



# Finance Act 2010

## 2010 CHAPTER 13

### PART 2

#### ANTI-AVOIDANCE AND REVENUE PROTECTION

##### *Losses, capital allowances etc*

#### **24 Sideways relief etc**

Schedule 3 contains provision about sideways relief etc.

#### **25 Property loss relief**

(1) Chapter 4 of Part 4 of ITA 2007 (losses from property businesses) is amended as follows.

(2) In section 117 (overview of Chapter), after subsection (2) insert—

“(3) This Chapter also contains provision restricting relief under this Chapter (see section 127A).”

(3) In section 120 (deduction of property losses from general income), after subsection (6) insert—

“(7) See also section 127A (no relief for tax-generated losses attributable to annual investment allowance).”

(4) After section 127 insert—

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*“Restrictions on relief*

**127A No relief for tax-generated losses attributable to annual investment allowance**

- (1) This section applies if—
  - (a) in a tax year a person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership),
  - (b) the loss has a capital allowances connection (see section 123(2)), and
  - (c) the loss arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.
- (2) No property loss relief against general income may be given to the person for so much of the applicable amount of the loss as is attributable to an annual investment allowance.
- (3) For the purposes of subsection (2), the applicable amount of the loss is to be treated as attributable to capital allowances before anything else and to an annual investment allowance before any other capital allowance.
- (4) In subsection (1) “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is being in a position to make use of an annual investment allowance in the obtaining of a reduction in tax liability by means of property loss relief against general income.
- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) In this section “the applicable amount of the loss” has the meaning given by section 122.”
- (5) The amendments made by this section have effect in relation to a loss if it arises directly or indirectly in consequence of, or otherwise in connection with—
  - (a) arrangements which are entered into on or after 24 March 2010, or
  - (b) any transaction forming part of arrangements which is entered into on or after that date.
- (6) But those amendments do not have effect where the arrangements are, or any such transaction is, entered into pursuant to an unconditional obligation in a contract made before that date.
- (7) “An unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of a right (whether or not under the contract).

**26 Capital allowance buying**

Schedule 4 contains provisions about capital allowance buying.

## 27 Leased assets

Schedule 5 contains provisions about leased assets.

## 28 Cushion gas

- (1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- (2) Section 70J (meaning of “funding lease”) is amended as follows.
- (3) After subsection (1) insert—

“(1A) A plant or machinery lease is also a “funding lease” if the plant or machinery is cushion gas.”
- (4) In subsection (2), for “Subsection (1) is” substitute “Subsections (1) and (1A) are”.
- (5) After subsection (6) insert—

“(7) In this section “cushion gas” means gas that functions or is intended to function as plant in a particular gas storage facility.”
- (6) In section 104A(1) (special rate expenditure)—
  - (a) omit the “and” at the end of paragraph (d), and
  - (b) after paragraph (e) insert “and
    - (f) expenditure incurred on or after 1 April 2010 on the provision of cushion gas (within the meaning given by section 70J(7)).”
- (7) After section 104F insert—

### “104G Disposal events in respect of cushion gas

- (1) This section applies if expenditure incurred by a person on the provision of cushion gas used in a particular gas storage facility includes both new expenditure and old expenditure.
- (2) Any disposal event which concerns any of that cushion gas is to be treated for the purposes of this Part as relating to cushion gas which is the subject of the new expenditure before cushion gas which is the subject of the old expenditure.
- (3) The result of subsection (2) (including any further application of that subsection) is that a disposal event may be treated as relating—
  - (a) only to cushion gas which is the subject of the new expenditure,
  - (b) both to—
    - (i) cushion gas which is the subject of the new expenditure, and
    - (ii) cushion gas which is the subject of the old expenditure, or
  - (c) only to cushion gas which is the subject of the old expenditure.
- (4) If a disposal event is treated, as a result of subsection (2), as relating both to—
  - (a) cushion gas which is the subject of the new expenditure, and
  - (b) cushion gas which is the subject of the old expenditure,it is to be treated for the purposes of this Part as two separate disposal events, the first relating to cushion gas within paragraph (a) and the second relating to cushion gas within paragraph (b).

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- (5) In this section—
- “cushion gas” has the meaning given by section 70J(7),
  - “new expenditure” means expenditure incurred on or after 1 April 2010, and
  - “old expenditure” means expenditure incurred before that date.”
- (8) The amendments made by subsections (2) to (5) have effect in relation to leases whose inception (within the meaning given by section 70YI(1) of CAA 2001) is on or after 1 April 2010.
- (9) The amendments made by subsection (6) have effect in relation to expenditure incurred on or after 1 April 2010.
- (10) The amendment made by subsection (7) has effect in relation to disposal events on or after 1 April 2010.

## **29 Sale of lessors: consortium relationships**

- (1) Chapters 3 and 4 of Part 9 of CTA 2010 (sales of lessors) are amended as follows.
- (2) In section 393(7) (qualifying 75% subsidiaries), omit “or 90%”.
- (3) In section 394 (consortium relationships)—
- (a) in subsections (1)(b), (4) and (5)(b), for “90%” substitute “75%”, and
  - (b) in subsection (9)(b), omit “or 90%”.
- (4) In section 398 (qualifying 75% or 90% subsidiary), omit—
- (a) subsections (5) and (6), and
  - (b) in subsection (7)(b), “and “90% subsidiary””,
- and, in the heading, omit “**or 90%**”.
- (5) In section 405(2)(b) and (6) (adjustments to basic amount), for “90%” substitute “75%”.
- (6) In sections 408(5)(b) and 430(4)(b) (associated company), for “90%” substitute “75%”.
- (7) In Schedule 4 to CTA 2010, omit the entry relating to “qualifying 90% subsidiary (in Chapters 3 to 6 of Part 9)”.
- (8) The amendments made by this section have effect where the relevant day is on or after 9 December 2009.
- (9) Corresponding amendments, having effect where the relevant day is on or after that date, are to be treated as having been made in Schedule 10 to FA 2006.

*Charities etc*

## **30 Charities and community amateur sports clubs: definitions**

Schedule 6 contains provision about the meaning of “charity” (and related expressions) and “community amateur sports club”.

### **31 Gifts of shares etc to charities**

Schedule 7 contains provision about schemes to obtain or increase relief in respect of certain gifts to charities.

### **32 Miscellaneous amendments**

Schedule 8 contains miscellaneous amendments of provisions relating to charities.

#### *Remittance basis*

### **33 “Relevant person”**

- (1) Section 809M of ITA 2007 (remittance basis: meaning of “relevant person”) is amended as follows.
- (2) In subsection (2)(f), insert at the end “or a company which is a 51% subsidiary of such a company,”.
- (3) In subsection (3)(ca), for “Act),” substitute “Act) and, in relation to a company that would be a close company if it were resident in the United Kingdom, means a person who would be such a participator if it were a close company,”.
- (4) The amendments made by this section are treated as having come into force on 6 April 2010.

### **34 Foreign currency bank accounts**

Schedule 9 contains provision about foreign currency bank accounts.

#### *Other international matters*

### **35 Penalties: offshore income etc**

- (1) Schedule 10 contains provision about penalties in respect of offshore income etc.
- (2) Schedule 10 comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may make different provision for different purposes, and
  - (b) may include transitional provisions and savings.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional or transitory provision or saving that appears appropriate in consequence of, or otherwise in connection with, Schedule 10.
- (5) An order under subsection (4) may—
  - (a) make different provision for different purposes, and
  - (b) make provision amending, repealing or revoking an enactment or instrument (whenever passed or made).
- (6) An order under this section is to be made by statutory instrument.

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- (7) A statutory instrument containing an order under subsection (4) is subject to annulment in pursuance of a resolution of the House of Commons.

### **36 Reliefs and reductions for foreign tax**

Schedule 11 contains provision about activities designed to increase the amount allowed by way of credit or reduction in respect of foreign tax.

### **37 Asset transfer to non-resident company: recovery of postponed charge**

- (1) In section 140 of TCGA 1992 (postponement of charge on transfer of assets to non-resident company)—
- (a) in subsection (4), for “the consideration received by it on the disposal shall be treated as increased by” substitute “there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion”, and
  - (b) after that subsection insert—
 

“(4A) A chargeable gain which is deemed to accrue under subsection (4) is in addition to any gain or loss that actually accrues to the transferor company on the disposal of the securities.”
- (2) In Schedule 7AC to that Act (exemption for disposals by companies with substantial shareholding), omit paragraph 35 (recovery of charge postponed on transfer of asset to non-resident company).
- (3) The amendments made by this section have effect in relation to disposals of securities on or after 6 January 2010.

#### *Securities etc*

### **38 Transactions in securities**

Schedule 12 contains provision about transactions in securities.

### **39 Approved CSOP schemes: eligible shares**

- (1) In Part 4 of Schedule 4 to ITEPA 2003 (shares to which approved CSOP schemes can apply), omit paragraph 17(1)(c) (shares in a company which is under the control of a listed company).
- (2) Accordingly, in that Schedule—
- (a) in paragraph 17—
    - (i) after sub-paragraph (1)(a) insert “or”,
    - (ii) omit “or” at the end of sub-paragraph (1)(b), and
    - (iii) omit sub-paragraph (2), and
  - (b) omit paragraph 20(3)(c) (and the “or” before it).
- (3) The amendments made by this section—
- (a) come into force on 24 September 2010, and
  - (b) have effect in relation to options granted on or after that day.

- (4) If—
- (a) during the period beginning with 24 March 2010 and ending with 23 September 2010 (“the transitional period”), a share option is granted to an individual in accordance with the provisions of an approved CSOP scheme, and
  - (b) the shares which may be acquired by the exercise of the option are shares in a company which is under the control of a listed company, other than shares of a class listed on a recognised stock exchange,
- the share option is to be treated for the purposes of the CSOP code as not having been granted in accordance with the provisions of an approved CSOP scheme.
- (5) An alteration made to a scheme during the transitional period in order to meet the amended paragraph 17 requirement is to be regarded as an alteration made in a key feature of the scheme for the purposes of paragraph 30 of Schedule 4 to ITEPA 2003 (withdrawal of approval).
- (6) Where the amended paragraph 17 requirement is not met in respect of an approved CSOP scheme at the end of the transitional period, the requirement is to be treated for the purposes of paragraph 30(2)(a) of that Schedule (disqualifying events) as ceasing to be met immediately after that time.
- (7) Where, by virtue of subsection (6), approval is withdrawn from a scheme under Part 7 of that Schedule, that withdrawal has effect (from the time determined in accordance with paragraph 30(1) of that Schedule) in relation to options granted on or after 24 September 2010 only.
- (8) In subsections (3) to (7) references to options having been granted include new share options granted under the terms of a provision included in a scheme under paragraph 26 of Schedule 4 to ITEPA 2003 (exchange of shares on company reorganisation); but paragraph 27(5) of that Schedule (new share options treated as granted at same time as old share options) does not apply for the purposes of those subsections.
- (9) In this section—
- “the amended paragraph 17 requirement” means the requirement of paragraph 17 of Schedule 4 to ITEPA 2003 as amended by this section;
  - “approved” and “CSOP scheme” have the meaning given by section 521 of that Act;
  - “control” and “listed company” have the same meaning as in paragraph 17 of Schedule 4 to that Act.

#### **40 Unauthorised unit trusts**

Schedule 13 contains provision about unauthorised unit trusts.

#### **41 Index-linked gilt-edged securities**

Schedule 14 contains provision about index-linked gilt-edged securities.

#### **42 Approved share incentive plans**

- (1) Paragraph 84(1) of Schedule 2 to ITEPA 2003 (approved share incentive plans) is amended as follows.

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- (2) For paragraph (d) substitute—
- “(d) an alteration being made—
- (i) in the share capital of a company any of whose shares are subject to the plan trust, or
- (ii) in the rights attaching to any shares of such a company, that materially affects the value of shares that are subject to the plan trust;”.
- (3) In paragraph (e), for “have been awarded to participants” substitute “are subject to the plan trust”.
- (4) Section 989 of CTA 2009 (deduction for contribution to plan trust) is amended as follows.
- (5) In subsection (1), after paragraph (a) insert—
- “(aa) the payment is not made pursuant to tax avoidance arrangements;”.
- (6) After subsection (6) insert—
- “(6A) For the purposes of this section the payment mentioned in subsection (1)(a) is made pursuant to tax avoidance arrangements if—
- (a) it is made pursuant to arrangements entered into by the paying company, and
- (b) the main purpose, or one of the main purposes, of the paying company in entering into the arrangements was to obtain a deduction or an increased deduction.
- (6B) In subsection (6A) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.”
- (7) The amendments made by subsections (1) to (3) have effect in relation to events taking place on or after 24 March 2010.
- (8) The amendments made by subsections (4) to (6) have effect in relation to payments made on or after that day.

*Loan relationships and derivative contracts*

**43 Close companies: release of loans to participators etc**

- (1) In CTA 2009, after section 321 insert—

**“321A Restriction on debits resulting from release of loans to participators etc**

- (1) This section applies if—
- (a) a loan gives rise to a charge to tax under section 455 of CTA 2010 (including a charge by virtue of section 459 or 460 of that Act), and
- (b) the whole or a part of the debt in respect of the loan is released or written off.



(2) No debit is to be brought into account for the purposes of this Part in respect of the release or writing off.”

(2) The amendment made by subsection (1) has effect in relation to debts (or parts of debts) released or written off on or after 24 March 2010.

#### **44 Connected companies: releases of debts**

Schedule 15 contains provision about releases of debts in cases involving connected companies.

#### **45 Relationships treated as loan relationships etc: repos**

(1) In paragraph 4 of Schedule 13 to FA 2007 (ignoring effect on borrower of sale of securities), in sub-paragraph (4) omit the “and” at the end of paragraph (a) and after that paragraph insert—

“(aa) an amount representative of income payable in respect of the securities is not to be ignored as a result of sub-paragraph (3)(b) if it is, in accordance with generally accepted accounting practice, so recognised or taken into account, and”.

(2) In section 550 of CTA 2009 (ignoring effect on borrower of sale of securities)—

- (a) in subsection (4), for “and (6)” substitute “to (6)”, and
- (b) after subsection (5) insert—

“(5A) For the purposes of the charge to corporation tax, an amount representative of income payable in respect of the securities is not to be ignored as a result of subsection (3)(b) if—

- (a) it is, in accordance with generally accepted accounting practice, recognised in determining the borrower’s profit or loss for that or any other period, or
- (b) it is taken into account in calculating the amounts which are so recognised.”

(3) The amendments made by this section are treated as always having had effect.

#### **46 Risk transfer schemes**

Schedule 16 contains provision about risk transfer schemes.

#### *Insurance companies*

#### **47 Apportionment of asset value increases**

(1) In Chapter 1 of Part 12 of ICTA (insurance companies etc), after section 432C insert—

**“432CA Apportionment of asset value increase where line 51 amount decreases**

(1) This section applies where—

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- (a) an insurance company is not a non-profit company in relation to a period of account (“the current period of account”),
  - (b) in the case of any business with which an account of the company for the current period of account is concerned (“the relevant business”), an amount is a relevant brought into account amount for that period of account (see subsection (2)),
  - (c) section 432C applies for determining the extent to which the relevant brought into account amount is referable to life assurance business or to gross roll-up business, and
  - (d) the line 51 reduction condition is met (see subsection (3)).
- (2) An amount is a relevant brought into account amount for a period of account if—
- (a) it is brought into account as mentioned in subsection (2)(b) of section 83 of the Finance Act 1989 (increases in value of non-linked assets) for that period,
  - (b) it is deemed to be brought into account for that period by subsection (2B) of that section in consequence of the transfer of non-linked assets, or
  - (c) it is taken into account under subsection (2) of that section for that period by virtue of section 444AB as being the relevant amount in relation to non-linked assets.
- (3) The line 51 reduction condition is met if—
- (a) the amount shown in column 1 of line 51 of Form 14 of the company’s periodical return in respect of the relevant business for the current period of account, is less than
  - (b) the amount so shown for the period of account immediately before it; and the amount of the difference is “the relevant reduction”.
- (4) Section 432C applies in relation to so much of the relevant brought into account amount as does not exceed the relevant reduction (“the affected amount”) as if it were brought into account as an increase in the value of assets in the case of the relevant business for the applicable appropriate period of account of the company.
- (5) A period of account is an “appropriate period of account” if it ended before the current period of account and—
- (a) the amount shown in column 1 of line 51 of Form 14 of the company’s periodical return in respect of the relevant business for it, was more than
  - (b) the amount so shown for the period of account immediately before it; and the amount of the difference is “the relevant increase.”
- (6) The “applicable” appropriate period of account is the one which ended most recently (“the most recent appropriate period of account”).
- (7) But if the relevant increase in the case of the most recent appropriate period of account is less than the affected amount, the most recent appropriate period of account is the applicable appropriate period of account in relation to only so much of the affected amount as does not exceed that relevant increase.

- (8) In that case, the appropriate period of account which ended most recently before the most recent appropriate period of account is the applicable appropriate period of account in relation to so much of the remainder as does not exceed the relevant increase in the case of that appropriate period of account (and, where necessary, so on until the applicable appropriate period of account is established in relation to all of the affected amount or there are no more appropriate periods of account).
  - (9) If the current period of account is not the first in relation to which this section has applied in the case of the business concerned, the amount of the relevant increase in the case of any appropriate period of account (“the period in question”) is to be treated as reduced by the relevant aggregate.
  - (10) The “relevant aggregate” is the aggregate of so much of the affected amount for any period or periods of account earlier than the current period of account as was an amount to which section 432C applied as if it were brought into account as mentioned in subsection (4) for the period in question.
  - (11) For the purposes of this section an insurance company which has elected under section 83YA(9) of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) to be treated as a non-profit company in relation to a period of account is to be regarded as a non-profit company in relation to the period of account.”
- (2) The amendment made by subsection (1) has effect if the current period of account is a period of account beginning on or after 9 December 2009.
  - (3) No period of account beginning before that date counts as an appropriate period of account for the purposes of section 432CA of ICTA.
  - (4) But where the operation of that section does not establish the applicable appropriate period of account in relation to all or any of the affected amount (“the unallocated amount”), section 432C of ICTA applies in relation to the unallocated amount as if it were brought into account as an increase in the value of assets in the case of the relevant business for the last period of account beginning before 9 December 2009.

### *Pensions*

#### **48 Extension of special annual allowance charge**

- (1) Schedule 35 to FA 2009 (special annual allowance charge) is amended as follows.
- (2) In paragraph 1(2) (high-income individual)—
  - (a) in the first sentence, for “£150,000” substitute “£130,000”, and
  - (b) insert at the end—

“Paragraph 16A makes special provision about cases in which the individual’s relevant income for the tax year 2009-10 is less than £150,000.”
- (3) In paragraph 2 (calculation of relevant income)—
  - (a) in the last sentence of sub-paragraph (1),
  - (b) in sub-paragraph (2) (in each place), and
  - (c) in sub-paragraph (3) (in both places),

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for “£150,000” substitute “£130,000”.

(4) After sub-paragraph (5) of that paragraph insert—

“(5A) If—

- (a) the individual’s relevant income for the tax year (whether that is the tax year 2009-10 or a later tax year) would (apart from this sub-paragraph) be less than £130,000 if the reference in sub-paragraph (5) to a scheme made on or after 22 April 2009 were to a scheme made on or after 9 December 2009, and
- (b) the individual’s relevant income for the tax year 2009-10 is less than £150,000,

the individual’s relevant income for the tax year is to be assumed to be less than £130,000.”

(5) In paragraph 11(3)(b), after “22 April” insert “2009”.

(6) After paragraph 16 insert—

*“Individuals with relevant income below £150,000 in 2009-10*

16A (1) This paragraph has effect if the individual’s relevant income for the tax year 2009-10 is less than £150,000.

(2) References in this Schedule to a pre-22 April 2009 pension input amount are to a pre-9 December 2009 pension input amount.

(3) References in this Schedule to noon on 22 April 2009 are to 9 December 2009.

(4) Other references in this Schedule to 22 April 2009 (except in paragraph 2) are to 9 December 2009.

(5) The reference in paragraph 16(2) to 21 April 2009 is to 8 December 2009.

(6) If the amount arrived at in the case of the individual under sub-paragraph (1) of paragraph 2 for the tax year 2009-10 is less than £150,000, take the steps in that sub-paragraph in relation to the tax year 2007-08 and the tax year 2008-09.

If the result is £150,000 or more for either or both of those earlier tax years the individual’s relevant income for the tax year 2009-10 is to be assumed for the purposes of sub-paragraph (1) to be £150,000.

(7) If there is a scheme the main purpose, or one of the main purposes, of which is to secure that the individual’s relevant income for the tax year 2009-10 is less than £150,000, it is to be assumed for the purposes of sub-paragraph (1) to be £150,000.”

(7) The amendments made by this section have effect for the tax year 2009-10 and subsequent tax years (but see paragraph 21(2) of Schedule 35 to FA 2009).

## 49 Information

In section 251(5) of FA 2004 (persons who can be required to provide information to scheme administrators etc), after paragraph (a) insert—

“(aa) employers of members of a registered pension scheme.”

*Value added tax and insurance premium tax*

**50 Extension of reverse charge provisions to supplies of services**

- (1) In section 55A of VATA 1994 (customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud), after “goods” (in each place, including the heading) insert “or services”.
- (2) In paragraph 2(3B) of Schedule 11 to that Act (power to require notifications relating to supplies to which section 55A(6) applies), after “goods” insert “or services”.

**51 Insurance premium tax: separate contracts**

- (1) Part 3 of FA 1994 (insurance premium tax) is amended as follows.
- (2) Section 72 (meaning of “premium”) is amended as follows.
- (3) After subsection (1A) insert—
  - “(1AA) A contract (“the relevant contract”) is not to be regarded as a separate contract for the purposes of subsection (1A) above if conditions A to D are met.
  - (1AB) Condition A is that the insured is an individual (“I”) and enters into the taxable insurance contract in a personal capacity.
  - (1AC) Condition B is that I—
    - (a) is required to enter into the relevant contract by, or as a condition of entering into, the taxable insurance contract, or
    - (b) would be unlikely to enter into the relevant contract without also entering into the taxable insurance contract.
  - (1AD) Condition C is that—
    - (a) the amount charged to I under the relevant contract in respect of any particular services is not open to negotiation by I, or
    - (b) the other terms on which particular services are to be provided to I under the relevant contract are not open to such negotiation.
  - (1AE) Condition D is that the amount charged to I under the taxable insurance contract is arrived at without a comprehensive assessment having been undertaken of the individual circumstances of I which might affect the level of risk.”
- (4) After subsection (9) insert—

“(9A) Provision may be made by order amending subsections (1AA) to (1AE) above.”
- (5) In section 74(4) and (6) (orders which need to be approved by House of Commons), for “or 71” substitute “, 71 or 72”.
- (6) The amendment made by subsection (3) has effect in relation to payments made on or after 24 March 2010.

*Inheritance tax***52 Reversionary interests of purchaser or settlor etc in relevant property**

(1) In IHTA 1984, after section 81 insert—

**“81A Reversionary interests in relevant property**

(1) Where a reversionary interest in relevant property to which—

- (a) a person who acquired it for a consideration in money or money’s worth, or
- (b) the settlor or the spouse or civil partner of the settlor,

(a “relevant reversioner”) is beneficially entitled comes to an end by reason of the relevant reversioner becoming entitled to an interest in possession in the relevant property, the relevant reversioner is to be treated as having made a disposition of the reversionary interest at that time.

(2) A transfer of value of a reversionary interest in relevant property to which a relevant reversioner is beneficially entitled is to be taken to be a transfer which is not a potentially exempt transfer.”

(2) The amendment made by subsection (1) has effect in relation to reversionary interests to which a relevant reversioner becomes beneficially entitled on or after 9 December 2009.

**53 Interests in possession**

(1) IHTA 1984 is amended as follows.

(2) In section 3A (potentially exempt transfers)—

- (a) in subsection (6), omit “other than section 52”, and
- (b) after that subsection insert—

“(6A) The reference in subsection (6) above to any provision of this Act does not include section 52 below except where the transfer of value treated as made by that section is one treated as made on the coming to an end of an interest which falls within section 5(1B) below.”

(3) In section 5 (meaning of estate)—

- (a) in subsection (1)(a)(ii), after “below” insert “unless it falls within subsection (1B) below”, and
- (b) after subsection (1A) insert—

“(1B) An interest in possession falls within this subsection if the person—

- (a) was domiciled in the United Kingdom on becoming beneficially entitled to it, and
- (b) became beneficially entitled to it by virtue of a disposition which was prevented from being a transfer of value by section 10 below.”

(4) In—

- (a) section 49(1A) (treatment of interests in possession),
- (b) section 51(1A) (disposal of interest in possession), and

- (c) section 52(2A) and (3A) (charge on termination of interest in possession), insert at the end (not as part of paragraph (c))—
- “or falls within section 5(1B) above.”
- (5) In section 57A(1A) (relief where property enters maintenance fund), insert at the end (not as part of paragraph (c))—
- “or fell within section 5(1B) above.”
- (6) In section 100(1A) (alterations of capital etc where participators are trustees), insert at the end (not as part of paragraph (c))—
- “or falls within section 5(1B) above.”
- (7) In section 101(1A) (companies’ interests in settled property), insert at the end (not as part of paragraph (b))—
- “or falls within section 5(1B) above.”
- (8) In section 102ZA(1)(b)(ii) of FA 1986 (gifts with reservation: termination of interests in possession), after “serial interest” insert “or falls within section 5(1B) of the 1984 Act”.
- (9) In F(No.2)A 1987, omit section 96(2)(c).
- (10) The amendments made by this section have effect in relation to an interest in possession to which a person is beneficially entitled if the person becomes beneficially entitled to it on or after 9 December 2009.

#### *Stamp taxes*

### **54 SDRT: depositary receipt systems and clearance services systems**

- (1) Part 4 of FA 1986 (stamp duty reserve tax) is amended as follows.
- (2) In section 95(1) (depositary receipts: exceptions), before “there shall be” insert “subject to section 97C,”.
- (3) In section 97(1) (clearance services: exceptions), before “there shall be” insert “subject to section 97C,”.
- (4) In section 97B (transfer between depositary receipt system and clearance system), after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 97C.”
- (5) After that section insert—

#### **“97C Transfers to non-EU depositary receipt and clearance services systems**

- (1) This section applies where arrangements are made in accordance with which chargeable securities are—
- issued to an EU system, and
  - subsequently transferred from an EU system to a non-EU system.

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

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- (2) Nothing in section 95(1), 97(1) or 97B(1) disappplies a charge to tax under section 93 or 96 in respect of that transfer if—
- (a) the chargeable securities have not previously been transferred, or
  - (b) where they have previously been transferred, the transfer (or, if more than one, each of them) was an exempt transfer.
- (3) For the purposes of subsection (1)(a) chargeable securities are issued to an EU system if—
- (a) pursuant to an arrangement of the kind mentioned in section 93(1), they are issued to a nominee in respect of an EU depositary receipt issuer, or
  - (b) pursuant to an arrangement of the kind mentioned in section 96(1), they are issued to a nominee in respect of an EU clearance service operator.
- (4) For the purposes of subsection (1)(b)—
- (a) a transfer is from an EU system if it is from a company which is incorporated under the law of a member State and at the time of the transfer falls within section 67(6) or 70(6), and
  - (b) a transfer is to a non-EU system if it is to a company which is not incorporated under the law of a member State and at the time of the transfer falls within section 67(6) or 70(6).
- (5) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “EU clearance service operator” means a person—
- (a) whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities, and
  - (b) who—
    - (i) if it is a company, is incorporated under the law of a member State, and
    - (ii) in any other case, is resident in a member State;
- “EU depositary receipt issuer” means a person—
- (a) whose business is or includes issuing depositary receipts for chargeable securities, and
  - (b) who—
    - (i) if it is a company, is incorporated under the law of a member State, and
    - (ii) in any other case, is resident in a member State;
- “exempt transfer” means a transfer in respect of which, by reason of section 90(5), 95(1), 97(1) or 97B(1), no charge to stamp duty reserve tax arises;
- “nominee”—
- (a) in respect of an EU clearance service operator, means a person whose business is or includes holding chargeable securities as nominee for the EU clearance service operator, and



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

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(b) in respect of an EU depositary receipt issuer, means a person whose business is or includes holding chargeable securities as nominee or agent for the EU depositary receipt issuer.”

(6) The amendments made by this section have effect in relation to transfers of chargeable securities on or after 1 October 2009.

## **55 SDLT: partnerships**

(1) In section 75C of FA 2003 (SDLT anti-avoidance: supplemental)—

- (a) in subsection (8), omit paragraph (b) (and the “and” before it), and
- (b) after that subsection insert—

“(8A) Nothing in Part 3 of Schedule 15 applies to the notional transaction under section 75A.”

(2) The amendments made by subsection (1) have effect in relation to any notional transaction of which the effective date is on or after 24 March 2010.

(3) But those amendments do not have effect in relation to a notional transaction if any scheme transaction is—

- (a) completed before that date,
- (b) effected in pursuance of a contract entered into and substantially performed before that date, or
- (c) effected in pursuance of a contract entered into before that date and not excluded by subsection (4).

(4) A scheme transaction effected in pursuance of a contract entered into before 24 March 2010 is excluded by this subsection if—

- (a) there is any variation of the contract, or assignment (or assignation) of rights under the contract, on or after 24 March 2010,
- (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
- (c) it is a land transaction and on or after that date there is an assignment (or assignation), subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

### *Administration*

## **56 Disclosure of tax avoidance schemes**

Schedule 17 contains amendments of the provisions relating to the disclosure of tax avoidance schemes.

## **57 Opening of postal packets**

(1) Section 106 of the Postal Services Act 2000 (power to detain postal packets containing contraband) is amended as follows.

(2) In subsection (4), for paragraphs (a) and (b) substitute “in the presence of a representative of the postal operator”.

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

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(3) Omit subsection (5).

(4) In subsection (7)(b), omit “if he is absent”.