1) inserts new section 432CA into Chapter 1 of Part 12 of ICTA.

3. New section 432CA(1) provides that the provisions apply when, for a period of account:

   a) a company is not a non-profit company or has elected to be treated as a non-profit company;

   b) an amount is brought into account in a revenue account as an increase in the value of non-linked assets;

   c) section 432C of ICTA applies to determine the extent to which the amount brought into account is referable to life assurance business or gross roll-up business; and

d) the amount in line 51 of Form 14 of the company's periodical return is less than the amount shown for the previous period of account.

4. When the provisions of new section 432CA apply, the difference between the amount in line 51 of Form 14 for the current period and the amount at line 51 of Form 14 for the previous period of account is identified. The lesser of that amount and the "relevant brought into account amount" for the current period of account is, for the purposes of applying section 432C of ICTA only, not treated as brought into account in the current period of account but is instead treated as if it had been brought into account in an earlier period of account or periods of account. This amount is the "affected amount".

5. New section 432CA(2) sets out that the "relevant brought into account amount" is the total of the amount brought into account as an increase in value of non-linked assets, amounts deemed to be brought into account as an increase in the value of non-linked assets by virtue of section 83(2B) of the Finance Act (FA) 1989 and amounts taken into account under section 83(2) of FA 1989 by virtue of section 444AB of ICTA.

6. The rules which determine the period(s) of account for which the "affected" amount is treated as being brought into account, for the purposes of applying section 432C of ICTA only, are in new section 432CA(4) to (10).

7. New section 432CA(5) identifies the periods of account in which the affected amount may be treated as being brought into account ("the appropriate periods of account") as those in which there has been an increase in line 51 of Form 14 for the period when compared with the same figure for the previous period of account. The amount of that increase is the "relevant increase".

8. The "affected amount" is first allocated to the most recent appropriate period of account. Any excess of the "affected amount" over the relevant increase for that most recent period of account is then allocated to the next most recent appropriate period of account and so on.

9. Subsection (2) of the section provides for new section 432CA to have effect for accounting periods beginning on or after 9 December 2009.

10. Subsection (3) restricts the identification of appropriate periods of account to those which began on or after 9 December 2009.

11. If after allocation to the appropriate periods of account some or all of the "affected amount" has not been allocated to a period of account, subsection (4) specifies that the unallocated "affected amount" is treated as brought into account as an increase in value of the latest period of account beginning before 9 December 2009.

Background Note

12. The income and gains of a company's life insurance business are taxed as they are brought into account in the company's regulatory return to the Financial Services Authority (FSA). FSA rules allow companies to defer recognition of income and gains and this deferral is effective for tax purposes.

13. When income and gains are recognised they are apportioned between categories of business on the basis of the mix of business liabilities at the time when the profits are recognised not when they accrued. In a recent case, a company recognised a substantial amount of deferred income and gains, accrued in a period where the business was substantially life insurance business, in a period of account where there were no net life insurance business liabilities. This manipulation could have the effect of eliminating the tax due on these profits, particularly where non-profit funds were concerned.

14. On 15 July 2009 Written Ministerial Statements were laid before Parliament announcing an intention, following industry consultation, to legislate to prevent the

manipulation of the liabilities in a non-profit fund in order to avoid tax when previously unrecognised profits are recognised.

15. Following the Written Ministerial Statements, HM Revenue & Customs consulted widely with industry representative bodies and all those insurance companies that would be affected by a change of legislation. That consultation continued after draft clauses were published at the 2009 Pre-Budget Report and the legislation is the fruit of that consultation.

Section 48: Extension of Special Annual Allowance Charge

Summary

1. Section 48 amends Schedule 35 to the Finance Act (FA) 2009 to lower the income threshold at which an individual is a high income individual for the purposes of determining whether the special annual allowance charge is applicable. The income threshold is lowered from £150,000 to £130,000 on and after 9 December 2009.

Details of the Section

2. Subsection (2) amends paragraph 1(2) of Schedule 35 to reduce the relevant income threshold at which an individual becomes a high income individual from £150,000 to £130,000 and inserts a reference to new paragraph 16A.

3. Subsection (3) amends paragraph 2(1) and (2) to substitute a threshold of £130,000 rather than £150,000 when calculating an individual's relevant income. It also amends the anti-avoidance rule at paragraph 2(3) so that it applies if there is a scheme to reduce the individual's relevant income below £130,000.

4. Subsection (4) inserts a new sub-paragraph 5A in Schedule 35. New sub-paragraph 5A provides that only employment income the individual has agreed to give up under a salary sacrifice scheme made on or after 9 December 2009 is taken into account when determining if an individual has relevant income of £130,000 or more.

5. Subsection (5) corrects an omission in Schedule 35 by inserting 2009 after 22 April.

6. Subsection (6) inserts a new paragraph 16A in Schedule 35. New paragraph 16A only applies to individuals with relevant income below £150,000 in 2009-10. Paragraph 16 of Schedule 35 provides how to determine how much of the pension input amounts for that year are pre-22 April 2009 input amounts and do not therefore give rise to the special annual allowance charge. New paragraph 16A ensures that the same protection from the special annual allowance charge is provided for those with an income of less than £150,000 during 2009-10 in respect of pre-9 December 2009 pension input amounts.

7. New paragraph 16A(6) provides that an individual whose relevant income in 2009-10 is less than £150,000 is nonetheless a high-income individual for the purposes of the special annual allowance charge in that tax year if the individual's relevant income in either of the two preceding tax years was £130,000 or more.

8. New paragraph 16A(7) provides an anti-avoidance rule so that if there is a scheme the purpose of which is to reduce the individual's relevant income for 2009-10 so that it is less than £150,000 in order to prevent the individual from being subject to the special annual allowance charge, the individual shall be treated as an individual with a relevant income of £150,000 who is liable to the special annual allowance charge.

9. Subsection (7) provides that the amendments made by the section have effect for 2009-10 and subsequent years. This is subject to paragraph 21(2) of Schedule 35 to FA 2009, which provides a power for HM Treasury to make regulations switching off the special annual allowance charge from the beginning of a particular tax year.

Background Note

10. At Budget 2009, the Chancellor announced changes to the tax relief available on pension savings for individuals whose income is £150,000 or higher.

11. The Government intends to restrict the availability of tax relief to basic rate on contributions to registered pension schemes for individuals whose income is £150,000 or higher with effect from 6 April 2011.

12. In anticipation of that new restriction, Schedule 35 to FA 2009 introduced new rules to apply from 22 April 2009 to restrict higher rate tax relief on pension contributions for individuals. This introduced the special annual allowance charge, an income tax charge at 20 per cent for certain individuals on certain pension contributions and benefits accrued.

13. These restrictions apply to people:

- whose income is £150,000 or higher;
- who change their normal ongoing regular pension savings; and
- whose total pension savings exceed £20,000 (or the lower of £30,000 and average contributions over the past three years if contributions are less regular than quarterly).

These restrictions remove the advantage to those individuals of increasing their pension contributions in excess of their normal pattern.

14. At the 2009 Pre-Budget Report, the Government announced a change in the income definition for the 2011 restriction which includes the pension benefit provided by an employer. This is set at £150,000 and is subject to a £130,000 floor which excludes employer contributions.

15. The change introduced by the section prevents individuals who may be brought into the restriction as a result of the change in the income definition from making substantial additional pension contributions in order to take advantage of higher rate pensions tax relief while this level of relief is still available to them.

Section 49: Information

Summary

1. Section 49 amends section 251(5) of the Finance Act 2004 to provide for the information provision requirements to pension scheme administrators to be amended.

Details of the Section

2. Section 49 inserts a new category of persons who can be required, by regulations, to provide information to registered pension scheme administrators.

Background Note

3. Certain persons can already be required to provide information to the scheme administrators of registered pension schemes. This is to ensure that scheme administrators have the necessary information so they can comply with their statutory obligations to HM Revenue and Customs. The proposed change will add a new category to the list of persons who can be required, by regulations, to provide information to scheme administrators and to whom scheme administrators can be required to provide information to.

4. The change is being made as part of proposals to restrict pensions tax relief to basic rate for individuals with high incomes. Members affected by these proposals are going

to have to obtain statements of their pension benefits from their scheme administrator in order to complete their Self Assessment return. In order to speed up the process, regulations will be introduced to place an obligation on an employer to identify any employee to whom they provide employment income of £130,000 or over and to request from the pension scheme administrator that they provide a benefit statement to the employee.

Section 50: Vat - Extension of Reverse Charge Provisions to Supplies of Services

Summary

1. Section 50 is an anti-fraud measure which provides an enabling provision in the VAT Act 1994 (VATA) necessary to implement European Council Directive 2010/23/EU. That Directive permits the option of a "reverse charge" for VAT to be applied to supplies of emissions allowances. This section enables the reverse charge to be applied to supplies of services of a kind used in missing trader intra-community fraud ("MTIC fraud").

Details of the Section

2. Subsection (1) amends subsections (1), (2), (6), (9) and (11) of section 55A of VATA. Section 55A permits a reverse charge to be applied to goods of a kind used in MTIC fraud. The supplies to which that section applies are specified by Treasury Order. The amendments enable that section to apply to supplies of services of a kind used in MTIC fraud in the same way as it already applies to supplies of goods.

3. Subsection (2) amends paragraph 2(3B) of Schedule 11 to VATA. Paragraphs 2(3A) and (3B) of that Schedule permit HM Revenue & Customs (HMRC) to impose additional reporting requirements in respect of supplies of goods to which section 55A applies. The amendment extends that power to supplies of services to which that section applies.

Background Note

4. A reverse charge means that the supplier of goods or services does not charge VAT on the supply, but the recipient must declare the VAT due on it. The recipient can also reclaim this VAT in the same way as if it had been paid to the supplier. The overall effect is that the reverse charge and reclaim cancel each other out and so no net VAT is actually paid to or reclaimed from HMRC, thus eliminating the prospect of VAT being obtained fraudulently by means of MTIC fraud.

5. The existing VAT provisions permit the application of a reverse charge to supplies of goods which are specified by Treasury order. A reverse charge has been applied to supplies of mobile telephones and computer "chips" to counteract the substantial VAT losses arising from MTIC fraud perpetrated by trading in those particular goods.

6. Around the middle of 2009, there was evidence of similar fraud occurring with trading in emissions allowances under the EU "cap and trade" Emissions Trading Scheme (EU-ETS). This evidence, together with the potential for rapid escalation of the fraud, led several countries, including the UK, to introduce urgent legislation to prevent it.

7. This was achieved in the UK by applying a zero-rate to these services as an interim measure pending the adoption of an EU legislative solution. UK law did not permit the use of a reverse charge for supplies of emissions allowances as these are services not goods. The EU legislative solution is for a reverse charge and the amendment to the VAT Act effected by this section enables it to be applied to emissions allowances. Although the description of services in the relevant secondary legislation will be restricted to emissions allowances at this time, the amendment will enable other services to be added should similar fraud surface for them.

8. The EU Directive which permits the reverse charge does not impose any additional reporting requirements for trade in emissions allowances. There is no intention to apply any extra reporting requirements for these trades. However, the amendment aligns the power to make additional reporting requirements for supplies of goods or services of a kind used in MTIC fraud. This may be required should other services be identified as being used for MTIC fraud.

Scetion 51 Insurance Premium Tax: Separate Contracts

Summary

1. Section 51 amends the definition of "premium" for insurance premium tax (IPT) purposes.

Details of the Section

2. For IPT purposes, "premium" is defined in section 72 of the Finance Act (FA) 1994. Subsection (3) inserts new subsections (1AA) to (1AE) into section 72.

3. New subsection (1AA) brings fees charged under separate contracts back into the scope of IPT, if the conditions in the new subsections (1AB) to (1AE) are met.

4. New subsection (1AB) sets out condition A, that the insurance is provided to private individuals.

5. New subsection (1AC) sets out condition B, which relates to the connection between the (otherwise separate) contract and the taxable contract of insurance.

6. New subsection (1AD) sets out condition C, which provides that the terms and price of the relevant contract are not negotiable by the insured.

7. New subsection (1AE) sets out condition D, that the amount charged to the individual under the taxable insurance contract is arrived at without a comprehensive assessment having been undertaken of the individual circumstances of that person which might affect the level of risk.

8. Subsection (4) provides that the section may be amended by order.

9. Subsection (5) provides that any order made under subsection (4) would be subject to the affirmative resolution procedure.

10. Subsection (6) makes the provision in subsection (3) effective for payments received on or after 24 March 2010.

Background Note

11. IPT is charged as an inclusive amount within the premium for a taxable insurance contract. As defined, the premium includes all payments received under the insurance contract and certain other payments related to it.

12. The section closes an avoidance loophole that exploited the use of separate contracts, which are excluded from the scope of IPT by section 72(1A)(b) of FA 1994, by means of an intermediary charging amounts under a separate contract with the insured that normally form part of the premium received by an insurer under a taxable contract of insurance.

13. The section does not apply to insurance bought by businesses, as avoidance has not been seen in this sector of the market – HM Revenue & Customs will keep the situation under review. The power in subsection (4) will allow any necessary changes to extend the scope of the provision to be made by secondary legislation at some time in the future should there be any evidence of the avoidance moving into other areas.

Section 52: Reversionary Interests of Purchaser Or Settlor Etc in Relevant Property

Summary

1. Section 52 provides that where a person transfers property into a trust in which they or their spouse or civil partner retains a future interest, or where a person purchases a future interest in a trust, then there will be inheritance tax (IHT) charges when that future interest comes to an end and they take their actual interest.

Details of the Section

2. Subsection (1) inserts new section 81A into the Inheritance Tax Act 1984 (IHTA):

   - New section 81A(1) provides for there to be a disposition for IHT purposes where a reversionary interest (which is defined in section 47 of IHTA as a future interest in a trust) in relevant property comes to an end and the person takes the actual interest where that person:
     - purchased the reversionary interest; or
     - where the person who is entitled to the reversionary interest is the settlor or the spouse or civil partner of the settlor of the trust.
   - New section 81A(2) provides that where a reversionary interest defined in new section 81A(1) is given away it will not be a potentially exempt transfer.

3. Subsection (2) provides for these changes to have effect for reversionary interests to which a person has become entitled in the circumstances specified in new section 81A on or after 9 December 2009.

Background Note

4. Reversionary interests, as defined in section 47 of IHTA, are not generally treated as part of a person's IHT estate, but section 48(1) of IHTA provides for certain exceptions to that rule.

5. IHT charges arise on relevant property:

   - at 20 per cent on assets put into trust which exceed the IHT nil rate band (with a further charge of up to 20 per cent if the person dies within seven years of making the transfer);
   - at 6 per cent every ten years on the value of the trust assets over the nil rate band (the "periodic charge"); and
   - an "exit charge" when funds are taken out of trust between ten-year anniversaries at a rate based on the time since the last "periodic charge".

6. HM Revenue & Customs (HMRC) became aware of arrangements that sought to avoid any IHT charges on assets that are put into a trust. The arrangement was designed to exploit the rules that treat certain reversionary interests as part of a person's estate in order to reduce the entry charge where assets are put in to trust.

7. This section provides that where certain reversionary interests that are treated as part of a person's estate come to an end and that person takes their actual interest in the relevant property trust then there is a deemed disposition for IHT purposes. This means that there is a transfer of value and IHT will be charged based on the value of the reversionary interest immediately before it came to an end. To prevent these charges being avoided by a person gifting their reversionary interest to another person, such a transfer will be an immediately chargeable IHT event.

8. These changes affect only reversionary interests in relevant property. They do not affect certain interests in possession which are not included as part of the relevant property regime (for example, a disabled person's interest).

Section 53: Interests in Possession

Summary

1. Section 53 provides that where an interest in possession in a trust is purchased then for inheritance tax (IHT) purposes it will be treated as part of the purchaser's estate.

Details of the Section

2. Subsection (2) amends section 3A of the Inheritance Tax Act 1984 (IHTA), which provides for certain transfers to individuals to be potentially exempt from IHT.

3. Subsection (2)(a) removes the reference to a charge under section 52 of IHTA being treated as a potentially exempt transfer. (Section 52 of IHTA provides for there to be an IHT charge where an interest in a settlement that is treated as part of a person's estate comes to an end.)

4. Subsection (2)(b) inserts new subsection (6A) into section 3A of IHTA. This re-instates the position that a transfer of value under section 52 will be potentially exempt, but provides for an exception to this where the section 52 charge arises in respect of an interest that is treated as part of a person's estate under new section 5(1B) of IHTA. This means that, for example, where the trust comes to an end and the capital is paid out, the transfer of value will be immediately chargeable to IHT.

5. Subsection (3) amends section 5(1)(a)(ii) of IHTA so that interest in possessions defined in new section 5(1B) of IHTA will be excluded from the general provision that interest in possessions are not treated as part of a person' estate.

6. Subsection (3)(b) inserts new subsection (1B) into section 5 of IHTA, so that it includes a new category of interest in possessions that will be included as part of a person's estate. These are interests to which a UK domiciled person is entitled and that the person acquired that interest in an arm's length transaction (as defined in section 10 of IHTA).

7. Subsection (4) provides for consequential amendments to other provisions so that they include interests in possession as defined in new section 5(1B) of IHTA.

8. Subsection (4)(a) provides that the person who has a section 5(1B) interest will be treated as being beneficially entitled to the property underlying that interest by virtue of section 49(1A) of IHTA. This means that, for example, on death, they will be treated as if they owned the property in which their interest subsisted.

9. Subsection (4)(b) amends section 51(1A) of IHTA, which provides that where a person disposes of an interest in possession it is not a transfer of value, but IHT charges may arise under section 52 of IHTA. This provision applies only to certain categories of interest in possession, which are extended to include section 5(1B) interests.

10. Subsection (4)(c) amends section 52(2A) and (3A) of IHTA which provide for IHT charges when an interest in possession comes to an end during the beneficiary's lifetime. The charges only apply to certain interests in possession; these are extended to include section 5(1B) interests. This means, for example, that if a person gives their interest away or their interest comes to an end, then there is an IHT chargeable event.

11. Subsection (5) amends section 57A(1A) of IHTA, which provides for relief where an interest in possession is included as part of a person's IHT estate if within two years of their death the property in which they had their interest becomes held in a trust that has been approved as a heritage maintenance fund. The relief is extended to interest in possessions that will be treated as part of a person's estate under section 5(1B).

12. Subsection (6) amends section 100(1A) of IHTA, which deems there to be a disposition for IHT purposes if there is a change in a close company's share capital (where an individual is entitled to certain categories of interests in possession.). This is extended to interests in possession that will be treated as part of a person's estate under section 5(1B).

13. Subsection (7) amends section 101(1A) of IHTA, which treats the participators of a close company as being entitled to an interest in possession in any settled property held by the company. This applies only to certain categories of interest in possession, which are extended to interests that will be treated as part of a person's estate under section 5(1B).

14. Subsection (8) amends section 102ZA(1)(b)(ii) of the Finance Act 1986. This provides for the gifts with reservation rules to apply to a person with certain categories of interest in possession, which are extended to include interests that will be treated as part of a person's estate under section 5(1B).

15. Subsection (9) is a consequential amendment as a result of the changes in section 1(2).

16. Subsection (10) provides that these amendments will have effect only for interests in possession to which a person becomes entitled on or after 9 December 2009.

Background Note

17. An interest in possession is an interest in which a beneficiary has the right to any income arising on the property in a trust. Changes made to the trust rules in 2006 mean that most interest in possessions are now included in the relevant property regime. Broadly, IHT charges arise on relevant property:

    - at 20 per cent on assets put into trust which exceed the IHT nil-rate band (with a further charge of up to 20 per cent if the person dies within seven years of making the transfer);
    - at 6 per cent every ten years on the value of the trust assets over the nil-rate band (the "periodic charge"); and
    - an "exit charge" when funds are taken out of trust between ten-year anniversaries at a rate based on the time since the last "periodic charge".

18. HM Revenue & Customs (HMRC) became aware of arrangements that sought to avoid any IHT charges on assets that are put into a trust. The arrangement was designed to allow individuals who would normally be chargeable to IHT on transfers in to trust to purchase an interest in a trust that had not been subject to UK IHT charges when property had originally been transferred in to it.

19. The section provides that where an interest has been purchased at full value then that interest will be treated as part of a person's estate. Where a person puts funds in to a trust in the normal course of events the normal IHT charges will apply, and the changes in new section 5(1B) will not apply. If a person purchases an interest in a trust other than at arms length then section 10 of IHTA will not apply and there will be a transfer of value in the normal way.

20. Where new section 5(1B) applies to treat the interest as part of a person's estate the property in the trust will still be part of the relevant property regime.

21. Some interests in possession are already treated as part of a person's estate – for example, a disabled person's interest. This section does not affect any such interests.

Section 54: Stamp Duty Reserve Tax: Depositary Receipt Systems and Clearance Services Systems

Summary

1. Section 54 is an anti-avoidance provision that withdraws certain existing reliefs where, following an adverse decision in the European Court of Justice, chargeable securities are the subject of arrangements under which the securities are initially routed through an EU clearance service or depositary receipt scheme, in order to avoid the higher rate stamp duty reserve tax (SDRT) charge on entry to a non-EU clearance service or depositary receipt scheme. It has effect for relevant transfers taking place on or after 1 October 2009.

Details of the Section

2. Subsections (2)-(4) amend sections 95(1), 97(1) and 97B of the Finance Act (FA) 1986 to make the provisions of those sections subject to new section 97C.

3. Subsection (5) inserts new section 97C into FA 1986.

4. New section 97C(1) provides that the section applies where, under arrangements, chargeable securities are issued to an EU system and are subsequently transferred to a non-EU system.

5. New section 97C(2) provides that the reliefs available under sections 95(1), 97(1) and 97B(1) of FA 1986 will not apply to the subsequent transfer to the non-EU system if the securities have not previously been subject to any 1.5 per cent SDRT charges.

6. New section 97C(3)-(4) describe what is meant by issues and transfers to and from EU and non-EU systems.

7. New section 97C(5) provides definitions of “arrangements”, “EU clearance service operator”, “EU depositary receipt issuer”, “exempt transfer” and “nominee”.

8. Subsection (6) provides that the new section 97C has effect in relation to any transfer of chargeable securities on or after 1 October 2009.

Background Note

9. SDRT is payable upon agreements to transfer chargeable securities at the rate of 0.5 per cent of the consideration for the securities. A higher rate of 1.5 per cent applies where securities are issued or transferred to a clearance service or depositary receipt issuer. The 1.5 per cent charge acts as a “season ticket” with subsequent transfers within the 1.5 per cent system being exempt from ordinary 0.5 per cent charges. Where securities that have been subject to a 1.5 per cent entry charge are subsequently transferred to another 1.5 per cent regime, relief is available to ensure that there is no double charge.

10. On October 1 2009, the European Court of Justice (ECJ) held that the higher rate charge on issues of chargeable securities to clearance services in the EU is incompatible with EU law. As a result, it became possible, from that date, for shares intended for non-EU markets to be issued initially to an EU clearance service or depositary receipt issuer, and then transferred to a non-EU clearance service or depositary receipt issuer, under cover of the existing exemptions for transfers between such systems, thereby avoiding all SDRT charges.

11. This section prevents this by removing the exemptions that would otherwise apply to transfers of chargeable securities from an EU 1.5 per cent system to a non-EU 1.5 per cent system where arrangements have been entered into under which 1.5 per cent SDRT would not otherwise be payable. The section has effect from 1 October 2009, the date of the ECJ decision.

Section 55: Sdlt: Partnerships

Summary

1. Section 55 will apply stamp duty land tax (SDLT) anti-avoidance rules to certain partnership transactions.

Details of the Section

2. Subsection (1)(a) repeals section 75C(8)(b) of the Finance Act (FA) 2003 which currently reduces the applicability of the SDLT anti-avoidance rule (section 75A of FA 2003) to partnership transactions.

3. Subsection (1)(b) inserts new section 75C(8A) in FA 2003. This new subsection provides that the provisions of Part 3 of Schedule 15 to FA 2003 (the special SDLT partnerships rules) do not apply to a "notional transaction" created by section 75A of FA 2003.

4. Subsection (2) gives effect to the amendments (subject to subsections (3) and (4)) in relation to notional transactions with an effective date on or after 24 March 2010.

5. Subsections (3) and (4) are transitional provisions. They provide, broadly, that the old rules apply to notional transactions where any of the "scheme transactions" is entered into before 24 March 2010.

Background Note

6. The special SDLT rules for partnerships are currently being exploited to achieve inappropriate reductions in SDLT for certain land transactions. These changes ensure that SDLT planning schemes which seek to exploit the partnerships rules will be subject to the SDLT anti-avoidance rule at section 75A of FA 2003.

7. The anti-avoidance rule works by creating, and charging to SDLT, a notional land transaction. The notional transaction supplants the actual land transaction under section 75A(4) of FA 2003. Before this section comes into effect, the chargeable consideration for notional transactions in section 75A is subject to the special partnerships rules in Part 3 of Schedule 15 to FA 2003. This will no longer be the case once the section has effect; instead section 75A(5) of FA 2003 will apply.

Section 56 and Schedule 17: Disclosure of Tax Avoidance Schemes

Summary

1. Section 56 and Schedule 17 amend provisions in Part 7 of the Finance Act (FA) 2004 (Part 7), which require promoters and users of certain tax avoidance schemes to provide information about them to HM Revenue & Customs (HMRC); and section 98C of the Taxes Management Act 1970 (TMA), which provides for penalties for non-compliance with those duties. In particular, they amend the definition of "promoter" and the time at which the duty to disclose a scheme arises; require promoters of notifiable schemes periodically to provide lists of clients; empower HMRC to require intermediaries who are concerned in the marketing of a scheme, but who are not promoters, to identify the promoter; and substantially increase the penalties available to the Tribunal where a scheme is not disclosed as required.

2. Powers are also taken to vary the amounts of penalties should that appear necessary. All regulations varying penalty amounts are subject to an affirmative resolution of the House of Commons.

Details of the Schedule

3. Paragraph 1 states that Part 7, which comprises sections 306 – 319 of FA 2004 and contains the primary legislation in relation to the disclosure regime, is amended by the paragraphs which follow.

4. Paragraph 2 amends section 307 of FA 2004, which defines "promoter" so that the definition includes persons who market fully designed schemes in order to solicit clients to whom they will sell the scheme. In practice promoters often market schemes through introducers, persons whose role is to introduce potential clients to the promoter, and section 307 is also amended to include a definition of "introducer".

   a. Sub-paragraph (2) inserts a new sub-paragraph (ii) in section 307(1)(a), providing that, in addition to the existing criteria, a person ("P") is also a promoter if he has made "a firm approach" to another person ("C") relating to a scheme with a view to P making the scheme available for implementation by C or any other person. In practice C may be an introducer or a potential client.

   b. Sub-paragraph (3) makes a consequential amendment to subsection (1)(b).

   c. Sub-paragraph (4) inserts a new subsection (1A) in section 307, defining "introducer". A person is an "introducer" if he makes a "marketing contact" with another person in relation to a scheme.

   d. Sub-paragraph (5) inserts new subsections (4A) to (4C) which respectively define "makes a firm approach", "makes a marketing contact" and "substantially designed":

      i. A person "makes a firm approach" if he "makes a marketing contact" at a time when the scheme has been "substantially designed";

      ii. A person makes a marketing contact if he communicates to another person information about a scheme, including an explanation of the tax advantage, with a view to that person or any other person implementing the scheme. This covers communication of a general nature both to persons who may wish to use the scheme, and to intermediaries or introducers who may in turn communicate it to a potential user;

      iii. A scheme is "substantially designed" if the development of its design has reached the stage where it would be reasonable to assume that the transactions a person would enter into, should the person decide to implement the scheme, would not be substantially different from those envisaged in that design.

   e. Sub-paragraphs (6) and (7) make consequential amendments to subsections (5) and (6) of section 307.

5. Paragraph 3 amends section 308(2) of FA 2004, which defines the "relevant date", i.e. the beginning of the period within which a disclosure must be made, so as to insert a new trigger point for the disclosure of a fully designed scheme that a promoter markets to potential clients, in line with the revised definition of 'promoter' in section 307 as amended by paragraph 2.

   a. Sub-paragraph (3) inserts a new paragraph (za) in section 308(2), corresponding to the new sub-paragraph (ii) of section 307(1)(a) of FA 2004, providing that the date on which a promoter first makes a firm approach is a "relevant date".

   b. Sub-paragraph (2) makes a consequential amendment.

6. Paragraph 4 extends section 313A(1) of FA 2004 to introducers. Section 313A allows HMRC to require persons they suspect of being promoters (or, as a consequence of this amendment, introducers) of a notifiable scheme to explain why they think they are not

required to disclose the scheme. This enables HMRC to seek information where it is aware that a person is marketing a scheme but is not certain if that person is the scheme promoter or merely an introducer.

7. Paragraph 5 inserts in section 318(1) of FA 2004 definitions of "introducer", "makes a firm approach" and "makes a marketing contact" which correspond to the definitions in new subsections (4A) to (4C) of section 307 of FA 2004.

8. Paragraph 6 inserts a new section 313ZA in FA 2004.

   a. Subsection (1) sets out the scope of the new section. It applies where a promoter is subject to the "reference number information requirement" or would be so required had the promoter complied with section 308 of FA 2004 and got a reference number from HMRC.

   b. Subsection (2) defines the "reference number information requirement". It is the requirement, in section 312 of FA 2004, to notify clients of the reference number allocated to the scheme by HMRC. Section 312 (and therefore new section 313ZA) applies once a client has implemented a scheme.

   c. Subsection (3) requires promoters to provide prescribed information about clients and to do so within a prescribed period after the "relevant period" prescribed under subsection (4). "Prescribed" means prescribed by regulations made by HMRC (see section 318(1) of FA 2004). It is intended that the prescribed information will be the names and addresses of clients, the "relevant period" will be each calendar quarter, and that the "prescribed period" will be 14 days. So promoters will be required to provide to HMRC lists of clients who have implemented a scheme and have been issued with a SRN in each calendar quarter, and to do so within 14 days of the end of the quarter.

   d. Subsection (5) disapplies the obligation to provide client lists where HMRC have given notice under section 312(6) of FA 2004 that promoters are no longer required to provide clients with SRN information.

9. Paragraph 7 makes a consequential amendment to section 316 of FA 2004, adding a reference to new section 313ZA(1). Section 316 allows HMRC to specify the form and manner in which information must be provided. It is used to specify such matters as forms on which information is to be provided and the address to which the form is to be sent.

10. Paragraph 8 amends section 317(2) so that regulations may make different provision for different cases, allowing regulations to be tailored to different circumstances that may arise.

11. Paragraph 9 inserts a new section 313C in FA 2004.

   a. Subsection (1) provides that HMRC may require a person whom they suspect is an introducer of a notifiable scheme to provide prescribed information about any other person who has provided him with information about a scheme. The requirement must be by written notice. The other person who has provided the introducer with information about the scheme is likely to be the promoter of the scheme, but in some circumstances may be a further intermediary.

   b. Subsection (2) requires a notice under new section 313C to specify the scheme to which it relates.

   c. Subsection (3) requires a person to comply with a notice within a prescribed period, or such longer period as HMRC may direct. Again, "prescribed" means prescribed in regulations made by HMRC (section 318(1) of FA 2004).

12. Paragraph 10 amends section 98C of TMA, which provides for penalties for non-compliance with duties under Part 7.

a. Sub-paragraph (2) amends subsection (1)(a) of section 98C. At present subsection (1)(a) provides for a single initial penalty of up to £5,000 for failure to comply with any of the Part 7 duties mentioned in section 98C(2). For failure to disclose a scheme, sub-paragraph (2) replaces the initial single penalty with an initial daily penalty not exceeding £600 for each day during the "initial period", which is defined in new subsection (2ZA). The initial penalty for failure to comply with other duties (duties imposed by the disclosure regime other than disclosing the scheme) mentioned in section 98C(2) remains unchanged. There is no change to the provisions (sections 100(2)(f) and 100C of TMA) which require penalties under subsection (1)(a) to be determined by the First-tier Tribunal.

b. Sub-paragraph (3) amends subsection (2) of section 98C, adding the new duties of promoters to provide client lists and of introducers to identify promoters to HMRC to the list of duties to which a penalty relates. The penalty in these cases is the existing single initial penalty not exceeding £5,000.

c. Sub-paragraph (4) inserts new subsections (2ZA) to (2ZE) in section 98C after existing subsection (2).

    i. New subsection (2ZA) defines the "initial period" referred to in the amended subsection (1)(a)(i). The "initial period" begins with the "relevant day" and ends on the day the penalty is determined by the Tribunal, or the day before the person complies with the duty in question, whichever is earlier. The "relevant day" is defined in the Table in subsection (2ZA). In each case it is the day after the end of the period during which the person should have complied with the duty in question.

       So the "initial period" is the period of non-compliance beginning on the day after the deadline for complying, and ending when the penalty is determined, or when the person complies if earlier.

    ii. New subsection (2ZB) requires the Tribunal, in determining the level of penalty for failure to disclose a scheme, to take account of all relevant matters, including the need for the penalty to be an adequate deterrent, having regard in particular to:

        1. in the case of a promoter's failure to make a disclosure within the prescribed period, to the fees received or likely to have been received in connection with the scheme; and

        2. in the case of a taxpayer's failure to make a disclosure within the prescribed period, to the tax advantage obtained or sought from the scheme.

    iii. New subsection (2ZC) provides that where the daily penalty determined under subsection (1)(a)(i) appears inappropriately low, then the Tribunal may increase the penalty to an amount, not exceeding £1 million.

    iv. New subsection (2ZD) provides for HMRC to commence proceedings before the First-tier Tribunal for re-determination of a penalty where it appears that the "relevant day" from which a penalty has been determined is incorrect. This may occur in cases where the Tribunal has made an order under section 306A of FA 2004 that a scheme be treated as notifiable.

       HMRC may apply for orders under section 306A where they have evidence to satisfy the tests in that section but cannot prove that a scheme is notifiable, and therefore cannot prove that the time limit for notifying is to be calculated from the relevant dates in section 308(2) of FA 2004. If non-compliance continues after an order is made HMRC may seek a penalty, but in the absence of further evidence the Tribunal will only

be able to determine a penalty on the basis that the duty arose from the section 306A order itself, and that the time limit for compliance, and the "relevant day" for the purposes of determining the "initial period", are to be calculated from the date of the order.

However, evidence may subsequently come to light, possibly from a belated notification, that the scheme was indeed notifiable from the beginning, and that the "initial period" should start from an earlier date. Subsection (2ZD) allows HMRC to apply to the Tribunal for the daily penalty to be backdated accordingly.

v. New subsection (2ZE) provides for the Treasury to vary by secondary legislation the amounts of both the proposed initial daily penalty in subsection (1) and new subsection (2ZC) of section 98C of TMA. Such regulations are subject to an affirmative resolution of the House of Commons.

d. Sub-paragraph (5) amends subsection (2A) of section 98C of TMA.

At present subsection (2A), together with subsection (2C)(a), provides vires for the Treasury by regulations to increase the amount of the daily penalty under section 98C(1)(b) where the Tribunal has made an order under section 306A of FA 2004 that a scheme be treated as notifiable.

The amendment extends the vires to the proposed initial daily penalty, and, together with the amendment to subsection (2C)(b) (see below), also provides vires for HMRC to prescribe by regulations the period after which the increased amount is to apply.

e. Sub-paragraph (6) amends subsection (2B) of section 98C of TMA.

At present subsection (2B), together with subsection (2C), provides vires for the Treasury by regulations to increase the amount of the daily penalty under section 98C(1)(b) where the Tribunal has made an order under section 314A of FA 2004 that a scheme is notifiable, and for HMRC to prescribe by regulations the period after which the increased amount is to apply.

The amendment extends the vires to the proposed initial daily penalty.

f. Any regulations varying the amount of a penalty in section 306A or 314A cases are subject to an affirmative resolution of the House of Commons.

g. Sub-paragraph (7) amends subsection (2C)(b) of section 98C of TMA, which defines "prescribed period" in subsection (2B) in relation to orders under section 314A of FA 2004. The amendment extends the definition to cases where orders have been made under section 306A of FA 2004, and is consequential to the amendment of subsection (2A).

h. Sub-paragraphs (8) and (9) add a reference to section 306A of FA 2004 to subsections (2D) and (2E) of section 98C of TMA. Subsections (2D) and (2E) provide, respectively:

   i. That the making of a disclosure order does not mean that a person either had, or did not have, reasonable excuse for non-compliance; and

   ii. That after an order is made, any reasonable excuse founded on uncertainty as to notifiability ceases after the period prescribed under subsection (2B) of section 98C of TMA for the increased penalty

Under section 118(2) of TMA a person who has a reasonable excuse for failure to comply is deemed not to have defaulted, and as a consequence is not liable to a

penalty. But if the reasonable excuse ceases the person must then comply without unreasonable delay

The effect of the amendment is that, where an order is made under section 306A, any reasonable excuse ceases after the period prescribed under subsection (2B), which will be 10 days. If the scheme then remains undisclosed the promoter becomes liable to a penalty at the increased rate prescribed under subsection (2A) which will be an amount not exceeding £5,000 per day. This is already the case where an order is made under section 314A.

i. Sub-paragraph (10) amends subsection (2F) of section 98C of TMA, which contains certain procedural provisions concerning secondary legislation.

    i. Sub-paragraph 10(a) is consequential to the amendments described above.

    ii. Sub-paragraph 10(b) amends subsection (2F)(c) to provide that regulations varying the amounts specified in section 98C(1) be subject to the affirmative parliamentary procedure, as are regulations increasing the amount in section 306A and 314A cases at present.

Background Note

13. Measures requiring the disclosure of tax avoidance schemes falling within descriptions prescribed in regulations were introduced in FA 2004. Initially the prescribed descriptions were limited in scope to income tax, corporation tax (CT) and capital gains tax (CGT), and to schemes which concerned employment or certain financial products. Stamp duty land tax, in relation to commercial property, was added with effect from 1 August 2005, and the regime was extended to the whole of income tax, CT and CGT from 1 August 2006.

14. A separate disclosure regime exists for National Insurance Contributions. Regulations mirroring, with modifications, the tax regime as it applies to income tax came into effect on 1 May 2007.

15. A separate disclosure regime also exists for VAT. That is outside the scope of this measure.

16. The purpose of disclosure is to provide HMRC with early information about tax avoidance schemes, informing risk assessment and selection of schemes for either closure by legislation or operational challenge.

17. Disclosure requires certain persons (normally promoters) to provide information about tax avoidance schemes sufficient for an officer of HMRC to understand how they are intended to work.

18. The scheme reference number (SRN) system is intended to identify the users of notifiable schemes. HMRC allocate a SRN to schemes when they are disclosed, and notify it to the person who makes the disclosure. This is normally a promoter of the scheme. Promoters are required to pass the SRN to clients who implement the scheme, who must report it back to HMRC, normally on a tax return affected by using the scheme.

19. The amendments are designed to advance the time at which information about schemes and users of schemes is to be provided, to enable HMRC to identify the promoter of schemes involving intermediary introducers, and to enhance the effectiveness of penalties as a deterrent against non-compliance.

20. HMRC issued a consultation document Disclosure of Tax Avoidance Schemes (DOTAS) containing draft Finance Bill legislation on 9 December 2009. This section and Schedule revise the draft legislation to reflect comments made by respondents and the outcome of discussions between HMRC and promoters and representative bodies.

Section 57: Opening of Postal Packets

Summary

1. Section 57 amends section 106 of the Postal Services Act 2000 (PSA) (power to detain postal packets containing contraband) to bring this process into line with the customs checks carried out on postal packets in other circumstances. It allows officers acting on behalf of the Commissioners for HM Revenue & Customs (HMRC) to open suspect packets in the presence of a representative of the postal company without reference to the addressee. It will come into force on Royal Assent of Finance Bill 2010.

Details of the Section

2. Subsection (2) amends section 106(4) of PSA to remove the requirement for the addressee to be present and, instead requires a representative of the postal operator to be present.

3. Subsection (3) deletes section 106(5) of PSA as the Commissioners will no longer be giving notice for the addressee to attend when packets are opened.

4. Subsection (4) deletes section 106(7)(b) of PSA as packets will no longer be forwarded to absent addressees.

Background Note

5. This section supports HMRC's strategy to improve effectiveness in combating tobacco smuggling in the post. The section will address the current legal constraint whereby HMRC has to contact addressees before opening postal packets which then alerts them to HMRC's interest.

Section 58: Zero and Low Emission Vehicles

Summary

1. Income tax on the chargeable benefit for a company car made available for private use is calculated on the list price of the car multiplied by the appropriate percentage (normally based on the CO_2 engine emissions of the vehicle). Income tax on the chargeable benefit for a company van made available for private use is based on an annual flat-rate charge – the "cash equivalent". Section 58 makes the necessary amendments to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) required to allow company cars and vans which cannot produce CO_2 emissions under any circumstances when driven to qualify for an appropriate percentage of 0 per cent in the case of a car and for a cash equivalent of nil in the case of a van. It also introduces a reduced appropriate percentage of 5 per cent in the case of a car with approved CO_2 engine emissions of exactly 75 grams per kilometre or less.

2. The special percentage of 0 per cent for cars will apply for the tax years 2010-11 to 2014-15, and will revert to the 9 per cent currently applicable to electric cars for the tax year 2015-16 onwards. The nil cash equivalent for vans will apply for the tax years 2010-11 to 2014-15, following which it will revert to £3,000.

3. The reduced percentage of 5 per cent for ultra low emission cars will apply for the tax years 2010-11 to 2014-15, and will revert to 10 per cent for the tax year 2015-16 onwards.

Details of the Section

4. Subsections (1), (2) and (7) set out which parts of the legislation are most affected by the amendments.

5. Subsection (3) substitutes a new subsection (1A) to section 139 of ITEPA which sets out the definition of a “qualifying low emissions car”.

6. Subsection (4) amends current section 139(1B) of ITEPA to provide for an appropriate percentage of 5 per cent where a car’s CO_2 emissions do not exceed 75 grams per kilometre.

7. Subsection (5) amends current section 139(5) of ITEPA with the effect that the rounding mechanism, used where the level of the CO_2 emissions is not a multiple of 5, only applies to cars which are not qualifying low emissions cars and have not exceeded the level at which the appropriate percentage of 35 per cent is set. As a result, section 139(5A) of ITEPA is no longer needed, and this is removed by subsection (6).

8. Subsection (8) amends section 140(3) of ITEPA to provide for the special percentage for all cars which cannot produce CO_2 emissions under any circumstances when being driven.

9. Subsection (9) inserts a new section 140(3A) in ITEPA which sets out the level of the special percentage for the tax years 2010-11 to 2014-15 and for the tax year 2015-16 and subsequent years. The definition of electrically propelled vehicle is no longer required and is removed by subsection (10).

10. Subsection (11) amends section 149(4) of ITEPA so that no car fuel benefit charge applies where energy is supplied for a car which cannot produce CO_2 emissions under any circumstances when being driven.

11. Subsection (12) replaces subsections (1) to (3) of section 155 of ITEPA in respect of vans with new subsections (1) and (2).

12. New section 155(1) provides for the nil cash equivalent and new section 155(2) sets out the circumstances where the cash equivalent applies.

13. Subsections (13), (14) and (15) provide for consequential amendments to sections 156(1), 158(1), 160 and 170(1A) of ITEPA as a result of amending section 155. Subsection (16) is a further consequential amendment which omits paragraph 7 of section 59 of the Finance Act (FA) 2006.

14. Subsection (17) omits paragraph 7 of Schedule 28 to FA 2009 which set a new appropriate percentage for company cars wholly electrically propelled with effect from the tax year 2011-12. This is superseded by this sectionand so is no longer required.

15. Subsections (18) and (19) provide for the dates from which the amendments made by subsections (2) to (16) and subsection (17) are to have effect.

16. Subsection (20) provides for the amendment of section 142 of ITEPA made by paragraph 8 of Schedule 28 to FA 2009 for cars first registered before 1 January 1998 to be effective from the tax year 2010-11 and onwards, one year earlier than provided for in that Act.

Background Note

17. The Government has introduced a new initiative to encourage the take-up of the most environmentally friendly and least polluting vehicles by company car and van fleets by introducing a nil taxable benefit for cars and vans which are incapable of producing CO_2 emissions under any circumstances when being driven.

18. The Government has also undertaken to provide a further initiative for ultra low emission company cars – that is, those with an approved CO_2 emissions figure of 75 grams per kilometre or less.

19. Together, these measures recognise and encourage advances in technologies underpinning the future development of both zero-emission and ultra low emission vehicles.

20. The appropriate percentage for zero-emission company cars will be set at 0 per cent for the tax years 2010-11 to 2014-15. The level of the cash equivalent for zero-emissions company vans will be set at nil for the same period.

21. The appropriate percentage for ultra low emission cars will be set at 5 per cent for the tax years 2010-11 to 2014-15.

Section 59: Cars With CO_2 Emissions Figure

Summary

1. Section 59 relates to taxable benefits on company cars. With effect from 6 April 2012, it modifies current appropriate percentage bands and CO_2 emissions thresholds by extending current graduated tax bands down to a new 10 per cent band, and moving all CO_2 emissions thresholds down by 5kg/km. The new 10 per cent band will apply to company cars with CO_2 emissions up to 99gm/km. The category of Qualifying Low Emissions Cars (QUALECs) is removed as a result.

Details of the Section

2. Subsection (2) inserts a new section 139 into the Income Tax (Earnings & Pensions) Act 2003 (ITEPA) which provides that the appropriate percentage, used with the list price to determine the level of chargeable benefit, is based on the CO_2 emissions of the car. It also provides for the relevant threshold, below which the appropriate percentage of ten per cent applies, the graduation of bands which trigger an increase in the appropriate percentage, and the upper threshold of 35 per cent. Finally, it provides for adjustments to the appropriate percentage in the case of diesel cars and by any regulations made under section 170(4).

3. Subsection (3) provides for consequential amendments to section 170. Section 170(3A) is removed and section 170(3) is amended to reflect the changes to section 139 described in subsection (2). It also amends the commencing year in which Regulations to adjust the level of the appropriate percentage may be laid.

4. Subsection (4) provides for other consequential amendments to section 59 of the Finance Act (FA) 2006 (which defined QUALECs), and to paragraphs 6, 9 and 10(1) of Schedule 28 to FA 2009 (relating to the table of thresholds).

5. Subsection (5) provides for the commencement date for the amendments made by the new section 139.

Background Note

6. Section 139 of ITEPA sets out the basis for calculating the appropriate percentage for cars with CO_2 emissions. The appropriate percentage multiplied by the list price of the car (adjusted for any taxable accessories) provides the level of chargeable benefit for company car tax and Class 1A National Insurance Contributions.

7. The current graduated table of company car tax bands will be extended down to a new 10 per cent band, and all CO_2 emissions thresholds moved down by 5g/km on 6 April 2012 so that the 10 percent band will apply to company cars with CO_2 emissions up to 99g/km. Qualifying Low Emissions Cars (QUALECs) will therefore no longer exist as a separate category. These changes support the Government's commitments on reducing carbon emissions.

Section 60: Salary Sacrifice: Restricting Tax Exemption for Workplace Canteens

Summary

1. Section 60 amends section 317 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to restrict the exemption for the benefit of free or subsidised meals where an employee has an entitlement in conjunction with salary sacrifice or flexible benefits arrangements to employer-provided free or subsidised meals. The amended section 317 will have effect on and after 6 April 2011.

Details of the Section

2. Section 317 of ITEPA removes the tax charge on the provision of meals for directors or employees if the meal is provided in a canteen or on the employer's premises and the following conditions are met:

- the meal is on a reasonable scale;
- all employees, or all employees at a particular work location, may obtain a free or subsidised meal (or a voucher for one); and
- in the case of a hotel, catering or similar business, if free or subsidised meals are provided for employees in a restaurant or dining room when meals are being served to the public, part of the dining area must be designated for staff use only and the meals must be taken in that part.

3. This section will remove the tax exemption in circumstances where employees are in effect using a designated amount of their gross remuneration to fund the purchase of food and drink at work.

4. Subsidy benefits that are quantifiable but not connected to salary sacrifice or flexible benefits arrangements will not be affected.

5. The section achieves this by amending section 317 of ITEPA to restrict its application.

6. Subsection (3) inserts new subsection (4A) into section 317. New subsection (4A)(a) will prevent the exemption from applying where the provision of free or subsidised meals is linked to a salary sacrifice arrangement in which the employee has agreed to reduce their existing taxable employment income and is to be provided in return with food and drink (or the means of obtaining it).

7. New subsection (4A)(b) will prevent the exemption from applying where the provision of free or subsidised meals is linked to a flexible benefits remuneration arrangement in which the employee and employer have agreed that part of the reward for that employment will be provided as food and drink (or the means of obtaining it) rather than some other form of employment reward that the employee could have received instead,

8. Subsection (4) inserts new subsection (5A) into section 317, which provides definitions of the terms used in new subsection (4A).

9. Once they take effect, the new subsections apply equally to salary sacrifice and flexible benefits remuneration arrangements entered into before, on and after 6 April 2011. Subsection (5) of the section provides for the commencement.

Background Note

10. The Government has become aware that some employers and employees have developed remuneration arrangements involving salary sacrifice or flexible benefits to take advantage of the exemption at section 317.

11. These arrangements are intended to allow some employees to purchase meals out of gross pay, and hence obtain a significant tax and National Insurance Contributions

(NICs) advantage over the majority of employees who must purchase their meals using their net pay, from which tax and NICs have already been deducted.

12. This section prevents the exemption from being used in such arrangements, while ensuring it continues to apply to free or subsidised meals provided not as part of salary sacrifice or flexible benefit arrangements. This remains subject to such meals meeting the pre-existing conditions of the exemption.

Section 61Schedule 18: Sale of Lessors: Election Out of Charge on Qualifying Change

Summary

1. Section 61 and Schedule 18 make changes to Chapter 3 of Part 9 of the Corporation Tax Act (CTA) 2010 to offer an option to elect for an alternative treatment.

Details of the Schedule

2. Paragraph 1 introduces the changes to Chapter 3 of Part 9 of CTA 2010 (formerly Schedule 10 to the Finance Act (FA) 2006).

3. Paragraph 2 makes consequential changes to section 382 of CTA 2010.

4. Paragraph 3 inserts new subsection (1A) into section 383 which signposts those sections defining "qualifying change of ownership".

5. Paragraph 4 substitutes a new section 392 which defines "relevant change in relationship" by reference to the circumstances set out in section 393 or 394.

6. Paragraph 5 inserts new section 394A which defines when there is a "qualifying change of ownership" for the purposes of the sale of lessors Chapters by reference to a "relevant change in the relationship" between A and a principal company of A and lists those sections that set out circumstances when this is not the case.

7. Paragraph 6 inserts new sections 398A, 398B, 398C, 398D, 398E, 398F and 398G after section 398.

8. New section 398A provides for an election for an alternative treatment to that provided for by the current sales of lessors legislation. It is available where a company (A) is carrying on a business of leasing plant or machinery alone, there is a relevant change in the relationship between A and a principal company and A elects for the section to apply.

9. New section 398A(2) sets out the effect of the election:

   - there is no qualifying change of ownership in relation to the company, but subsections (2)(b) and (4)(b) of section 383 apply bringing the accounting period of the company to a close and commencing a new accounting period on the day after the relevant day;
   - new section 398D applies during the relevant period; and
   - new sections 398E to 398G apply during the relevant period and on the relevant day.

10. New section 398A(3) defines "the relevant period" as beginning with the day after the relevant day and ending when there is next a relevant change in the relationship between A and a principal company of A as set out in subsection (4). Where there is not such an event the relevant period continues.

11. New section 398A(4) sets out the requirements to be satisfied before the relevant period is brought to an end. There must be a relevant change in the relationship between A and a principal company of A that results in the unadjusted basic amount being treated as a receipt of the business of leasing plant or machinery. This is extended to include a case

where the unadjusted basic amount of income would have been treated as a receipt of the business, but for a further election.

12. New section 398A(5) explains the consequences when there is a relevant change in the relationship but the relevant period is not brought to an end. In these circumstances there is no qualifying change of ownership and the effects of the election continue.

13. New section 398B provides how the election must be made. The election must be made by notice to an officer of HM Revenue & Customs (HMRC) and within two years beginning with the relevant day. The election is irrevocable.

14. New section 398B(4) ensures that the effect of the election can be reflected by making any assessments and adjusting any assessments.

15. New section 398C introduces new sections 398D and 398E which make special provision about the trade or property business consisting of or including the business of leasing plant or machinery. For the purposes of new sections 398D and 398E, the trade or the property business is the “relevant activity”.

16. New sections 398D sets out the restrictions on the use of losses etc against profits of the relevant activity:

    - no loss may be deducted under chapter 2 of Part 4 (trade losses), section 62 (losses made in UK property business) or section 189 (charitable donations);
    - no group relief under Part 5 is available;
    - no deficit may be set off under section 461 of CTA 2009 (non-trading deficit from loan relationship);
    - no loss may be set off under section 753 of CTA 2009 (non-trading loss on intangible fixed assets);
    - no deduction under section 1219 of CTA 2009 (expenses of management of investment business) is allowed;
    - no sum may be set off under paragraph 1 of Schedule 26 to the Income and Corporation Taxes Act 1988 (ICTA) if A is a controlled foreign company subject to an apportionment; and
    - if the company would otherwise be a tonnage tax company it is to be treated as not being a tonnage tax company.

17. New section 398E takes expenditure that has an unallowable purpose out of account when computing the profits or losses of the relevant activity. Expenditure has an unallowable purpose if the main purpose, or one of the main purposes, of the lessor company in incurring it, is to obtain a relevant tax advantage. New paragraph 398E(4) defines “relevant tax advantage” as:

    - a reduction in the corporation tax profits attributable to the carrying on of the relevant activity;
    - the creation of a corporation tax loss attributable to the carrying on of the relevant activity; or
    - an increase in corporation tax losses attributable to the carrying on of the relevant activity.

18. New section 398F limits the availability of capital allowances on expenditure incurred by the lessor company by preventing expenditure incurred on the acquisition or creation of an “independent asset” from qualifying for capital allowances.

19. An “independent asset” is defined as being an asset that, in the normal course of business, could be used individually, whether or not it could also be used as a constituent

part of a single combined asset, or, an asset that could be used "at different times" as a constituent part of different combined assets. A "combined asset" is a single asset consisting of more than one asset.

20. New section 398G deals with transfers of assets into and out of the lessor company. Where the transfer falls within section 948, or where the lessor company is the predecessor and section 265 of the Capital Allowances Act 2001 applies, then the transfer value is treated as equal to its market value as defined in section 437(9) i.e. the value of the asset unencumbered by any leases or other encumbrances.

21. Paragraph 7 amends section 437 of CTA 2010 (interpretation of the sale of lessors Chapters), by inserting new subsection (8A) which defines "property business" as meaning a UK or overseas property business.

22. Paragraph 8 makes consequential changes to Schedule 4 to insert references to the definition of "property business", "relevant changing relationship" and "qualifying change of ownership in relation to a company".

23. Paragraph 9 provides that the amendments made by the Schedule have effect where the relevant day is on or after 9 December 2009.

24. Paragraph 10 makes corresponding amendments to Schedule 10 to FA 2006, (the legislation re-written as Chapter 3 of Part 9 of CTA 2010 and which is in force in relation to the period between 9 December 2009 and the enactment of CTA 2010).

25. Paragraph 11 disapplies section 398F where expenditure is incurred as a consequence of a contract entered into by the company and finalised before 9 December 2009.

26. Paragraph 12 prevents the relevant period from being brought to a close where sections 398A(4) and (5) apply and the relevant day is before 24 March 2010.

27. Paragraph 13 disapplies section 398D(6) in relation to accounting periods beginning before 24 March 2010, and disapplies section 398D(7) until 24 March 2010.

Background Note

28. The sale of lessor companies legislation prevents a potential loss of tax when a lessor company changes hands. Tax could be lost if a lessor company with deferred tax profits is sold to a loss-making concern that is able to utilise its own losses against the deferred tax profits of the lessor company. A sale to a loss-making concern is deterred by the legislation through the imposition of a charge that is matched by a relief; the charge affecting the selling group and the relief benefiting the buying group. Where the lessor company is sold to a profit-making concern the relief is valuable and the buyer will pay enough for the shares in the lessor company to compensate the seller for the imposition of the charge. Where the lessor company is sold to a loss-making concern the relief brings no benefit and the buyer is not willing to pay enough to compensate the seller.

29. It has become clear that in some limited circumstances the legislation can act as a deterrent in cases where there is no tax avoidance motive. Typically, this is because the buyer is not a loss-making concern but, as a consequence of a temporary dip in profitability or as a consequence of the particular nature of the buying entity, it is not able to utilise the relief efficiently.

30. This Schedule introduces an option to elect for an alternative treatment which replaces the charge and relief with a ring fence that preserves the profits of the leasing business by restricting the set off of losses, preventing the fragmentation of the business without tax effect and the reduction of the profits of the business through additional claims to capital allowances and the creation of artificial deductions. As a consequence of these restrictions tax is collected on the deferred profits over time.

31. The election offers an alternative where Schedule 10 acts as a barrier to a commercially motivated sale while ensuring that the incentive to sell a lessor company to a loss-making concern is not reinstated.

Section 62Schedule 19: Accounting Standards: Loan Relationships and Derivative Contracts

Summary

1. Section 62 and Schedule 19 provide for regulations to be made to amend the corporation tax (CT) rules on loan relationships and derivative contracts where changes in accounting standards affect the way in which companies account for taxable amounts arising from financial instruments such as loans and derivatives.

Details of the Schedule

2. Paragraph 1 inserts a new section 465A into the Corporation Tax Act 2009 (CTA), to allow regulations to be made where as a consequence of a "change in accounting standards" there is a "relevant accounting change".

3. Subsection (2) of new section 465A defines a "change in accounting standards" to mean a change made to an "accounting standard" by an "accounting body". These terms are defined in subsection (8).

4. Subsection (3) defines a "relevant accounting change" to mean a change in the way a company may or must account for profits and losses that are taxed or relieved under the loan relationships rules in Part 5 of CTA. (By virtue of section 294 of CTA, the provisions of Part 5 also apply to matters treated as loan relationships under Part 6 of CTA.)

5. Subsection (4) allows regulations made under this power to amend the primary legislation on loan relationships.

6. Subsection (5) allows for the regulations to make any necessary consequential and transitional provisions, and to introduce an election.

7. Subsection (6) permits any such consequential changes to include changes in CT provisions outside the loan relationship rules.

8. Subsection (7) allows the regulations to have retrospective effect where a relevant accounting change can be adopted by a company for a period of account beginning before the regulations are made.

9. Subsection (8) defines the terms "accounting body" and "accounting standard". The term "accounting standards" embraces International Accounting Standards, International Financial Reporting Standards, Statements of Standard Accounting Practice, Statements of Recognised Accounting Practice, Financial Reporting Standards, interpretations issued by the International Financial Reporting Interpretations Committee, and all similar documents.

10. Paragraph 2 inserts a new section 701A in CTA. The provisions of this new section mirror those of new section 465A, and allow equivalent regulations to be made in relation to Part 7 of CTA, which sets out the CT rules on derivative contracts.

11. Paragraph 3 provides for any regulations made under either of the new sections to be subject to the affirmative resolution procedure.

Background Note

12. In July 2009, the International Accounting Standards Board (IASB) issued proposals to amend the accounting standard on financial instruments (IAS 39 – "Financial Instruments: Recognition and Measurement"). Changes to IAS 39 will have a

significant impact on the CT rules on loan relationships and derivative contracts in Parts 5 to 7 of CTA. One of the key principles in these rules is that amounts brought into account for tax purposes are based closely on the profit or loss shown in accounts drawn up in accordance with generally accepted accounting practice (GAAP). GAAP includes both International Accounting Standards and their UK equivalents issued by the Accounting Standards Board (ASB). Changes made by the IASB are likely to be followed by the ASB for UK GAAP.

13. It is anticipated that the amendments to IAS 39 will be made in stages, between 2009 and 2013. Each draft proposal for changes to the current standard is subject to consultation, and the final version of any new or amended standards may differ from the original draft. The first stage in this programme was the issue of a new standard, International Financial Reporting Standard (IFRS) 9, in November 2009. IFRS 9 allows a company to adopt the new standard for the period ending after it was issued, and it is possible that other new or amended standards will similarly allow for adoption in the period in which they are issued.

14. The CT rules on loan relationships and derivative contracts contain a number of regulation-making powers, but these powers are unlikely to permit the type of amendments to those rules that may be needed to cater for the extensive changes to accounting standards that have recently been, or are expected to be, announced by the IASB.

15. There would be uncertainty for both companies and for the Exchequer if it was necessary to wait for the next Finance Act to address the changes to tax rules which are likely to be needed as a consequence of the accounting changes. The new regulation-making powers inserted by this Schedule enable such changes to be made as and when the accounting changes are announced, and for any period to which they apply.

Section 63Schedule 20: Champions League Final

Summary

1. Section 63 and Schedule 20 provides for an exemption from income tax for the non-resident players and officials of visiting teams who compete in the 2011 Champions League Final.

Details of the Schedule

2. Paragraph 1(1) describes the individuals to be exempt as employees and contractors of the visiting team who are not resident and not ordinarily resident in the UK

3. Paragraph 1(2) describes the income to be exempt as being related to the duties or services performed in connection with the Champions League Final. This is subject to the following paragraphs and the definitions contained within them as per paragraphs 3 and 4.

4. Paragraph 2 provides that income that is to be exempt must relate to contracts that are in place before the final takes place.

5. Paragraph 3 provides that the exemption does not apply to arrangements set up for tax avoidance purposes. For example by creating contracts, duties or payments that would not otherwise exist but for the exemption.

6. Paragraph 4 provides that withholding obligations under section 966 of the Income Tax Act 2007 (ITA) that otherwise apply to payments or transfers to foreign sportspeople that relate to performing in the UK are removed from payers of exempted payments or transfers.

7. Paragraph 5 provides that the exemption covers employment income and self-employment income. This includes payments and transfers deemed to be profits of a

trade, profession or vocation of a foreign sportsperson, even where those payments or transfers are made to a person other than the sportsperson.

8. Paragraph (6) provides the necessary definitions of "the 2011 Champions League Final", a "contractor", an "employee and employment" and an "overseas team".

Background Note

9. Exemption from UK income tax for the players and officials of visiting football teams was part of the bid to host the 2011 Champions League Final. This section and Schedule enact that undertaking.

10. The employment income, self-employment income and any endorsement income of the players and the teams' officials relating to the Champions League Final in the UK will not be liable to UK income tax where the team is an overseas team and those players and officials are not resident and not ordinarily resident in the UK. This is provided that the income is in relation to the match and that the individual works for, or is contracted to, the team or its subsidiaries.

Section 64: Fscs Intervention in Relation to Insurance Contracts

Summary

1. Section 64 provides HM Treasury with a power to make regulations in connection with how taxes apply after an intervention by the Financial Services Compensation Scheme (FSCS) in relation to insurance contracts. The power to make regulations will come into force when Finance Bill 2010 receives Royal Assent.

Details of the Section

2. Subsection (1) provides that HM Treasury may make regulations in relation to how taxes apply when there is a relevant intervention by the FSCS in connection with protected insurance contracts. Subsection (2) explains when there will be a relevant intervention.

3. Subsection (3) identifies the contracts that are included by referring to the definition included in Financial Services Authority Handbook.

4. Subsection (6) provides that the regulations can apply to a period before they were made, but only if they do not increase any person's tax liability.

5. Subsections (7) and (8) provide that the regulations may amend or modify primary and secondary legislation.

6. Subsection (10) provides that the regulations are to be made under the negative resolution procedure.

Background Note

7. The Financial Services Compensation Scheme (FSCS) is an independent body established by Part 15 of the Financial Services and Markets Act 2000. It is the UK's statutory fund of last resort for customers of authorised financial services firms, including insurers, banks, building societies and investment firms.

8. The FSCS protect policyholders of insurance companies authorised by the Financial Services Authority that are unable, or likely to be unable, to meet claims made against them.

9. Insurance companies offer a range of products which are protected by the FSCS, including life insurance policies, life annuity contracts, and permanent health insurance policies.

10. This section provides the power to make regulations adapting the tax treatment applicable where the FSCS intervenes to protect insurance policyholders.

11. These regulations will address unintended tax consequences arising from FSCS interventions and provide broadly the same tax treatment that would have applied had the FSCS not intervened

12. This section will primarily affect the tax impacts for non-pension related savings and investments. Similar powers to make regulations addressing tax impacts arising from FSCS interventions for pension saving with insurers were introduced by section 74 of the Finance Act 2009.

Section 65: Stamp Duty and Sdrt: Clearing Houses

Summary

1. Section 65 provides that members of clearing houses and their nominees are explicitly included in the enabling legislation that permits regulations to be made by HM Treasury removing additional charges to stamp duty and stamp duty reserve tax (SDRT) when share trades are cleared through a central counterparty.

Details of the Section

2. Subsection (1) provides for the enabling powers in sections 116 and 117 of the Finance Act (FA) 1991 to make regulations that give relief from stamp duty and SDRT to explicitly include members of clearing houses and the nominees of members of clearing houses within the categories of entities that can be granted relief.

3. Subsection (2) provides that the amendments are to be treated as always having had effect.

Background Note

4. Stamp duty is charged on instruments transferring stock or marketable securities. SDRT is payable upon agreements to transfer chargeable securities where no instrument of transfer is executed. Both stamp duty and SDRT are charged at rate of 0.5 per cent of the consideration for the securities (stamp duty is not charged where the duty would be less than £5).

5. When a transfer of securities occurs, the buyer and the seller can settle directly with one another, the buyer giving consideration in return for the seller's shares. It is, however, common for the parties in the deal to "clear" the trade. Clearing provides a guarantee to the ultimate seller and buyer that the deal will be completed should either party default, the seller receiving the consideration and the purchaser the securities.

6. When transactions in UK securities are cleared through a central counterparty such as a clearing house, a chain of transactions will arise involving exchange members, their nominees, the clearing house itself, and the members and nominees of the clearing house, each of which will potentially give rise to a charge to stamp duty or SDRT for what is essentially a single transaction of sale and purchase. HM Treasury, under powers contained in FA 1991, can make regulations that remove all but the last of these charges.

7. The Select Committee on Statutory Instruments (report dated 9 December 2009) has reported regulations made recently as possibly going beyond the scope of the enabling power which mentions members of recognised investment exchanges but not members of clearing houses. This has resulted in confusion and uncertainty amongst financial market participants as to the validity of the regulations already made. Future regulations made under these powers will also need to provide for relief for clearing members and their nominees.

8. This section amends the enabling powers to explicitly provide relief to clearing members (and their nominees). The section also provides that the amendment to the powers shall be treated as having always had effect. The policy aim is therefore met that only a single charge to stamp duty or SDRT shall arise when a transaction is cleared.

Section 66: Alcoholic Liquor Duties: Power to Amend Definition of "Cider"

Summary

1. Section 66 provides the Treasury with a power to amend the definition of cider for excise duty purposes by means of an order.

Details of the Section

2. Section 66 introduces new subsections (6A) (6B) (6C) and (6D) into section 1 of the Alcoholic Liquor Duties Act 1979 providing a power to amend the definition of cider for duty purposes by way of Treasury order. Any order made under the new sections will be subject to the affirmative resolution procedure.

Background Note

3. This section provides for a power for the Treasury to amend the definition of cider for duty purposes by way of statutory instrument.

Section 67: Climate Change Levy: Compatible State Aid

Summary

1. Section 67 cites specific EU rules on State aid which may sometimes be relevant to the application of the reduced rate of climate change levy (CCL). This citation is a requirement of the Commission Regulation which the UK proposes to use to renew State aid approval for the extension of the climate change agreement (CCA) scheme from 1 April 2011.

Details of the Section

2. Section 67 inserts new sub-paragraphs (3) and (4) into paragraph 42 of Schedule 6 to the Finance Act 2000, which fulfil the requirements of the stated EU State aid Regulation for the scheme in question to cite that Regulation's title and publication reference.

Background Note

3. CCL was introduced in 2001 and is a UK wide tax on the supply of electricity, gas, solid fuel and liquefied gases used for fuel purposes by business and the public sector.

4. The purpose of the CCL is to encourage the efficient use of energy and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

5. CCAs were introduced alongside the levy and entitle participating facilities to pay a reduced rate of levy in return for meeting challenging targets for improving energy efficiency or reducing emissions.

6. The reduced rate of CCL, which is claimed by facilities in the climate change agreements scheme, is a State aid. Section 67 of this Act amends the level of CCL discount for facilities participating in the scheme from 1 April 2011. Doing so enables the UK to renew its State aid approval for the CCA scheme using the simplified procedure for State aid clearance provided for by Commission Regulation (EC) No 800/2008. Article 3(1) of that Regulation requires the aid scheme to contain an express reference to the Regulation.

Section 68: Pensions: Minor Corrections

Summary

1. Section 68 provides for a number of minor corrections that are required to section 280(2) of the Finance Act (FA) 2004.

Details of the Section

2. Subsections (2) – (4) add two definitions to the list in section 280(2) of FA 2004 and correct a cross reference.

3. Subsections (5) and (6) provide for when the amendments shall have effect from.

Background Note

4. Section 280(2) of FA 2004 sets out a number of definitions used in Part 4 of that Act by reference to other provisions in the Taxes Acts. The section corrects some minor earlier drafting errors concerning cross references to the different rates of tax.

Sections 69 & 70: Final Provisions

Section 69: Interpretation

1. This section provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "ICTA" as an abbreviation for the Income and Corporation Taxes Act 1988.

Section 70: Short Title

2. This section provides for the Act to be known as the "Finance Act 2010" upon Royal Assent.