



# Finance Act 2021

## 2021 CHAPTER 26

### PART 4

#### MISCELLANEOUS AND FINAL

#### *Freeports <sup>[F1]</sup>and investment zones]*

#### Textual Amendments

- F1** Words in s. 113 cross-heading inserted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), Sch. 23 para. 18

#### **113 Designation of <sup>[F2]</sup>special tax sites]**

- (1) The Treasury may by regulations designate an area in Great Britain as a special area for the purposes of—
  - (a) Part 2 of CAA 2001 (plant and machinery allowances),
  - (b) Part 2A of CAA 2001 (structures and buildings allowances), and
  - (c) where the area is in England, Part 4 of FA 2003 (stamp duty land tax).
- (2) An area may only be designated by regulations under this section if, at the time the regulations are made—
  - (a) the area is situated in a freeport <sup>[F3]</sup>or an investment zone], or
  - (b) the Treasury consider that the area is being used, or is likely to be used, for purposes connected with activities carried on, or likely to be carried on, in a freeport <sup>[F4]</sup>or an investment zone].
- (3) An area designated under this section is to be known as <sup>[F5]</sup>a “special tax site”].
- (4) Regulations under this section must specify the date on which the designation takes effect.

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- [<sup>F6</sup>(5) For the purposes of this section any reference to a freeport or an investment zone is to an area which is identified as such in a document published by, or with the consent of, the Treasury for the purposes of this section (and not withdrawn).]
- (6) Any regulations made by the Treasury in reliance on a resolution under section 1 of the Provisional Collection of Taxes Act 1968 and in force immediately before the passing of this Act which make a designation described in subsections (1) and (2) have effect as if validly made under this section.

#### Textual Amendments

- F2** Words in s. 113 heading substituted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), Sch. 23 para. 19
- F3** Words in s. 113(2)(a) inserted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 331(2)
- F4** Words in s. 113(2)(b) inserted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 331(2)
- F5** Words in s. 113(3) substituted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 331(3)
- F6** S. 113(5) substituted (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 331(4)

### 114 Capital allowances for freeport tax sites

- (1) Schedule 22 makes provision about capital allowances for expenditure incurred in connection with freeport tax sites.
- (2) In that Schedule —
- (a) Part 1 provides for a first-year allowance under Part 2 of CAA 2001 (plant and machinery allowances),
  - (b) Part 2 provides for a different rate of allowance under Part 2A of CAA 2001 (structures and buildings allowances), and
  - (c) Part 3 contains related amendments.

### 115 Relief from stamp duty land tax for freeport tax sites

Schedule 23 provides for relief under Part 4 of FA 2003 in the case of transactions relating to land in a freeport tax site.

#### *Penalties*

### 116 Penalties for failure to make returns etc

- (1) Schedule 24 contains provision for imposing penalties on persons in respect of failures to make certain returns.
- (2) Schedule 25 contains provision for imposing penalties on persons who, by failing to make certain returns, deliberately withhold information which would enable or assist HMRC to assess that person's liability to tax.
- (3) Schedules 24 and 25 come into force on such day as the Treasury may by regulations appoint.
- (4) Different days may be appointed for different purposes.
- (5) The Treasury may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision in Schedules 24 and 25.

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- (6) The power to make regulations under subsection (5) includes power to make different provision for different purposes.
- (7) Regulations under this section are to be made by statutory instrument.

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

- (1) Schedule 26 contains provision for imposing penalties on persons in respect of failures to make certain payments on time.
- (2) Schedule 26 comes into force on such day as the Treasury may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The Treasury may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision in Schedule 26.
- (5) The power to make regulations under subsection (4) includes power to make different provision for different purposes.
- (6) Regulations under this section are to be made by statutory instrument.

#### **118 Penalties for failure to make returns etc or pay tax: consequential provision**

- (1) Schedule 27 contains amendments that are consequential on Schedules 24 to 26.
- (2) Schedule 27 comes into force on such day as the Treasury may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The Treasury may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision in Schedule 27.
- (5) The Treasury may by regulations make provision that is consequential on Schedules 24 to 26.
- (6) Regulations under subsection (5) may—
  - (a) include provision amending, repealing or revoking any provision of an Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it);
  - (b) make supplementary, incidental, transitional, transitory or saving provision.
- (7) In subsection (6) “subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (8) The power to make regulations under subsection (4) or (5) includes power to make different provision for different purposes.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing (whether alone or with other provision) regulations under subsection (5) that amend or repeal provision made by an Act is subject to annulment in pursuance of a resolution of the House of Commons.

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## **119 Follower notice penalties**

Schedule 28 makes provision in relation to penalties to which a person may be liable after a follower notice has been given under Chapter 2 of Part 4 of FA 2014.

### *Interest*

## **120 Late payment interest and repayment interest: VAT**

- (1) Schedule 29 contains amendments of FA 2009 relating to late payment interest, repayment interest and VAT.
- (2) Schedule 29 comes into force on such day as the Treasury may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The Treasury may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision in Schedule 29.
- (5) The Treasury may by regulations make provision that is consequential on Schedule 29.
- (6) Regulations under subsection (5) may—
  - (a) include provision amending, repealing or revoking any provision of an Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it);
  - (b) make supplementary, incidental, transitional, transitory or saving provision.
- (7) In subsection (6) “subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (8) The power to make regulations under subsection (4) or (5) includes power to make different provision for different purposes.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing (whether alone or with other provision) regulations under subsection (5) that amend or repeal provision made by an Act is subject to annulment in pursuance of a resolution of the House of Commons.

### *Avoidance*

## **121 Promoters of tax avoidance schemes**

- (1) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended in accordance with Schedule 30.
- (2) Part 1 of that Schedule contains—
  - (a) amendments about “stop notices”, which prohibit the promotion of arrangements of a description specified in the notice, and
  - (b) amendments about the application of Schedule 36 to FA 2008 (information and inspection powers) in connection with Part 5 of FA 2014.
- (3) Part 2 of that Schedule contains amendments in connection with providing for persons (whether or not they carry on a business) to be treated as carrying on business as a promoter as a result of their connection to other persons.

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- (4) Part 3 of that Schedule contains amendments about powers to give a person a conduct notice or monitoring notice as a result of the transfer of a business, a part of a business, or property of a business to that person.
- (5) Part 4 of that Schedule contains miscellaneous amendments of Part 5 of FA 2014.
- (6) The amendments made by that Schedule, other than the amendments made by paragraphs 20, 21 and 27 of that Schedule, have effect—
  - (a) from the day on which this Act is passed, and
  - (b) for the purposes of determining whether a person meets a threshold condition (within the meaning of Part 5 of FA 2014), or a condition in subsections (11) to (13) of Section 237A of FA 2014, in a period of three years ending on or after that day.

## **122 Disclosure of tax avoidance schemes**

Schedule 31 makes provision about the disclosure of tax avoidance schemes.

## **123 Penalties for enablers of defeated tax avoidance**

- (1) Schedule 16 to F(No.2)A 2017 (penalties for enablers of defeated tax avoidance) is amended as follows.
- (2) In paragraph 21 (special provision about assessment for multi-user schemes)—
  - (a) in sub-paragraph (1)(c), for “, the required percentage of relevant defeats has not been reached” substitute “ (other than a tribunal or court defeat), neither condition 1 nor condition 2 has been met ”;
  - (b) in sub-paragraph (2), for “the required percentage of relevant defeats is reached” substitute “ condition 1 or condition 2 is met ”;
  - (c) after sub-paragraph (2) insert—
    - “(2A) Condition 1 is that a defeat that is a tribunal or court defeat is incurred in the case of at least one of the number of related arrangements implementing the proposal.
    - (2B) Condition 2 is that the required number or percentage of relevant defeats is reached.
    - (2C) For the purposes of this paragraph, a defeat incurred in respect of arrangements is a “tribunal or court defeat” if—
      - (a) condition A (in paragraph 5) is met and the adjustments mentioned in paragraph 5(2) have been confirmed by a tribunal or court, or
      - (b) condition B (in paragraph 6) is met and the assessment mentioned in paragraph 6(2) has been confirmed by a tribunal or court.
    - (2D) An adjustment or assessment (as the case may be) has been confirmed by a tribunal or court if the First-tier Tribunal, the Upper Tribunal or a court has determined in proceedings before it that the adjustment or assessment in question should not be varied.

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- (2E) For the purposes of sub-paragraph (2D), disregard variations that do not substantively alter the basis of the adjustment or assessment in question.”;
- (d) in sub-paragraph (3)—
- (i) after “required” insert “ number or ”;
  - (ii) for the words from “defeats have” to the end of the sub-paragraph substitute “—
    - (a) the number of related arrangements implementing the proposal is fewer than 21 and defeats have been incurred in the case of 50% or more of those arrangements;
    - (b) the number of related arrangements implementing the proposal is more than 20 but fewer than 44 and defeats have been incurred in the case of 11 or more of those arrangements;
    - (c) the number of related arrangements implementing the proposal is more than 43 but fewer than 200 and defeats have been incurred in the case of 25% or more of those arrangements;
    - (d) the number of related arrangements implementing the proposal is 200 or more and defeats have been incurred in the case of 50 or more of those arrangements.”
- (3) In paragraph 22 (time limit for assessment)—
- (a) in sub-paragraph (3)—
    - (i) in paragraph (a), for “the required percentage of defeats was reached” substitute “ condition 1 or condition 2 was met ”;
    - (ii) for paragraph (b) substitute—
 

“(b) condition 1 or condition 2 has been met.”;
    - (iii) in paragraph (ii) for “that required percentage was reached” substitute “ the first of condition 1 or condition 2 was met ”;
  - (b) in sub-paragraph (4), in the words after paragraph (b), for “the required percentage of relevant defeats is reached” substitute “ condition 1 or condition 2 is met ”.
- (4) In paragraph 40 (information and inspection powers: application of Schedule 36 to FA 2008)—
- (a) for sub-paragraph (1) substitute—
 

“(1) Schedule 36 to FA 2008 (information and inspection powers) applies for the purpose of—

    - (a) checking a relevant person's position as regards liability for a penalty under paragraph 1 in relation to particular tax arrangements;
    - (b) ascertaining the identity of any other person who has or may have enabled those arrangements,

as it applies for the purpose of checking a person's tax position, subject to the modifications in paragraphs 41 to 43.”;

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- (b) in sub-paragraph (2), in the definition of “relevant person”, at the end of the definition insert “ (or will become or may become so liable if T incurs a defeat )”;
- (c) after sub-paragraph (2) insert—
  - “(3) References in this paragraph and paragraphs 41 and 42 to a person who has or may have enabled particular tax arrangements are to be read in accordance with Part 4 of this Schedule (persons who “enabled” the arrangements), save that—
    - (a) references in that Part to the arrangements mentioned in paragraph 1 (however expressed) are to be read as references to the particular tax arrangements, and
    - (b) references in that Part to “T” are to be read as references to the person who entered into the particular tax arrangements.”
- (5) In paragraph 41 (general modifications of Schedule 36 to FA 2008 as applied)—
  - (a) in the words before sub-paragraph (a), for “the purpose” substitute “ a purpose ”;
  - (b) in sub-paragraph (d), for the words from “the investigation” to the end of the sub-paragraph substitute “—
    - (i) the investigation of the relevant person's position as regards liability for a penalty under paragraph 1 in relation to particular tax arrangements, or (as the case may be)
    - (ii) the identification of any other person who has or may have enabled those arrangements, and”.
- (6) In paragraph 42 (specific modifications of Schedule 36 to FA 2008 as applied)—
  - (a) in sub-paragraph (1)—
    - (i) for “the purpose” substitute “ a purpose ”;
    - (ii) for “(2)” substitute “ (1A) ”;
  - (b) after sub-paragraph (1) insert—
    - “(1A) Paragraph 1 (taxpayer notices) has effect as if the reference to checking the taxpayer's tax position (as modified by paragraph 41 of this Schedule) included a reference to ascertaining the identity of any other person who has or may have enabled the particular tax arrangements in relation to which the relevant person's position as regards liability to a penalty under paragraph 1 is to be checked.
    - (1B) Paragraph 10 (power to inspect business premises etc) has effect as if the reference to checking that person's tax position (as modified by paragraph 41 of this Schedule) included a reference to ascertaining the identity of any other person who has or may have enabled the particular tax arrangements in relation to which the relevant person's position as regards liability to a penalty under paragraph 1 is to be checked.”;
  - (c) after sub-paragraph (2) insert—
    - “(2A) Paragraph 25 (tax advisers) is treated as omitted.”
- (7) In paragraph 43 (exclusion of paragraphs 50 and 51 of Schedule 36 to FA 2008), for “the purpose” substitute “ a purpose ”.

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- (8) In paragraph 48 (restrictions on power to publish information about persons who have incurred a penalty)—
- (a) in sub-paragraph (1), omit paragraph (c);
  - (b) in sub-paragraph (2), for “(1)(c) and (d)” substitute “ (1)(d) ”;
  - (c) omit sub-paragraph (3).
- (9) The amendments made by subsections (2) and (3) do not have effect in relation to a person who is liable to a penalty under paragraph 1 of Schedule 16 to F(No.2)A 2017 solely by reason of actions of the person carried out before the day on which this Act is passed.
- (10) Where the amendments made by subsections (2) and (3) have effect, in determining whether condition 1 or 2 is met in relation to particular tax arrangements, account may be taken of defeats incurred in the case of other related arrangements before the day on which this Act is passed.
- (11) For the purposes of subsection (10), “condition 1”, “condition 2”, “defeat” and “related arrangements” have the same meanings as in paragraph 21 of Schedule 16 to F(No.2)A 2017 (as amended by subsection (2)).
- (12) The amendments made by subsections (4) to (7) have effect for a purpose mentioned in paragraph (a) or (b) of paragraph 40(1) of Schedule 16 to F(No.2)A 2017 (as substituted by subsection (4)(a)) in relation to tax arrangements whenever entered into (whether before or after the passing of this Act).
- (13) The amendments made by subsection (8) do not have effect in relation to a person who incurs a penalty under paragraph 1 of Schedule 16 to F(No.2)A 2017 whose liability to the penalty arose solely by reason of actions of the person carried out before the day on which this Act is passed.

#### **124 The GAAR and partnerships**

- (1) Schedule 32 makes provision about the operation of the general anti-abuse rule in relation to partnerships.
- (2) The amendments made by the Schedule have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or after the passing of this Act).

#### *Conditionality*

#### **125 Licensing authorities: requirements to give or obtain tax information**

- (1) Schedule 33 contains provision requiring licensing authorities, before considering an application for an authorisation to which that Schedule applies—
  - (a) in the case of a first-time application, to give the applicant information relating to tax compliance, and
  - (b) in the case of any other application, to obtain from HMRC confirmation that the applicant has given HMRC information relating to tax compliance.
- (2) Schedule 33 has effect in relation to applications made on or after 4 April 2022.



### *HMRC powers*

#### **126 Financial institution notices**

- (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) After paragraph 4 insert—

##### **4A “Power to obtain information and documents from financial institutions**

- (1) An officer of Revenue and Customs may by notice in writing require a financial institution—
  - (a) to provide information, or
  - (b) to produce a document,if conditions A and B are met.
- (2) Condition A is that the information or document is, in the reasonable opinion of the officer giving the notice, of a kind that it would not be onerous for the institution to provide or produce.
- (3) Condition B is that the information or document is reasonably required by the officer—
  - (a) for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”), or
  - (b) for the purpose of collecting a tax debt of the taxpayer.
- (4) In this Schedule, “financial institution notice” means a notice under this paragraph.
- (5) A financial institution notice may be given by an officer of Revenue and Customs only if—
  - (a) the officer is an authorised officer of Revenue and Customs, or
  - (b) an authorised officer of Revenue and Customs has agreed to the giving of the notice.
- (6) A financial institution notice must name the taxpayer to whom it relates.
- (7) An officer of Revenue and Customs—
  - (a) must give a copy of a financial institution notice to the taxpayer to whom it relates, and
  - (b) must give the taxpayer a summary of the reasons why an officer of Revenue and Customs requires the information and documents.
- (8) An application (without notice) may be made to the tribunal by, or with the agreement of, an authorised officer of Revenue and Customs to disapply any of the requirements under sub-paragraph (6) or (7).
- (9) The tribunal must grant the application to disapply the requirement under sub-paragraph (6) if it is satisfied that the officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

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- (10) The tribunal must grant the application to disapply a requirement under sub-paragraph (7) if it is satisfied that complying with the requirement might prejudice the assessment or collection of tax.”
- (3) In paragraph 6 (notices)—
- (a) in sub-paragraph (1), after “2,” insert “ 4A, ”;
  - (b) in sub-paragraph (4), after “4” insert “ , 4A ”.
- (4) After paragraph 61 insert—

#### 61ZA “**Financial institution**”

- (1) In this Schedule “financial institution” means—
  - (a) a financial institution under the CRS other than one which is such an institution because (and only because) it is an investment entity within section VIII (A)(6)(b) of the CRS, or
  - (b) a person who issues credit cards.
- (2) In this paragraph “the CRS” means the common reporting standard for automatic exchange of financial account information developed by the Organisation for Economic Co-operation and Development, as that standard has effect from time to time.”
- (5) As soon as reasonably practicable after the end of each financial year, the Commissioners for Her Majesty's Revenue and Customs must provide the Treasury with—
  - (a) information about the number of financial institution notices given during that financial year, and
  - (b) such other information (if any) relating to financial institution notices as the Treasury may reasonably require.
- (6) Information received under subsection (5) must be included in a report laid before the House of Commons by the Treasury.
- (7) The report mentioned in subsection (6) must be laid not later than 31 January following the end of the financial year to which the information relates.
- (8) For the purposes of subsections (5) to (7)—
 

“financial institution notice” means a notice under paragraph 4A of Schedule 36 to FA 2008;

each of the following is a “financial year”—

  - (a) the period beginning with the date on which this Schedule comes into force and ending with 31 March 2022, and
  - (b) each successive period of 12 months.
- (9) The amendments made by subsections (2) to (4) have effect—
  - (a) for the purpose of checking the tax position of a taxpayer as regards periods or tax liabilities whenever arising, or
  - (b) for the purpose of collecting a tax debt of a taxpayer whenever arising.

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## **127 Collection of tax debts**

- (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) In paragraph 1(1) (taxpayer notices), at the end insert “ or for the purpose of collecting a tax debt of the taxpayer ”.
- (3) In paragraph 2(1) (third party notices), at the end insert “ or for the purpose of collecting a tax debt of the taxpayer ”.
- (4) In paragraph 5(2) (persons whose identities are not known), after “tax position of” insert “ or for the purpose of collecting a tax debt of ”.
- (5) In paragraph 5A (persons whose identity can be ascertained)—
  - (a) in sub-paragraph (2), at the end insert “ or for the purpose of collecting a tax debt of the taxpayer ”, and
  - (b) in sub-paragraph (7), after “tax position of”, in both places, insert “ , or for the purpose of collecting a tax debt of, ”.
- (6) After paragraph 63 insert—

### **63A “Tax debts: collection**

- (1) In this Schedule a reference to collecting a tax debt of a person is a reference to taking any steps for, or in connection with, the recovery of—
  - (a) an amount of tax due from the person, or
  - (b) any other amount due from the person in connection with any tax.
- (2) It does not matter whether or not another person is, or has been, at any time liable to pay the tax or other amount.”
- (7) After paragraph 63A (inserted by subsection (6)) insert—

### **63B “Tax debts: extended meaning of “relevant foreign tax”**

Where this Schedule applies for the purpose of collecting a tax debt of a person, “relevant foreign tax” is to be taken to include (in addition to what is mentioned in paragraph 63(4)) any tax or duty which is covered by the provisions for the exchange of information under Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (as it had effect immediately before IP completion day).”

- (8) The amendments made by this section have effect for the purpose of collecting a tax debt of a person whenever arising.

## **128 Miscellaneous amendments of Schedule 36 to FA 2008**

Schedule 34 makes miscellaneous amendments of Schedule 36 to FA 2008 (information and inspection powers).

## **<sup>F7</sup>129 International arrangements for exchanging information on the gig economy**

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, PART 4. (See end of Document for details)*

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### Textual Amendments

F7 S. 129 repealed (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 349(11)(d)

## 130 Unauthorised removal or disposal of seized goods

- (1) In Schedule 3 to CEMA 1979 (provisions relating to forfeiture), after paragraph 17 insert—

### “Unauthorised removal or disposal: penalties etc

- 18 (1) This paragraph applies where a thing is seized as liable to forfeiture and, with the agreement of a person within sub-paragraph (2) (“the responsible person”), the thing remains at the place where it is first seized.
- (2) A person is within this sub-paragraph if the person is—
- (a) the person whose offence or suspected offence occasioned the seizure,
  - (b) the owner or any of the owners of the thing seized or any servant or agent of such an owner,
  - (c) a person who has (or appears to have) possession or control over the thing being seized,
  - (d) in the case of any thing seized on a ship or aircraft, the master or commander,
  - (e) in the case of any thing seized on any other vehicle, the vehicle operator, or
  - (f) a person whom the person who seizes the thing reasonably believes to be a person within any of paragraphs (a) to (e).
- (3) Where the thing is deemed to be seized as liable to forfeiture under paragraph 2(3) of Schedule 2A—
- (a) the offence or suspected offence that occasioned its detention is to be treated, for the purpose of sub-paragraph (2)(a), as having occasioned its seizure, and
  - (b) sub-paragraph (2)(f) has effect as if the reference to the person who seizes the thing were a reference to any officer of Revenue and Customs.
- (4) If the responsible person fails to prevent the unauthorised removal or disposal of the thing from the place where it is seized, that failure attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (5) The removal or disposal of the thing is unauthorised unless it is done with the permission of a proper officer of Revenue and Customs.
- (6) Where any duty of excise is payable in respect of the thing—
- (a) the penalty is to be calculated by reference to the amount of that duty (whether it has been paid or not), and
  - (b) section 9 of the Finance Act 1994 has effect as if in subsection (2) (a) the words “5 per cent of” were omitted.

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- (7) If no duty of excise is payable in respect of the thing, that section has effect as if the penalty provided for by subsection (2)(b) of that section were whichever is the greater of—
- (a) the value of the thing at the time when it was first seized, or
  - (b) £250.
- 19 (1) This paragraph applies where—
- (a) a thing is seized at a revenue trader's premises,
  - (b) the thing is liable to forfeiture under the customs and excise Acts, and
  - (c) without the permission of a proper officer of Revenue and Customs, the thing is removed from the trader's premises, or otherwise disposed of, by any person.
- (2) The Commissioners may seize as liable to forfeiture goods of equivalent value to the thing from the revenue trader's stock.
- (3) For the purposes of this paragraph, a revenue trader's premises include any premises used to hold or store anything for the purposes of the revenue trader's trade, regardless of who owns or occupies the premises.”
- (2) The amendments made by this section have effect in relation to a thing seized as liable to forfeiture on or after the day on which this Act is passed.

### **131 Temporary approvals etc pending review or appeal**

- (1) In Chapter 2 of Part 1 of FA 1994 (customs and excise: appeals and penalties), after section 16 insert—

#### **“16A Temporary approvals etc pending review or appeal: eligibility**

- (1) Section 16B applies where HMRC notify P of an approval decision and—
- (a) HMRC are required to review the decision under section 15C or 15E, or
  - (b) the decision, or the decision on a review under that section, has been appealed to an appeal tribunal under section 16.
- (2) An approval decision is a decision as to whether or not, and in which respects, any person or place (as the case may be) is to be or is to continue to be—
- (a) approved under section 92 of CEMA 1979 (warehousekeepers and owners of warehouses goods regime: approval of excise warehouses);
  - (b) approved and registered under section 100G of CEMA 1979 by virtue of—
    - (i) regulation 3 of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278) (authorized warehousekeepers);
    - (ii) regulation 5 of those Regulations (registered owners);
    - (iii) regulation 6 of those Regulations (duty representatives);
    - (iv) regulation 4 of the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002 (S.I. 2002/3057) (registered dealers in controlled oil);

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- (c) approved and registered to carry on a controlled activity under section 88C ALDA 1979 (alcohol wholesalers registration scheme);
  - (d) approved to carry on a controlled activity under section 8L of TPDA 1979 (raw tobacco scheme);
  - (e) approved and registered under section 49 F(No.2)A 2017 (fulfilment houses due diligence scheme);
  - (f) licensed to carry out a regulated activity under the Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018 (S.I. 2018/75) (tobacco machinery scheme).
- (3) The Commissioners may by regulations made by statutory instrument amend subsection (2) so as to add, vary or remove a paragraph of that subsection.
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.

### **16B Temporary approvals etc pending review or appeal: process**

- (1) On an application by P, HMRC may grant temporary approval if they are satisfied that—
- (a) P has demonstrated that if temporary approval were not granted the review or appeal in respect of the approval decision, or the appeal from a decision on review of that decision, would be rendered nugatory by virtue of P being unable to continue as a going concern or otherwise, and
  - (b) it is appropriate in all the circumstances to grant temporary approval (despite the approval decision).
- (2) In determining whether it would be appropriate to grant temporary approval, HMRC must have regard to—
- (a) the prospect of the review or appeal in respect of the approval decision, or appeal from a decision on review of that decision, being determined in P's favour;
  - (b) any alternative steps available to, and taken by, P to protect P's position pending the final determination of the review or appeal;
  - (c) whether P has acted expeditiously in requiring the review or in bringing and progressing the appeal.
- (3) Subject to any provision made in regulations under section 16C, temporary approval has effect as an approval, registration or licence (as the case may be) under the relevant provision listed in section 16A(2) that—
- (a) commences on the day on which the application for temporary approval is granted,
  - (b) expires on the day determined in accordance with subsection (4), and
  - (c) is subject to any conditions or restrictions imposed on the temporary approval.
- (4) The day on which a temporary approval expires is—
- (a) in a case where the approval decision is cancelled on a review, the day on which it is cancelled;
  - (b) in a case where the approval decision is upheld on a review, the last day on which an appeal could be brought against that decision

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- (ignoring any possibility of an appeal brought out of time with permission), unless paragraph (4)(c) applies;
- (c) in a case where an appeal (other than an appeal brought out of time with permission) is brought in respect of an approval decision or a decision on a review of that decision, the day on which the appeal is finally determined.
- (5) HMRC may revoke a temporary approval, or vary the conditions or restrictions to which it is subject, if they are satisfied that a change in circumstances justifies doing so.
- (6) HMRC may by notice published in such form as HMRC considers appropriate make provision about the timing, form, content and determination of applications under subsection (1).
- (7) Subsection (8) applies if HMRC—
- (a) refuse an application under subsection (1),
  - (b) grant an application under that subsection subject to conditions or restrictions,
  - (c) vary the conditions or restrictions to which a temporary approval is subject, or
  - (d) revoke a temporary approval, and
- the approval decision, or the decision on a review of that decision under section 15C or 15E, has been appealed to an appeal tribunal under section 16.
- (8) If, on an application by P, the appeal tribunal decides that HMRC should not have (as the case may be)—
- (a) refused the application,
  - (b) granted the application subject to particular conditions or restrictions,
  - (c) varied the conditions or restrictions to which the temporary approval is subject, or
  - (d) revoked the temporary approval,
- the appeal tribunal may order HMRC to make any decision that it would have been open to HMRC to make under this section.
- (9) If the appeal tribunal makes an order under subsection (8), HMRC or P may apply to the appeal tribunal to vary or revoke that order.
- (10) HMRC must notify P of any decision to grant or revoke a temporary approval or to vary the conditions or restrictions to which such approval is subject.

### **16C Temporary approvals etc pending review or appeal: modifications**

- (1) The Commissioners may by regulations make such provision as they consider appropriate in consequence of provision made in sections 16A and 16B (including by virtue of regulations under section 16A(3)).
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify any enactment.
- (3) Regulations under this section are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this section which amend, repeal or modify the application of an Act of Parliament must be laid before

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the House of Commons after being made and, unless approved by that House before the end of the period of 28 days beginning with the date on which the instrument is made, ceases to have effect at the end of that period.

- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
  - (6) The fact that a statutory instrument ceases to have effect as a result of subsection (4) does not affect—
    - (a) anything previously done under the instrument, or
    - (b) the making of a new instrument.
  - (7) In calculating the period of 28 days mentioned in subsection (4), no account is to be taken of any time—
    - (a) during which Parliament is dissolved or prorogued, or
    - (b) during which the House of Commons is adjourned for more than four days.
  - (8) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.”
- (2) In section 16A(1) of FA 1994 (inserted by subsection (1) of this section), the reference to HMRC notifying P of an approval decision includes a reference to HMRC having notified P of such a decision before the coming into force of this section.
- (3) This section comes into force on such day as the Commissioners may by regulations made by statutory instrument appoint.

#### Commencement Information

**II** S. 131 in force at 5.7.2021 by S.I. 2021/799, reg. 2

### *Banking*

#### **132 Replacement of LIBOR with incremental borrowing rate**

- (1) In section 70O of CAA 2001 (funding leases: the lease payments test)—
  - (a) in subsection (4)(b), for “1% above LIBOR” substitute “ the incremental borrowing rate ”;
  - (b) for subsection (5) substitute—
    - “(5) For this purpose, the incremental borrowing rate has the same meaning as it has for accounting purposes.
  - (6) The Treasury may by regulations amend this section for the purpose of replacing references to the incremental borrowing rate with references to another rate.”
- (2) In section 228MB of CAA 2001 (plant or machinery leases: present value of asset)—
  - (a) in subsection (3), for “1% above LIBOR” substitute “ the incremental borrowing rate ”;
  - (b) for subsection (4) substitute—



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- “(4) For this purpose, the incremental borrowing rate has the same meaning as it has for accounting purposes.
- (5) The Treasury may by regulations amend this section for the purpose of replacing references to the incremental borrowing rate with references to another rate.”
- (3) In section 437C of CTA 2010 (plant or machinery lease: present value of lease)—
- (a) in subsection (6), for “1% above LIBOR” substitute “ the incremental borrowing rate ”;
  - (b) for subsection (7) substitute—
- “(7) For this purpose, the incremental borrowing rate has the same meaning as it has for accounting purposes.
- (7A) The Treasury may by regulations amend this section for the purpose of replacing references to the incremental borrowing rate with references to another rate.”
- (4) Subsection (1) has effect in relation to leases the inception of which (within the meaning of section 70YI of CAA 2001) is on or after 1 January 2022.
- (5) Subsection (2) has effect in relation to leases entered into on or after 1 January 2022.
- (6) Subsection (3) has effect in cases where the relevant time for the purposes of section 437C of CTA 2010 is on or after 1 January 2022.

### **133 Tax consequences of reform etc of LIBOR and other reference rates**

- (1) The Treasury may by regulations make provision about the tax consequences of things done in anticipation of or in connection with—
- (a) the reform or discontinuance of LIBOR, or
  - (b) the reform or discontinuance of another reference rate.
- (2) Regulations under this section may, for example, make provision—
- (a) changing the tax treatment of transactions (including by disregarding a transaction or treating a transaction as taking place at a different time or to a different extent);
  - (b) changing the tax treatment of amounts (including by disregarding an amount or treating an amount as larger or smaller than it actually is).
- (3) Regulations under this section may include retrospective provision.
- (4) Where regulations under this section do so—
- (a) they must include provision conferring power on a person to make an election for no provision of the regulations to have retrospective effect in the person's case;
  - (b) they may include provision conferring power on a person to make such other election limiting the retrospective effect of the regulations in the person's case as is specified in the regulations.
- (5) Regulations that include provision for an election mentioned in subsection (4)—
- (a) must include provision about how the election is to be made, and
  - (b) may include provision for a time limit within which the election is to be made.

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- (6) Regulations under this section may—
  - (a) apply an enactment (with or without modifications) or disapply an enactment, or
  - (b) amend, repeal or revoke an enactment.
- (7) Regulations under this section may—
  - (a) make different provision for different cases or purposes, and
  - (b) include incidental, consequential, supplementary or transitional provision.
- (8) Regulations under this section are to be made by statutory instrument.
- (9) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.
- (10) In this section—
  - “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);
  - “reference rate” means a published rate used to set interest rates for financial instruments;
  - “tax” includes stamp duty.
- (11) The power conferred by this section is not exercisable after 31 December 2023, except for the purpose of revoking regulations made under it on or before that date.

### **134 Powers of the Treasury to amend legislation relating to banks**

- (1) In section 133N of CTA 2009 (powers to amend provisions relating to banking companies), after subsection (3) insert—
  - “(3A) Regulations under this section made on or before 30 June 2022 may have retrospective effect in relation to any time on or after 1 January 2022.”
- (2) Chapter 2 of Part 7A of CTA 2010 (banking companies: key definitions) is amended as follows.
- (3) For the italic heading before section 269BE (power to make consequential changes) substitute “ Powers to amend ”.
- (4) In section 269BE—
  - (a) for the heading substitute “ Powers to amend ”;
  - (b) after subsection (1) insert—
    - “(1A) The Treasury may by regulations—
      - (a) amend sections 269B to 269BD;
      - (b) amend other provisions of this Part in consequence of provision made under paragraph (a).
    - (1B) Regulations under this section may include transitional provision.
    - (1C) Regulations under this section made on or before 30 June 2022 may have retrospective effect in relation to any accounting period ending on or after 1 January 2022.

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- (1D) A statutory instrument containing (whether alone or with other provision) regulations under subsection (1A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.”
- (5) Part 9 of Schedule 19 to FA 2011 (the bank levy: power to make consequential changes) is amended as follows.
- (6) For the Part heading substitute “ Powers to amend ”.
- (7) In paragraph 81—
- (a) after sub-paragraph (1) insert—
- “(1A) The Treasury may by regulations made by statutory instrument—
- (a) amend Part 8 of this Schedule (definitions);
- (b) amend other Parts of this Schedule in consequence of provision made under paragraph (a).”
- (1B) An order under sub-paragraph (1) or regulations under sub-paragraph (1A) may include transitional provision.”;
- (b) in sub-paragraph (2)—
- (i) in the words before paragraph (a), for “this paragraph” substitute “ sub-paragraph (1) ”;
- (ii) omit paragraph (b);
- (iii) at the end insert—
- “(c) in the case of an order made on or before 30 June 2022, in relation to any chargeable period ending on or after 1 January 2022.”;
- (c) after sub-paragraph (2) insert—
- “(2A) Regulations under sub-paragraph (1A) made on or before 30 June 2022 may have retrospective effect in relation to any chargeable period ending on or after 1 January 2022.”;
- (d) in sub-paragraph (3), for “an order under this paragraph” substitute “ only an order under sub-paragraph (1) ”;
- (e) after sub-paragraph (3) insert—
- “(4) Any other statutory instrument containing provision made under this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.”

*Other*

## 135 Interpretation

In this Act the following abbreviations are references to the following Acts—

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CAA 2001	Capital Allowances Act 2001
CEMA 1979	Customs and Excise Management Act 1979

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CRCA 2005	Commissioners for Revenue and Customs Act 2005
CTA 2009	Corporation Tax Act 2009
CTA 2010	Corporation Tax Act 2010
CT(NI)A 2015	Corporation Tax (Northern Ireland) Act 2015
FA followed by a year	Finance Act of that year
F(No.2)A or F(No.3)A followed by a year	Finance (No.2) Act or Finance (No.3) Act of that year
HODA 1979	Hydrocarbon Oil Duties Act 1979
IHTA 1984	Inheritance Tax Act 1984
ITA 2007	Income Tax Act 2007
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
ITTOIA 2005	Income Tax (Trading and Other Income) Act 2005
TCGA 1992	Taxation of Chargeable Gains Act 1992
TCTA 2018	Taxation (Cross-border Trade) Act 2018
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
TMA 1970	Taxes Management Act 1970
TPDA 1979	Tobacco Products Duty Act 1979
VATA 1994	Value Added Tax Act 1994
VERA 1994	Vehicle Excise and Registration Act 1994

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### 136 Short title

This Act may be cited as the Finance Act 2021.

**Changes to legislation:**

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