

# Finance Bill (Volume II)

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The Bill is divided into two Volumes. Volume I contains the Clauses and Schedules 1 to 21 to the Bill. Volume II contains Schedules 22 to 61 to the Bill.

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SCHEDULE 22

Section 44

OFFSHORE FUNDS

PART 1

MEANING OF “OFFSHORE FUND”

<i>FA 2008</i>		5
1	FA 2008 is amended as follows.	
2	Before section 41 (tax treatment of participants in offshore funds) insert –	
	<b>“40A Meaning of “offshore fund”</b>	
	(1) This section and sections 40B to 40G have effect for this group of sections.	10
	(2) “Offshore fund” means –	
	(a) a mutual fund constituted by a body corporate resident outside the United Kingdom,	
	(b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or	15
	(c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom (but see subsection (3)).	20
	(3) Subsection (2)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.	
	(4) “This group of sections” means this section and sections 40B to 42A.	
	(5) References to participants in arrangements (or a fund) are to persons taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise (and references to participation in arrangements or a fund, however expressed, are to be read accordingly).	25
	(6) In this section –	30
	“body corporate” does not include a limited liability partnership;	
	“co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.	
	<b>40B Meaning of “mutual fund” etc</b>	35
	(1) “Mutual fund” means arrangements with respect to property of any description, including money, that meet conditions A to C, subject to –	
	(a) sections 40C and 40D, and	
	(b) the exceptions made by or under sections 40E to 40G.	40
	(2) Condition A is that the purpose or effect of the arrangements is to enable the participants –	

- 
- (a) to participate in the acquisition, holding, management or disposal of the property, or
- (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income. 5
- (3) Condition B is that the participants do not have day-to-day control of the management of the property.
- (4) For the purpose of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions. 10
- (5) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to –
- (a) the net asset value of the property that is the subject of the arrangements, or 15
- (b) an index of any description.
- (6) The Treasury may by regulations amend condition C.
- 40C Umbrella arrangements**
- (1) In the case of umbrella arrangements – 20
- (a) each part of the umbrella arrangements is to be treated as separate arrangements (subject to section 40D), and
- (b) the umbrella arrangements are to be disregarded.
- (2) “Umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them. 25
- (3) References to a part of umbrella arrangements are to the arrangements relating to a separate pool.
- 40D Arrangements comprising more than one class of interest**
- (1) Where there is more than one class of interest in arrangements (the “main arrangements”) – 30
- (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and
- (b) the main arrangements are to be disregarded.
- (2) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements). 35
- 40E Meaning of “mutual fund”: exceptions**
- (1) Arrangements are not a mutual fund if –
- (a) under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in condition C in section 40B only in the event of the winding up, dissolution or termination of the arrangements, and 40
- 45

- 
- (b) condition X or Y is met.
- (2) Condition X is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (3) Condition Y is that – 5
- (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements, and
- (b) condition Y1, Y2 or Y3 is met.
- (4) Condition Y1 is that none of the assets that are the subject of the arrangements are relevant income-producing assets. 10
- (5) Condition Y2 is that, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income. 15
- (6) Condition Y3 is that –
- (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and 20
- (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (7) Condition Y is not met if the arrangements are designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest. 25
- (8) For the purposes of this section, the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements. 30
- 40F Meaning of “relevant income-producing assets”**
- (1) “Relevant income-producing assets” means assets that produce income on which, if they were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (subject to the following provisions of this section). 35
- (2) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from –
- (a) the asset (taking account of the hedging), or
- (b) any product of the hedging arrangements. 40
- (3) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets.

**40G Meaning of “mutual fund”: powers to vary exceptions**

- (1) The Treasury may by regulations amend or repeal any provision of section 40E or 40F.
  - (2) The Treasury may by regulations provide that arrangements are not a mutual fund –
    - (a) in specified circumstances, or
    - (b) if they are of a specified description.
  - (3) Regulations under this section may include provision having effect in relation to the tax year and accounting periods current on the day on which the regulations are made.”
- 3 (1) Section 41 (tax treatment of participants in offshore funds) is amended as follows.
- (2) In subsection (2), omit the definition of “offshore fund” (and the “and” before it).
  - (3) Omit subsections (3) to (9).
- 4 (1) Section 42 (regulations under section 41: supplementary) is amended as follows.
- (2) In subsection (2), for paragraphs (a) and (b) substitute –
    - “(a) an offshore fund comprising a part of umbrella arrangements, and
    - (b) an offshore fund comprising arrangements relating to a class of interest in other arrangements (see section 40D).”
  - (3) In subsection (3), for the words from “may” to the end substitute “, in particular –
    - (a) repeal Chapter 5 of Part 17 of ICTA (offshore funds), and
    - (b) make provision consequential on the repeal of provisions of that Chapter.”
  - (4) In subsection (4)(e), insert at the end “and savings”.
  - (5) For subsection (5) substitute –
    - “(5) Regulations under section 41 may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.”
  - (6) In subsection (6), for “and “offshore fund” have” substitute “has”.
- 5 After that section insert –
- “42A Regulations: procedure**
- (1) Regulations under this group of sections are to be made by statutory instrument.
  - (2) The following regulations may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons –
    - (a) regulations under section 40B(6),
    - (b) regulations under section 40G(1), and

(c) the first regulations under section 41(1).

- (3) A statutory instrument containing any other regulations under this group of sections is subject to annulment in pursuance of a resolution of the House of Commons, unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.” 5

*Restriction on regulation-making power under section 41 of FA 2008*

- 6 (1) Regulations under section 41 of FA 2008 may not make provision about the treatment of a person in respect of any rights in an affected offshore fund that are acquired by the person – 10
- (a) before 1 December 2009, or
- (b) in accordance with sub-paragraph (2),  
 (but see sub-paragraph (4)).
- (2) Rights are acquired in accordance with this sub-paragraph if – 15
- (a) the rights are acquired by the participant in accordance with a legally enforceable agreement in writing that was entered into by the participant before 30 April 2009,
- (b) if the agreement was conditional, the conditions are satisfied before that date, and
- (c) the agreement is not varied on or after that date. 20
- (3) Rights of a person in a fund are rights in an affected offshore fund if –
- (a) the fund is an offshore fund within the meaning of section 40A of FA 2008, but
- (b) on the date on which the person acquired them, the fund was not an offshore fund within the meaning of Chapter 5 of Part 17 of ICTA. 25
- (4) Sub-paragraph (1) does not prevent regulations under section 41 of FA 2008 making –
- (a) provision for a person to elect to be treated in accordance with the regulations in respect of rights referred to in that sub-paragraph, or
- (b) provision that does not increase the person’s liability to tax in respect of such rights. 30

PART 2

APPLICATION OF TCGA 1992 TO OFFSHORE FUNDS

*TCGA 1992*

- 7 TCGA 1992 is amended as follows. 35
- 8 In Chapter 3 of Part 3 (collective investment schemes), insert at the end –
- “103A Application of Act to certain offshore funds**
- (1) This Act applies in relation to a relevant offshore fund as if –
- (a) the fund were a company, and
- (b) the rights of the participants in the fund were shares in the company. 40
- (2) An offshore fund is a relevant offshore fund if –

- (a) it is not constituted by a company, and
  - (b) it is not a unit trust scheme (see section 99).
- (3) In this section “offshore fund” and “participant”, in relation to a fund, have the meanings given in section 40A of the Finance Act 2008.” 5
- 9 Accordingly, in the title of Part 3 and in the title of Chapter 3 of that Part, insert at the end “ETC”.
- 10 In section 288(1) (interpretation), in the definition of “company”, for “section 99” substitute “sections 99 and 103A”.
- Consequential provision* 10
- 11 (1) In TMA 1970, in—
  - (a) section 25(9) (issuing houses, stockbrokers, auctioneers, etc), and
  - (b) section 28(2) (non-resident companies and trusts),after “sections 99” insert “, 103A”.
- (2) In section 842(4) of ICTA (investment trusts), after “sections 99” insert “, 103A”. 15
- (3) In ITTOIA 2005—
  - (a) in section 149(4) (taxation of amounts taken to reserves), at the end of paragraph (b) (before the “and”) insert—
    - “(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,” and 20
  - (b) in section 150(8) (conversion etc of securities held as circulating capital), after paragraph (c) insert—
    - “(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,”. 25
- (4) In section 834(5) of the Companies Act 2006 (investment company: condition as to holdings in other companies), in the definition of “company” and “shares”, after “sections 99” insert “, 103A”. 30
- (5) In section 332 of ITA 2007 (venture capital trusts: minor definitions), in the definition of “company”—
  - (a) for “section 99” substitute “sections 99 and 103A”, and
  - (b) after “schemes” insert “and certain offshore funds”.
- Commencement: general* 35
- 12 (1) The amendments made by this Part of this Schedule have effect in relation to the acquisition, holding and disposal of rights in a relevant offshore fund on or after the commencement day, subject to paragraphs 13 and 15.
- (2) In this paragraph and paragraphs 15 to 18, “the commencement day” means—
  - (a) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to capital gains tax, 1 December 2009, and 40

- (b) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to corporation tax, such day as the Treasury may by order appoint.

*Commencement: certain consequential amendments*

- 13 (1) The amendment made by sub-paragraph (1)(a) of paragraph 11 comes into force on 1 December 2009 (and has effect as if section 103A of TCGA 1992 had effect from that date in relation to the issue, placing, acquisition, holding and disposal of rights in relevant offshore funds by any person). 5
- (2) The amendments made by sub-paragraphs (2), (4) and (5) of paragraph 11 come into force in accordance with an order made by the Treasury. 10

*Commencement orders*

- 14 (1) An order under paragraph 12(2)(b) or 13(2) –
- (a) may make different provision for different cases or different purposes, and
- (b) may include transitional provision and savings. 15
- (2) Section 828(3) of ICTA, section 287(3) of TCGA 1992 and section 1014(4) of ITA 2007 (orders etc subject to annulment) do not apply in relation to such an order.

*Election modifying commencement*

- 15 (1) This paragraph applies if a person makes an election – 20
- (a) for capital gains tax purposes, in respect of a relevant tax year, or
- (b) for corporation tax purposes, in respect of a relevant accounting period.
- (2) The amendments made by this Part of this Schedule (other than the amendments made by paragraph 11(1)(a), (2), (4) and (5)) have effect, and are to be treated as always having had effect, in relation to the acquisition, holding and disposal by the person of rights in a relevant offshore fund on or after the first day of that tax year or accounting period (“the election day”). 25
- (3) Sub-paragraph (4) applies if, in respect of any time on or after the election day but before the commencement day, the relevant offshore fund was not certified as a distributing fund under Part 3 of Schedule 27 to ICTA (distributing funds: certification procedure). 30
- (4) The acquisition, holding or disposal by the person of rights in the fund at that time is to be treated as the acquisition, holding or disposal of rights in an offshore fund that is so certified. 35
- (5) In this paragraph and paragraph 16 –
- “relevant accounting period” means an accounting period beginning on or after 1 April 2003 but before the day appointed under paragraph 12(2)(b); 40
- “relevant tax year” means the tax year 2003-04 and any subsequent tax year up to and including the tax year 2009-2010.

*Making an election*

- 16 (1) An election under paragraph 15 must be made –
- (a) for capital gains tax purposes, by being included in a relevant return under TMA 1970, and
  - (b) for corporation tax purposes, by being included in a relevant company tax return. 5
- (2) A return under TMA 1970 is relevant if it is for –
- (a) the tax year in respect of which the election is made, or
  - (b) a subsequent relevant tax year.
- (3) A company tax return is relevant if it is for – 10
- (a) the accounting period in respect of which the election is made, or
  - (b) a subsequent relevant accounting period.
- (4) The references in sub-paragraph (1) to an election being included in a return include an election being included by virtue of an amendment of the return.
- (5) An election under paragraph 15 is irrevocable. 15

*Giving effect to elections*

- 17 If, in order to give effect to an election under paragraph 15, any adjustments are required, whether by the discharge or repayment of tax, the making of assessments or otherwise –
- (a) the adjustments must be made, and 20
  - (b) any time limit for making the adjustments is to be disregarded.

*Modification of acquisition cost*

- 18 (1) This paragraph applies where a participant in a relevant offshore fund –
- (a) holds rights in a relevant offshore fund immediately before the effective date, and 25
  - (b) disposes of those rights on or after that date.
- (2) For the purposes of TCGA 1992, the participant is to be treated as if the acquisition cost for those rights were the pre-commencement acquisition cost.
- (3) “The effective date” means – 30
- (a) if the participant has made an election under paragraph 15, the election day, or
  - (b) otherwise, the commencement day.
- (4) “Acquisition cost” means the total of the consideration, costs and expenditure described in section 38(1)(a) and (b) of TCGA 1992 (acquisition and disposal costs etc). 35
- (5) “Pre-commencement acquisition cost” means the total of the consideration, costs and expenditure that would have been allowable as a deduction under section 38(1)(a) and (b) of TCGA 1992 if the participant had disposed of the rights immediately before the effective date. 40



## SCHEDULE 23

Section 46

## INSURANCE COMPANIES

*Transfer from non technical account not to be receipt*

- 1 (1) In section 83 of FA 1989 (receipts to be taken into account), after subsection (2) insert – 5
- “(2AZA) No amount shown as transfer from non technical account in line 32 of Form 58 in respect of the whole of the company’s long-term business in the periodical return for a period of account is to be taken into account as a receipt of the period of account.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to periods of account ending on or after 22 April 2009. 10
- (3) But, in relation to a period of account of a company beginning before that date, that amendment has effect only insofar as the amount shown as transfer from non technical account in line 32 of Form 58 covering the whole of the company’s long-term business in the periodical return for the period of account is attributable to transfers made on or after that date. 15

*No deduction for capital allocations to with-profits policy holders*

- 2 (1) In section 82 of FA 1989 (calculation of profits), after subsection (2) insert –
- “(2A) But amounts are not allowed as such a deduction if they – 20
- (a) are allocated to holders of policies under which they are eligible to participate in surplus,
- (b) are of a capital nature, and
- (c) are not funded from amounts brought into account as part of total income in line 19 of the revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) in respect of the whole of the company’s long-term business. 25
- (2B) For the purposes of subsection (2A) above payments made in connection with the reattribution of inherited estate are to be regarded as being of a capital nature.” 30
- (2) The amendment made by sub-paragraph (1) has effect in relation to amounts allocated on or after 22 April 2009 to holders of policies under which they are eligible to participate in surplus.

*Limits on loss relief for addition to non-profit funds*

- 3 (1) In ICTA, after section 434A insert – 35
- “**434AZA Reduced loss relief for additions to non-profit funds**
- (1) Where this section applies in the case of a company carrying on life assurance business, relief allowable under section 393A or Chapter 4 of Part 10 in respect of losses incurred by the company in the life assurance business in an accounting period is reduced in accordance with section 434AZB. 40
- (2) This section applies in the case of a company where –

- (a) there has been a relevant addition to one or more non-profit funds in a period of account ending no later than the accounting period (“the relevant period of account”) (see subsection (3)),
  - (b) the company is not a non-profit company in relation to the relevant period of account and has not elected under subsection (9) of section 83YA of the Finance Act 1989 to be treated for the purposes of that section as if it were, and 5
  - (c) condition A or B is met,
- and, if the relevant period of account is not the period of account ending with the accounting period (“the current period of account”), condition C is also met. 10
- (3) For the purposes of subsection (2), there is a relevant addition to a non-profit fund in the relevant period of account if an amount is shown as a transfer from non-technical account in line 32 of the Form 58 of the non-profit fund in the periodical return for that period of account. 15
  - (4) Condition A is that there is a relevant book value election in relation to assets of a non-profit fund of the company.
  - (5) For the purposes of subsection (4), there is a relevant book value election in relation to assets of a non-profit fund if an amount is shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account. 20
  - (6) Condition B is that the company is party to arrangements the main purpose, or one of the main purposes, of which is to reduce the relevant admissible value of assets of a non-profit fund of the company, other than any structural assets. 25
  - (7) For the purposes of subsection (6) (and section 434AZB), the “relevant admissible value” means the value reflected in line 89 of Form 13 of the periodical return for the current period of account. 30
  - (8) Condition C is that the surplus arising since the last valuation shown in line 34 of the Form 58 of the non-profit fund, or any of the non-profit funds, in relation to which condition A or B is met in the periodical return for the current period of account is a negative amount. 35

**434AZB Additions to non-profit funds: amount of loss reduction**

- (1) The amount of the relief allowable as mentioned in section 434AZA(1) is reduced by whichever of the following is the least – 40
  - (a) the amount of the loss,
  - (b) the amount specified in subsection (2), and
  - (c) the amount specified in subsection (4).
- (2) The amount mentioned in subsection (1)(b) is – 45
  - (a) where only condition A in section 434AZA is met, the relevant amount relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant amounts relating to them,

- (b) where only condition B is met, the amount of the relevant reduction relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant reductions relating to them, and 5
- (c) where both condition A and condition B are met, the aggregate of the amounts in paragraphs (a) and (b).
- (3) In subsection (2) –
- (a) “relevant amount”, in relation to a non-profit fund, means the amount shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account (as reduced by any amount which has had effect to reduce relief for losses for a previous accounting period), and 10  
15
- (b) “relevant reduction”, in relation to a non-profit fund, means the reduction of the relevant admissible value of assets of the non-profit fund (other than structural assets) which is attributable to the arrangements (as so reduced).
- (4) The amount mentioned in subsection (1)(c) is – 20
- (a) if the relevant period of account is the current period of account, the amount referred to in section 434AZA(3) in the case of the non-profit fund, or of each of the non-profit funds, to which there has been a relevant addition in the relevant period of account, and 25
- (b) otherwise, so much of the amount shown in line 31 of the Form 58 of the non-profit fund or non-profit funds in the periodical return for the current period of account as is attributable to the amount so referred to.
- 434AZC Sections 434AZA and 434AZB: supplementary** 30
- (1) For the purposes of sections 434AZA and 434AZB, a non-profit fund required to support a with-profits fund is to be treated as not being a non-profit fund.
- (2) Sections 434AZA and 434AZB apply to a non-profit part of a with-profits fund as if references to something shown in the Form 14 or Form 58 of the non-profit fund in a periodical return were to what would be so shown if there were a Form 14 or Form 58 of the non-profit part of the with-profits fund in the periodical return. 35
- (3) In sections 434AZA and 434AZB –
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and 40
- “structural assets” has the same meaning as in section 83XA of the Finance Act 1989 (see subsection (3) of that section and any regulations made under it).” 45
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009 unless –
- (a) to the extent that section 434AZA would otherwise apply because condition A in that section is met in relation to a non-profit fund, the

- relevant addition to the non-profit fund was made before that date,  
or
- (b) to the extent that section 434AZA would otherwise apply because condition B in that section is so met, the relevant addition to the non-profit fund and the arrangements were both made before that date. 5

*FAFTS and contingent loans*

- 4 (1) In paragraph 4(5) of Schedule 17 to FA 2008 (financing-arrangement-funded transfers: companies with unrepaid contingent loan liabilities before first period of account beginning on or after 1 January 2008), in the definition of “R”, after “(7)(a) of that section” insert “in respect of amounts brought into account as transfers to non-technical account for periods of account beginning on or after 1 January 2008”. 10
- (2) The amendment made by sub-paragraph (1) has effect in relation to periods of account beginning on or after 1 January 2008.

*Apportionment: foreign business assets* 15

- 5 (1) Section 432E of ICTA (section 432B apportionment: participating funds) is amended as follows.
- (2) In subsection (3)(a), omit “and foreign business assets”.
- (3) In subsection (4), in the definition of “A”, omit “and foreign business assets”.
- (4) In subsection (4A), omit “or foreign business assets”. 20
- 6 In consequence of the amendments made by paragraph 5, omit –
- (a) paragraph 19(4)(a) and (6) of Schedule 7 to FA 2007, and
- (b) paragraph 10(3)(c) of Schedule 17 to FA 2008.
- 7 (1) The amendments made by paragraphs 5 and 6 have effect in relation to periods of account beginning on or after 1 January 2009 and ending on or after 22 April 2009. 25
- (2) But an insurance company may, in its company tax return for –
- (a) an accounting period beginning on or after 1 January 2008 but before 1 January 2009, or
- (b) an accounting period beginning on or after 1 January 2009 and ending before 22 April 2009, 30
- elect that the amendments made by paragraphs 5 and 6 have effect in relation to that accounting period.

*Value shifting attributable to transfer of business*

- 8 (1) In section 32(1) of TCGA 1992 (value shifting: disposals within group followed by disposal of shares), after “171(1)” insert “or 211”. 35
- (2) The amendment made by sub-paragraph (1) has effect for determining whether section 30 of TCGA 1992 has effect as respects a disposal on or after 22 April 2009.

## SCHEDULE 24

Section 48

## DISGUISED INTEREST

*Amendments of Part 6 of CTA 2009*

- |   |  |    |
|---|--|----|
| 1 | Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.  | 5  |
| 2 | (1) Section 477(2) (overview of Part 6) is amended as follows.<br>(2) After paragraph (a) insert –<br>“(aa) Chapter 2A (disguised interest),”. |    |
|   | (3) For paragraph (f) substitute –<br>“(f) Chapter 6A (shares accounted for as liabilities),”.   | 10 |
| 3 | After Chapter 2 insert –   |    |

## “CHAPTER 2A

## DISGUISED INTEREST

**486A Overview**

- |     |   |    |
|-----|---|----|
| (1) | This Chapter provides for Part 5 to apply in relation to returns which are economically equivalent to interest (see section 486B).  | 15 |
| (2) | For exclusions from this Chapter, see –<br>(a) section 486C (return otherwise taxable),<br>(b) section 486D (arrangement having no tax avoidance purpose), and<br>(c) section 486E (excluded shares). | 20 |

**486B Disguised interest to be regarded as profit from loan relationship**

- |     |   |                  |
|-----|---|------------------|
| (1) | Where a company is party to an arrangement which produces for the company a return in relation to any amount which is economically equivalent to interest, Part 5 applies as if the return were a profit arising to the company from a loan relationship.   | 25               |
| (2) | For the purposes of this Chapter a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if) –<br>(a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,<br>(b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and<br>(c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it. | 30<br><br><br>35 |
| (3) | In subsection (2)(c) “the relevant time” means the time when the company becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the company.  | 40               |

- (4) The credits and debits to be brought into account for the purposes of Part 5 in respect of the return must be determined on an amortised cost basis of accounting.
- (5) But if any of the return is not recognised in determining the company's profit or loss for any period it is to be treated as recognised using an amortised cost basis of accounting. 5
- (6) Where two or more persons are party to an arrangement which produces a return such as is mentioned in subsection (1) –
- (a) for the persons (when taken together), but
  - (b) not for either (or any) of them individually, 10
- this section applies as if there were a profit arising to such (if any) of them as are companies from a loan relationship of so much of the return as is just and reasonable.
- (7) The only amounts which may be brought into account for corporation tax purposes in relation to a return such as is mentioned in subsection (1) in the case of any company are those which are brought into account in accordance with this section (but see section 486C). 15
- (8) In subsection (4) “credits” and “debts” include exchange gains and losses arising as a result of translating at different times the carrying value of the return or the amount by reference to which the return falls to be produced. 20
- (9) In this Chapter “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), other than one which constitutes a finance lease (within the meaning given by section 219 of CAA 2001). 25

#### **486C Exclusion where return otherwise taxable**

- (1) This Chapter does not apply to an arrangement which produces a return for a company if or to the extent that the return – 30
- (a) is charged to corporation tax as income of the company or brought into account as income of the company for corporation tax purposes no later than the time when amounts are brought into account in relation to the return in accordance with section 486B, 35
  - (b) arises from anything that would produce credits or debits in relation to the company under Part 7 (derivative contracts) or Part 8 (intangible fixed assets) but for any exception relating to particular credits or debits, or
  - (c) arises from anything that would produce credits or debits in relation to the company under Part 5 apart from this Chapter but for any exception relating to particular credits or debits. 40
- (2) Subsection (1)(b) does not disapply this Chapter in the case of a return in relation to which section 641 (derivative contracts taxed on chargeable gains basis) applies. 45

**486D Exclusion where arrangement has no tax avoidance purpose**

- (1) This Chapter does not apply in relation to a return produced by an arrangement to which a company is a party unless it is reasonable to assume that the main purpose, or one of the main purposes, of the company being a party to the arrangement is to obtain a relevant tax advantage. 5
- (2) But a company for which a return is produced by an arrangement to which this Chapter would otherwise be prevented from applying by subsection (1) may elect that this Chapter is to apply in relation to the return. 10
- (3) An election under subsection (2) –
- (a) may not be made by a company if section 486B applies to the company in relation to the return in accordance with subsection (6) of that section,
  - (b) must be made no later than the time when the arrangement begins to produce a return for the company, and 15
  - (c) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return (or any part of it) is produced in a way which means that its treatment for corporation tax purposes is more advantageous to the company than it would be if it were – 20
- (a) charged to corporation tax as income of the company, or
  - (b) brought into account as income of the company for corporation tax purposes,
- at the time when amounts would be brought into account in relation to the return in accordance with section 486B. 25
- (5) Nothing in this section applies in relation to a company for an accounting period if the company is an excluded controlled foreign company. 30
- (6) For this purpose a company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA) – 30
- (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
  - (b) are not so apportioned because of section 748(1) of that Act. 35

**486E Excluded shares**

- (1) This Chapter does not apply in relation to an accounting period (“the relevant accounting period”) of a company (“the holding company”) for which an arrangement produces a return for the company if the arrangement involves only relevant shares held by the company throughout the relevant period. 40
- (2) In this section “the relevant period” means the period –
- (a) beginning with the later of –
    - (i) the time when the holding company becomes party to the arrangement, and 45
    - (ii) the time when the arrangement begins to produce a return for the company, and

- 
- (b) ending with the earliest of—
- (i) the end of the relevant accounting period,
  - (ii) the time when the holding company ceases to be party to the arrangement, and
  - (iii) the time when the arrangement ceases to produce a return for the company. 5
- (3) For the purposes of this section an arrangement “involves only” relevant shares if (and only if) the return produced reflects only an increase in the fair value of the shares.
- (4) For the purposes of subsection (3)— 10
- (a) “fair value”, in relation to relevant shares held by the holding company, means an amount which the company would obtain from a knowledgeable and willing purchaser of the shares dealing at arm’s length, and
  - (b) there is an increase in the fair value of shares even if the increase is realised by the payment of a distribution in respect of the shares. 15
- (5) In this section “relevant shares” means shares which, throughout the relevant period, are—
- (a) fully paid-up shares of a relevant company, or 20
  - (b) shares of a company, other than a relevant company, which would be accounted for as a liability by the company in which they are shares in accordance with generally accepted accounting practice and which produce for the holding company a return in relation to any amount which is economically equivalent to interest (as to which see Chapter 6A). 25
- (6) For the purposes of subsection (5)(a) shares are fully paid-up if there are no actual or contingent obligations—
- (a) to meet unpaid calls on the shares, or 30
  - (b) to make a contribution to the capital of the company in which they are shares that could affect the value of the shares.
- (7) For the purposes of subsection (5) a company is “a relevant company” if—
- (a) it and the holding company are connected companies, 35
  - (b) it is a relevant joint venture company, or
  - (c) it is a relevant controlled foreign company.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (7)(a).
- (9) For the purposes of subsection (7)(b) a company is a relevant joint venture company if— 40
- (a) the holding company is one of two persons who, taken together, control it,
  - (b) the holding company is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and 45
  - (c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.



- |      |   |    |
|------|---|----|
| (10) | Section 755D of ICTA (meaning of “control” etc) applies for the purposes of subsection (9)(a) as for those of Chapter 4 of Part 17 of that Act (controlled foreign companies), except that no rights and powers are attributed to a person by subsection (6)(c) or (d) of that section. | 5  |
| (11) | For the purposes of subsection (7)(c) a company is a relevant controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA) –  |    |
|      | (a) are apportioned to the holding company for the relevant accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or  | 10 |
|      | (b) are not so apportioned because of section 748(1) or (3) of that Act.  |    |
| (12) | Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this section.”   | 15 |
| 4    | After Chapter 6 insert –  |    |

“CHAPTER 6A

SHARES ACCOUNTED FOR AS LIABILITIES

**521A Introduction to Chapter**

- |     |   |    |
|-----|---|----|
| (1) | This Chapter contains rules for Part 5 (and the other provisions of the Corporation Tax Acts) to apply in some cases as if at some times in the accounting period of a company (“A”) which holds shares of a certain kind in another company (“B”) the shares were rights under a creditor relationship of A. | 20 |
| (2) | See, in particular –  | 25 |
|     | (a) section 521B (application of Part 5 to some shares as rights under creditor relationship), and  |    |
|     | (b) section 521C (which describes the shares to which the rules apply).   |    |
| (3) | In this Chapter references to the investing company are to A and references to the issuing company are to B.  | 30 |
| (4) | For the purposes of this Chapter, the definition of “share” in section 476(1) only applies so far as it provides that “share” does not include a share in a building society.   |    |
| (5) | Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this Chapter.  | 35 |
| (6) | See section 116B of TCGA 1992 for the effect for chargeable gains purposes of shares beginning or ceasing to be shares to which section 521C applies.   |    |

**521B Application of Part 5 to certain shares as rights under creditor relationship** 40

- |     |   |  |
|-----|---|--|
| (1) | This section applies in relation to the times in a company’s accounting period when – |  |
|     | (a) the company holds a share in another company, and                                 |  |

- (b) section 521C (shares accounted for as liabilities) applies to the share.
- (2) Part 5 (and the other provisions of the Corporation Tax Acts) apply as if at those times –
  - (a) the share were rights under a creditor relationship of the investing company, and 5
  - (b) any distribution in respect of the share were not a distribution (and accordingly is within Part 5).
- (3) Where Part 5 applies in relation to the investing company in accordance with subsection (2) it so applies as if the issuing company stood in the position of debtor as respects the debt in question. 10
- (4) No debits are to be brought into account by the investing company as respects the share but this does not affect debits to be brought into account in respect of exchange gains or losses.
- (5) Subsection (2)(b) does not affect the operation of Part 1 of Schedule 25 of ICTA (controlled foreign companies: acceptable distribution policy) (including as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009). 15
- (6) In this Chapter references to “the share” are to the share mentioned in subsection (1). 20

#### **521C Shares accounted for as liabilities**

- (1) This section applies to the share if –
  - (a) the share would be accounted for by the issuing company as a liability in accordance with generally accepted accounting practice, 25
  - (b) the share produces for the investing company a return in relation to any amount which is economically equivalent to interest,
  - (c) the issuing company and the investing company are not connected companies, 30
  - (d) the condition in subsection (4) is met,
  - (e) the share is not an excepted share (see section 521D), and
  - (f) the investing company holds the share for an unallowable purpose (see section 521E).
- (2) For the purposes of this section a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if) –
  - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and 40
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it. 45

- (3) In subsection (2)(c) “the relevant time” means the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company.
- (4) The condition mentioned in subsection (1)(d) is that the share does not fall to be treated for the accounting period in question as if it were rights under a creditor relationship of the investing company because of section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights). 5
- (5) Section 466 (companies connected for an accounting period) applies for the purposes of this section. 10

### 521D Excepted shares

- (1) A share is an excepted share for the purposes of section 521C if it is –
- (a) a qualifying publicly-issued share (see subsection (2)), or
  - (b) a share which mirrors a public issue (see subsections (3) and (4)). 15
- (2) A share is a “qualifying publicly-issued share” if –
- (a) it was issued by a company as part of an issue of shares to persons not connected with the company, and
  - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it. 20
- (3) The first case where shares (“the mirroring shares”) mirror a public issue is where –
- (a) a company (“company A”) issues shares (“the public issue”) to persons not connected with the company,
  - (b) within 7 days of that issue, one or more other companies (“companies BB”) issue the mirroring shares to company A on the same terms as the public issue or substantially the same terms, 25
  - (c) company A and companies BB are associated companies (see subsection (5)), and 30
  - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue.
- (4) The second case where shares (“the second level mirroring shares”) mirror a public issue is where, in the circumstances of the first case –
- (a) within 7 days of the public issue, one or more other companies (“companies CC”) issue the second level mirroring shares to one or more of companies BB on the same terms as the public issue or substantially the same terms, 35
  - (b) company A, companies BB and companies CC are associated companies (see subsection (5)), and 40
  - (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue.
- (5) For the purposes of subsections (3) and (4) companies are associated companies if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3)(a) of that Act). 45

**521E Unallowable purpose**

- (1) For the purposes of section 521C, the investing company holds the share for an unallowable purpose if the main purpose, or one of the main purposes for which the company holds the share is to obtain a relevant tax advantage. 5
- (2) But the investing company may elect that this Chapter is to apply in relation to the share even though it would otherwise be prevented from applying by subsection (1)(f) of that section.
- (3) An election under subsection (2) –
  - (a) must be made no later than the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company, and 10
  - (b) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return produced by the share (or any part of it) is received in a way that means that its treatment for corporation tax purpose is more advantageous to the investing company than it would be if it were –
  - (a) charged to corporation tax as income of the investing company, or 15
  - (b) brought into account as income of the investing company for corporation tax purposes, 20at the time when amounts would be brought into account in relation to the return in accordance with section 521B.
- (5) Nothing in this section applies in relation to the investing company for an accounting period if it is an excluded controlled foreign company. 25
- (6) For this purpose the investing company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA) –
  - (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or 30
  - (b) are not so apportioned because of section 748(1) of that Act.

**521F Shares becoming or ceasing to be shares to which section 521B applies**

- (1) This section applies if at any time section 521B begins or ceases to apply in the case of a share held by the investing company. 35
- (2) The investing company is treated for the purposes of Part 5 –
  - (a) as having disposed of the share immediately before that time for consideration of an amount equal to the notional carrying value of the share at that time, and 40
  - (b) as having immediately reacquired it for consideration of the same amount.
- (3) In subsection (2) “notional carrying value”, in relation to the share, means the amount which would have been its carrying value in the accounts of the investing company if a period of account had ended immediately before section 521B began or ceased to apply in the case of the share and the investing company. 45

- (4) For the purposes of subsection (3) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317).”

*Amendments and repeals*

- 5 (1) Section 116B of TCGA 1992 (shares beginning or ceasing to be shares to which section 523 of CTA 2009 applies) is amended as follows. 5
- (2) In subsection (1) and the heading, for “522” substitute “521B”.
- (3) In subsection (1)(b), for “its fair value” substitute “the notional carrying value of the share”.
- (4) In subsection (2), for the definition of “fair value” substitute – 10  
“notional carrying value” has the same meaning as in subsection (2) of section 521F of CTA 2009 (see subsection (3) of that section),”.
- (5) In that subsection, in the definition of “investing company” – 15  
(a) for “7” substitute “6A”, and  
(b) for “with guaranteed returns) (see section 522(3)” substitute “accounted for as liabilities) (see section 521A(3))”.
- 6 In section 26 of F(No.2)A 2005 (tax arbitrage), for subsection (10) substitute – 20  
“(10) This subsection applies to an amount that is brought into account by virtue of Chapter 2A or 6A of Part 6 of CTA 2009 (shares treated as loan relationships).”
- 7 (1) Schedule 4 to CTA 2009 (index of expressions) is amended as follows.
- (2) After the entry relating to “approved, approval (in relation to a share incentive plan) (in Chapter 1 of Part 11)” insert – 25  
“arrangement (in Chapter 2A of Part 6 of CTA 2009) (see section 486B(9))”.
- (3) Omit the entry relating to “the associated transactions condition (in Chapter 7 of Part 6)”.
- (4) After the entry relating to “effective 51% subsidiary (in Part 8)” insert – 30  
“economically equivalent to interest (in Chapter 2A of Part 6 of CTA 2009) (see section 486B(2))”.
- (5) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute – 35  
“the investing company (in Chapter 6A of Part 6 of CTA 2009) (see section 521A(3))”.
- (6) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute –

“the issuing company (in Chapter 6A of Part 6) | section 521A(3)”.

- (7) Omit the entries relating to “the increasing value condition (in Chapter 7 of Part 6)” and “the redemption return condition (in Chapter 7 of Part 6)”.
- (8) In the entry relating to “share (in Part 5 and in Part 6 except for Chapter 7 of that Part)”, for “7” substitute “6A”. 5
- (9) For the entries relating to “share (in Chapter 7 of Part 6)” and “the share (in Chapter 7 of Part 6) substitute –

“share (in Chapter 6A of Part 6) | section 521A(4)  
 the share (in Chapter 6A of Part 6) | section 521B(6)”. 10

*Repeals*

- 8 In consequence of the amendments made by this Schedule, omit –
- (a) in ICTA –
    - (i) section 736C (deemed interest: cash collateral under stock lending arrangement), and 15
    - (ii) section 736D (quasi-stock lending arrangements and quasi-cash collateral),
  - (b) in FA 2004, sections 131 to 133 (companies in partnership), and
  - (c) in CTA 2009 –
    - (i) Chapter 7 of Part 6 (shares with guaranteed returns etc), 20
    - (ii) Chapter 8 of that Part (returns from partnerships), and
    - (iii) section 547 (repo under arrangement designed to produce quasi-interest: tax avoidance).
- 9 Omit the following provisions (which relate to the provisions repealed by paragraph 8) – 25
- (a) in ICTA, sections 736B(4) and 807A(2B),
  - (b) in TCGA 1992, section 171(3A),
  - (c) in F(No.2)A 2005, in Schedule 7, paragraphs 5 and 9,
  - (d) in FA 2006, in Schedule 6, paragraphs 3 and 4,
  - (e) in ITA 2007, in Schedule 1, paragraphs 172 and 373, and 30
  - (f) in CTA 2009, in Schedule 1, paragraphs 215 and 571.
- 10 In section 542(2) of CTA 2009 (introduction to Chapter 10 of Part 6), for “547” substitute “546”.

*Commencement*

- 11 The amendments made by paragraphs 2(2) and 3 have effect in relation to any arrangement which produces for a company a return which is economically equivalent to interest if the company becomes a party to the arrangement on or after 22 April 2009. 35

- 
- 12 The amendments (and repeals) made by paragraphs 2(3) and 4 to 10 come into force on 22 April 2009.
- 13 (1) This paragraph applies where any of the provisions repealed by paragraph 8 applies in relation to anything done by a company before 22 April 2009 which amounts to becoming party to an arrangement (within the meaning given by section 486B(9) of CTA 2009). 5
- (2) The company is to be treated for the purposes of Chapter 2A of Part 6 of CTA 2009 as having become a party to the arrangement on that date.
- (3) But this paragraph does not apply in circumstances in which paragraph 15 does. 10
- 14 (1) This paragraph applies where Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009.
- (2) Section 116B(1) of TCGA 1992 is to be treated as applying as if section 523 of CTA 2009 ceased to apply in relation to the share on that date.
- (3) But this paragraph does not apply if paragraph 15 applies in relation to the share and the company. 15
- 15 (1) This paragraph applies where –
- (a) Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009 by reason of the redemption return condition being met (see section 529 of that Act) (or would so apply but for the share not being designed to produce a return which equates in substance to the return on an investment of money at a commercial rate of interest), and 20
- (b) section 521B of CTA 2009 applies in relation to the share and the company on 22 April 2009. 25
- (2) Part 5 of CTA 2009 applies as if the company had acquired the share on 22 April 2009 for an amount equal to the notional carrying value of the share on that date.
- (3) In sub-paragraph (2) “notional carrying value” has the same meaning as in section 521F(2) of CTA 2009 (see subsection (3) of that section). 30
- (4) Section 521F of CTA 2009 does not apply by virtue of the coming into force of section 521B of that Act.
- 16 An election under –
- (a) section 486D(2) of CTA 2009, or
- (b) section 521E(2) of that Act, 35
- relating to a return which begins to be produced before 1 August 2009 can be made at any time before that date but only in relation to any return produced on or after the day on which the election is made.

SCHEDULE 25

Section 49

TRANSFERS OF INCOME STREAMS

PART 1

COMPANY TRANSFERORS

<i>Application of Part</i>	5
1 (1) This Part applies where –	
(a) a company within the charge to corporation tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see sub-paragraph (2)), and	
(b) (subject to sub-paragraph (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.	10
(2) “Relevant receipts” means any income –	
(a) which (but for the transfer) would be charged to corporation tax as income of the transferor, or	15
(b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of corporation tax.	
(3) Despite paragraph (b) of sub-paragraph (1), this Part applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.	20
(4) Paragraph 2 makes provision as to the consequences of this Part applying.	
(5) For exclusions from this Part, see –	25
(a) paragraph 3 (amount otherwise taxed), and	
(b) paragraph 4 (transfer by way of security).	
(6) Paragraph 5 makes special provision about transfers of partnership shares.	
(7) Paragraph 6 contains supplementary provisions.	
<i>Value of transferred income stream treated as income</i>	30
2 (1) The relevant amount (see sub-paragraph (2)) is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts –	
(a) would have been chargeable to corporation tax, or	
(b) would have been brought into account in calculating any profits for the purposes of corporation tax,	35
but for the transfer of the right to relevant receipts.	
(2) The relevant amount is –	
(a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or	40
(b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes	



place (or where there is no consideration for the transfer of the right), the market value of the right at that time.

- (3) The income under sub-paragraph (1) is to be treated as arising –
- (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and 5
  - (b) otherwise, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place. 10
- (4) But if at any time it becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by sub-paragraph (3) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time. 15

*Exception: amount otherwise taxed*

- 3 This Part does not apply if and to the extent that the income under paragraph 2(1) is (apart from this Part) –
- (a) charged to tax as income of the transferor, 20
  - (b) brought into account as income in calculating the profits of the transferor, or
  - (c) brought into account under CAA 2001.

*Exception: transfer by way of security*

- 4 This Part does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner. 25

*Partnership shares*

- 5 (1) For the purposes of this Part a transfer of a right to relevant receipts consisting of the reduction in the transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met. 30
- (2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction. 35
- (3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to corporation tax or income tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes. 40

*Interpretation*

- 6 (1) For the purposes of this Part –

- (a) the grant or surrender (or renunciation) of a lease of land is to be regarded as a transfer of the land,
  - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence, and 5
  - (c) the grant or disposal of an interest in intellectual property (within the meaning of section 712(3) of CTA 2009) which constitutes a pre-2002 asset (within the meaning of section 881 of that Act) is to be regarded as a transfer of that intellectual property.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes. 10
- (3) In this Part—
- (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and 15
  - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Part applies. 20

## PART 2

### NON-CORPORATE TRANSFERORS

- 7 In ITA 2007, after section 809 insert —

#### “CHAPTER 5A 25

### TRANSFERS OF INCOME STREAMS

#### **809AZA Application of Chapter**

- (1) This Chapter applies where —
- (a) a person within the charge to income tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and 30
  - (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income — 35
- (a) which (but for the transfer) would be charged to income tax as income of the transferor, or
  - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of income tax. 40
- (3) Despite paragraph (b) of subsection (1), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the

purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.

- (4) Section 809AZB makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see – 5
  - (a) section 809AZC (amount otherwise taxed),
  - (b) section 809AZD (certain annuities), and
  - (c) section 809AZE (transfer by way of security).
- (6) Section 809AZF makes special provision about transfers of partnership shares. 10
- (7) Section 809AZG contains supplementary provisions.

**809AZB Value of transferred income stream treated as income**

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts – 15
  - (a) would have been chargeable to income tax, or
  - (b) would have been brought into account in calculating any profits for the purposes of income tax,

but for the transfer of the right to relevant receipts.
- (2) The relevant amount is – 20
  - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
  - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time. 25
- (3) The income under subsection (1) is to be treated as arising in the chargeable period of the transferor in which the transfer takes place.
- (4) But subsection (5) applies if (apart from the transfer) any of the relevant receipts – 30
  - (a) would have been brought into account in accordance with Part 2 or 3 of ITTOIA 2005 (trading income and property income) in calculating any profits for the purposes of income tax, and 35
  - (b) in accordance with generally accepted accounting practice, would have been recognised otherwise than wholly in the chargeable period in which the transfer takes place.
- (5) If this subsection applies, the income under subsection (1) is to be treated as arising – 40
  - (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and 45

(b) otherwise, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.	5
(6) But if in a case where the transferor is a company it at any time becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (5) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.	10
<b>809AZC Exception: amount otherwise taxed</b>	
This Chapter does not apply if and to the extent that the income under section 809AZB(1) is (apart from this Chapter) –	
(a) charged to tax as income of the transferor,	
(b) brought into account in calculating the profits of the transferor, or	15
(c) brought into account under CAA 2001.	
<b>809AZD Exception: certain annuities</b>	
This Chapter does not apply to a transfer of a right to –	
(a) annual payments under a life annuity as defined in section 473(2) of ITTOIA 2005, or	20
(b) annual payments under an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).	
<b>809AZE Exception: transfer by way of security</b>	25
This Chapter does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner.	30
<b>809AZF Partnership shares</b>	
(1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in a transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.	35
(2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.	
(3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to income tax or corporation tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.	40
<b>809AZG Interpretation</b>	45
(1) For the purposes of this Chapter –	

- 
- (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land, and
- (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence. 5
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Chapter –
- (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and 10
- (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement. 15
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.”
- PART 3 20
- COMPANY TRANSFEREES
- 8 (1) Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.
- (2) In section 477(2) (overview of Part 6), after paragraph (aa) (inserted by Schedule 24) insert – 25
- “(ab) Chapter 2B (transferred income streams).”.
- (3) After Chapter 2A (inserted by Schedule 24) insert –
- “CHAPTER 2B
- TRANSFERRED INCOME STREAMS
- 486F Introduction to Chapter** 30
- (1) This Chapter provides for Part 5 to apply in relation to a company to which an income stream transfer is made (“the transferee”).
- (2) An “income stream transfer” is a transfer by a person (“the transferor”) to which either of the following provisions applies –
- (a) Part 1 of Schedule 25 to FA 2009 (transfers of income streams by companies), or 35
- (b) Chapter 5A of Part 13 of ITA 2007 (transfers of income streams by individuals).
- 486G Consideration to be treated as loan relationship**
- (1) For the purposes of this Part – 40
- (a) the consideration for the transfer of the right to relevant receipts is to be treated as a money debt which is owed to the

- transferee by the person by whom the relevant receipts fall to be paid, and
- (b) the transfer is to be treated as a transaction for the lending of money from which that debt is treated as arising.
- (2) For the meaning of “relevant receipts” see paragraph 1(2) of Schedule 25 to FA 2009 or section 809AZA(2) of ITA 2007.” 5

#### PART 4

##### CONSEQUENTIAL AMENDMENTS AND REPEALS

- 9 (1) In ICTA, omit –
- (a) section 730 (transfers of rights to receive distributions in respect of shares), 10
- (b) section 775A (transfers of rights to receive annual payments),
- (c) section 785A (rent factoring of leases of plant or machinery), and
- (d) in section 786 (transactions associated with loans or credit) –
- (i) in subsection (5), “assigns,” “(without a sale or transfer of the property)” and “assigned,” 15
- (ii) in subsection (5ZA), “assigned,” and
- (iii) in subsection (5A), “assigned.”
- (2) In ITTOIA 2005, omit –
- (a) in Chapter 11 of Part 4 (transactions in deposits) – 20
- (i) in section 551(2), the words after “of it”, and
- (ii) in section 552(1), paragraph (e) and the word “and” before it, and
- (b) Chapter 13 of Part 4 (sales of foreign dividend coupons).
- (3) Omit the following provisions (which relate to the provisions repealed by sub-paragraphs (1) and (2)) – 25
- (a) in TMA 1970, in section 98, in column 1 of the Table, the entry relating to section 730(8) of ICTA,
- (b) in ICTA, in section 774E(1), the second sentence,
- (c) in FA 1996, in Schedule 7, paragraph 23, 30
- (d) in FA 2004, section 135,
- (e) in ITTOIA 2005, in Schedule 1, paragraph 300,
- (f) in F(No.2)A 2005, in Schedule 7, paragraphs 2 and 4,
- (g) in FA 2006, in Schedule 6, paragraph 7,
- (h) in ITA 2007 – 35
- (i) in section 1016, in Part 3 of the table, the entry relating to section 730(4) of ICTA, and
- (ii) in Schedule 1, paragraphs 183 and 545, and
- (i) in CTA 2009, in Schedule 1, paragraphs 214 and 230.
- (4) In section 785ZB(3) of ICTA, for “has the same meaning as in section 785A” substitute “includes an underlease, sublease, tenancy or licence and an agreement for any of those things”. 40
- (5) In section 2(13) of ITA 2007, omit the “and” at the end of paragraph (d) and insert at the end “or
- (f) transfers of income streams (Chapter 5A).” 45

(6) Schedule 4 to that Act (index of defined expressions) is amended as follows.

(7) After the entry relating to “transfer (in Chapter 2 of Part 13)” insert –

“transfer (in Chapter 5A of Part 13)		Section 809AZF(3)”. ”
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(8) After the entry relating to “transferor (in Part 12)” insert –

5

“transfer taking place (in Chapter 5A of Part 13)		Section 809AZF(3)”. ”
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#### PART 5

#### COMMENCEMENT

10 This Schedule has effect in relation to transfers on or after 22 April 2009. 10

#### SCHEDULE 26

Section 50

#### CERTIFICATION OF SAYE SAVINGS ARRANGEMENTS

1 Chapter 4 of Part 6 of ITTOIA 2005 (SAYE interest) is amended as follows.

*Transfer of certain functions from Treasury to HMRC*

2 (1) Section 705 (certification of arrangements) is amended as follows. 15

(2) In subsections (1) and (2), for “Treasury” (in each place) substitute “Commissioners”.

(3) After subsection (4) insert –

“(5) In this Chapter “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.” 20

3 In section 706(1) and (2) (withdrawal and variation of certifications etc), for “Treasury” substitute “Commissioners”.

4 In section 707(1) (authorisation of providers), for “Treasury” substitute “Commissioners”.

5 (1) Section 708 (withdrawal and variation of authorisations) is amended as follows. 25

(2) In subsections (1) and (2), for “Treasury” substitute “Commissioners”.

(3) In subsection (4), for “Treasury of its” substitute “Commissioners of their”.

*Removal of requirement that notice be sent by post*

6 In the following provisions omit “by post” – 30

	(a) section 706(2)(b) (notification of withdrawal and variation of certifications etc), and	
	(b) section 708(2)(b) (notification of withdrawal and variation of authorisations).	
	<i>Reduction of notice period for withdrawals and variations</i>	5
7	In section 706(2)(b) (notification of withdrawal and variation of certifications etc), for “28 days” substitute “15 days”.	
	<i>Power to provide for withdrawals and variations not to affect certain contracts</i>	
8	In section 706(3) (transitional provision for withdrawals and variations of certifications) for the words from “the operation of” to the end substitute –	10
	“(a) the operation of the arrangement concerned before that date,	
	(b) contracts made under that arrangement before that date, or	
	(c) where the notice so provides, contracts which are of a description specified in the notice and are made under that arrangement after that date.”	15

## SCHEDULE 27

Section 51

### REMITTANCE BASIS

#### PART 1

#### AMENDMENTS OF ITA 2007

1	Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.	20
2	In section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply), after subsection (5) insert –	
	“(5A) The references to income tax in subsection (5) do not include income tax under section 424 (gift aid).”	25
3	(1) Section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000) is amended as follows.	
	(2) In subsection (1), insert at the end (not as part of paragraph (c)) –	
	“unless condition A or condition B is met.”	
	(3) After that subsection insert –	30
	“(1A) Condition A is that the individual is not domiciled in the United Kingdom in that year and conditions A to F in section 828B are met.	
	(1B) Condition B is that the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for that year.”	35
4	(1) Section 809E (application of remittance basis without claim: other cases) is amended as follows.	



- (2) In subsection (1), for paragraph (c) substitute –  
     “(c) for that year the individual either has no UK income or gains or has no UK income and gains other than taxed investment income not exceeding £100.”
- (3) In that subsection, insert at the end (not as part of paragraph (e)) – 5  
     “unless the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for that year.”
- (4) After subsection (2) insert – 10  
     “(2A) For the purposes of subsection (1)(c) “taxed investment income” means UK income or gains consisting of payments within section 946 from which a sum representing income tax has been deducted.”
- 5 In section 809H (claim for remittance basis by long-term UK resident: charge), after subsection (5) insert – 15  
     “(5A) The references to income tax in subsection (5) do not include income tax under section 424 (gift aid).”
- 6 (1) Section 809L (meaning of “remitted to the United Kingdom”) is amended as follows.  
     (2) Omit subsection (8).  
     (3) In subsection (9), for “income or chargeable gains are used in respect of a debt include cases where income or chargeable gains are” substitute “property (including income or chargeable gains) is used in respect of a debt include cases where the property is”. 20
- 7 (1) Section 809M (meaning of “relevant person” for purposes of sections 809L, 809N and 809O) is amended as follows. 25  
     (2) In subsection (2)(e), insert at the end “or a company which is a 51% subsidiary of such a close company”.  
     (3) In subsection (3), after paragraph (c) insert –  
         “(ca) “participator”, in relation to a close company, means a person who is a participator in relation to the company for the purposes of section 419 of ICTA (see sections 417(1) and 419(7) of that Act),  
         (cb) “51% subsidiary” has the same meaning as in the Corporation Tax Acts (see section 838 of ICTA).” 30
- 8 In section 809P (amount remitted), insert at the end – 35  
     “(13) If the property forms part of a set only part of which is in the United Kingdom, the amount remitted is such portion of what it would have been had the complete set been brought to, or received or used in, the United Kingdom when the part was as is just and reasonable (having regard to the part of the set which is there).” 40
- 9 (1) Section 809T (foreign chargeable gains accruing on disposals made other than for full consideration) is amended as follows.  
     (2) In subsection (1)(b), after “amount” insert “at least”.

- (3) In the heading, for “**other**” substitute “**otherwise**”.
- 10 (1) Section 809X (property which is exempt property) is amended as follows.
- (2) In subsection (4), omit “that derive from relevant foreign income”.
- (3) In subsection (5), omit “of any description that derives from relevant foreign income”. 5
- 11 (1) Section 809Z5 (notional remitted amount) is amended as follows.
- (2) In subsection (1), omit “of income”.
- (3) Omit subsections (2) and (3).

## PART 2

### AMENDMENTS OF OTHER ACTS

10

#### TCGA 1992

- 12 In section 14A(3)(b) of TCGA 1992 (section 13: non-UK domiciled individuals), after “amount” insert “at least”.

#### ITTOIA 2005

- 13 In section 648 of ITTOIA 2005 (income arising under a settlement), for subsections (2) to (5) substitute – 15
- “(2) But if, in a tax year, the settlor is not UK resident, references in this Chapter to income arising under a settlement do not include income arising under the settlement in that tax year in respect of which the settlor, if actually entitled to it, would not be chargeable to income tax by deduction or otherwise because of not being UK resident. 20
- (3) And if, for a tax year, section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the settlor, references in this Chapter to income arising under a settlement include in relation to any relevant foreign income arising under the settlement in that tax year only such of it as is remitted to the United Kingdom (in that tax year or any subsequent tax year) in circumstances such that, if the settlor remitted it, the settlor would be chargeable to income tax. 25
- (4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc. 30
- (5) Where subsection (3) applies the remitted income is treated for the purposes of this Chapter as arising under the settlement in the tax year in which it is remitted.”

#### FA 2008

- 14 In paragraph 86 of Schedule 7 to FA 2008 (remittance basis: transitional provisions), after sub-paragraph (4) insert – 35
- “(4A) For the purposes of sub-paragraph (4), section 648(2) to (5) of ITTOIA 2005 (and corresponding earlier enactments) do not apply (so that relevant foreign income which arose under a settlement in

the tax year 2007-08 or any earlier tax year is to be treated as income for the tax year in which it arose).”

PART 3

COMMENCEMENT

- 15 (1) The amendments made by paragraphs 2 to 5, 10, 11(2) and 14 have effect for the tax year 2008-09 and subsequent tax years. 5
- (2) The other amendments made by this Schedule come into force on 22 April 2009.

SCHEDULE 28

Section 53

TAXABLE BENEFITS: CARS 10

*Introduction*

- 1 Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars) is amended as follows.

*Abolition of “price cap”*

- 2 (1) Section 121(1) (method of calculating cash equivalent of benefit of car) is amended as follows. 15
- (2) In step 3, insert at the end –  
“The resulting amount is the interim sum.”
- (3) Omit step 4 (interim sum to be £80,000 if step 3 amount exceeds £80,000).
- 3 In section 145(5) (modifications of provisions where car temporarily replaced), for “step 4” substitute “step 3”. 20
- 4 In section 147(1) and (2), for “amount carried forward from” substitute “interim sum calculated under”.
- 5 In section 170(1) (Treasury orders increasing various amounts), omit paragraph (a) (amount in step 4 of section 121(1)). 25

*Cars with CO<sub>2</sub> emissions figures: the appropriate percentage*

- 6 In section 139(4) (car with a CO<sub>2</sub> emissions figure: the appropriate percentage), for the table substitute –  
“TABLE

<i>Tax year</i>	<i>Lower threshold (in g/km)</i>
2009-10	135
2010-11	130
2011-12 and subsequent tax years	125”.

30

*Electrically propelled cars: the appropriate percentage*

- 7 In section 140(3)(a) (appropriate percentage for electrically propelled cars), for “15%” substitute “9%”.
- 8 In section 142 (special provision for cars registered before 1998) –
- (a) in subsection (3) (cars without internal combustion engine with reciprocating pistons), for the words after “year is” substitute “32%”, and
  - (b) omit subsection (4) (definition of electrically propelled car).

*Consequential repeal*

- 9 In consequence of the amendment made by paragraph 6, in FA 2008, omit section 47(1). 10

*Commencement*

- 10 (1) The amendments made by paragraphs 6 and 9 have effect for the tax year 2009-10 and subsequent tax years.
- (2) The other amendments made by this Schedule have effect for the tax year 2011-12 and subsequent tax years. 15

SCHEDULE 29

Section 58

MANUFACTURED OVERSEAS DIVIDENDS

*Repos*

- 1 (1) Schedule 23A to ICTA (manufactured dividends and interest) is amended as follows. 20
- (2) In paragraph 4, in sub-paragraph (4) –
- (a) in paragraph (a), for “the amount deducted under section 922(2) of ITA 2007 or (as the case may be)” substitute “the relevant amount in relation to the amount deducted under section 922(2) of ITA 2007 or the whole of the amount”, 25
  - (b) in paragraph (b), for “the amount so deducted or” substitute “the relevant amount in relation to the amount so deducted or the whole of the amount”, and
  - (c) insert at the end – 30  
“For the meaning of references in this paragraph to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007, see paragraph 4A.”
- (3) After that paragraph insert –
- “4A (1) A reference in paragraph 4(4)(a) or (b) to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007 is – 35
- (a) where the deduction is made in respect of a manufactured overseas dividend that is treated as paid under paragraph

- 13(1) of Schedule 13 to FA 2007 (sale and repurchase of securities), to amount A, and
- (b) otherwise, to the amount deducted under section 922(2) of ITA 2007.
- (2) Amount A is – 5
- (a) in a case to which sub-paragraph (3) applies, the amount deducted under section 922(2) of ITA 2007,
- (b) in a case to which sub-paragraph (4) applies – 10
- (i) the amount deducted under section 922(2) of ITA 2007, less
- (ii) the excess mentioned in that sub-paragraph, and
- (c) in any other case, nil.
- (3) This sub-paragraph applies to a case in which – 15
- (a) an amount is actually paid by way of manufactured overseas dividend,
- (b) the amount so paid equals the relevant net amount, and
- (c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.
- (4) This sub-paragraph applies to a case in which – 20
- (a) an amount is actually paid by way of manufactured overseas dividend,
- (b) the amount so paid exceeds the relevant net amount, and
- (c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid. 25
- (5) In this section “the repurchase price” of the securities means the price at which the payer of the manufactured overseas dividend is entitled or obliged to sell the securities, or similar securities, to the recipient of the manufactured overseas dividend. 30
- (6) In this section “the securities” means the securities in respect of which the overseas dividend of which the manufactured overseas dividend is representative is paid.
- (7) In this section “the relevant net amount” means – 35
- (a) the gross amount of the overseas dividend of which the manufactured overseas dividend is representative, less
- (b) the amount deducted under section 922(2) of ITA 2007.”

*Stock lending*

- 2 (1) Section 736B of ICTA (deemed manufactured payments in the case of stock lending arrangements) is amended as follows. 40
- (2) In subsection (2), for “subsection (2A)” substitute “subsections (2A) and (2B)”.
- (3) After subsection (2A) insert –
- “(2B) In its application by virtue of subsection (2), paragraph 4(4) of Schedule 23A has effect as if – 45

- (a) in paragraph (a), the words from “but paid after” to the end were omitted, and
- (b) paragraph (b) were omitted.”

*Commencement*

- 3 (1) The amendments made by paragraph 1 have effect in relation to overseas dividends paid on or after 22 April 2009. 5
- (2) The amendments made by paragraph 2 have effect in relation to interest on securities paid on or after 22 April 2009.
- (3) In this paragraph –
  - “interest” has the same meaning as in section 736B of ICTA; 10
  - “overseas dividend” has the same meaning as in Schedule 23A to ICTA.

SCHEDULE 30

Section 61

FINANCIAL ARRANGEMENTS AVOIDANCE

*Interest payments: arrangements appearing very likely to produce post-tax advantage*

- 1 (1) In ITA 2007, after section 384 insert – 15
  - “384A Restriction on relief where arrangements minimise risk to borrower**
  - (1) Relief is not to be given under this Chapter for interest paid by a person on a loan if –
    - (a) the loan is made to the person (“the borrower”) as part of arrangements which appear very likely to produce a post-tax advantage, and 20
    - (b) the arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements. 25
  - (2) Arrangements “appear very likely” to produce a post-tax advantage if (and only if) it would be reasonable to assume from either or both of –
    - (a) the likely effect of the arrangements, and
    - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected, 30that there is no risk, or only an insignificant risk, that they will not produce a post-tax advantage.
  - (3) “Produce a post-tax advantage” means give rise to a sum or sums –
    - (a) payable to the borrower or a person connected with the borrower, or 35
    - (b) payable to any other person for the benefit of the borrower or a person connected with the borrower,of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is equal to or greater than the relevant amount. 40

- (4) “The relevant amount” is the aggregate of—
- (a) the amount required to meet the borrower’s obligations in respect of the loan, and
  - (b) any amount which is used by the borrower in the same way as that which entitles the borrower to relief under this Chapter in respect of the loan and is not money lent to the borrower under any loan. 5
- (5) If, with a view to securing that the condition in subsection (1)(a) is not met, the arrangements make provision for securing that, in all or any circumstances in which they do not produce a post-tax advantage, they will produce a broadly compensatory amount, the arrangements are to be regarded for the purposes of subsection (2) as making provision for securing the production of a post-tax advantage in those circumstances. 10
- (6) “Produce a broadly compensatory amount” means give rise to a sum or sums payable as mentioned in subsection (3) of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is not significantly less than the relevant amount. 15
- (7) For the purposes of subsections (3) and (6) causing the value of an asset to be obtainable, directly or indirectly, by a person is to be treated as equivalent to giving rise to a sum payable to the person of an amount equal to that value. 20
- (8) To make the appropriate tax adjustments for the purpose of subsection (3) or (6)—
- (a) if A exceeds B, deduct the amount of the excess from the amount (or aggregate amount), and
  - (b) if B exceeds A, add the amount of the excess to the amount (or aggregate amount). 25
- (9) For the purposes of subsection (8)—
- A is the amount of any income tax, any capital gains tax and any tax under the law of a territory outside the United Kingdom to which the borrower is liable in consequence of the arrangements, and
  - B is the amount by which the borrower’s liability to income tax and capital gains tax is (or apart from subsection (1) would be) reduced in consequence of the arrangements. 30
- (10) Arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements if (and only if) it would be reasonable to assume from either or both of—
- (a) the likely effect of the arrangements, and
  - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected, 35
- that the arrangements, or any parts of the arrangements, are designed to do so. 40
- (11) In this section “arrangements” means arrangements consisting of any number of agreements, understandings, schemes, transactions or other arrangements (whether or not legally enforceable); but in 45

- subsections (1)(a), (2), (5) and (9) the references to arrangements also include any related transactions.
- (12) In subsection (11) “related transactions” means transactions in the case of which it is reasonable to assume from either or both of –
- (a) the likely effect of the transactions, and 5
  - (b) the circumstances in which the transactions are entered into or effected,  
that the transactions would not have been entered into or effected independently of the arrangements.
- (13) Transactions are not prevented from being related transactions just because the transactions – 10
- (a) are not between the same parties, or
  - (b) are not between parties to the arrangements.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to interest paid on or after 19 March 2009. 15

*Amounts not fully recognised for accounting purposes*

- 2 (1) Section 311 of CTA 2009 (loan relationships: amounts not fully recognised for accounting purposes) is amended as follows.
- (2) In subsection (2), for paragraphs (b) and (c) substitute –
- “(b) condition A, B or C is met, and 20
  - (c) an amount is not fully recognised for the period in respect of the creditor relationship as a result of the application of generally accepted accounting practice in relation to the creditor relationship and the debtor relationship, contribution or securities referred to in the condition that is met.” 25
- (3) In subsection (3)(b), after “to the” insert “creditor relationship and the debtor”.
- (4) In paragraph (b) of subsection (4), after “to the” insert “creditor relationship and the relevant capital”. 30
- (5) After that subsection insert –
- “(4A) Condition C is that –
- (a) the company has issued securities that form part of its capital for the period, and
  - (b) an amount is not fully recognised for the period in respect of the securities as a result of the application of generally accepted accounting practice in relation to the creditor relationship and the securities.” 35
- (6) In subsection (6) –
- (a) for “or a relevant capital contribution to it” substitute “, a contribution to it or securities issued by it”, and 40
  - (b) for “or contribution” (in both places) substitute “, contribution or securities”.



- (7) In section 317(5) of CTA 2009 (carrying value), before paragraph (a) insert –  
“(za) sections 311 and 312 (amounts not fully recognised for accounting purposes),”.
- (8) The amendments made by this paragraph have effect in relation to periods of account beginning on or after 22 April 2009. 5
- (9) But for the purposes of sub-paragraph (8) a period of account beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate periods of account.
- 3 (1) In CTA 2009, after section 599 insert – 10
- “599A Amounts not fully recognised for accounting purposes: introduction**
- (1) Section 599B applies for the purpose of determining the credits and debits which a company is to bring into account for a period for the purposes of this Part in the following case.
- (2) The case is where – 15
- (a) the company is, or is treated as, a party to a derivative contract in the period,
- (b) condition A or B is met, and
- (c) an amount is not fully recognised for the period in respect of the contract as a result of the application of generally accepted accounting practice in relation to the contract and the contribution or securities referred to in the condition that is met. 20
- (3) Condition A is that –
- (a) an amount (a “relevant capital contribution”) has at any time been contributed to the company which forms part of its capital for the period, and 25
- (b) an amount is not fully recognised for the period in respect of the relevant capital contribution as a result of the application of generally accepted accounting practice in relation to the derivative contract and the relevant contribution. 30
- (4) It does not matter for the purposes of subsection (3) whether the contribution forms part of the company’s share capital or other capital for the period.
- (5) Condition B is that – 35
- (a) the company has issued securities that form part of its capital for the period, and
- (b) an amount is not fully recognised for the period in respect of the securities as a result of the application of generally accepted accounting practice in relation to the derivative contract and the securities. 40
- (6) For the purposes of this section an amount is not fully recognised for a period in respect of a contract of a company, a contribution to it or securities issued by it if –
- (a) no amount in respect of the contract, contribution or securities is recognised in determining its profit or loss for the period, or 45

- (b) an amount is so recognised in respect of only part of the contract, contribution or securities.

**599B Determination of credits and debits where amounts not fully recognised**

- (1) In determining the credits and debits which a company is to bring into account for the period referred to in section 599A(1) for the purposes of this Part in respect of the derivative contract mentioned in section 599A(2), the assumption in subsection (2) is to be made. 5
- (2) The assumption is that an amount in respect of the whole of the contract in question is recognised in determining the company's profit or loss for the period. 10
- (3) The credits and debits which are to be brought into account for the purposes of this Part by the company in respect of the contract are to be determined on the basis of fair value accounting."
- (2) In section 702(3) of CTA 2009 (carrying value), before paragraph (c) insert – 15  
“(ca) sections 599A and 599B (amounts not fully recognised for accounting purposes),”.
- (3) The amendments made by this paragraph have effect in relation to periods of account beginning on or after 22 April 2009.
- (4) But for the purposes of sub-paragraph (3) a period of account beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate periods of account. 20

*Loan relationships involving connected debtor and creditor where debits exceed credits*

- 4 (1) Section 418 of CTA 2009 (loan relationships treated differently by connected debtor and creditor) is amended as follows. 25
- (2) In subsection (1)(b), for “A, B and C” substitute “A and B”.
- (3) For subsections (2) to (4) substitute –
- “(2) Condition A is that the rights under the loan relationship include provision by virtue of which the creditor company – 30
- (a) is or may become entitled, or
- (b) is or may be required,
- to acquire (whether by conversion or exchange or otherwise) any shares in any company.
- (3) Condition B is that – 35
- (a) the debits brought into account by the debtor under this Part in respect of the loan relationship for any accounting period, exceed
- (b) the credits brought into account (otherwise than as a result of this section) by the creditor in respect of the loan relationship for the corresponding accounting period or periods of the creditor.” 40

- (4) After subsection (6) insert –
- “(6A) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor’s rights under the loan relationship to another person – 5
- (a) under a repo or stock lending arrangement, or
- (b) under a transaction which is treated as not involving any disposal as a result of section 26 of TCGA 1992 (mortgages and charges not to be treated as disposals).
- (6B) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor’s rights under the loan relationship to another person if the disposal was made with the relevant avoidance intention. 10
- (6C) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account for the purposes of this Part.” 15
- (5) In subsection (7), for “Section 419 supplements” substitute “Sections 418A and 419 supplement”.
- (6) In the heading, for “**treated differently by connected debtor and creditor**” substitute “**involving connected debtor and creditor where debits exceed credits**”. 20
- (7) After section 418 insert –
- “418A Cases involving host contract**
- (1) This section applies where the debtor or the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as divided between – 25
- (a) rights and liabilities under a loan relationship (“the host contract”), and
- (b) rights and liabilities under one or more derivative financial instruments or equity instruments. 30
- (2) Where the debtor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(a) were to the host contract. 35
- (3) Where the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(b) were to the host contract.
- (4) In this section “the debtor” and “the creditor” have the same meaning as in section 418.” 40
- (8) The amendments made by this paragraph have effect in relation to debits and credits arising on or after 22 April 2009.

*Credits and debits for manufactured interest*

- 5 (1) In section 540(3) of CTA 2009 (manufactured interest treated as interest under loan relationship), insert at the end “and the credits and debits to be brought into account in respect of manufactured interest for any period are those that are recognised in determining the company’s profit or loss for the period in accordance with generally accepted accounting practice (but subject to the provisions of Part 5, including, in particular, section 307(3) and to paragraph 7A of Schedule 23A to ICTA).” 5
- (2) In section 97(2) of FA 1996 (equivalent provision for accounting periods ending before 1 April 2009), insert at the end “and the credits and debits to be brought into account in respect of manufactured interest for any period are those that are recognised in determining the company’s profit or loss for the period in accordance with generally accepted accounting practice (but subject to the provisions of this Chapter (including, in particular, section 84(1)) and to paragraph 7A of Schedule 23A to the Taxes Act 1988).” 10 15
- (3) The amendments made by this paragraph have effect in relation to manufactured interest whenever paid, apart from payments treated under section 737A(5) of ICTA as made before 27 January 2009.

SCHEDULE 31

Section 63

SALE OF LESSOR COMPANIES ETC: ANTI-AVOIDANCE 20

*Introduction*

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

*Paragraph 6*

- 2 In paragraph 6(3) (meaning of “business of leasing plant or machinery”: condition A), for “accounting value of the plant or machinery owned by the relevant company on the relevant day” substitute “relevant plant or machinery value”. 25

*Paragraph 7*

- 3 (1) Paragraph 7 (provision for purposes of condition A) is amended as follows. 30

(2) For sub-paragraphs (2) and (3) substitute –

“(2) The relevant plant or machinery value is the aggregate of the amounts in sub-paragraph (3), but subject to paragraph 7A.

(3) The amounts are –

- (a) the amounts (if any) which would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and 35

- (b) the amounts (if any) which would be shown in the appropriate balance sheet of the relevant company drawn 40

- up as at the end of the relevant day in respect of relevant transferred plant or machinery.
- (3A) For the purposes of sub-paragraph (3)(b) plant or machinery is “relevant transferred plant or machinery” if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.” 5
- (3) In sub-paragraph (4), for “this purpose” substitute “the purposes of this paragraph”.
- (4) In sub-paragraph (8)(a), omit “as at the start of the relevant day”.
- (5) Insert at the end – 10
- “(10) References in this Part of this Schedule to an associated company are to a company which is an associated company of the relevant company on the relevant day (as to which, see paragraph 9).”

*Paragraph 7A*

- 4 After paragraph 7 insert – 15
- “7A (1) Where this paragraph applies in relation to any plant or machinery –
- (a) any amount included in the aggregate mentioned in paragraph 7(2) in respect of the plant or machinery is to be deducted from that aggregate, and 20
- (b) the market value of the plant or machinery as at the relevant day is to be added to that aggregate (or, if that aggregate is nil, is to constitute the relevant plant or machinery value).
- (2) This paragraph applies in relation to plant or machinery if condition A or B is met. 25
- (3) Condition A is that –
- (a) the plant or machinery falls within sub-paragraph (4) at the start of the relevant day, or
- (b) the plant or machinery falls within that sub-paragraph at the end of the relevant day, having been acquired by the relevant company from an associated company on that day. 30
- (4) Plant or machinery falls within this sub-paragraph if the relevant company – 35
- (a) is the lessee of the plant or machinery under a long funding finance lease, or
- (b) is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts). 40
- (5) Condition B is that –
- (a) the relevant company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or

- (b) the relevant company is the lessee of the plant or machinery under such a lease at the end of the relevant day and the plant or machinery was acquired by the relevant company from an associated company on that day.”

*Paragraph 17* 5

- 5 (1) Paragraph 17 (meaning of “PM” in paragraph 16) is amended as follows.
  - (2) In sub-paragraph (1) –
    - (a) after “paragraph” insert “and paragraph 17A”, and
    - (b) for paragraph (a) substitute –
      - “
        - (a) on the provision of which the company has not incurred qualifying expenditure for the purposes of Part 2 of CAA 2001, 10
        - (aa) of which the company is the lessor under a long funding lease, or”.
  - (3) For sub-paragraph (2) substitute – 15
    - “(2) For the purposes of paragraph 16 “PM” is the aggregate of the amounts in sub-paragraph (2A), but subject to paragraph 17A.
    - (2A) The amounts are –
      - (a) the amounts (if any) which would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and 20
      - (b) the amounts (if any) which would be shown in the appropriate balance sheet of the relevant company drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery. 25
    - (2B) For the purposes of sub-paragraph (2A)(b) plant or machinery is “relevant transferred plant or machinery” if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.” 30
  - (4) In sub-paragraph (3), for “this purpose” substitute “the purposes of this paragraph”.
  - (5) In sub-paragraph (7)(a), omit “as at the start of the relevant day”.

*Paragraph 17A*

- 6 After paragraph 17 insert – 35
  - “17A(1) Where this paragraph applies in relation to any plant or machinery –
    - (a) any amount included in the aggregate mentioned in paragraph 17(2) in respect of the plant or machinery is to be deducted from that aggregate, and 40
    - (b) the market value of the plant or machinery as at the relevant day is to be added to that aggregate (or, if that aggregate is nil, is to constitute PM).

	(2) This paragraph applies in relation to plant or machinery if condition A or B is met.	
	(3) Condition A is that—	
	(a) the plant or machinery falls within sub-paragraph (4) at the start of the relevant day, or	5
	(b) the plant or machinery falls within that sub-paragraph at the end of the relevant day, having been acquired by the relevant company from an associated company on that day.	
	(4) Plant or machinery falls within this sub-paragraph if the relevant company—	10
	(a) is the lessee of the plant or machinery under a long funding finance lease, or	
	(b) is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).	15
	(5) Condition B is that—	
	(a) the relevant company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or	20
	(b) the relevant company is the lessee of the plant or machinery under such a lease at the end of the relevant day and the plant or machinery was acquired by the relevant company from an associated company on that day.”	
	<i>Paragraph 22</i>	25
7	In paragraph 22(2) (migration), for “owned by the company” substitute “in respect of which an amount would be shown in a balance sheet of the company drawn up immediately before the relevant day in accordance with generally accepted accounting practice”.	
	<i>Paragraph 40</i>	30
8	Omit paragraph 40 (relationship of Schedule with section 228K of CAA 2001).	
	<i>Paragraph 41</i>	
9	In paragraph 41 (definitions), after sub-paragraph (5) insert—	
	“(5A) “Long funding finance lease”, “long funding lease” and “long funding operating lease” have the same meaning as in Part 2 of CAA 2001 (see section 70YI of that Act).”	35
	<i>Paragraph 42</i>	
10	In paragraph 42 (index), in the table, after the entry relating to “fixture” insert—	40
	“long funding finance lease	paragraph 41

long funding lease	paragraph 41
long funding operating lease	paragraph 41”.

*Consequential repeal*

- 11 In FA 2007, in Schedule 6, omit paragraph 2(3).

*Commencement*

5

- 12 The amendments made by this Schedule have effect where the relevant day is on or after 13 November 2008.

SCHEDULE 32

Section 64

LEASES OF PLANT OR MACHINERY

*Disposal values: commencement of long funding finance leases* 10

- 1 (1) Section 61 of CAA 2001 (disposal events and disposal values) is amended as follows.

- (2) In the Table in subsection (2), for item 5A substitute –

“5A. Commencement of the term of a long funding finance lease of the plant or machinery.	The greater of –	15
	(a) the market value of the plant or machinery at the commencement of the term of the lease, and	20
	(b) the qualifying lease payments.”	

- (3) After subsection (5) insert –

“(5A) In item 5A of the Table “qualifying lease payments” means the minimum payments under the lease (including any initial payment), excluding the following –

- (a) so much of any payment as, under generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment in respect of the lease,
- (b) so much of any payment as represents charges for services, and
- (c) so much of any payment as represents qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor.”

- (4) Omit subsections (6) to (9). 35

- 2 Accordingly, in FA 2008, in Schedule 20, omit paragraph 4.



- 3 (1) Section 25A of TCGA 1992 (long funding leases of plant or machinery: deemed disposals) is amended as follows.
- (2) In subsection (2)(a), for “the value described in subsection (4)(a) or (b)” substitute “the relevant disposal value”.
- (3) For subsections (4) to (4D) substitute – 5
- “(4) “Relevant disposal value” means –
- (a) in relation to a long funding finance lease, the disposal value described in item 5A of the table in section 61(2) of the Capital Allowances Act (disposal values), and
- (b) in relation to a long funding operating lease, the disposal value described in item 5B of that table.” 10
- (4) In subsection (5), omit ““market value”,”.
- 4 Accordingly, in FA 2008, in Schedule 20, omit paragraph 5.
- 5 (1) The amendments made by paragraphs 1 and 2 have effect in relation to leases whose inception is on or after 13 November 2008. 15
- (2) The amendments made by paragraphs 3 and 4 have effect in relation to leases whose inception is on or after 22 April 2009.

*Disposal values: termination etc of long funding leases*

- 6 In section 66 of CAA 2001 (list of provisions outside Chapter 5 of Part 2 of that Act about disposal values), in the list, insert at the appropriate place – 20
- “section 70E                      long funding leases: disposal events and disposal values”.
- 7 (1) Section 70E of CAA 2001 (long funding leases: disposal events and disposal values) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute – 25
- “(c) a relevant event occurs.”
- (3) After that subsection insert –
- “(1A) A relevant event occurs if –
- (a) the lease terminates,
- (b) the plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity, or 30
- (c) the qualifying activity is permanently discontinued.”
- (4) In subsection (2)(a), for “termination of the lease” substitute “relevant event”.
- (5) For subsections (3) to (8) substitute – 35
- “(2A) The amount of the disposal value is –
- $(QE - QA) + R$
- where –

- QE is the person’s qualifying expenditure on the provision of the plant or machinery;  
QA is the qualifying amount (see subsections (2B) to (2E));  
R is any relevant rebate (see subsections (2F) and (2G)).
- (2B) In the case of a long funding operating lease, “the qualifying amount” means the aggregate amount of the reductions made under section 502K of ICTA or section 148I of ITTOIA 2005 for periods of account in which the person was the lessee. 5
- (2C) In the case of a long funding finance lease, “the qualifying amount” means the aggregate of – 10
- (a) the payments made to the lessor by the person under the lease (including any initial payment), and
  - (b) the payments made to the lessor by the person under a guarantee of any residual amount (as defined in section 70YE), 15
- subject to subsection (2D).
- (2D) The following are excluded from the “qualifying amount” under subsection (2C) –
- (a) so much of any payment as, in accordance with generally accepted accounting practice, falls (or would fall) to be shown in the person’s accounts as finance charges in respect of the lease, 20
  - (b) so much of any payment as represents charges for services, and
  - (c) so much of any payment as represents qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor. 25
- (2E) In the case of a long funding finance lease that is not a transaction at arm’s length, “the qualifying amount” includes only so much of the amounts described in subsection (2C) as would reasonably be expected to have been paid if the lease had been such a transaction. 30
- (2F) “Relevant rebate” means –
- (a) in a case falling within subsection (1A)(a), any amount calculated by reference to the termination value that is payable for the benefit (directly or indirectly) of the person or another person connected with that person, or 35
  - (b) in a case falling within subsection (1A)(b) or (c), any such amount that would have been so payable if, when the relevant event occurred, the lease had terminated and the plant or machinery had been sold for its market value at that time. 40
- (2G) In the case of a lease that is not a transaction at arm’s length, “relevant rebate” includes any amount that would reasonably be expected to have fallen within subsection (2F) if the lease had been such a transaction. 45
- (2H) The amount of the disposal value brought into account under this section cannot be less than nil.”
- (6) In subsection (9), for “termination of the lease” substitute “relevant event”.

- 8 The amendments made by paragraphs 6 and 7 have effect in relation to cases where the relevant event occurs on or after 13 November 2008.

*Capital receipts treated as income*

- 9 (1) Section 785C of ICTA (plant and machinery leases: capital receipts to be treated as income: interpretation) is amended as follows. 5
- (2) In subsection (6), for “subsection (9)” substitute “subsections (9) and (9A)”.
- (3) In subsection (9) –
- (a) in paragraph (a), insert at the end “or”, and
- (b) omit paragraph (c) (and the “or” before it).
- (4) After subsection (9) insert – 10
- “(9A) Where –
- (a) a capital payment is an initial payment under a long-funding lease, and
- (b) under section 61 of the Capital Allowances Act (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account,
- the capital payment is only “relevant” to the extent that it exceeds the disposal value.” 15
- (9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of the Capital Allowances Act.” 20
- 10 (1) Section 809ZB of ITA 2007 (plant and machinery leases: capital receipts to be treated as income: interpretation) is amended as follows.
- (2) In subsection (6), for “subsection (9)” substitute “subsections (9) and (9A)”.
- (3) In subsection (9) – 25
- (a) in paragraph (a), insert at the end “or”, and
- (b) omit paragraph (c) (and the “or” before it).
- (4) After subsection (9) insert –
- “(9A) Where – 30
- (a) a capital payment is an initial payment under a long-funding lease, and
- (b) under section 61 of CAA 2001 (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account,
- the capital payment is only “relevant” to the extent that it exceeds the disposal value.” 35
- (9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of CAA 2001.” 40

- 11 (1) The amendments made by paragraphs 9 and 10 have effect in relation to payments made under leases whose inception is on or after 13 November 2008 (subject to sub-paragraph (2)).
- (2) In relation to payments made under leases whose inception is before 22 April 2009, section 785C(9A) of ICTA and section 809ZB(9A) of ITA 2007 (inserted by this Schedule) have effect as if, for the words following paragraph (b), there were substituted “the capital payment is not “relevant””. 5

*Transfer and long funding leaseback: restrictions on lessee’s allowances*

- 12 In section 51A(10) of CAA 2001 (annual investment allowances), insert at the appropriate place – 10  
“section 70DA(2) (transfer and long funding leaseback: no annual investment allowance for lessee);”.
- 13 In section 52(5) of CAA 2001 (first-year allowances), insert at the appropriate place – 15  
“section 70DA(2) (transfer and long funding leaseback: no first-year allowance for lessee);”.
- 14 In section 57(3) of CAA 2001 (available qualifying expenditure), insert at the appropriate place –  
“section 70DA (transfer and long funding leaseback);”. 20
- 15 In CAA 2001, after section 70D insert –
- “70DA Transfer and long funding leaseback: restrictions on lessee’s allowances**
- (1) This section applies where –
- (a) a person (“S”) transfers plant or machinery to another person (“B”), 25
- (b) at any time after the date of the transfer, the plant or machinery is available to be used by S, or a person (other than B) who is connected with S (“CS”), under a plant or machinery lease, and 30
- (c) that lease is a long funding lease.
- (2) No annual investment allowance or first-year allowance is to be made in respect of the expenditure of S or CS under the lease.
- (3) The amount, if any, by which E exceeds D is to be left out of account in determining the available qualifying expenditure of S or CS. 35
- (4) E is the capital expenditure of S or CS on the provision of the plant or machinery under the long funding lease.
- (5) If S is required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), D is that disposal value. 40
- (6) Otherwise, D is whichever of the following is the smallest –
- (a) the market value of the plant or machinery;

- (b) if S incurred capital expenditure on the provision of the plant or machinery before the transfer referred to in subsection (1)(a), the amount of that expenditure;
- (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery before that transfer, the amount of that expenditure. 5
- (7) Section 70Y(3) applies to references in this section to a transfer of plant or machinery by a person.
- (8) For the purposes of this section, a transfer involving the grant of a lease takes place on the commencement of the term of the lease.” 10
- 16 In section 70H of CAA 2001 (lessee: requirement for tax return treating lease as long funding lease), after subsection (1B) insert –
- “(1C) In a case in which paragraphs (a) and (b) of subsection (1) of section 70DA (leaseback of plant or machinery) are satisfied, subsection (1) of this section does not apply to the lease referred to in section 70DA(1)(b).” 15
- 17 The amendments made by paragraphs 12 to 16 have effect in relation to cases where the commencement of the term of the lease referred to in subsection (1)(b) of section 70DA of CAA 2001 is on or after 13 November 2008. 20

*Transfer followed by hire-purchase etc: restrictions on hirer’s allowances*

- 18 In section 51A(10) of CAA 2001 (annual investment allowances), after “218A” insert “, 229A(2)”. 10
- 19 In section 52(5) of CAA 2001 (first-year allowances), after “217” insert “, 229A(2)”. 25
- 20 In section 57(3) of CAA 2001 (available qualifying expenditure), after “228(2)” insert “, 229A”. 30
- 21 In CAA 2001, after section 229 insert –
- “229A Transfer followed by hire-purchase etc: restrictions on hirer’s allowances** 30
- (1) This section applies where –
- (a) a person (“S”) transfers plant or machinery to another person (“B”),
- (b) at any time after the date of the transfer, the plant or machinery is available to be used by S, or a person (other than B) who is connected with S (“CS”), 35
- (c) it is available to be so used under a contract which provides that S or CS is to or may become the owner of the plant or machinery on the performance of the contract, and
- (d) S or CS incurs capital expenditure on the provision of the plant or machinery under that contract. 40
- (2) No annual investment allowance or first-year allowance is to be made in respect of the expenditure of S or CS under the contract.

- 
- (3) The amount, if any, by which E exceeds D is to be left out of account in determining the available qualifying expenditure of S or CS.
- (4) E is the capital expenditure of S or CS on the provision of the plant or machinery under the contract referred to in subsection (1)(c).
- (5) If S is required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), D is that disposal value. 5
- (6) Otherwise, D is whichever of the following is the smallest –
- (a) the market value of the plant or machinery;
  - (b) if S incurred capital expenditure on the provision of the plant or machinery before the transfer referred to in subsection (1)(a), the amount of that expenditure; 10
  - (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery before that transfer, the amount of that expenditure. 15
- (7) Sections 214 and 215 do not apply in relation to the contract referred to in subsection (1)(c).
- (8) Section 70Y(3) applies to references in this section to a transfer of plant or machinery by a person.
- (9) For the purposes of this section, a transfer involving the grant of a lease takes place on the commencement of the term of the lease.” 20
- 22 The amendments made by paragraphs 18 to 21 have effect in relation to cases where the contract referred to in subsection (1)(c) of section 229A of CAA 2001 is entered into on or after 13 November 2008.
- Finance leaseback* 25
- 23 In section 216(1)(b)(i) of CAA 2001 (sale and leaseback etc), after “S” insert “or by a person (other than B) who is connected with S”.
- 24 In section 221(1)(b)(i) of CAA 2001 (meaning of “sale and finance leaseback”), for “a qualifying activity carried on by S” substitute “an activity carried on by S or by a person (other than B) who is connected with S,”. 30
- 25 The amendment made by paragraph 23 has effect –
- (a) where the date of the transaction referred to in section 216(1)(a) of CAA 2001 is on or after 22 April 2009, and
  - (b) for the purposes of section 227 of that Act (which applies section 216(1)(b) of that Act), where the date of the transaction referred to in section 227(1)(a) is on or after 22 April 2009. 35
- 26 The amendment made by paragraph 24 has effect –
- (a) where the date of the transaction referred to in section 221(1)(a) of CAA 2001 is on or after 22 April 2009, and
  - (b) for the purposes of section 228A of that Act (which applies section 221(1)(b) of that Act), where the date of the transaction referred to in section 228A(2)(a) is on or after 22 April 2009. 40

*Interpretation*

- 27 In this Schedule “commencement” and “inception” have the meaning given in section 70YI(1) of CAA 2001.

## SCHEDULE 33

Section 65

## LONG FUNDING LEASES OF FILMS

5

- 1 In ICTA, after section 502GC insert –

**“502GD Cases where ss 502B to 502G do not apply: films**

- (1) If a company is or has been a lessor under a long funding lease of a film, sections 502B to 502G do not apply in respect of the lease.

- (2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).” 10

- 2 In ITTOIA 2005, after section 148FC insert –

**“148FD Cases where ss 148A to 148F do not apply: films**

- (1) If a person is or has been a lessor under a long funding lease of a film, sections 148A to 148F do not apply in respect of the lease. 15

- (2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).”

- 3 The amendments made by paragraphs 1 and 2 have effect where the inception of the long funding lease is on or after 13 November 2008 (“the relevant date”). 20

- 4 Paragraphs 5 to 8 apply in respect of a long funding finance lease of a film –  
(a) whose inception is before the relevant date, and  
(b) which has not terminated before that date.

- 5 (1) Section 502B of ICTA or section 148A of ITTOIA 2005 (rental earnings) does not apply to a period of account within sub-paragraph (2). 25

- (2) A period of account is within this sub-paragraph if –  
(a) it begins on or after the relevant date, and  
(b) no rentals due (wholly or partly) in respect of any part of the period of account were due under the lease before the relevant date.

- 6 (1) For the purpose of calculating the profits of the lessor under the lease for a period of account – 30

- (a) that ends on or after the relevant date, and  
(b) that is not within paragraph 5(2),

treat the lessor as receiving for that period of account income attributable to the lease of an amount equal to the relevant amount (in addition to any amount brought into account under section 502B(2) of ICTA or section 148A(2) of ITTOIA 2005). 35

- (2) The “relevant amount” is an amount equal to so much of the rentals as –  
(a) become due on or after the relevant date, and

- (b) are due wholly or partly in respect of the period of account, as would not reasonably be regarded as reflected in the rental earnings for that period of account.
- (3) If any rental is paid for a period (“the rental period”) which—
- (a) begins before the relevant date, or 5
  - (b) is not wholly within the period of account, 10
- for the purposes of sub-paragraph (2) treat the amount of that rental as equal to the amount apportioned (on a time basis) in respect of so much of the rental period as falls on or after the relevant date and within the period of account.
- 7 Section 502C of ICTA or section 148B of ITTOIA 2005 (exceptional items) does not apply in relation to any profit or loss arising on or after the relevant date.
- 8 (1) If section 502D of ICTA or section 148C of ITTOIA 2005 (lessor making termination payment) applies in respect of the termination of the lease on or after the relevant date, a deduction is allowed (in calculating the profits of the lessor) in respect of any sum calculated by reference to the termination value paid to the lessee. 15
- (2) The amount of the deduction is (if it would otherwise exceed that amount) limited to the total amount brought into account in respect of the lease by virtue of paragraph 5 or 6. 20
- 9 For the purpose of paragraphs 3 to 8—
- (a) “film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act),
  - (b) “rental earnings” has the same meaning as in section 502B of ICTA or section 148A of ITTOIA 2005, and 25
  - (c) Chapter 6A of Part 2 of CAA 2001 (interpretation of provisions about long funding leases) applies.

## SCHEDULE 34

Section 66

### REAL ESTATE INVESTMENT TRUSTS 30

#### *Introduction*

- 1 Part 4 of FA 2006 (Real Estate Investment Trusts) is amended as follows.

#### *Property rental business*

- 2 (1) In section 104 (property rental business), insert at the end—
- “(3) For the purposes of section 104(1) ignore the effect of section 42 of CTA 2009 (which provides for receipts and expenses in connection with tied premises to be treated as part of a trade and not as part of a property business).” 35
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009. 40



*Conditions for company*

- 3 (1) Section 106 (conditions for company) is amended as follows.
- (2) In subsection (2), insert at the end “(subject to section 109 and regulations under section 116)”.
- (3) In subsection (7)(a)(ii)– 5
- (a) for “fixed-rate” substitute “relevant”, and
- (b) omit “(within the meaning of paragraph 2 of Schedule 25 to ICTA (acceptable distribution policy))”.
- (4) After subsection (7) insert–
- “(7A) For the purposes of Condition 5– 10
- (a) “relevant preference share” means a share which is a “relevant preference share” for the purposes of Schedule 18 to ICTA (group relief) or would be but for the fact that it carries a right of conversion into shares or securities in the company, and 15
- (b) a share is “non-voting” if it carries no right to vote at a general meeting of the company or if it carries a right to vote which is contingent on the non-payment of a dividend and which has not become exercisable.”
- (5) The amendment made by sub-paragraph (2) is to be treated as always having had effect. 20
- (6) The amendments made by sub-paragraphs (3) and (4) have effect in relation to accounting periods ending on or after 22 April 2009.

*Conditions for balance of business*

- 4 (1) In section 108(3)(a) (conditions for balance of business), for “if it is property involved in the relevant property rental business within the meaning given by section 107(6)(a),” substitute “if it would be shown as an asset if separate accounts were produced for C (tax-exempt),” 25
- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009. 30

*Entry notice: conditions for company*

- 5 (1) Section 109 (entry notice) is amended as follows.
- (2) After subsection (2) insert–
- “(2A) Subsection (2B) applies where a company– 35
- (a) does not expect to satisfy Condition 3 of section 106 on the first day of an accounting period, but
- (b) reasonably expects to satisfy that Condition throughout the rest of the accounting period.
- (2B) Where this subsection applies– 40
- (a) subsection (2)(c) does not apply, but

- (b) the notice under subsection (1) must be accompanied by a statement by the company containing the assertions specified in subsection (2C).
- (2C) Those assertions are –
- (a) that Conditions 1, 2, 4, 5 and 6 of section 106 are reasonably expected to be satisfied in respect of the company throughout the specified accounting period, and 5
  - (b) that Condition 3 of section 106 is reasonably expected to be satisfied in respect of the company for at least a part of the first day of the specified accounting period, and throughout the remainder of that period.” 10
- (3) In subsection (3), omit “by reason only that its shares have not been listed and dealt with on a recognised stock exchange within the preceding 12 months,”.
- (4) In subsection (5) – 15
- (a) after “Conditions 1, 2,” insert “3,” and
  - (b) omit paragraph (b) (but not the “and” at the end).
- (5) Insert at the end –
- “(6) A company may take advantage both of subsections (2A) to (2C) and of subsections (3) to (5) (in which case the assertion under subsection (2C)(a) should omit reference to Condition 4 and the assertion under subsection (5)(a) should omit reference to Condition 3.” 20
- (6) The amendments made by this paragraph have effect in relation to accounting periods beginning on or after 22 April 2009.
- Profit: financing-cost ratio* 25
- 6 (1) In section 115 (profit: financing-cost ratio), after subsection (3) insert –
- “(3A) The Commissioners for Her Majesty’s Revenue and Customs may waive a charge in respect of an accounting period where they think that –
- (a) the company was in severe financial difficulties at a time in the accounting period, 30
  - (b) the result of the sum specified in subsection (2) is less than 1.25 in respect of the accounting period because of circumstances that arose unexpectedly, and
  - (c) in those circumstances, the company could not reasonably have taken action to avoid the result being less than 1.25. 35
- (3B) The regulations may specify criteria to be applied by the Commissioners in determining whether to waive a charge.”
- (2) The Commissioners may waive a charge in respect of accounting periods ending before the day on which this Act is passed. 40
- Funds awaiting re-investment*
- 7 (1) In section 118(5) (funds awaiting re-investment), after “one or more periods of” insert “(in aggregate)”.

- (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 22 April 2009.

*Connected persons*

- 8 (1) Before section 137 (miscellaneous: insurance companies) insert –
- “136A Connected persons** 5
- (1) If they consider it expedient in the public interest the Treasury may make regulations about the application of this Part to activities or situations which involve, or arise in connection with, a relationship between a REIT company and another person.
- (2) In subsection (1) “REIT company” means – 10
- (a) a company to which this Part applies, and
- (b) a member of a group to which this Part applies (a “REIT group”).
- (3) The regulations may, in particular –
- (a) treat a specified person, or a person in specified circumstances, as forming part of a REIT group for specified purposes; 15
- (b) provide for a specified provision which applies in respect of members of a REIT group also to apply, with or without modifications, in respect of a specified person or a person in specified circumstances. 20
- (4) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.”
- (2) Regulations under section 136A (inserted by sub-paragraph (1)) may make provision in relation to accounting periods ending on or after the date on which the regulations are made. 25

SCHEDULE 35

Section 72

PENSIONS: SPECIAL ANNUAL ALLOWANCE CHARGE

- Special annual allowance charge* 30
- 1 (1) A charge to income tax, to be known as the special annual allowance charge, arises where –
- (a) the total adjusted pension input amount for a tax year in the case of a high-income individual who is a member of one or more registered pension schemes, exceeds 35
- (b) the amount of the special annual allowance.
- (2) The individual is a high-income individual if the individual’s relevant income for the tax year is £150,000 or more.  
Paragraph 2 makes provision for calculating the individual’s relevant income. 40
- (3) Paragraphs 3 to 16 explain what is the total adjusted pension input amount.

- (4) The special annual allowance is £20,000 (but subject to paragraph 17).
- (5) But if, in calculating the total adjusted pension input amount of the individual for the tax year, a deduction is made in respect of—
- (a) protected pension input amounts (see paragraphs 7 to 14), or
  - (b) a pre-22 April 2009 pension input amount that is such an amount by virtue of paragraph 16(3),
- (or both) the special annual allowance is £20,000 less the amount of the deduction or, if the deduction is £20,000 or more, is nil. 5
- (6) The person liable to the special annual allowance charge is the individual.
- (7) The individual is liable to the special annual allowance charge whether or not— 10
- (a) the individual, and
  - (b) the scheme administrator of the pension scheme or schemes concerned,
- are UK resident, ordinarily UK resident or domiciled in the United Kingdom. 15
- (8) The special annual allowance charge is a charge at the rate of 20% in respect of the amount by which—
- (a) the total adjusted pension input amount, exceeds
  - (b) the amount of the special annual allowance. 20
- (9) But where—
- (a) the individual’s total pension input amount under section 229 of FA 2004 (annual allowance charge) for the tax year, exceeds
  - (b) the amount of the annual allowance for the tax year (see section 228 of that Act and orders made under it),
- the amount in respect of which the special annual allowance charge is charged is reduced by the amount of the excess. 25
- (10) In calculating the individual’s liability to income tax for the tax year the amount of any income tax to which the individual is liable under this section is to be added at Step 7 of the calculation in section 23 of ITA 2007 (which applies as if this Schedule were a provision listed in section 30 of that Act). 30
- (11) The amount in respect of which the special annual allowance charge is charged is not to be treated as income for any purpose of the Tax Acts.

*Calculation of relevant income*

- 2 (1) To find the individual’s relevant income for the tax year take the following steps— 35
- Step 1*  
Identify the individual’s total income.
- Step 2*  
Add the amount of any deductions made from any employment income of the individual for the tax year under section 193(2) of FA 2004 or made under Chapter 2 of Part 5 of ITEPA 2003 in accordance with paragraph 51 of Schedule 36 to FA 2004. 40
- Step 3*

- Deduct the amount of any relief under the provisions listed in section 24 of ITA 2007, other than sections 193(4) and 194(1) of FA 2004, to which the individual is entitled for the tax year.
- Step 4*  
Deduct the aggregate amount of any relevant contributions, but subject to a maximum of £20,000. 5
- Step 5*  
Add any amount by which what would otherwise be general earnings or specific employment income of the individual for the tax year has been reduced by a post-22 April 2009 salary sacrifice scheme. 10
- Step 6*  
If in the tax year the individual makes, or is treated under section 426 of ITA 2007 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid), deduct the grossed up amount of the gift (that is, the amount of the gift grossed up by reference to the basic rate for the tax year). 15
- The result is the individual’s relevant income for the tax year unless the result is less than £150,000 and the following provisions provide that the individual’s relevant income is to be a different amount.
- (2) If the amount arrived at under sub-paragraph (1) is less than £150,000, take the steps in that sub-paragraph in relation to – 20
- (a) the tax year before the tax year concerned, and
  - (b) the tax year before that.
- If the result is £150,000 or more for either or both of those earlier tax years the individual’s relevant income for the tax year is to be assumed to be £150,000. 25
- (3) If there is a scheme the main purpose, or one of the main purposes, of which is to secure that the individual’s relevant income for the tax year is less than £150,000, it is to be assumed to be £150,000.
- (4) In step 4 in sub-paragraph (1) “relevant contributions” are – 30
- (a) contributions which are relievable pension contributions in relation to the individual and are paid in the tax year,
  - (b) contributions in respect of which the individual is entitled to a tax reduction under section 788 of ICTA and which are paid in the tax year, and 35
  - (c) contributions paid by the individual for which a deduction is given under Chapter 2 of Part 5 of ITEPA 2003 for the tax year in accordance with paragraph 51 of Schedule 36 to FA 2004.
- (5) In step 5 in sub-paragraph (1) “a post-22 April 2009 salary sacrifice scheme” is a scheme made on or after 22 April 2009 in pursuance of which – 40
- (a) the individual gives up the right to receive general earnings or specific employment income, and
  - (b) an employer of the individual or any other person agrees to pay contributions (or additional contributions) to a pension scheme in respect of the individual or otherwise to secure an increase in the amount of benefits to which the individual or any person who is a dependant of, or is connected with, the individual is actually or prospectively entitled under a pension scheme. 45

- (6) Section 993 of ITA 2007 (meaning of “connected” person) applies for the purposes of sub-paragraph (5).

*Total adjusted pension input amount: general*

- 3 (1) The total adjusted pension input amount is to be calculated as follows.
- (2) Arrive at an amount in the same way as the total pension input amount would be arrived at for the purposes of the annual allowance charge in accordance with sections 229 to 237 of FA 2004 (assuming that it were necessary to arrive at it for that purpose) but subject to –
- (a) the modifications of those sections specified in paragraphs 4 and 5, and
  - (b) where paragraph 6 applies, the provisions of that paragraph.
- (3) Then reduce the amount so arrived at by the aggregate of –
- (a) any protected pension input amounts (see paragraphs 7 to 14), and
  - (b) any relevant refunded amounts (see paragraph 15),
- and, if the tax year is the tax year 2009-10, any pre-22 April 2009 pension input amount (see paragraph 16).

*Total adjusted pension input amount: modifications of sections 229 to 237 of FA 2004*

- 4 (1) Section 229(3) of FA 2004 (no pension input amount for year in which individual becomes entitled to all benefits under arrangement or dies) has effect for arriving at an amount under paragraph 3(2) in relation to an arrangement only if condition A or B is met.
- (2) Condition A is that –
- (a) the arrangement is a defined benefits arrangement under a pension scheme,
  - (b) at the time when the individual becomes entitled to all the benefits that may be provided to the individual under the arrangement or dies, there are at least 20 persons in respect of whom defined benefits arrangements subsist under the pension scheme under which benefits are accruing or scheme pensions are being paid, and
  - (c) the individual’s becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.
- (3) Condition B is that –
- (a) the arrangement is under an occupational pension scheme, a public service pension scheme or a group personal pension scheme,
  - (b) the individual’s entitlement to the benefits mentioned in section 229(3)(a) of FA 2004 arises only because the ill-health condition is satisfied, and
  - (c) the individual’s becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.

- 5 (1) Sections 230(1), 233(1) and 234(1) of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “the pension input period of the arrangement that ends in” were omitted.
- (2) Sections 230 to 237 of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “tax year” were substituted for “pension input period” in all other places. 5

*Total adjusted pension input amount: modification in cases of avoidance scheme*

- 6 (1) This paragraph applies if there is a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge by reducing the amount arrived at in accordance with paragraph 3(2) in relation to an arrangement under a pension scheme for the tax year (or for reducing that amount and the amount so arrived at for other tax years). 10
- (2) If the amount calculated under sub-paragraph (3) exceeds that arrived at in accordance with paragraph 3(2) in relation to the arrangement for the tax year, the amount so calculated is to be treated as if it were the amount so arrived at. 15
- (3) The amount is calculated by deducting—
- (a) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the beginning of the tax year, from 20
- (b) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the end of the tax year. 25
- (4) That calculation is to be made on the assumptions that—
- (a) the benefits are capable of assignment (or assignation), 30
- (b) the assignment (or assignation) is by a transaction between parties at arm’s length, and
- (c) any power to reduce entitlement to the benefits does not exist.
- (5) If the arrangement ceases to exist during the tax year, the reference in sub-paragraph (3)(b) to the end of the tax year is to the time immediately before it ceases to exist. 35
- (6) Section 236 of FA 2004 applies for adjusting the amount in sub-paragraph (3)(b) as for adjusting the closing value of an individual’s rights as calculated under section 234(5) of that Act (but as if references to the pension input period were to the tax year and whether or not the arrangement is a defined benefits arrangement). 40

*Protected pension input amounts: general*

- 7 (1) The following paragraphs make provision for protected pension input amounts in respect of arrangements under registered pension schemes—
- (a) paragraph 8 makes provision about existing defined benefits arrangements, 45

- (b) paragraph 9 makes provision about existing cash balance arrangements,
  - (c) paragraph 10 makes provision about other existing money purchase arrangements under occupational pension schemes and public service pension schemes, 5
  - (d) paragraph 11 makes provision about other existing money purchase arrangements under other schemes,
  - (e) paragraph 12 makes provision about existing hybrid arrangements, and
  - (f) paragraph 13 makes provision about new and re-activated arrangements. 10
- (2) Paragraph 14 makes anti-avoidance provision in relation to all the varieties of arrangements covered by paragraphs 8 to 13.

*Protected pension input amounts: existing defined benefits arrangements*

- 8 (1) This paragraph applies in respect of a defined benefits arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme. 15
- (2) If the individual pays relevant added years contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions. 20
- (3) Relevant added years contributions are contributions paid –
- (a) with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual, 25
  - (b) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
  - (c) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and 30
  - (d) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time. 35
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant added years contributions it is a protected pension input amount if – 40
- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and
  - (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date. 45



- (5) If there is a material change in the rules of the pension scheme under which such benefits are calculated under the arrangement in that period, the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount to the extent that it is not attributable to that change.
- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme. 5
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement. 10

*Protected pension input amounts: existing cash balance arrangements*

- 9 (1) This paragraph applies in respect of a cash balance arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme.
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions. 15
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid – 20
- (a) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
- (b) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and 25
- (c) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time. 30
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant additional voluntary contributions it is a protected pension input amount if – 35
- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 until the relevant end date, and 40
- (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.
- (5) If there is a material change in the rules of the pension scheme under which such benefits are calculated under the arrangement in that period, the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount to the extent that it is not attributable to that change. 45

- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme.
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement. 5

*Protected pension input amounts: other existing money purchase arrangements under occupational and public service pension schemes*

- 10 (1) This paragraph applies in respect of a money purchase arrangement, other than a cash balance arrangement, if the arrangement is under an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme. 10
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions. 15
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid –
- (a) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time, 20
  - (b) on a quarterly or more frequent basis during the period beginning with that date of (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and 25
  - (c) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time. 30
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in sub-paragraph (5) if the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date. 35
- (5) That amount is a protected pension input amount to the extent that it is attributable to contributions paid –
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and 40
  - (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time. 45

- (6) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

*Protected pension input amounts: other existing money purchase arrangements under other pension schemes* 5

- 11 (1) This paragraph applies in respect of a money purchase arrangement, other than a cash balance arrangement, if –
- (a) the arrangement is under a scheme other than an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme, and 10
  - (b) the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to contributions paid –
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and 15
  - (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before that date. 20
- (3) If the individual –
- (a) was not an active member of the pension scheme by reference to the arrangement immediately before 22 April 2009, but 25
  - (b) a written application to become such an active member was received by or on behalf of the scheme administrator of the pension scheme before noon on 22 April,
- the references to before 22 April 2009 (and to that date) in sub-paragraphs (1)(b) and (2) are to the date on which the individual became such an active member pursuant to the application. 30
- (4) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

*Protected pension input amounts: existing hybrid arrangements* 35

- 12 (1) This paragraph applies in respect of a hybrid arrangement under a pension scheme if any one or more of paragraphs 8 to 11 would be applicable in relation to it.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount if and to the extent of the greater or greatest amount that it would be if the arrangement were an arrangement under whichever (if any) of paragraphs 8 to 11 are applicable in relation to it. 40
- (3) Paragraph 8 is applicable in relation to it as in relation to a defined benefits arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits. 45

- (4) Paragraph 9 is applicable in relation to it as in relation to a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are cash balance benefits.
- (5) Paragraph 10 or 11 is applicable in relation to it as in relation to a money purchase arrangement other than a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits. 5

*Protected pension input amounts: new and re-activated arrangements*

- 13 (1) This paragraph applies in respect of an arrangement if –
  - (a) the arrangement is made or re-activated on or after 22 April 2009, 10
  - (b) the arrangement –
    - (i) is under an occupational pension scheme or forms part of a group personal pension scheme and (in either case) relates to an employment of the individual, or
    - (ii) is a public service pension scheme, 15
  - (c) there is no material change in the rules of the pension scheme under which benefits are calculated under the arrangement in the relevant period or any such material change in the relevant period affects at least 50 active members of the pension scheme, and
  - (d) throughout the relevant period there are at least 20 persons in respect of whom arrangements subsist under the pension scheme under which benefits are accruing on the same basis as those under the arrangement. 20
- (2) If the arrangement falls within sub-paragraph (1)(b)(i), this paragraph does not apply in respect of it if –
  - (a) the provision of benefits under it is not part of the normal pattern of pension provision made by the person who is the employer in relation to the employment of the individual for the employees of the employer generally, or
  - (b) the persons mentioned in sub-paragraph (1)(d) are not employees of that person. 25
- (3) “The relevant period” is the period –
  - (a) beginning when the arrangement is made or re-activated, and
  - (b) ending at the same time as the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement. 35
- (4) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount except to the extent that it is attributable to the payment of added years contributions or additional voluntary contributions. 40
- (5) “Added years contributions” are contributions paid with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual.
- (6) An arrangement relates to an employment of the individual if –
  - (a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or 45

- (b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.
- (7) An arrangement is “re-activated” if the individual, having ceased to be an active member of the pension scheme by reference to the arrangement, again becomes such a member. 5

*Protected pension input amounts: anti-avoidance*

- 14 No amount is a protected pension input amount by virtue of any of paragraphs 8 to 13 if the individual is during the tax year a party to a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge. 10

*Relevant refunded amounts*

- 15 (1) The amount arrived at under paragraph 3(2) in relation to an arrangement is a relevant refunded amount to the extent that it does not exceed the amount of a contributions refund lump sum paid to the individual (or the personal representatives of the individual). 15
- (2) A lump sum is a contributions refund lump sum if –
- (a) it is paid to the individual by a pension scheme in respect of an arrangement,
  - (b) it is not a lump sum of any of the descriptions listed in section 166(1) of FA 2004, 20
  - (c) it is paid during the period of one year beginning immediately after the end of the tax year,
  - (d) its amount does not exceed the adjusted contributions amount for the tax year, and 25
  - (e) the individual is a high-income individual for the tax year.
- (3) The adjusted contributions amount for the tax year is the amount of any relevant relievable pension contributions less any relevant deductions.
- (4) “Relevant relievable pension contributions” are contributions which –
- (a) are relievable pension contributions in relation to the individual, and 30
  - (b) are paid to the pension scheme under the arrangement in the tax year,
- but subject as follows.
- (5) If the pension scheme is an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme, contributions are relevant relievable pension contributions only if they – 35
- (a) are additional voluntary contributions, and
  - (b) are not relevant additional voluntary contributions within the meaning of paragraph 9(3) or 10(3).
- (6) If the pension scheme is not an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme – 40
- (a) contributions are not relevant relievable pension contributions if they fall within paragraph 11(2), and

- (b) if the tax year is the tax year 2009-10, contributions paid before 22 April 2009 are not relevant relievable pension contributions if they were paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis.
- (7) “Relevant deductions” are – 5
  - (a) the amount of any previous contributions refund lump sum previously paid by the pension scheme since the end of the tax year in respect of the arrangement,
  - (b) the amount of any pension debit to which the rights of the individual under the arrangement became subject in the tax year, 10
  - (c) where during the tax year there was a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under any other pension scheme that is a registered pension scheme or a qualifying recognised overseas pension scheme, the amount of any sums, and the market value of any assets, transferred, and 15
  - (d) the amount crystallised by any benefit crystallisation events which occurred in relation to the individual and the arrangement in the tax year. 20

*Pre-22 April 2009 pension input amount*

- 16 (1) This paragraph makes provision for the extent (if any) to which the amount arrived at under paragraph 3(2) in relation to an arrangement is a pre-22 April 2009 pension input amount.
- (2) In relation to a defined benefits arrangement or cash balance arrangement, a pre-22 April 2009 pension input amount is such proportion of what would otherwise be the amount arrived at under paragraph 3(2) as, on a just and reasonable apportionment, relates to the period beginning with 6 April 2009 and ending with 21 April 2009. 25
- (3) In relation to a money purchase arrangement that is not a cash balance arrangement, a pre-22 April 2009 pension input amount is so much of the amount of the contributions within section 233 of FA 2004 as are paid in the period beginning with 6 April 2009 and ending with 21 April 2009, other than any contributions paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis. 30 35
- (4) In relation to a hybrid arrangement, a pre-22 April 2009 pension input amount is the greater or greatest of the amounts under the sub-paragraph or sub-paragraphs applicable in relation to it.
- (5) For this purpose –
  - (a) sub-paragraph (2) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits or cash balance benefits, and 40
  - (b) sub-paragraph (3) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits. 45

*Increased special annual allowance*

- 17 (1) This paragraph has effect where the mean of the infrequent money purchase contributions amount for the tax years 2006-07, 2007-08 and 2008-09 (“the relevant mean”) exceeds £20,000.
- (2) Where the relevant mean is less than £30,000, this Schedule has effect as if the references in paragraph 1(4) and (5) to £20,000 were instead to the relevant mean. 5
- (3) Where the relevant mean is £30,000 or more, this Schedule has effect as if those references were instead to £30,000.
- (4) The “infrequent money purchase contributions amount” for a tax year is the aggregate of any relevant contributions paid in the tax year – 10
- (a) under money purchase arrangements, other than cash balance arrangements, under registered pension schemes, and
- (b) less frequently than on a quarterly basis;
- (and so is nil if no such contributions were so paid). 15
- (5) But if the infrequent money purchase contributions amount for a tax year would otherwise be greater than the annual allowance for the tax year, it is to be taken to be the annual allowance for the tax year.
- (6) “Relevant contributions” means contributions which are –
- (a) relievable pension contributions by or on behalf of the individual, or 20
- (b) contributions paid by an employer of the individual in respect of the individual.

*Taxation of contributions refund lump sums*

- 18 Part 4 of FA 2004 applies in relation to a contributions refund lump sum as if it were a short service refund lump sum in excess of the limit specified in section 205(4)(a) of that Act (so that it is not an unauthorised payment and is liable to tax at the rate chargeable on a short service refund lump sum). 25

*Power to amend*

- 19 (1) The Treasury may by order made by statutory instrument amend paragraph 1(8) so as to vary the rate of the special annual allowance charge. 30
- (2) An order under sub-paragraph (1) may make provision for there to be different rates in different circumstances.
- (3) The Treasury may by order made by statutory instrument amend paragraphs 2 to 18.
- (4) An order under sub-paragraph (3) may make provision having effect in relation to times before it is made if it does not increase any person’s liability to tax. 35
- (5) No order may be made under sub-paragraph (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons. 40
- (6) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.

*Currently-relieved non-UK pension schemes*

- 20 (1) The Treasury may by order made by statutory instrument make provision for this Schedule to apply in relation to individuals who –
- (a) are or have been members of currently-relieved non-UK pension schemes, or 5
  - (b) have been members of overseas pension schemes, that were not currently-relieved non-UK pension schemes subject to such modifications as are specified in the order.
- (2) An order under sub-paragraph (1) may –
- (a) include provision having effect in relation to times before it is made, 10
  - (b) confer discretion on the Commissioners for Her Majesty’s Revenue and Customs or officers of Revenue and Customs, and
  - (c) make different provision for different cases.
- (3) A statutory instrument containing an order under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons. 15

*Tax years to which Schedule applies*

- 21 (1) This Schedule has effect for the tax year 2009-10 and subsequent tax years (with the result that paragraph 18 has effect for the tax year 2010-11 and subsequent tax years).
- (2) But the Treasury may by order make provision for this Schedule to cease to have effect after the tax year specified in the order (but so that paragraph 18 continues to have effect for the following tax year). 20

*Minor amendment*

- 22 In paragraph 49 of Schedule 36 to FA 2004 (annual allowance charge: enhanced protection), insert at the end – 25
- “(3) This paragraph does not apply for the purposes of the special annual allowance charge.”

*Interpretation*

- 23 (1) In this Schedule –
- “group personal pension scheme” means arrangements administered on a group basis under a personal pension scheme which are available to employees of the same employer or of employers which are members of the same group of companies; 30
  - “personal pension scheme” means a pension scheme that is neither an occupational pension scheme nor a public service pension scheme; 35
  - “scheme” (otherwise than in the expression “pension scheme”) includes any arrangement, agreement, understanding, transaction or series of transactions (whether or not legally enforceable).
- (2) For the purposes of the definition of “group personal pension scheme” a company and all of its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on; and for this purpose “75% subsidiary” has the meaning given by section 838 of ICTA. 40



- (3) Expressions used in this Schedule and in any provisions of Part 4 of FA 2004 have the same meaning in this Schedule as they have in the provisions of that Part in which they are used.

## SCHEDULE 36

Section 76

## VAT: PLACE OF SUPPLY OF SERVICES ETC

5

## PART 1

## AMENDMENTS COMING INTO FORCE IN 2010

- 1 VATA 1994 is amended as follows.
- 2 In section 6(14A) (time of supply), omit “In relation to any services of a description specified in an order under section 7(11),”.
- 3 (1) Section 7 (place of supply) is amended as follows.
- (2) In subsection (1), omit “or services”.
- (3) Omit subsection (10).
- (4) In subsection (11), omit “or services” (in each place).
- (5) In the heading, insert at the end “of goods”.
- 4 After that section insert –
- “7A Place of supply of services**
- (1) This section applies for determining, for the purposes of this Act, the country in which services are supplied.
- (2) A supply of services is to be treated as made –
- (a) in a case in which the person to whom the services are supplied is a relevant business person, in the country in which the recipient belongs, and
- (b) otherwise, in the country in which the supplier belongs.
- (3) The place of supply of a right to services is the same as that in which the supply of the services would be treated as made if made by the supplier of the right to the recipient of the right (whether or not the right is exercised); and for this purpose a right to services includes any right, option or priority with respect to the supply of services and an interest deriving from a right to services.
- (4) For the purposes of this Act a person is a relevant business person in relation to a supply of services if the person –
- (a) is a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC,
- (b) is registered under this Act,
- (c) is identified for the purposes of VAT in accordance with the law of a member State other than the United Kingdom, or

- (d) is registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to value added tax, and the services are received by the person otherwise than wholly for private purposes. 5
- (5) Subsection (2) has effect subject to Schedule 4A.
- (6) The Treasury may by order –
- (a) amend subsection (4),
  - (b) amend Schedule 4A, or
  - (c) otherwise make provision for exceptions from either or both of the paragraphs of subsection (2). 10
- (7) An order under subsection (6) may include incidental, supplemental, consequential and transitional provision.”
- 5 (1) Section 8 (reverse charge on supplies received from abroad) is amended as follows. 15
- (2) For subsections (1) and (2) substitute –
- “(1) Where services are supplied by a person who belongs in a country other than the United Kingdom in circumstances in which this subsection applies, this Act has effect as if (instead of there being a supply of the services by that person) – 20
- (a) there were a supply of the services by the recipient in the United Kingdom in the course or furtherance of a business carried on by the recipient, and
  - (b) that supply were a taxable supply.
- (2) Subsection (1) above applies if – 25
- (a) the recipient is a relevant business person who belongs in the United Kingdom, and
  - (b) the place of supply of the services is inside the United Kingdom,
- and, where the supply of the services is one to which any paragraph of Part 1 or 2 of Schedule 4A applies, the recipient is registered under this Act.” 30
- (3) After subsection (4) insert –
- “(4A) Subsection (1) does not apply to services of any of the descriptions specified in Schedule 9.” 35
- (4) In subsection (5), for “add to, or vary, Schedule 5” substitute “amend subsection (4A) by altering the descriptions of services specified in that subsection”.
- (5) Omit subsection (6).
- (6) In subsection (7) – 40
- (a) for “add to or vary Schedule 5” substitute “amend subsection (4A)”, and
  - (b) for “addition to or variation of that Schedule” substitute “amendment of that subsection”.
- (7) In subsection (8) – 45

- (a) for “addition to or variation of that Schedule” substitute “amendment of subsection (4A)”, and
- (b) for “the Schedule” substitute “that subsection”.
- 6 For section 9 substitute—
- “9 Place where supplier or recipient of services belongs 5**
- (1) This section has effect for determining for the purposes of section 7A (or Schedule 4A) or section 8, in relation to any supply of services, whether a person who is the supplier or recipient belongs in one country or another.
- (2) A person who is a relevant business person is to be treated as belonging in the relevant country. 10
- (3) In subsection (2) “the relevant country” means—
- (a) if the person has a business establishment, or some other fixed establishment, in a country (and none in any other country), that country, 15
- (b) if the person has a business establishment, or some other fixed establishment or establishments, in more than one country, the country in which the relevant establishment is, and
- (c) otherwise, the country in which the person’s usual place of residence is. 20
- (4) In subsection (3)(b) “relevant establishment” means whichever of the person’s business establishment, or other fixed establishments, is most directly concerned with the supply.
- (5) A person who is not a relevant business person is to be treated as belonging in the country in which the person’s usual place of residence is. 25
- (6) In this section “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.”
- 7 (1) Section 43 (groups of companies) is amended as follows. 30
- (2) In subsection (2A)—
- (a) in paragraph (a), for “falling within Schedule 5” substitute “to which section 7A(2)(a) applies made”, and
- (b) in paragraph (c)—
- (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and 35
- (ii) insert at the end “and section 7A(2)(a) applied to the supply”.
- (3) In subsection (2D)—
- (a) in paragraph (c)—
- (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and
- (ii) insert at the end “and section 7A(2)(a) applied to the supply”, 40
- and
- (b) in the words after the paragraphs, for “falling within that Schedule,” substitute “to which section 7A(2)(a) applies,”.
- (4) In subsection (2E)(b), for “there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling 45

- within that Schedule,” substitute “there is a supply to which section 7A(2)(a) applies of services which, if used by the transferor for making such a supply,”.
- 8 (1) Section 96 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “regulations” insert – 5  
““relevant business person” has the meaning given by section 7A(4);”.
- (3) In subsection (8), omit “(subject to any provision made under section 8(6))”.
- 9 Section 97(4)(a) (orders subject to requirement of Parliamentary approval after making), after “5(4)” insert “, 7A(6)”. 10
- 10 Section 97A(1) (place of supply orders: transitional provision), for “on or after 17th March 1998 under section 7(11)” substitute “under section 7A(6)”. 10
- 11 After Schedule 4 insert –

“SCHEDULE 4A

Section 7A

PLACE OF SUPPLY OF SERVICES: SPECIAL RULES

15

PART 1

GENERAL EXCEPTIONS

*Services relating to land*

- 1 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the land in connection with which the supply is made is situated. 20
- (2) This paragraph applies to –
- (a) the grant, assignment or surrender of any interest in or right over land,
- (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land, 25
- (c) the grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation, seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities), 30
- (d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering, 35
- (e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and 40
- (f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.

- (3) In sub-paragraph (2)(c) “holiday accommodation” includes any accommodation in a building, hut (including a beach hut or chalet), caravan, houseboat or tent which is advertised or held out as holiday accommodation or as suitable for holiday or leisure use.
- (4) In sub-paragraph (2)(d) “similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by, or held out as being suitable for use by, visitors or travellers. 5

*Passenger transport* 10

- 2 (1) A supply of services consisting of the transportation of passengers (or of any luggage or motor vehicles accompanying passengers) is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each. 15
- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if –
- (a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and 20
- (b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points. 25
- (3) For the purposes of sub-paragraph (1) a pleasure cruise is to be regarded as the transportation of passengers (so that services provided as part of a pleasure cruise are to be treated as supplied in the same place as the transportation of the passengers).
- (4) In sub-paragraph (3) “pleasure cruise” includes a cruise wholly or partly for education or training. 30

*Hiring of means of transport*

- 3 (1) A supply of services consisting of the short-term hiring of a means of transport is to be treated as made in the country in which the means of transport is actually put at the disposal of the person by whom it is hired. 35
- But this is subject to sub-paragraphs (3) and (4).
- (2) For the purposes of this Schedule the hiring of a means of transport is “short-term” if it is hired for a continuous period not exceeding – 40
- (a) if the means of transport is a vessel, 90 days, and
- (b) otherwise, 30 days.
- (3) Where –
- (a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in the United Kingdom, and 45

(b) the services are to any extent effectively used and enjoyed in a country which is not a member State,  
the supply is to be treated to that extent as made in that country.

(4) Where—

(a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in a country which is not a member State, and 5

(b) the services are to any extent effectively used and enjoyed in the United Kingdom,

the supply is to be treated to that extent as made in the United Kingdom. 10

*Cultural, educational and entertainment services etc*

4 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out. 15

(2) This paragraph applies to the provision of—

(a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and

(b) ancillary services relating to such activities, including services of organisers of such activities. 20

*Restaurant and catering services: general*

5 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out. 25

(2) This paragraph applies to the provision of restaurant services and the provision of catering services, other than the provision of services to which paragraph 6 applies.

*EC on-board restaurant and catering services*

6 (1) A supply of services consisting of 30  
(a) the provision of restaurant services, or  
(b) the provision of catering services,

on board a ship, aircraft or train in connection with the transportation of passengers during an intra-EC passenger transport operation is to be treated as made in the country in which the relevant point of departure is located. 35

(2) An intra-EC passenger transport operation is a passenger transport operation which, or so much of a passenger transport operation as,—

(a) has as the first place at which passengers can embark a place which is within the EC, 40

(b) has as the last place at which passengers who embarked in a member State can disembark a place which is within the EC, and

- (c) does not include a stop at a place which is not within the EC and at which passengers can embark or passengers who embarked in a member State can disembark.
- (3) “Relevant point of departure”, in relation to an intra-EC passenger transport operation, is the first place in the intra-EC passenger transport operation at which passengers can embark. 5
- (4) A place is within the EC if it is within any member State.
- (5) For the purposes of this paragraph the return stage of a return passenger transport operation is to be regarded as a separate passenger transport operation; and for this purpose— 10
- (a) a return passenger transport operation is one which takes place in more than one country but is expected to end in the country in which it begins, and
- (b) the return stage of a return passenger transport operation is the part of it which ends in the country in which it began and begins with the last stop at a place at which there has not been a previous stop during it. 15

*Hiring of goods*

- 7 (1) Where—
- (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in the United Kingdom, and 20
- (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country. 25
- (2) Where—
- (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in a country which is not a member State, and 30
- (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom.

*Telecommunication and broadcasting services* 35

- 8 (1) This paragraph applies to a supply of services consisting of the provision of—
- (a) telecommunication services, or
- (b) radio or television broadcasting services.
- (2) In this Schedule “telecommunication services” means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including—
- (a) the related transfer or assignment of the right to use capacity for such transmission, emission or reception, and 40
- (b) the provision of access to global information networks. 45

- (3) Where—
- (a) a supply of services to which this paragraph applies would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country. 5
- (4) Where—
- (a) a supply of services to which this paragraph applies would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom. 10

PART 2 15

EXCEPTIONS RELATING TO SUPPLIES MADE TO RELEVANT BUSINESS PERSON

*Electronically-supplied services*

- 9 (1) Where—
- (a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country. 20 25
- (2) Where—
- (a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom. 30
- (3) Examples of what are electronically supplied services for the purposes of this Schedule include— 35
- (a) website supply, web-hosting and distance maintenance of programmes and equipment,
  - (b) the supply of software and the updating of software,
  - (c) the supply of images, text and information, and the making available of databases, 40
  - (d) the supply of music, films and games (including games of chance and gambling games),
  - (e) the supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events), and 45



(f) the supply of distance teaching.

- (4) But where the supplier of a service and the supplier's customer communicate via electronic mail, this does not of itself mean that the service provided is an electronically supplied service for the purposes of this Schedule.

5

### PART 3

#### EXCEPTIONS RELATING TO SUPPLIES NOT MADE TO RELEVANT BUSINESS PERSON

##### *Intermediaries*

- 10 (1) A supply of services to which this paragraph applies is to be treated as made in the same country as the supply to which it relates.

10

- (2) This paragraph applies to a supply to a person who is not a relevant business person consisting of the making of arrangements for a supply by or to another person or of any other activity intended to facilitate the making of such a supply.

15

##### *Transport of goods: general*

- 11 (1) A supply of services to a person who is not a relevant business person consisting of the transportation of goods is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each.

20

- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if –

(a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and

25

(b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points.

30

- (3) This paragraph does not apply to a transportation of goods beginning in one member State and ending in another (see paragraph 12).

##### *Intra-Community transport of goods*

35

- 12 A supply of services to a person who is not a relevant business person consisting of the transportation of goods which begins in one member State and ends in another is to be treated as made in the member State in which the transportation begins.

*Ancillary transport services*

- 13 (1) A supply to a person who is not a relevant business person of ancillary transport services is to be treated as made where the services are physically performed.
- (2) “Ancillary transport services” means loading, unloading handling and similar activities. 5

*Valuation services etc*

- 14 A supply to a person who is not a relevant business person of services consisting of the valuation of, or carrying out of work on, goods is to be treated as made where the services are physically performed. 10

*Electronic services*

- 15 A supply consisting of the provision by a person who belongs in a country which is not a member State (other than the Isle of Man) of electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)) to a person (“the recipient”) who – 15
- (a) is not a relevant business person, and
- (b) belongs in a member State,
- is to be treated as made in the country in which the recipient belongs. 20

*Other services provided to recipient belonging outside EC*

- 16 (1) A supply consisting of the provision to a person (“the recipient”) who – 25
- (a) is not a relevant business person, and
- (b) belongs in a country which is not a member State (other than the Isle of Man),
- of services to which this paragraph applies is to be treated as made in the country in which the recipient belongs.
- (2) This paragraph applies to – 30
- (a) transfers and assignments of copyright, patents, licences, trademarks and similar rights,
- (b) the acceptance of any obligation to refrain from pursuing or exercising (in whole or in part) any business activity or any rights within paragraph (a), 35
- (c) advertising services,
- (d) services of consultants, engineers, consultancy bureaux, lawyers, accountants, and similar services, data processing and provision of information, other than any services relating to land,
- (e) banking, financial and insurance services (including reinsurance), other than the provision of safe deposit facilities, 40
- (f) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services, 45

- 
- (g) the supply of staff,
  - (h) the letting on hire of goods other than means of transport,
  - (i) telecommunication services (as to the meaning of which see paragraph 8(2)),
  - (j) radio and television broadcasting services, and 5
  - (k) electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)).”
- 12 Omit Schedule 5 (services supplied where received).
- 13 In Article 5 of the Value Added Tax (Tour Operators) Order 1987 (S.I. 1987/1806) – 10
- (a) omit paragraph (1), and
  - (b) in paragraph (2) after “treated” insert “for the purposes of this Act”, and treat that article as made under section 7A(6)(c) of VATA 1994 (inserted by paragraph 4).
- 14 (1) The powers contained in section 7A(6) of VATA 1994 (inserted by paragraph 4) may be exercised at any time on or after the day on which this Act is passed. 15
- (2) The amendments made by paragraph 7 come into force on 1 January 2010; but the references in section 43 of VATA 1994 (as amended by that paragraph) to a supply to which section 7A(2) of that Act applies includes a supply of services falling within paragraphs 1 to 8 of Schedule 5 made before that date. 20
- (3) Subject to that, the amendments made by this Part have effect in relation to supplies made on or after 1 January 2010.

PART 2 25

AMENDMENTS COMING INTO FORCE IN 2011

*Admission to cultural, educational and entertainment activities etc*

- 15 (1) Schedule 4A to VATA 1994 (inserted by paragraph 11) is amended as follows.
- (2) Omit paragraph 4. 30
- (3) After paragraph 9 insert –
- “Admission to cultural, educational and entertainment activities etc*
- 9A (1) A supply to a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the events in question actually take place. 35
- (2) This paragraph applies to the provision of –
- (a) services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events (including fairs and exhibitions), and
  - (b) ancillary services relating to admission to such events.” 40

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(4)	After paragraph 14 insert –  <i>“Cultural, educational and entertainment services etc</i>	
	14A (1) A supply to a person who is not a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the activities concerned actually take place.	5
	(2) This paragraph applies to the provision of – (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and (b) ancillary services relating to such activities, including services of organisers of such activities.”	10
16	The amendments made by this Part have effect in relation to supplies made on or after 1 January 2011.	
	PART 3	15
	AMENDMENTS COMING INTO FORCE IN 2013	
17	In Schedule 4A to VATA 1994 (inserted by paragraph 11), after paragraph 13 insert –  <i>“Long-term hiring of means of transport</i>	
	13A (1) A supply to a person who is not a relevant business person (“the recipient”) of services consisting of the long-term hiring of a means of transport is to be treated as made in the country in which the recipient belongs. But this is subject to sub-paragraph (2) and paragraph 3(3) and (4).	20
	(2) A supply to a person who is not a relevant business person (“the recipient”) of services consisting of the long-term hiring of a pleasure boat which is actually put at the disposal of the recipient at the supplier’s business establishment, or some other fixed establishment of the supplier, is to be treated as made in the country where the pleasure boat is actually put at the disposal of the recipient.	25 30
	(3) For the purposes of this Schedule, the hiring of a means of transport is “long-term” if it is not short-term (as to the meaning of which see paragraph 3(2)).”	
18	The amendment made by this Part has effect in relation to supplies made on or after 1 January 2013.	35
	PART 4	
	TRANSITIONAL PROVISIONS	
19	(1) This paragraph applies where – (a) amendments made by this Schedule provide for a supply of services to be treated as made in the United Kingdom,	40

- (b) the supply would not have fallen to be so treated apart from the amendments, and
  - (c) the services are treated under the law of a member State other than the United Kingdom as supplied in that member State before the commencement date. 5
- (2) The supply is not to be treated as made in the United Kingdom.
- (3) “The commencement date” means the date specified by this Schedule as that on or after which a supply must be made if it is to be treated as made in the United Kingdom by virtue of the amendments.

## SCHEDULE 37

Section 83 10

### STOCK LENDING: STAMP TAXES IN THE EVENT OF INSOLVENCY

#### PART 1

#### STAMP DUTY

- 1 FA 1986 is amended as follows.
- 2 In Part 3 (stamp duty), after section 80C insert— 15
- “80D Repurchases and stock lending: replacement stock on insolvency**
- (1) This section applies where—
    - (a) A and B have entered into an arrangement falling within section 80C(1),
    - (b) the conditions in subsection (2A) or (3) of that section are met, 20
    - (c) stock is transferred to A or A’s nominee, and
    - (d) the conditions in subsection (2) below are met.
  - (2) The conditions in this subsection are that—
    - (a) A and B are not connected persons within the meaning of section 839 of the Taxes Act 1988, 25
    - (b) after B has transferred stock under the arrangement, A or B becomes insolvent,
    - (c) it becomes apparent (whether before or after the insolvency occurs) that, as a result of the insolvency, stock will not be transferred to B or B’s nominee in accordance with the arrangement, 30
    - (d) the party who does not become insolvent (“the solvent party”) or the solvent party’s nominee acquires replacement stock, and
    - (e) the replacement stock is acquired before the end of the period of 30 days beginning with the day on which the insolvency occurs (“the insolvency date”). 35
  - (3) Where collateral is provided under the arrangement (or under arrangements of which that arrangement forms part), stamp duty is not chargeable on any instrument transferring to the solvent party or the solvent party’s nominee— 40

- 
- (a) replacement stock acquired using the collateral (whether directly or indirectly), or
- (b) where the solvent party uses the whole of the value of the collateral to acquire replacement stock, any further replacement stock. 5
- (4) Where no collateral is provided as mentioned in subsection (3), stamp duty is not chargeable on any instrument transferring replacement stock to the solvent party or the solvent party's nominee.
- (5) Subsections (3) and (4) may apply as regards more than one instrument (and where those subsections apply as regards more than one instrument, the instruments may be executed by different persons). 10
- (6) But those subsections apply only as regards replacement stock up to the amount of stock which will not be transferred as a result of the insolvency. 15
- (7) An instrument on which stamp duty is not chargeable by virtue only of subsection (3) or (4) is not to be deemed to be duly stamped unless it has been stamped with a stamp denoting that it is not chargeable with any duty. 20
- (8) Despite section 122(1) of the Stamp Act 1891, the stamp mentioned in subsection (7) may be a stamp of such kind as the Commissioners for Her Majesty's Revenue and Customs may prescribe.
- (9) For the purposes of this section, a person becomes insolvent—
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986, 25
- (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
- (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part, 30
- (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
- (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act), 35
- (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
- (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009, 40
- (h) if a bank administration order takes effect under Part 3 of that Act, or
- (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom. 45
- (10) In this section—  
“collateral” means an amount of money or other property which is payable to, or made available for the benefit of, a party to an arrangement or that party's nominee for the

- purpose of securing the discharge of the requirement to transfer stock to that party or the nominee;  
 “replacement stock”, in the event of a party to an arrangement becoming insolvent, is stock of the same kind as the stock which will not be transferred to the other party or that party’s nominee as a result of the insolvency.” 5
- 3 (1) In consequence of the amendment made by paragraph 2, section 88(1C) (disregard of certain instruments falling within section 80C(1)) is amended as follows.
- (2) At the beginning of the words after paragraph (c) insert “then, if section 80D does not apply,”. 10

## PART 2

### STAMP DUTY RESERVE TAX

- 4 Part 4 of FA 1986 (stamp duty reserve tax) is amended as follows.
- 5 After section 89AA insert – 15
- “89AB Section 87: exception for repurchases and stock lending in case of insolvency**
- (1) This section applies where –
- (a) P and Q have entered into an arrangement falling within section 89AA(1), 20
- (b) the only reason that the conditions in subsection (2A) or (3) of that section are not met is that chargeable securities of the same kind and amount as those transferred to P or P’s nominee are not transferred to Q or Q’s nominee, and
- (c) the conditions in subsection (2) below are met. 25
- (2) The conditions in this subsection are that –
- (a) P and Q are not connected persons within the meaning of section 839 of the Taxes Act 1988,
- (b) after Q has transferred securities under the arrangement, either P or Q becomes insolvent, 30
- (c) it becomes apparent (whether before or after the insolvency occurs) that, as a result of the insolvency, securities will not be transferred to Q or Q’s nominee in accordance with the arrangement.
- (3) Section 87 does not apply as regards an agreement to transfer chargeable securities to P or P’s nominee, or Q or Q’s nominee, in accordance with the arrangement. 35
- (4) Subsections (5) and (6) apply if –
- (a) the party who does not become insolvent (“the solvent party”) or the solvent party’s nominee acquires replacement securities, and 40
- (b) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which the insolvency occurs (“the insolvency date”).

- 
- (5) Where collateral is provided under the arrangement (or under arrangements of which that arrangement forms part), section 87 does not apply as regards any agreement to transfer to the solvent party or the solvent party’s nominee –
- (a) replacement securities acquired using the collateral (whether directly or indirectly), or 5
  - (b) where the solvent party uses the whole of the value of the collateral to acquire replacement securities, any further replacement securities.
- (6) Where no collateral is provided as mentioned in subsection (5), section 87 does not apply as regards any agreement to transfer replacement securities to the solvent party or the solvent party’s nominee. 10
- (7) Subsections (5) and (6) may apply as regards more than one agreement (and where those subsections apply as regards more than one agreement, the agreements may be with different persons). 15
- (8) But those subsections apply only as regards replacement securities up to the amount of securities which will not be transferred as a result of the insolvency.
- (9) For the purposes of this section, a person becomes insolvent – 20
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed, 25
  - (c) on the commencement of a creditor’s voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act, 30
  - (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
  - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009, 35
  - (h) if a bank administration order takes effect under Part 3 of that Act, or
  - (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom. 40
- (10) In this section –
- “collateral” means an amount of money or other property which is payable to, or made available for the benefit of, a party to an arrangement or that party’s nominee for the purpose of securing the discharge of the requirement to transfer securities to that party or the nominee; 45
  - “replacement securities”, in the event of a party to an arrangement becoming insolvent, are chargeable securities of the same kind as the securities which will not be transferred 50



to the other party or that party’s nominee as a result of the insolvency.”

SCHEDULE 38

Section 84

CAPITAL ALLOWANCES FOR OIL DECOMMISSIONING EXPENDITURE

- |   |  |    |
|---|--|----|
| 1 | CAA 2001 is amended as follows.  | 5  |
| 2 | (1) Section 163 (meaning of “general decommissioning expenditure”) is amended as follows.  |    |
|   | (2) In subsection (1), for “(3) and (4)” substitute “(3) to (4)”.  |    |
|   | (3) After subsection (3) insert—   |    |
|   | “(3A) The expenditure must have been incurred wholly or substantially in complying with—   | 10 |
|   | (a) an approved abandonment programme,   |    |
|   | (b) a condition to which the approval of an abandonment programme is subject, or   |    |
|   | (c) a condition imposed by the Secretary of State, or an agreement made with the Secretary of State—   | 15 |
|   | (i) before the approval of an abandonment programme, and   |    |
|   | (ii) in relation to the decommissioning of the plant or machinery.”  | 20 |
|   | (4) In subsection (5)(b), insert at the beginning ““abandonment programme”, “approval” and “approved” (in relation to an abandonment programme)”.  |    |
| 3 | (1) Section 164 (general decommissioning expenditure incurred before cessation of ring fence trade) is amended as follows.   |    |
|   | (2) For subsection (1) substitute—   | 25 |
|   | “(1) A person (“R”) carrying on a ring fence trade may elect to have a special allowance made to R for a chargeable period (the “relevant chargeable period”) if conditions A and B are met. |    |
|   | (1A) Condition A is that one or more of these paragraphs applies—  |    |
|   | (a) R incurs general decommissioning expenditure in the relevant chargeable period in respect of decommissioning carried out in that period;   | 30 |
|   | (b) R incurs general decommissioning expenditure in the relevant chargeable period in respect of decommissioning carried out in a previous chargeable period;                                | 35 |
|   | (c) R incurred general decommissioning expenditure in a previous chargeable period in respect of decommissioning that has not been carried out until the relevant chargeable period.         |    |
|   | (1B) Condition B is that the plant or machinery concerned has been brought into use for the purposes of the ring fence trade.”   | 40 |

- (3) In subsection (2)(a), for the words from “the chargeable period” to the end substitute “the relevant chargeable period, and”.
- (4) In subsection (3) –
- (a) in paragraph (a), omit the “and” at the end, and
  - (b) after that paragraph insert – 5
    - “(aa) the chargeable period in which the expenditure was incurred,
    - (ab) the decommissioning to which the expenditure relates,
    - (ac) the chargeable period in which the decommissioning was carried out, and”.
- (5) In subsection (4)(a), for the words from “the chargeable period” to the end substitute “the relevant chargeable period, and”.
- (6) In subsection (5), for the words from “a chargeable period” to the end substitute “the relevant chargeable period is equal to the amount of the general decommissioning expenditure to which the election relates.” 15
- (7) After that subsection insert –
- “(5A) But subsection (5) is subject to subsections (5B) and (6).
  - (5B) If an amount of general decommissioning expenditure to which the election relates is disproportionate to the relevant decommissioning carried out in the specified decommissioning period then, for the purposes of this section, the election is to be taken to specify only the allowable expenditure. 20
  - (5C) The application of subsection (5B) to an amount of general decommissioning expenditure does not prevent a person from making an election under this section for a subsequent chargeable period specifying the non-allowable expenditure. 25
  - (5D) In subsections (5B) and (5C) –
    - “allowable expenditure”, in relation to general decommissioning expenditure, means the amount of the expenditure that is proportionate to the relevant decommissioning carried out in the specified decommissioning period; 30
    - “non-allowable expenditure”, in relation to general decommissioning expenditure, means so much of that expenditure as is not allowable expenditure; 35
    - “relevant decommissioning”, in relation to general decommissioning expenditure, means the decommissioning to which the expenditure relates;
    - “specified decommissioning period”, in relation to relevant decommissioning, means the chargeable period specified in the election as the period in which the decommissioning was carried out; 40
    - “specified expenditure period”, in relation to general decommissioning expenditure, means the chargeable period specified in the election as the period in which the expenditure was incurred.” 45

- 4 (1) Section 165 (general decommissioning expenditure after ceasing ring fence trade) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute –
- “(b) the decommissioning condition is met in relation to a notional accounting period, and”.
- (3) After that subsection insert –
- “(1A) The decommissioning condition is met in relation to a notional accounting period (the “relevant period”) if one or more of these paragraphs applies –
- (a) the former trader incurs general decommissioning expenditure in the relevant period in respect of decommissioning carried out in that period, 10
- (b) the former trader incurs general decommissioning expenditure in the relevant period in respect of decommissioning carried out in – 15
- (i) a previous notional accounting period, or
- (ii) a chargeable period falling before the first notional accounting period, and
- (c) the former trader incurred general decommissioning expenditure in – 20
- (i) a previous notional accounting period, or
- (ii) a chargeable period falling before the first notional accounting period,
- in respect of decommissioning that has not been carried out until the relevant period. 25
- (1B) “Notional accounting period” means each of the following periods –
- (a) the period that –
- (i) begins with the day following the last day on which the former trader carried on the ring fence trade, and
- (ii) ends with the day on which the first termination event subsequently occurs, and 30
- (b) each period that –
- (i) begins with the day following the last day of a period determined under paragraph (a) or this paragraph, and 35
- (ii) ends with the day on which the first termination event subsequently occurs;
- but there are to be no notional accounting periods after the end of the post-cessation period.
- (1C) “Termination event”, in relation to a notional accounting period, means each of the following – 40
- (a) the end of the period of 12 months beginning with the first day of the notional accounting period,
- (b) the occurrence of an accounting date of the former trader or, if there is a period for which the former trader does not make up accounts, the end of that period (but see subsections (6A) and (6B)), and 45
- (c) the end of the post-cessation period.”

- (4) In subsection (3) –
- (a) after “applies” insert “in relation to a notional accounting period”, and
  - (b) in paragraph (a), after “relevant decommissioning cost” insert “for that period, or the aggregate of all the relevant decommissioning costs for that period.”. 5
- (5) In subsection (4), for the definition of “the relevant decommissioning cost” substitute –
- ““relevant decommissioning cost”, for a notional accounting period, means the amount by which general decommissioning expenditure falling within paragraph (a), (b) or (c) of subsection (1A) in relation to that period exceeds any amounts received before or during that period for the remains of any plant or machinery on whose demolition any of the general decommissioning expenditure was incurred.” 10 15
- (6) After subsection (4A) insert –
- “(4B) If an amount of general decommissioning expenditure is disproportionate to the relevant decommissioning carried out in the decommissioning period then, for the purposes of this section, only the allowable expenditure is to be taken to have been incurred in the expenditure period. 20
  - (4C) The application of subsection (4B) to an amount of general decommissioning expenditure does not prevent the non-allowable expenditure from being taken into account under this section in relation to a subsequent notional accounting period. 25
  - (4D) In subsections (4B) and (4C) –
    - “allowable expenditure”, in relation to general decommissioning expenditure, means the amount of the expenditure that is proportionate to the relevant decommissioning carried out in the decommissioning period; 30
    - “decommissioning period”, in relation to relevant decommissioning, means the notional accounting period or chargeable period in which the decommissioning was carried out; 35
    - “expenditure period”, in relation to general decommissioning expenditure, means the notional accounting period or chargeable period in which the expenditure was incurred;
    - “non-allowable expenditure”, in relation to general decommissioning expenditure, means so much of that expenditure as is not allowable expenditure; 40
    - “relevant decommissioning”, in relation to general decommissioning expenditure, means the decommissioning to which the expenditure relates.”
- (7) After subsection (6) insert – 45
- “(6A) If the former trader –
    - (a) carries on more than one trade,
    - (b) makes up accounts of any of them to different dates, and

- (c) does not make up general accounts for the whole of the company's activities,  
subsection (1C)(b) applies with reference to the accounting date of such one of the trades as the former trader may determine.
- (6B) If the Commissioners for Her Majesty's Revenue and Customs are of the opinion, on reasonable grounds, that a date determined by the former trader for the purposes of subsection (6A) is inappropriate, the Commissioners may by notice direct that the accounting date of such other of the trades referred to in that subsection as appears to the Commissioners to be appropriate is to be used instead.”
- 5 The amendments made by this Schedule have effect in relation to expenditure incurred on or after 22 April 2009.

## SCHEDULE 39

Section 85

## PRT: BLENDED OIL

- 1 Part 5 of FA 1987 (oil taxation) is amended as follows. 15
- 2 For section 63 (blends of oil from two or more fields) substitute—
- “63 Blends of oil from two or more fields**
- (1) This section applies if, at any time before its disposal or relevant appropriation, oil won from an oil field (“the relevant field”) in a chargeable period (“the relevant period”) is mixed with oil won from one or more other oil fields. 20
- (2) A relevant participator's share of oil won from the relevant field in the relevant period is to be taken to be the amount of the blended oil that it is just and reasonable (for the purposes of the oil taxation legislation) to allocate to the participator in respect of the relevant period. 25
- (3) In making the allocation regard must be had (in particular) to the quantity and quality of the oil derived from each of the originating fields.
- (4) If the participators in the originating fields select a method for making the allocation, that method is to be used to determine that allocation. 30
- (5) But that is subject to Schedule 12.
- (6) If the participators in the originating fields fail to select a method for making the allocation, HMRC may select a method. 35
- (7) In a case where only some oil won from the relevant field in the relevant period is, before its disposal or relevant appropriation, mixed with oil won from one or more other fields, subsection (2) has effect for the purpose of determining the amount of the blended oil that is to be taken to be included in a relevant participator's share of oil won from the relevant field. 40
- (8) Schedule 12 contains provision supplementing this section.

- (9) In this section and Schedule 12 –
- “blended oil” means oil that consists of oil from two or more oil fields that has been mixed;
  - “foreign field” means an area which is a foreign field for the purposes of section 12 of the Oil Taxation Act 1983; 5
  - “oil” includes any substance which would be oil if the enactments mentioned in section 1(1) of the principal Act extended to a foreign field;
  - “oil field” includes a foreign field;
  - “oil taxation legislation” means Part 1 of the principal Act and any enactment construed as one with that Part; 10
  - “originating fields”, in relation to any blended oil, means the oil fields from which oil which has been mixed as mentioned in subsection (1);
  - “relevant participator” means a person who is a participator in the relevant field at any time in the relevant period.” 15
- 3 (1) Schedule 12 (supplementary provisions as to blended oil) is amended as follows.
- (2) For paragraphs 1 and 2 (and the headings before them) substitute –
- “Interpretation”* 20
- 1 (1) In this Schedule –
- “HMRC” means Her Majesty’s Revenue and Customs;
  - “method of allocation” means a method for making an allocation of blended oil for the purposes of section 63 that has been selected by the participators in the originating fields (including such a method that has been amended in accordance with this Schedule). 25
- (2) In this Schedule a reference to a suitable method of allocation is a reference to a method which secures that allocation of blended oil is just and reasonable (for the purposes of the oil taxation legislation). 30
- Method of allocation not suitable*
- 2 (1) This paragraph applies if it appears to HMRC that –
- (a) a method of allocation that has been used in respect of a chargeable period was not suitable, or 35
  - (b) a method of allocation that is proposed to be used in respect of a chargeable period would not be suitable.
- (2) HMRC may give notice to each of the participators in the originating fields –
- (a) informing the participators of what appears to HMRC to be the case, and 40
  - (b) proposing amendments to the method of allocation.
- (3) If HMRC give notice, the allocation of the blended oil for the purposes of section 63 in respect of the chargeable period is to be redetermined, or determined, using the method of allocation as amended in accordance with the notice. 45

- (4) Sub-paragraph (3) is subject to –
- (a) the following provisions of this Schedule,
  - (b) any subsequent notice given under this paragraph, and
  - (c) any amendment to the method of allocation made by the participators in the originating fields.” 5
- (3) In paragraph 3(1) –
- (a) for “the Board” (in each place) substitute “HMRC”, and
  - (b) for “paragraph 2(a)” substitute “paragraph 2(2)”.
- (4) In paragraph 3(2), for “the Board” (in each place) substitute “HMRC”.
- (5) After paragraph 3(2) insert – 10
- “(3) If the method of allocation is amended in accordance with this paragraph, the allocation of the blended oil for the purposes of section 63 in respect of the chargeable period is to be redetermined, or determined, using the method of allocation as so amended. 15
- (4) Sub-paragraph (3) is subject to –
- (a) any subsequent notice given under this paragraph, and
  - (b) any amendment to the method of allocation made by the participators in the originating fields.”
- (6) Omit paragraph 4. 20
- 4 The amendments made by this Schedule have effect in relation to chargeable periods beginning after 30 June 2009.

## SCHEDULE 40

Section 86

## OIL: CHARGEABLE GAINS

## PART 1 25

## LICENCE SWAPS

- 1 TCGA 1992 is amended as follows.
- 2 In section 35(3) (assets held on 31 March 1982, including assets held on 6 April 1965) –
- (a) in paragraph (c), omit the “or” at the end, and 30
  - (b) after that paragraph insert –
    - “(ca) where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal, or”.
- 3 In section 55 (assets owned on 31 March 1982 or acquired on a no gain/no loss disposal), after subsection (5) insert – 35
- “(5A) For the purposes of subsection (5), a disposal is also a no gain/no loss disposal if it is one on which, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal; but, in such a case, subsection (6)(b) below does not apply.” 40

- 4 In section 175(2C)(b) (replacement of business assets by members of a group), after “applies” insert “or is one where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal”.
- 5 After section 195 insert – 5
- “195A Oil licence swaps**
- (1) Sections 195B to 195E apply for the purposes of corporation tax on chargeable gains.
- (2) In those sections –
- “licence-consideration swap” means a case where conditions A, B, C and D are met; 10
- “mixed-consideration swap” means a case where conditions A, B, C and E are met.
- (3) Condition A is that a company (“company A”) disposes of one or more UK licences to another company (“company B”), by way of a bargain at arm’s length (“disposal A”). 15
- (4) Condition B is that company B disposes of one or more UK licences to company A, by way of a bargain at arm’s length (“disposal B”).
- (5) Condition C is that either or both of the following paragraphs applies – 20
- (a) the licence, or at least one of the licences, comprised in disposal A relates to a developed area;
- (b) the licence, or at least one of the licences, comprised in disposal B relates to a developed area.
- (6) Condition D is that both – 25
- (a) disposal A is the only consideration given for disposal B, and
- (b) disposal B is the only consideration given for disposal A.
- (7) Condition E is that either –
- (a) disposal A is the only consideration given for disposal B, or
- (b) disposal B is the only consideration given for disposal A, 30
- (and accordingly one of the disposals is part of the consideration given for the other disposal).
- (8) In this section and sections 195B to 196 a reference to disposal of a UK licence includes –
- (a) a disposal of an interest in a UK licence, and 35
- (b) a disposal of a UK licence, or an interest in a UK licence, only so far as the licence relates to part of the licensed area.

**195B Licence-consideration swap**

- (1) This section applies to a licence-consideration swap.
- (2) Each company participating in the swap is to be treated as follows. 40
- (3) As regards the licence, or each licence, which the company disposes of, the company is to be treated as if it had disposed of that licence for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the company.



- (4) In a case where the company acquires only one licence, the company is to be treated as if it had acquired the licence for a consideration of the same amount as the deemed disposal consideration.
- (5) In a case where the company acquires two or more licences, as regards each licence acquired, the company is to be treated as if it had acquired that licence for a consideration of – 5

$$\text{DDC} \times \frac{\text{A}}{\text{TA}}$$

where –

- DDC is the deemed disposal consideration;  
 A is the value of the licence acquired; 10  
 TA is total value of all the licences acquired.

- (6) In this section “deemed disposal consideration”, in relation to a company participating in the swap, means –
- (a) the amount of the consideration for which the company is, under subsection (3), treated as having disposed of its licence (if the company disposes of only one licence), or 15
- (b) the aggregate of all such amounts (if the company disposes of two or more licences).

**195C Company that receives mixed consideration: N exceeds C**

- (1) This section applies to a mixed-consideration swap if – 20
- (a) the no gain/no loss amount (“N”) of the company that receives the mixed consideration (“company R”), exceeds
- (b) the amount of non-licence consideration (“C”) which company R receives.

- (2) In a case where company R acquires only one licence, company R is to be treated as if it had acquired the licence for a consideration of – 25

$$\text{N} - \text{C}$$

- (3) In a case where company R acquires two or more licences, as regards each licence acquired, company R is to be treated as if it had acquired the licence for a consideration of – 30

$$(\text{N} - \text{C}) \times \frac{\text{A}}{\text{TA}}$$

where –

- A is the value of the licence acquired;  
 TA is total value of all the licences acquired.

- (4) The disposal by company R of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues. 35
- (5) But (despite subsection (4)), the disposal by company R is not a no gain/no loss disposal for the purposes of section 56.
- (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company G”) subsequently disposes of the licence, company R’s acquisition of the licence is to be treated as company G’s acquisition of it. 40

- (7) In this section the reference to the no gain/no loss amount of company R is a reference to—
- (a) in a case where company R disposes of only one licence, company R’s no gain/no loss amount in relation to that disposal, or
  - (b) in a case where company R disposes of two or more licences, the aggregate of company R’s no gain/no loss amounts in relation to all of those disposals.

5

**195D Company that receives mixed consideration: N does not exceed C**

- (1) This section applies to a mixed-consideration swap if—
- (a) the no gain/no loss amount (“N”) of the company that receives the mixed consideration (“company R”) does not exceed
  - (b) the amount of non-licence consideration (“C”) which company R receives.
- (2) As regards the licence, or each licence, which company R acquires, company R is to be treated as if it had acquired the licence for nil consideration.
- (3) In a case where company R disposes of only one licence, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—
- (4) In a case where company R disposes of two or more licences, as regards each licence disposed of, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—

10

15

20

25

$$C - N$$

$$(C - N) \times \frac{D}{TD}$$

where—

D is the value of the licence disposed of;  
 TD is total value of all the licences disposed of.

**195E Company that gives mixed consideration**

- (1) This section applies to a mixed-consideration swap—
- (a) whatever the no gain/no loss amount (“N”) of the company that gives the mixed consideration (“company G”), and
  - (b) whatever the amount of the non-licence consideration (“C”) which company G gives.
- (2) In a case where company G acquires only one licence, company G is to be treated as if it had acquired the licence for a consideration of—
- (3) In a case where company G acquires two or more licences, as regards each licence acquired, company G is to be treated as if it had acquired the licence for a consideration of—

30

35

40

$$N + C$$

$$(N + C) \times \frac{A}{TA}$$

where—

A is the value of the licence acquired;

- TA is total value of all the licences acquired.
- (4) The disposal by company G of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues.
- (5) But (despite subsection (4)), the disposal by company G is not a no gain/no loss disposal for the purposes of section 56. 5
- (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company R”) subsequently disposes of the licence, company G’s acquisition of the licence is to be treated as company R’s acquisition of it. 10
- (7) In this section the reference to the no gain/no loss amount of company G is a reference to –
- (a) in a case where company G disposes of only one licence, company G’s no gain/no loss amount in relation to that disposal, or 15
- (b) in a case where company G disposes of two or more licences, the aggregate of company G’s no gain/no loss amounts in relation to all of those disposals.”
- 6 (1) Section 196 (interpretation of sections 194 and 195) is amended as follows.
- (2) In the heading, for “**and 195**” substitute “**to 195E**”. 20
- (3) In subsection (1), after “section 194” insert “and this section”.
- (4) After subsection (1A) insert –
- “(1B) In sections 195A to 195E, a reference to a UK licence that relates to a developed area is a reference to any UK licence apart from one that relates to an undeveloped area.” 25
- (5) In subsection (2), for “and (1A)” substitute “to (1B)”.
- (6) In subsection (3), after “(1)” insert “or (1B)”.
- (7) In subsection (5) –
- (a) for “and 195” substitute “to 195E”,
- (b) after the definition of “licence” insert – 30
- ““licence-consideration swap” has the meaning given in section 195A(2);”, and
- (c) after the definition of “licensee” insert –
- ““mixed consideration” means consideration that consists partly of disposal of a UK licence; 35
- “mixed-consideration swap” has the meaning given in section 195A(2);
- “no gain/no loss amount”, in relation to a company that disposes of a UK licence, means the amount that would be taken to be the consideration for the disposal if section 56(2) applied to the disposal; 40
- “non-licence consideration” means consideration that does not consist of disposal of a UK licence, as determined at the time the swap arrangements are entered into; 45

- “swap arrangements”, in relation to a licence-consideration swap or a mixed-consideration swap, means the arrangements under which the swap takes place;”.
- (8) After subsection (5A) insert – 5
- “(5B) In any of sections 195B to 195E, a reference to the value of a licence comprised in disposal A or disposal B (see section 195A) is a reference to the value of the licence as determined under the swap arrangements at the time the swap arrangements are entered into.”
- 7 In Schedule 3 (assets held on 31 March 1982), in paragraph 1(2) (meaning of no gain/no loss disposal), after “provisions” insert “or any of sections 195B, 195C or 195E”. 10
- 8 The amendments made by this Part have effect in relation to disposals made on or after 22 April 2009.

PART 2

15

REINVESTMENT OF RING FENCE ASSETS

*Amendment of TCGA 1992*

- 9 TCGA 1992 is amended as follows.

*Roll-over relief*

- 10 In section 198 (replacement of business assets used in connection with oil fields), for subsection (3) substitute – 20
- “(3) Where –
- (a) section 152 or 153 applies in relation to any of the consideration on a material disposal, and
- (b) the asset which constitutes the new assets for the purposes of that section is a depreciating asset, 25
- section 154(2)(b) is to have effect as if the reference to a trade carried on by the claimant were a reference solely to the claimant’s ring fence trade.”

*Alternative to roll-over relief*

30

- 11 In section 198 (replacement of business assets used in connection with oil fields), after subsection (2) insert –

“(2A) But subsection (1) is subject to section 198A(3)(a).”

- 12 After that section insert –

**“198A Ring fence reinvestment: whole consideration reinvested” 35**

- (1) This section applies if a person (“P”) makes a disposal and acquisition which –
- (a) is a ring fence reinvestment, and
- (b) qualifies for roll-over relief.

- 
- (2) P may make a claim under this section in relation to the disposal and acquisition.
- (3) If P makes a claim under this section –
- (a) section 152 does not apply to any of the disposal consideration, and
  - (b) any gain accruing to P on the disposal is not a chargeable gain.
- (4) In this section “disposal consideration” means the whole of the consideration obtained on the disposal made by P.
- 198B Ring fence reinvestment: part of consideration reinvested** 10
- (1) This section applies if a person (“P”) makes a disposal and acquisition which –
- (a) is a ring fence reinvestment, and
  - (b) qualifies for section 153 relief.
- (2) P may make a claim under this section in relation to the disposal and acquisition. 15
- (3) If P makes a claim under this section –
- (a) section 153(1)(a) applies in relation to P and the disposal, but
  - (b) section 153(1)(b) does not apply to P and the acquisition.
- 198C Provisional application of sections 198A and 198B** 20
- (1) This section applies where a person (“P”) carrying on a ring fence trade who for a consideration disposes of, or of an interest in, any assets (“the old assets”) declares, in P’s return for the chargeable period in which the disposal takes place –
- (a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”), 25
  - (b) that the acquisition will take place as mentioned in section 152(3),
  - (c) that the disposal and acquisition will be a ring fence reinvestment, 30
  - (d) that P intends to make a claim under section 198A or 198B in relation to the disposal and acquisition, and
  - (e) that P has not made, and will not make, a declaration under section 153A in relation to the disposal and acquisition. 35
- (2) Until the declaration ceases to have effect, section 198A or 198B applies as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration ceases to have effect as follows –
- (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 198A or 198B, on the day on which it is so withdrawn or superseded, and 40
  - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day. 45

- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments –
- (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made. 5
- (5) If –
- (a) P makes a declaration under this section, and
  - (b) the disposal and acquisition is not a ring fence reinvestment, but qualifies for roll-over relief or section 153 relief, 10
- on P making a claim, the declaration is to have effect as also a declaration under section 153A.
- (6) In this section “the relevant day” means –
- (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place, and 15
  - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place. 20
- (7) Section 152(6), (10) and (11) apply for the purposes of this section as they apply for the purposes of section 152.

#### **198D No double claims**

- (1) If P makes a claim under section 198A or 198B, no other relevant claim may be made in respect of the relevant acquisition. 25
- (2) P may make a claim under section 198A or 198B (“the new claim”), if P has previously made a claim under section 152 or 153 (“the previous claim”) in respect of the relevant acquisition.
- (3) But P may make the new claim only if the previous claim is withdrawn at or before the time the new claim is made. 30
- (4) If the new claim is made in accordance with subsections (2) and (3), all necessary adjustments –
- (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made. 35
- (5) In this section –
- “relevant acquisition” means the acquisition of the new assets that is comprised in the disposal and acquisition to which a claim under section 198A or 198B or declaration under section 198C relates; 40
  - “relevant claim” means a claim under section 152, 153, 198A or 198B.

#### **198E Ring fence reinvestments and disposal consideration**

- (1) This section applies for the purposes of sections 198A to 198G. 45

- (2) A disposal and acquisition is a ring fence reinvestment if –
- (a) the disposal was –
    - (i) a material disposal, or
    - (ii) a disposal of a UK licence which relates to an undeveloped area, 5
  - (b) the old assets were used only for the purposes of P’s ring fence trade,
  - (c) the new assets are taken into use, and used only, for the purposes of one or more of the following trades –
    - (i) P’s ring fence trade; 10
    - (ii) if P is a member of a group of companies (within the meaning given in section 170), a ring fence trade of another member of that group, and
  - (d) the new assets are oil assets.
- (3) If the disposal consists of – 15
- (a) disposal of a licence to which section 195D(3) applies, or
  - (b) disposal of two or more licences to which section 195D(4) applies,
- the consideration for the disposal is to be taken to be the whole of the non-licence consideration obtained on the disposal (which is referred to as “C” in section 195D). 20
- (4) Accordingly, in sections 198A to 198G (including section 198A(4)), any reference to the consideration obtained on the disposal has effect subject to subsection (3).
- (5) Each of the following is an “oil asset” for the purposes of this section – 25
- (a) an interest in oil to be won from an oil field,
  - (b) an asset used in connection with an oil field,
  - (c) a structure which is to be placed on the seabed of the United Kingdom continental shelf, 30
  - (d) an asset used wholly in the winning of oil, or in the measuring of oil won, in the United Kingdom otherwise than from an oil field,
  - (e) an asset used for the initial treatment or storage of oil in the United Kingdom, 35
  - (f) an asset used for the transportation of oil from an oil field to the United Kingdom, and
  - (g) a UK licence which relates to an undeveloped area.
- (6) Section 12 of the Oil Taxation Act 1975 (interpretation of Part 1 of that Act) applies for the interpretation of subsection (5)(a) to (f). 40
- (7) Expressions used in this section and in section 152 have the same meanings in this section as in section 152.
- (8) In this section a reference to a UK licence which relates to an undeveloped area has the same meaning as in section 194 (see section 196). 45
- (9) In this section –  
 “material disposal” has the meaning given in section 197;

“ring fence trade” has the meaning given in section 198.

**198F Qualification for roll-over relief**

- (1) This section applies for the purposes of sections 198A and 198B and section 198G.
- (2) A disposal and acquisition qualifies for roll-over relief if – 5
  - (a) the consideration for the disposal is applied in an acquisition as mentioned in section 152(1), and
  - (b) section 152(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made.
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for roll-over relief. 10
- (4) Section 152(8) is to be disregarded.
- (5) Section 198A is to be disregarded.
- (6) Subject to subsections (4) to (5), all the circumstances are to be taken into account, including section 153(1) and section 198(1) and (2). 15

**198G Qualification for section 153 relief**

- (1) This section applies for the purposes of sections 198B and 198C.
- (2) A disposal and acquisition qualifies for section 153 relief if – 20
  - (a) section 153(1) applies to part of the amount or value of the consideration for the disposal,
  - (b) section 153(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made, and
  - (c) the disposal and acquisition would qualify for roll-over relief but for the disapplication of section 152(1) by section 153(1).
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for section 153 relief. 25
- (4) Section 153(2) has effect subject to section 198F(4) and (5).
- (5) Section 198B is to be disregarded.
- (6) Subject to subsections (4) and (5), all the circumstances are to be taken into account, including section 198(1).” 30

13 The amendments made by this Part have effect in relation to disposals made on or after 22 April 2009 (whether the acquisition in which the consideration is reinvested takes place before, on or after that date).



SCHEDULE 41

Section 87

OIL ASSETS PUT TO OTHER USES

PART 1

PETROLEUM REVENUE TAX

*Allowance of decommissioning and restoration expenditure* 5

- 1 (1) Section 3 of OTA 1975 (allowance of expenditure) is amended as follows.
- (2) In subsection (1C)(b), for “in connection with the field” substitute “for a qualifying purpose”.
- (3) In subsection (1D), for “in connection with the field” substitute “for a qualifying purpose”. 10
- (4) After that subsection insert—
- “(1DA) In subsections (1C) and (1D) a reference to use for a qualifying purpose is a reference to—
- (a) use in connection with the taxable field mentioned in subsection (1C), and 15
- (b) other use in—
- (i) the United Kingdom,
- (ii) the territorial sea of the United Kingdom, or
- (iii) a designated area,
- except use wholly or partly for an ineligible oil purpose. 20
- (1DB) In subsection (1DA)(b) the reference to use for an ineligible oil purpose is a reference to—
- (a) use in connection with an oil field other than the taxable field mentioned in subsection (1C), and
- (b) use for any other purpose (apart from a purpose falling within section 3(1)(b)) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988. 25
- (1DC) In subsections (1DA) and (1DB) a reference to use in connection with a taxable field or other oil field includes use giving rise to receipts which, for the purposes of the Oil Taxation Act 1983, are tariff receipts.” 30

*Amounts which are not chargeable tariff receipts*

- 2 (1) Section 6 of OTA 1983 (amounts which are not chargeable tariff receipts) is amended as follows. 35
- (2) In subsection (4)—
- (a) in paragraph (b), insert at the end “or”, and
- (b) after that paragraph insert—
- “(c) is referable to other use of an asset, except use wholly or partly for an oil purpose,”. 40

(3) After that subsection insert—

“(4A) In this section the reference to use of an asset for an oil purpose is a reference to—

- (a) use in connection with an oil field, and
- (b) use for any other purpose (apart from a purpose falling within section 3(1)(b) of the principal Act) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988. 5

(4B) In subsection (4A) the reference to use in connection with an oil field includes use giving rise to receipts which, for the purposes of this Act, are tariff receipts.” 10

*No reduction of allowable expenditure*

3 (1) Paragraph 8 of Schedule 1 to OTA 1983 (allowable expenditure: use of new asset otherwise than in connection with taxable field) is amended as follows.

(2) In sub-paragraph (1)(a) and (b), for “in connection with a taxable field” substitute “for a qualifying purpose”. 15

(3) After sub-paragraph (2) insert—

“(2A) In sub-paragraph (1) a reference to use for a qualifying purpose is a reference to—

- (a) use in connection with a taxable field, and 20
- (b) other use in—
  - (i) the United Kingdom,
  - (ii) the territorial sea of the United Kingdom, or
  - (iii) a designated area,except use wholly or partly for an ineligible oil purpose. 25

(2B) In this Act a reference to use of an asset for an ineligible oil purpose is a reference to—

- (a) use in connection with an oil field that is not a taxable field, and
- (b) use for any other purpose (apart from a purpose falling within section 3(1)(b) of the principal Act) of a separate trade consisting of activities falling within section 492(1) of the Income and Corporation Taxes Act 1988. 30

(2C) In sub-paragraphs (2A) and (2B) a reference to use in connection with a taxable field or other oil field includes use giving rise to receipts which, for the purposes of this Act, are tariff receipts.” 35

*Commencement*

4 The amendments made by this Part have effect in relation to chargeable periods beginning after 30 June 2009.

## PART 2

## CAPITAL ALLOWANCES

*General decommissioning expenditure*

- 5 (1) Section 163 of CAA 2001 (meaning of “general decommissioning expenditure”) is amended as follows. 5
- (2) In subsection (3)(a), after “use” insert “wholly or partly”.
- (3) In subsection (4ZA), for paragraphs (a) and (b) substitute –
- “(a) was not brought into use wholly for qualifying purposes, or
- (b) has, at any time since it was brought into use, not been used wholly for qualifying purposes.” 10
- (4) In subsection (4ZC), for “the purposes of the ring fence trade” substitute “qualifying purposes”.
- (5) After subsection (4C) insert –
- “(4D) In this section a reference to use for qualifying purposes is a reference to – 15
- (a) use for the purposes of any ring fence trade of any person, or
- (b) other use in –
- (i) the United Kingdom,
- (ii) the territorial sea of the United Kingdom, or
- (iii) an area designated under section 1(7) of the Continental Shelf Act 1964, 20
- except use wholly or partly in connection with an oil field (within the meaning given by section 12(2) of the Oil Taxation Act 1975).”
- 6 In section 165(4A) of CAA 2001 (general decommissioning expenditure after ceasing ring fence trade), for “abandonment expenditure” substitute “general decommissioning expenditure”. 25

*Commencement*

- 7 (1) The amendments made by paragraph 5 have effect in relation to expenditure incurred on or after 22 April 2009. 30
- (2) The amendment made by paragraph 6 has effect in relation to ring fence trades that cease to be carried on or after 12 March 2008.

## SCHEDULE 42

Section 88

## PRT: FORMER LICENSEES AND FORMER OIL FIELDS

## PART 1

35

## PERSONS WHO CEASE TO BE LICENSEES BECAUSE OF CESSATION EVENTS

- 1 OTA 1975 is amended as follows.

- 2 (1) Section 12 (interpretation of Part 1) is amended as follows.
- (2) In subsection (1), in the definition of “participator” –
- (a) for “any”, in the first place, substitute “a”,
  - (b) after paragraph (a) insert –
    - “(aa) a person who is no longer a licensee in respect of any licensed area wholly or partly included in the field, but who –
      - (i) was such a licensee at any time in any chargeable period preceding the relevant chargeable period, and
      - (ii) ceased to be such a licensee because of a cessation event; and”,
  - (c) in paragraph (b), after “field” insert “(and who does not fall within paragraph (aa) of this definition)”,
  - (d) in paragraph (c), after “paragraph” insert “(aa) or”, and
  - (e) omit the words after paragraph (g).
- (3) After that subsection insert –
- “(1A) In the definition of “participator” in subsection (1) –
- (a) “cessation event”, in relation to an oil field to which a licence relates, means any of the following –
    - (i) determination of the licence by the licensee,
    - (ii) revocation of the licence by the Secretary of State or a Northern Ireland Department,
    - (iii) expiry of the licence at the end of its term,
    - (iv) the licensed area ceasing to include any relevant area whatsoever, by reason of the licensee surrendering the licence so far as it relates to the whole of the relevant area, and
    - (v) the licence ceasing to apply to the oil field by reason of the operation of the licence;
 and for the purposes of sub-paragraph (iv) “relevant area” means an area which is, or combination of areas each of which is, included in the oil field (whether or not such an area falls partly outside the oil field);
  - (b) “current participator”, “former participator” and “default payment” have the same meanings as in paragraph 2A of Schedule 5.”
- 3 In Schedule 5 (allowance of expenditure other than abortive exploration expenditure), in paragraph 2C(2) –
- (a) in the definition of “current participator”, after “paragraph (a),” insert “(aa),” and
  - (b) in paragraph (b) of the definition of “former participator”, after “paragraph (a),” insert “(aa),”.
- 4 The amendments made by this Part have effect in relation to persons who cease to be licensees because of cessation events occurring in chargeable periods that begin after 30 June 2009.

PART 2

AREAS TREATED AS CONTINUING TO BE OIL FIELDS

- 5       OTA 1975 is amended as follows.
- 6       In section 12(1) (interpretation of Part 1), in the definition of “oil field”, after  
“this Act” insert “(which also includes provision about areas that are to be  
treated as continuing to be oil fields)”. 5
- 7       (1) Schedule 1 (determination of oil fields) is amended as follows.
- (2) Before paragraph 1 insert—
- “Areas that are oil fields”*
- (3) After paragraph 5 insert— 10
- “Areas treated as continuing to be oil fields*
- 6       (1) This paragraph applies if an area has ceased to be—
- (a) an oil field within the meaning of paragraph 1(1), or
- (b) part of such an oil field.
- (2) The area is to be treated as continuing to be— 15
- (a) the oil field, or
- (b) the part of the oil field,  
that it actually was.
- (3) Accordingly, whilst the area is treated in accordance with sub-  
paragraph (2), any reference to an oil field is to include a reference 20  
to the area.
- (4) Sub-paragraph (2) ceases to apply to the area—
- (a) in accordance with sub-paragraph (5), and
- (b) if or to the extent that it has not ceased to apply in 25  
accordance with sub-paragraph (5), in accordance with  
sub-paragraph (6).
- (5) Sub-paragraph (2) ceases to apply to the area if, or to the extent  
that, it again becomes—
- (a) an oil field within the meaning of paragraph 1(1), or 30
- (b) part of such an oil field.
- (6) Sub-paragraph (2) ceases to apply to the area at the end of the  
second chargeable period that falls after the chargeable period in  
which the area is decommissioned.
- 7       (1) A relevant area is decommissioned for the purposes of paragraph 35  
6 if all qualifying assets of the relevant area are decommissioned.
- (2) If, and to the extent that, a UK offshore decommissioning regime  
applies to qualifying assets of the relevant area, those assets are  
decommissioned if—
- (a) the Secretary of State has approved one or more 40  
abandonment programmes under the regime in relation to  
those assets, and

- (b) those programmes have been carried out to the satisfaction of the Secretary of State.
- (3) If, and to the extent that, a UK offshore decommissioning regime does not apply to qualifying assets of the relevant area, those assets are decommissioned if the Board are satisfied that they have been decommissioned. 5
- (4) For the purposes of sub-paragraph (3), the Board must have regard to any obligations to decommission the qualifying assets which arise under the law applicable to the relevant area (whether the law of any part of the United Kingdom or of any other state or territory), including any obligations imposed by an authority having functions under that law in respect of such decommissioning. 10
- (5) If sub-paragraph (3) applies (to any extent) to any qualifying assets, the Board must give the responsible person notice of any decision the Board make under that sub-paragraph. 15
- (6) The responsible person may appeal against such a decision by notice in writing given to the Board within three months of the responsible person receiving the notice under sub-paragraph (5).
- (7) An appeal under sub-paragraph (6) may, before it is notified to the tribunal, be abandoned by notice in writing given to the Board by the responsible person. 20
- (8) The provisions of paragraphs 14A to 14I of Schedule 2 apply to appeals under sub-paragraph (6) subject to any necessary modifications. 25
- (9) In this paragraph –  
“qualifying assets” means assets that are qualifying assets within the meaning of OTA 1983;  
“relevant area” means an area that is treated as being an oil field, or part of an oil field, under paragraph 6; 30  
“UK offshore decommissioning regime” means –  
(a) Part 4 of the Petroleum Act 1998, and  
(b) Part 1 of the Petroleum Act 1987.”
- 8 The amendments made by this Part have effect in relation to areas that cease to be oil fields, or parts of oil fields, in chargeable periods that begin after 30 June 2009. 35

## SCHEDULE 43

Section 89

### PRT: ABOLITION OF PROVISIONAL EXPENDITURE ALLOWANCE

#### *Interpretation*

- 1 In this Schedule –  
“future chargeable period” means a chargeable period beginning after 30 June 2009; 40

“provisional expenditure allowance” means an amount calculated under section 2(9)(a) of OTA 1975.

*Abolition of allowance*

- 2 No provisional expenditure allowance is to be calculated in respect of a future chargeable period. 5

*Amendments consequential on abolition*

- 3 (1) Section 2 of OTA 1975 (assessable profits and allowable losses) is amended as follows.
- (2) For subsection (8) substitute –
- “(8) The amount (if any) to be debited or credited to the participator for the period in respect of expenditure is the sum of the amounts mentioned in subsection (9) below.” 10
- (3) Omit subsections (9)(a), (10) and (11).
- (4) In Schedule 17 to FA 1980 (transfers of interests in oil fields), omit paragraph 11 (and the heading before it). 15
- (5) This paragraph has effect in relation to future chargeable periods.
- (6) But this paragraph is subject to paragraph 4.

*Savings*

- 4 (1) This paragraph applies if provisional expenditure allowance has been calculated in respect of a pre-abolition chargeable period (“the relevant allowance”). 20
- (2) The saved provisions continue to have effect in future chargeable periods in relation to the relevant allowance and the relevant participator as if those provisions had not been amended by paragraph 3.
- (3) In this paragraph – 25
- “pre-abolition chargeable period” means a chargeable period that begins before 30 June 2009;
- “relevant participator” means the participator in respect of which the relevant allowance has been calculated;
- “the saved provisions” means – 30
- (a) section 2(8) and (10) of OTA 1975, and
- (b) paragraph 11 of Schedule 17 to FA 1980.

SCHEDULE 44

Section 90

SUPPLEMENTARY CHARGE: REDUCTION FOR CERTAIN NEW OIL FIELDS

PART 1

REDUCTION OF ADJUSTED RING FENCE PROFITS

- 1 (1) A company's adjusted ring fence profits for an accounting period are to be reduced by the amount of the company's pool of field allowances for that accounting period (see Part 2). 5
- (2) But, if the profits are less than the amount of the pool, the profits are to be reduced to nil.

PART 2

10

POOL OF FIELD ALLOWANCES

*Company's pool of field allowances*

- 2 A company's pool of field allowances for an accounting period ("the relevant accounting period") is –
- $P + R$  15
- where –
- P is the amount of the company's pool of field allowances for the previous accounting period that has been carried into the relevant accounting period (see paragraphs 3 and 4), and
- R is the aggregate of the amounts of field allowances for new oil fields which the company holds (see Part 3) that are activated in respect of –
- (a) the relevant accounting period (see Part 4), and
- (b) reference periods that fall within the relevant accounting period (see Part 5). 25

*Carrying part of pool of field allowances into following period*

- 3 (1) This paragraph applies if –
- (a) a company has a pool of field allowances for an accounting period ("accounting period 1"), and
- (b) the company's adjusted ring fence profits for accounting period 1 are reduced to nil in accordance with paragraph 1(2). 30
- (2) A part of the company's pool of field allowances for accounting period 1 is to be carried into the following accounting period ("accounting period 2").
- (3) The part to be carried into accounting period 2 is –
- $F - P$  35
- where –
- F is the amount of the company's pool of field allowances for accounting period 1, and
- P is the amount of the adjusted ring fence profits for accounting period 1. 40



*Carrying whole of pool of field allowances into following period*

- 4 (1) This paragraph applies if a company –
- (a) has a pool of field allowances for an accounting period, but
  - (b) has no adjusted ring fence profits for the accounting period.
- (2) The whole of the company’s pool of field allowances for the accounting period is to be carried into the following accounting period. 5

PART 3

FIELD ALLOWANCE: WHEN HELD AND UNACTIVATED AMOUNT

*Initial licensee to hold a field allowance*

- 5 (1) A company that is an initial licensee in a new oil field is to hold a field allowance for that field as from the beginning of the authorisation day. 10
- (2) The amount of the field allowance which the licensee is to hold at that time is –

$$T \times S$$

where –

T is the amount of the total field allowance for the field (see paragraph 24);

S is the share of the equity in the field which the initial licensee has at the beginning of the authorisation day.

*Holding a field allowance on acquisition of equity share* 20

- 6 For provision about holding a field allowance by virtue of the acquisition of a share of the equity in a new oil field, see paragraph 15(2).

*Unactivated amount of a field allowance*

- 7 (1) This paragraph applies if a company holds a field allowance for a new oil field by virtue of paragraph 5 or 15(2). 25
- (2) The unactivated amount of that allowance at a particular time (“the relevant time”) is –

$$(R + E) - (A + D)$$

where –

R is the amount of the field allowance which the company held before the relevant time by virtue of paragraph 5 or 15(2), 30

E is the total amount of the field allowance received before the relevant time by virtue of paragraph 15(1) (company already holding field allowance acquires equity share),

A is the total amount of the field allowance activated in respect of – 35

(a) accounting periods ending before the relevant time, or

(b) reference periods ending before the relevant time, and

D is the total amount of reductions in the field allowance made before the relevant time by virtue of paragraph 14 (company disposes of equity share). 40

- (3) A company ceases to hold a field allowance for a new oil field if the unactivated amount of that allowance falls to nil.

#### PART 4

##### NO CHANGE IN EQUITY SHARE: ACTIVATION OF ALLOWANCE

*Introduction* 5

- 8 (1) This Part applies to a company in respect of a new oil field and an accounting period if the following conditions are met.
- (2) Condition A is that the company is a licensee in the field for the whole of the accounting period.
- (3) Condition B is that the company's share of the equity in the field is the same during the whole of the accounting period. 10
- (4) Condition C is that the company holds an unactivated amount of field allowance for the field at the beginning of the accounting period.
- (5) Condition D is that the company has relevant income from the new oil field in the accounting period. 15

*Activation of field allowance*

- 9 (1) An amount of the company's field allowance for the new oil field is to be activated in respect of the accounting period.
- (2) The amount of the field allowance to be activated is the smallest of the following amounts – 20
- (a) the relevant activation limit,
- (b) the company's relevant income from the field in the accounting period, and
- (c) the unactivated amount of the field allowance which the company holds at the beginning of the accounting period. 25

- (3) The relevant activation limit is –

$$\frac{T}{5} \times E \times \frac{N}{365}$$

where –

T is the amount of the total field allowance for the field (see paragraph 24), 30

E is the company's share of the equity in the field during the accounting period, and

N is the number of days in the accounting period.

#### PART 5

##### CHANGE IN EQUITY SHARE: ACTIVATION OF ALLOWANCE 35

*Introduction*

- 10 (1) This Part applies to a company in respect of a new oil field and an accounting period if the following conditions are met.

- (2) Condition A is that the company is a licensee in the field for the whole, or for part, of the accounting period.
- (3) Condition B is that the company's share of the equity in the field is different at different times during the accounting period.
- (4) Condition C is that the company holds an unactivated amount of field allowance for the field at any time during the accounting period. 5
- (5) Condition D is that the company has relevant income from the field in the accounting period.
- (6) In a case where a company has three or more different shares of the equity in a new oil field during a particular day, this Part (in particular provisions relating to the beginning or end of a day) has effect subject to the necessary modifications. 10

*Reference periods*

- 11 (1) For the purposes of this Part, the accounting period, or (if the company is not a licensee for the whole of the accounting period) the part or parts of the accounting period for which the company is a licensee, is to be divided into reference periods. 15
- (2) A reference period is a period of consecutive days that meets the following conditions.
- (3) Condition A is that, at the beginning of each day in the period, the company is a licensee in the new oil field. 20
- (4) Condition B is that, at the beginning of each day in the period, the company's share of the equity in the field is the same.
- (5) Condition C is that, at the beginning of the first day of the period, the company holds an unactivated amount of field allowance for the field. 25
- (6) Condition D is that each day in the period falls within the accounting period.

*Activation of field allowance*

- 12 (1) An amount of the company's field allowance for the new oil field is to be activated in respect of each reference period.
- (2) The amount of the field allowance to be activated is the smallest of the following amounts – 30
- (a) the relevant activation limit,
- (b) the company's relevant income from the field in the reference period, and
- (c) the unactivated amount of the field allowance which the company holds at the beginning of the reference period. 35

- (3) The relevant activation limit is –

$$\frac{T}{5} \times E \times \frac{R}{365}$$

where –

T is the amount of the total field allowance for the field (see paragraph 24), 40

E is the company’s share of the equity in the field during the reference period, and

R is the number of days in the reference period.

(4) The company’s relevant income from the field in the reference period is –

$$I \times \frac{R}{L} \quad 5$$

where –

I is the company’s relevant income from the field in the whole of the accounting period;

R is the number of days in the reference period;

L is the number of days in the accounting period for which the company is a licensee in the new oil field. 10

## PART 6

### CHANGE IN EQUITY SHARE: TRANSFER OF FIELD ALLOWANCE

#### Introduction

13 (1) This Part applies if the following conditions are met. 15

(2) Condition A is that a company that is a licensee in a new oil field (“the transferor”) disposes of the whole or a part of its share of the equity in the new oil field (and in this Part each of those to which a share of the equity is disposed of is referred to as “a transferee”).

(3) Condition B is that, immediately before the disposal, the transferor holds an unactivated amount of field allowance for the new oil field. 20

(4) Sub-paragraph (5) applies when –

(a) determining (for the purposes of this paragraph) whether a transferor holds an unactivated amount of field allowance immediately before the disposal (“the relevant time”), and 25

(b) determining (for the purposes of paragraph 14) the unactivated amount of field allowance which a transferor holds at the relevant time;

but it applies only if an amount of field allowance for the new oil field (“the relevant amount”) has, by virtue of paragraph 12, been activated in respect of the reference period that ends because of the disposal. 30

(5) When making the determination, the relevant amount of the field allowance must be treated as having been activated at a time before the relevant time.

(6) In a case where a company has three or more different shares of the equity in a new oil field during a particular day, this Part (in particular provisions relating to the beginning or end of a day) has effect subject to the necessary modifications. 35

*Reduction of field allowance if equity disposed of*

- 14 (1) The unactivated amount of the field allowance for the new oil field which the transferor holds immediately before the disposal is to be reduced by the following amount—

$$F \times \frac{E1 - E2}{E1} \quad 5$$

where—

F is the unactivated amount of the field allowance which the transferor holds immediately before the disposal,

E1 is the transferor's share of the equity in the new oil field immediately before the disposal, and 10

E2 is the transferor's share of the equity in the new oil field immediately after the disposal.

- (2) This paragraph has effect at the end of the day on which the disposal takes place.

*Acquisition of field allowance if equity acquired* 15

- 15 (1) If a transferee holds a field allowance for the new oil field immediately before the disposal, the unactivated amount of the field allowance is to be increased by the amount calculated in accordance with sub-paragraph (4).

- (2) If a transferee does not hold a field allowance for the new oil field immediately before the disposal, the transferee is to hold a field allowance for the new oil field. 20

- (3) The amount of the field allowance which the transferee is to hold is calculated in accordance with sub-paragraph (4).

- (4) The amount referred to in sub-paragraphs (1) and (3) is—

$$R \times \frac{E3}{E1 - E2} \quad 25$$

where—

R is the amount of the reduction determined in accordance with paragraph 14,

E3 is the share of the equity in the new oil field that the transferee has acquired from the transferor, and 30

E1 and E2 are the same as in paragraph 14.

- (5) This paragraph has effect at the end of the day on which the disposal takes place.

PART 7

MISCELLANEOUS 35

*Adjustments*

- 16 If there is any alteration in a company's adjusted ring fence profits for an accounting period after this Schedule has had effect in relation to the profits, any necessary adjustments to the operation of this Schedule (whether in relation to the profits or otherwise) are to be made (including any necessary 40

adjustments to the effect of Part 1 on the profits or to the calculation of the company's pool of field allowances for a subsequent accounting period).

*Orders*

- 17 (1) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the oil fields that are qualifying oil fields for the purposes of this Schedule. 5
- (2) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the amount of the total field allowance for any description of new oil field (whether or not provision has been made under sub-paragraph (1) about that description of new oil field). 10
- (3) An order under this paragraph may, in particular, amend any or all of paragraphs 20 to 24.
- (4) An order under this paragraph is to be made by statutory instrument.
- (5) No order may be made under this paragraph unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons. 15

PART 8

INTERPRETATION

*New oil fields*

- 18 In this Schedule "new oil field" means an oil field – 20
- (a) which is a qualifying oil field, and
- (b) whose development is authorised at any time on or after 22 April 2009.

*Authorising development*

- 19 (1) In this Schedule a reference to authorisation of development of an oil field is a reference to a national authority – 25
- (a) granting a licensee consent for development for the field,
- (b) serving on a licensee a programme of development for the field, or
- (c) approving a programme of development for the field.
- (2) In this paragraph – 30
- "consent for development", in relation to an oil field, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area;
- "development", in relation to an oil field, means winning oil from the field otherwise than in the course of searching for oil or drilling wells; 35
- "national authority" means –
- (a) the Secretary of State, or
- (b) a Northern Ireland Department.

*Qualifying oil fields*

- 20 In this Schedule “qualifying oil field” means an oil field that is, on the authorisation day –
- (a) a small oil field,
  - (b) an ultra heavy oil field, or 5
  - (c) an ultra high pressure/high temperature oil field.

*Small oil field*

- 21 (1) In this Schedule “small oil field” means an oil field which has reserves of oil of 3,500,000 tonnes or less.
- (2) For the purposes of this paragraph and paragraph 24(2) – 10
- (a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day;
  - (b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne. 15

*Ultra heavy oil field*

- 22 (1) In this Schedule “ultra heavy oil field” means an oil field with oil at –
- (a) an API gravity below 18 degrees, and
  - (b) a viscosity of more than 50 centipoise at reservoir temperature and pressure. 20
- (2) For that purpose API gravity, in relation to oil, is the amount determined by the following calculation –

$$\frac{141.5}{G} - 131.5$$

where G is the specific gravity of the oil at 15.56 degrees celsius.

*Ultra high pressure/high temperature oil field* 25

- 23 In this Schedule “ultra high pressure/high temperature oil field” means an oil field with oil at –
- (a) a pressure of more than 1034 bar in the reservoir formation, and
  - (b) a temperature of more than 176.67 degrees celsius in the reservoir formation. 30

*Total field allowance for new oil field*

- 24 (1) For the purposes of this Schedule, the total field allowance for a new oil field is –
- (a) in the case of a small oil field, the amount determined in accordance with sub-paragraph (2), 35
  - (b) in the case of an ultra heavy oil field, £800,000,000, and
  - (c) in the case of an ultra high pressure/high temperature oil field, £800,000,000.
- (2) The total field allowance for a small oil field is –

- (a) if the oil field has reserves of oil of 2,750,000 tonnes or less, £75,000,000, and  
 (b) in any other case (where the oil field has reserves of more than 2,750,000 tonnes but not more than 3,500,000 tonnes), the following amount –

5

$$£75,000,000 \times \frac{3,500,000 - X}{3,500,000 - 2,750,000}$$

where X is the amount of the reserves of oil (in tonnes) which the oil field has.

*Other interpretation*

- 25 In this Schedule –
- “adjusted ring fence profits”, in relation to a company and an accounting period, means the adjusted ring fence profits that would (if this Schedule were ignored) be taken into account in calculating the supplementary charge on the company under section 501A of ICTA for the accounting period; 15
  - “authorisation day”, in relation to a new oil field, means the day when development of the field is authorised;
  - “initial licensee”, in relation to a new oil field, means a company that is licensee in the field on the authorisation day.
  - “licensee” has the same meaning as in Part 1 of OTA 1975; 20
  - “oil” has the same meaning as in Part 1 of OTA 1975;
  - “oil field” has the same meaning as in Part 1 of OTA 1975;
  - “relevant income”, in relation to a new oil field and an accounting period of a company, means production income of the company from any oil extraction activities carried on in the field that is taken into account in calculating the company’s adjusted ring fence profits for the accounting period. 25

SCHEDULE 45

Section 91

OIL: MISCELLANEOUS AMENDMENTS

OTA 1975 30

- 1 (1) OTA 1975 is amended as follows.
- (2) Omit paragraphs 9 and 10 of Schedule 3 (election to have amounts mentioned in section 2(9)(b) and (c) spread).
  - (3) In consequence of the omission of paragraph 9 of Schedule 3, omit section 9(4). 35
  - (4) Omit paragraph 3 of Schedule 4 (allowable expenditure incurred before 13 November 1974).
  - (5) The repeals made by this paragraph have effect in relation to chargeable periods beginning after 30 June 2009.



## OTA 1983

- 2 (1) OTA 1983 is amended as follows.
- (2) Omit section 9(3) and paragraph 3 of Schedule 3 (receipts from contracts made before 8 May 1982).
- (3) In consequence of the omission of subsection (3) of section 9— 5  
 (a) in subsection (2) of that section, for “subsections (3) and (4)” substitute “subsection (4)”, and  
 (b) in subsection (4)(b) of that section, for “subsections (1) to (3)” substitute “subsections (1) and (2)”.
- (4) Omit sections 13 and 14 and Schedule 5 (transitional provision for expenditure incurred on or before 31 December 1983). 10

## FA 1993

- 3 (1) Schedule 20A to FA 1993 (as inserted by Part 1 of Schedule 33 to FA 2008) is renumbered as Schedule 20B to that Act.
- (2) In the following provisions, for “Schedule 20A” substitute “Schedule 20B”— 15  
 (a) section 6(1A) of OTA 1975,  
 (b) paragraph 15(9A) of Schedule 17 to FA 1980, and  
 (c) section 185(1ZA)(b) of FA 1993.

## ICTA

- 4 (1) In section 502(3A) of ICTA (interpretation of Chapter 5 of Part 12), omit the words from “but” to the end. 20
- (2) The repeal made by this paragraph has effect on and after 22 April 2009.

## SCHEDULE 46

Section 93

## DUTIES OF SENIOR ACCOUNTING OFFICERS OF QUALIFYING COMPANIES

*Main duty of senior accounting officer* 25

- 1 (1) The senior accounting officer of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements.
- (2) The senior accounting officer of a qualifying company must, in particular, take reasonable steps— 30  
 (a) to monitor the accounting arrangements of the company, and  
 (b) to identify any respects in which those arrangements are not appropriate tax accounting arrangements.

*Certificate for Commissioners*

- 2 (1) The senior accounting officer of a qualifying company must provide the Commissioners with a certificate for each financial year of the company. 35

- (2) The certificate must –
  - (a) state whether the company had appropriate tax accounting arrangements throughout the financial year, and
  - (b) if it did not, give an explanation of the respects in which the accounting arrangements of the company were not appropriate tax accounting arrangements. 5
- (3) The certificate must be provided –
  - (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and
  - (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed). 10
- (4) A certificate may relate to more than one qualifying company.

*Notifying Commissioners of name of senior accounting officer*

- 3 (1) For each financial year a qualifying company must ensure that the Commissioners are notified of the name of each person who was its senior accounting officer at any time during the year. 15
- (2) The notification must be given –
  - (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and 20
  - (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed for providing the certificate for the financial year under paragraph 2).
- (3) A notification may relate to more than one qualifying company. 25

*Penalty for failure to comply with main duty*

- 4 (1) This paragraph applies if a senior accounting officer fails to comply with paragraph 1 at any time in a financial year.
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) A person is not liable to more than one penalty under this paragraph in respect of the same company and the same financial year. 30

*Penalties for failure to provide certificate etc*

- 5 (1) This paragraph applies if a senior accounting officer –
  - (a) fails to provide a certificate in accordance with paragraph 2, or
  - (b) provides a certificate in accordance with that paragraph that contains a careless or deliberate inaccuracy. 35
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) For the purposes of this Schedule, an inaccuracy is careless if the inaccuracy is due to a failure by the senior accounting officer to take reasonable care.
- (4) An inaccuracy in a certificate that was neither careless nor deliberate when the certificate was given is to be treated as careless if the senior accounting officer – 40

- (a) discovered the inaccuracy some time later, and
- (b) did not take reasonable steps to inform HMRC.

*More than one senior accounting officer*

- 6 (1) This paragraph applies if the identity of the senior accounting officer of a company changes. 5
- (2) If (but for this sub-paragraph) more than one person would be liable to a penalty under paragraph 4 in respect of a financial year of the company, only the one who became the senior accounting officer latest in the year is liable to such a penalty.
- (3) If a person who is or has been the senior accounting officer of the company complies, or purports to comply, with paragraph 2 in respect of a financial year, no other person is liable to a penalty under paragraph 5 in respect of that company and that financial year. 10
- (4) A person who is replaced as the senior accounting officer of the company before the last day for compliance with paragraph 2 in respect of a financial year is not liable to a penalty under paragraph 5(1)(a) for failing to comply with that paragraph in respect of that company and that financial year. 15

*Penalty for failure to notify Commissioners of name of senior accounting officer*

- 7 A qualifying company is liable to a penalty of £5,000 if, for a financial year, the Commissioners are not notified of the name or names of its senior accounting officer or officers in accordance with paragraph 3. 20

*Reasonable excuse*

- 8 (1) Liability to a penalty for a failure to comply with this Schedule does not arise if the senior accounting officer or qualifying company satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure. 25
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
  - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure, and 30
  - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased. 35

*Assessment of penalties*

- 9 (1) Where a senior accounting officer or a qualifying company becomes liable for a penalty under this Schedule—
- (a) HMRC may assess the penalty, and 40
  - (b) if they do so, they must notify the officer or company liable for the penalty.

- (2) An assessment of a penalty under this Schedule for a failure in respect of a financial year, or an inaccuracy in a certificate for a financial year, may not be made –
- (a) more than 6 months after the failure or inaccuracy first comes to the attention of an officer of Revenue and Customs, or 5
  - (b) more than 6 years after the end of the period for filing the company’s accounts for the financial year.
- (3) HMRC may not assess a person who is the senior accounting officer of a company (“C”) as liable to a penalty under paragraph 4 or 5 for a financial year (“the relevant financial year”) if – 10
- (a) at any time in the relevant financial year the person was the senior accounting officer of another company that was a member of the same group as C, and
  - (b) HMRC has assessed the person as liable, as the senior accounting officer of the other company, to a penalty under that paragraph for a financial year that ends on a day in the relevant financial year. 15
- (4) HMRC may not assess a company (“C”) as liable to a penalty under paragraph 7 for a financial year (“the relevant financial year”) if –
- (a) C was a member of a group at the end of that year, and
  - (b) HMRC has assessed another company that was a member of the same group as C at that time as liable to a penalty under that paragraph – 20
    - (i) for its financial year ending on the same day as the relevant financial year, or
    - (ii) if its financial year does not end on that day, for its financial year ending last before that day. 25

*Appeal*

- 10 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.
- (2) Notice of an appeal must be given – 30
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, and
  - (c) to HMRC.
- (3) Notice of an appeal must state the grounds of appeal. 35
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) Subject to this paragraph and paragraph 11, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax. 40

*Enforcement of penalties*

- 11 (1) A penalty under this Schedule must be paid –
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, or 45

- (b) if a notice of appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable. 5

*Power to change amount of penalties*

- 12 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 4, 5 and 7 such other sums as appear to them to be justified by the change. 10
- (2) In sub-paragraph (1), in relation to a specified sum, “relevant date” means—
- (a) the date on which this Act is passed, and
- (b) in relation to that sum, each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to— 15
- (a) a failure that occurs in respect of a financial year of a company that begins before the date on which they come into force, or
- (b) an inaccuracy in a certificate that was provided to HMRC in respect of such a financial year.

*Application of provisions of TMA 1970* 20

- 13 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
- (b) section 114 (want of form), and 25
- (c) section 115 (delivery and service of documents).

*Meaning of “appropriate tax accounting arrangements”*

- 14 (1) “Appropriate tax accounting arrangements” means accounting arrangements that enable the company’s relevant liabilities to be calculated accurately in all material respects. 30
- (2) “Accounting arrangements” includes arrangements for keeping accounting records.
- (3) “Relevant liabilities”, in relation to a company, means liabilities in respect of—
- (a) corporation tax (including any amount assessable or chargeable as if it were corporation tax), 35
- (b) value added tax,
- (c) amounts for which the company is accountable under PAYE regulations,
- (d) insurance premium tax, 40
- (e) stamp duty land tax,
- (f) stamp duty reserve tax,
- (g) petroleum revenue tax,

- (h) customs duties, and
- (i) excise duties.

*Meaning of “qualifying company”*

- 15 (1) A company is a qualifying company in relation to a financial year if the qualification test was satisfied in the previous financial year (subject to any regulations under sub-paragraph (8)). 5
- (2) The qualification test is that the company satisfied either or both of the following requirements—
- 1. Relevant turnover More than £200 million
  - 2. Relevant balance sheet total More than £2 billion. 10
- (3) If the company was not a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the company’s turnover, and
  - (b) “relevant balance sheet total” means the company’s balance sheet total. 15
- (4) If the company was a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the aggregate turnover of the company (“C”) and any other company that was a member of the same group as C at the end of C’s previous financial year, and 20
  - (b) “relevant balance sheet total” means the aggregate balance sheet totals of C and any such company.
- (5) If the financial year of a company that was a member of the same group as C does not end on the same day as C’s previous financial year, the figures for that company that are to be included in the aggregate figures are the figures for that company’s financial year ending last before the end of C’s previous financial year. 25
- (6) “Turnover”, in relation to a company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act).
- (7) “Balance sheet total”, in relation to a company and a financial year, means the aggregate of the amounts shown as assets in the company’s balance sheet as at the end of the financial year. 30
- (8) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule. 35

*Meaning of “senior accounting officer”*

- 16 (1) “Senior accounting officer”, in relation to a company that is not a member of a group, means the director or officer who, in the company’s reasonable opinion, has overall responsibility for the company’s financial accounting arrangements. 40
- (2) “Senior accounting officer”, in relation to a company that is a member of a group, means the group director or officer who, in the company’s reasonable

opinion, has overall responsibility for the company’s financial accounting arrangements.

(3) “Group director or officer”, in relation to a company, means a director or officer of the company or of a relevant body that is a member of the same group as the company. 5

(4) A person may be the senior accounting officer of more than one company.

### Regulations

17 (1) Regulations under this Schedule are to be made by statutory instrument.

(2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons. 10

### Other definitions

18 (1) In this Schedule –

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006) but does not include a company that is an open-ended investment company (within the meaning of section 468A of ICTA) or an investment trust (within the meaning of section 842 of ICTA); 15

“financial year”, in relation to a company, has the same meaning as in the Companies Act 2006 (see section 390 of that Act); 20

“HMRC” means Her Majesty’s Revenue and Customs;

“period for filing”, in relation to accounts, has the same meaning as in the Companies Acts (see section 442 of the Companies Act 2006);

“relevant body” means a company or other body corporate but does not include a limited liability partnership; 25

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) For the purposes of this Schedule –

(a) a relevant body is a member of a group if – 30

(i) another relevant body is its 51 per cent subsidiary, or

(ii) it is a 51 per cent subsidiary of another relevant body, and

(b) two relevant bodies are members of the same group if –

(i) one is a 51 per cent subsidiary of the other, or

(ii) both are 51 per cent subsidiaries of a third relevant body. 35

(3) Section 838 of ICTA (meaning of “51 per cent subsidiary”) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (subject to the modification in sub-paragraph (4)).

(4) It applies as if references in that section to a body corporate were to a relevant body. 40

SCHEDULE 47

Section 95

AMENDMENT OF INFORMATION AND INSPECTION POWERS

- 1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- 2 (1) Paragraph 3 (approval etc of taxpayer notices and third party notices) is amended as follows. 5  
(2) After sub-paragraph (2) insert –  
    “(2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).”
- 3 (3) In sub-paragraph (3)(c), after “is” insert “to be”. 10  
(1) Paragraph 5 (power to obtain information and documents about persons whose identity is not known) is amended as follows.  
(2) After sub-paragraph (3) insert –  
    “(3A) An application for approval under this paragraph may be made without notice.” 15  
(3) In sub-paragraph (4), for “give its approval for the purpose of” substitute “approve the giving of a notice under”.
- 4 In paragraph 6 (notices), insert at the end –  
    “(4) A decision of the tribunal under paragraph 3, 4 or 5 is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).” 20
- 5 (1) Paragraph 10 (power to inspect business premises etc) is amended as follows.  
(2) In sub-paragraph (3), in the definition of “business assets”, for “, excluding documents” substitute “(but see sub-paragraph (4))”. 25  
(3) After that sub-paragraph insert –  
    “(4) For the purposes of this Schedule, “business assets” does not include documents, other than –  
        (a) documents that are trading stock for the purposes of Chapter 11A of Part 2 of ITTOIA 2005 (see section 172A of that Act), and 30  
        (b) documents that are plant for the purposes of Part 2 of CAA 2001.”
- 6 (1) Paragraph 11 (power to inspect premises used in connection with taxable supplies etc) is amended as follows. 35  
(2) In sub-paragraph (1) –  
    (a) in paragraph (a), after “supplied” insert “or documents relating to such goods”,  
    (b) in paragraph (b), after “acquired” insert “or documents relating to such goods”, and 40  
    (c) in paragraph (c), after “as” insert “or in connection with”.



- (3) In sub-paragraph (2)(c), for “such goods” substitute “the supply of goods under taxable supplies, the acquisition of goods from other member States under taxable acquisitions or fiscal warehousing”.
- (4) In sub-paragraph (4) –
- (a) for “sub-paragraph (1)” substitute “this paragraph”, and 5
- (b) for “in that sub-paragraph” substitute “here”.
- 7 In paragraph 12(5) (carrying out inspections) –
- (a) for “with the approval of” substitute “in respect of an inspection approved by”, and
- (b) for “it is given with that approval” substitute “the inspection has been so approved”. 10
- 8 (1) Paragraph 13 (approval of inspections) is amended as follows.
- (2) After sub-paragraph (1) insert –
- “(1A) An application for approval under this paragraph may be made without notice.” 15
- (3) Insert at the end –
- “(3) A decision of the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).”
- 9 (1) Paragraph 21 (taxpayer notices) is amended as follows. 20
- (2) In sub-paragraph (6), after “that” (in the first place) insert “, as regards the person,”.
- (3) In sub-paragraph (7), for “that” (in the third place) substitute “the”.
- (4) In sub-paragraph (8) –
- (a) after “repayments” insert “of tax or withholding of income”, and 25
- (b) after “64(2)” insert “or (2A)”.
- (5) After sub-paragraph (8) insert –
- “(9) In this paragraph, references to the person who made the return are only to that person in the capacity in which the return was made.” 30
- 10 (1) Paragraph 35 (special cases: groups of undertakings) is amended as follows.
- (2) In sub-paragraph (2) –
- (a) for “paragraph 2” substitute “–
- (a) paragraph 2(2)”, and
- (b) insert at the end “, and 35
- (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the parent undertaking.”
- (3) For sub-paragraph (4) substitute –
- “(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking – 40

- (a) paragraph 2(2) only requires the notice to state this, and
  - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement.
- (4A) In relation to such a notice –
  - (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply, 5
  - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
  - (c) paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings), 10
  - (d) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and 15
  - (e) in paragraph 30(2) (no appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.” 20
- (4) In sub-paragraph (5), for the words after “the notice” substitute “–
  - (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and 25
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the parent undertaking may not appeal against a requirement in the notice to produce any document that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings.” 30
- (5) Omit sub-paragraph (6).
- 11 (1) Paragraph 37 (special cases: partnerships) is amended as follows.
  - (2) For sub-paragraph (2) substitute –
    - “(2) Where, in respect of a chargeable period, any of the partners has –
      - (a) made a tax return under section 12AA of TMA 1970 (partnership returns), or 35
      - (b) made a claim or election in accordance with section 42(6)(b) of TMA 1970 (partnership claims and elections), paragraph 21 (restrictions where taxpayer has made tax return) has effect as if that return, claim or election had been made by each of the partners.” 40
  - (3) In sub-paragraph (3) –
    - (a) omit “to any person (other than one of the partners)”,
    - (b) for “paragraph 2” substitute “–
      - (a) paragraph 2(2)”, and 45

- (c) insert at the end “, and  
     (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the partnership.”
- (4) In sub-paragraph (4) – 5  
     (a) after “notice” insert “given to a person other than one of the partners”, and  
     (b) in paragraph (b), for “each of the partners” substitute “any of the partners in the partnership”.
- (5) For sub-paragraph (5) substitute – 10  
     “(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such) –  
         (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply, 15  
         (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,  
         (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and  
         (d) in paragraph 30(2) (no appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.” 20
- (6) In sub-paragraph (6) for the words after “the notice” substitute “ –  
     (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and 25  
     (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the partner to whom the notice is given may not appeal against a requirement in the notice to produce any document that forms part of that partner’s statutory records.” 30
- (7) Omit sub-paragraph (7). 35
- 12 After paragraph 37 insert – 35  
     “*Information in connection with herd basis election*  
     37A (1) This paragraph applies to a taxpayer notice given to a person carrying on a trade in relation to which a herd basis election is made if the notice refers only to information or documents that relate to – 40  
         (a) the animals kept for the purposes of the trade, or  
         (b) the products of those animals.  
     (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice. 45

- (3) “Herd basis election” means an election under Chapter 8 of Part 2 of ITTOIA 2005 or Chapter 8 of Part 3 of CTA 2009.

*Information from persons liable to counteraction of tax advantage*

- 37B (1) This paragraph applies to a taxpayer notice given to a person if—
- (a) it appears to an officer of Revenue and Customs that a counteraction provision may apply to the person by reason of one or more transactions, and
  - (b) the notice refers only to information or documents relating to the transaction (or, if there are two or more transactions, any of them).
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
- (3) “Counteraction provision” means—
- (a) section 703 of ICTA (company liable to counteraction of corporation tax advantage), or
  - (b) section 684 of ITA 2007 (person liable to counteraction of income tax advantage).”
- 13 (1) Paragraph 39 (standard penalties) is amended as follows.
- (2) In sub-paragraph (2), for “A person to whom this paragraph applies” substitute “The person”.
- (3) In the heading—
- (a) omit “*Standard*”, and
  - (b) insert at the end “*for failure to comply or obstruction*”.
- 14 In the heading before paragraph 40 (daily default penalties), insert at the end “*for failure to comply or obstruction*”.
- 15 After that paragraph insert—

*“Penalties for inaccurate information and documents*

- 40A (1) This paragraph applies if—
- (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
  - (b) condition A or B is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person—
- (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) The person is liable to a penalty not exceeding £3,000.

- (6) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.”
- 16 (1) Paragraph 41 (power to change amount of penalties) is amended as follows.
- (2) In sub-paragraph (1), for “and 40(2)” substitute “, 40(2) and 40A(5)”.
- (3) In sub-paragraph (2) – 5
- (a) after “(1)” insert “, in relation to a specified sum,”, and
- (b) in paragraph (b), insert at the end “in relation to that sum”.
- (4) In sub-paragraph (3) –
- (a) after “to” insert “ – 10
- (a) ”, and
- (b) insert at the end “, or
- (b) an inaccuracy in any information or document provided to HMRC before that date.”
- (5) Accordingly, in the heading omit “*standard and daily default*”.
- 17 (1) Paragraph 46 (assessment of penalty) is amended as follows. 15
- (2) In sub-paragraph (1) –
- (a) for “or 40” substitute “, 40 or 40A”,
- (b) omit “HMRC may”,
- (c) at the beginning of paragraph (a), insert “HMRC may”, and
- (d) at the beginning of paragraph (b), insert “if they do so, they must”. 20
- (3) In sub-paragraph (2), for “within 12 months of the relevant date” substitute “within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to sub-paragraph (3)”.
- (4) For sub-paragraph (3) substitute –
- “(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the latest of the following – 25
- (a) the date on which the person became liable to the penalty,
- (b) the end of the period in which notice of an appeal against the information notice could have been given, and 30
- (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 40A must be made – 35
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.”
- (5) Accordingly, in the heading omit “*standard penalty or daily default*”. 40
- 18 (1) Paragraph 47 (right to appeal) is amended as follows.
- (2) In paragraph (a), for “or 40” substitute “, 40 or 40A”.
- (3) Accordingly, in the heading, omit “*standard penalty or daily default*”.

- 19 In the heading before paragraph 48 (procedure on appeal), omit “*standard or daily default*”.
- 20 (1) Paragraph 49 (enforcement) is amended as follows.  
(2) In sub-paragraph (1), for “or 40” substitute “, 40 or 40A”.  
(3) In sub-paragraph (2), for “or 40” substitute “, 40 or 40A”. 5  
(4) Accordingly, in the heading, omit “*standard penalty or daily default*”.
- 21 (1) Paragraph 63 (tax) is amended as follows.  
(2) In sub-paragraph (3) –  
(a) omit the “and” at the end of paragraph (a), and  
(b) for the words following paragraph (b) substitute “, and 10  
(c) amounts listed in sub-paragraph (3A).”  
(3) After that sub-paragraph insert –  
“(3A) Those amounts are –  
(a) any amount that is recoverable under paragraph 5(2) of 15  
Schedule 11 to VATA 1994 (amounts shown on invoices as VAT), and  
(b) any amount that is treated as VAT by virtue of regulations under section 54 of VATA 1994 (farmers etc).”
- 22 (1) Paragraph 64 (tax position) is amended as follows.  
(2) In sub-paragraph (1)(c), after “with” insert “the person’s liability to pay”. 20  
(3) After sub-paragraph (2) insert –  
“(2A) References in this Schedule to a person’s tax position also include, where appropriate, a reference to the person’s position as regards the withholding by the person of another person’s PAYE income (as defined in section 683 of ITEPA 2003).” 25

## SCHEDULE 48

Section 96

### EXTENSION OF INFORMATION AND INSPECTION POWERS

- 1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- 2 In paragraph 5(4)(b) (power to obtain information and documents about persons whose identity is not known), for the words from “, VATA 1994” to the end substitute “or any other enactment relating to UK tax”. 30
- 3 After paragraph 10 insert –  
“*Power to inspect business premises etc of involved third parties*”
- 10A (1) An officer of Revenue and Customs may enter business premises of an involved third party (see paragraph 61A) and inspect – 35  
(a) the premises,  
(b) business assets that are on the premises, and

- (c) relevant documents that are on the premises,  
if the inspection is reasonably required by the officer for the  
purpose of checking the position of any person or class of persons  
as regards a relevant tax.
- (2) The powers under this paragraph may be exercised whether or not 5  
the identity of that person is, or the individual identities of those  
persons are, known to the officer.
- (3) The powers under this paragraph do not include power to enter or  
inspect any part of the premises that is used solely as a dwelling.
- (4) In relation to an involved third party, “relevant documents” and 10  
“relevant tax” are defined in paragraph 61A.”
- 4 (1) Paragraph 12 (carrying out inspections) is amended as follows.
- (2) In sub-paragraph (1), for “this Part of this Schedule” substitute “paragraph  
10, 10A or 11”.
- (3) Accordingly, in the heading, insert at the end “*under paragraph 10, 10A or 11*”. 15
- 5 After that paragraph insert –
- “Powers to inspect property for valuation etc*
- 12A (1) An officer of Revenue and Customs may enter and inspect  
premises for the purpose of valuing the premises if the valuation 20  
is reasonably required for the purpose of checking any person’s  
position as regards income tax or corporation tax.
- (2) An officer of Revenue and Customs may enter premises and  
inspect –
- (a) the premises, and
- (b) any other property on the premises, 25  
for the purpose of valuing, measuring or determining the  
character of the premises or property.
- (3) Sub-paragraph (2) only applies if the valuation, measurement or  
determination is reasonably required for the purpose of checking 30  
any person’s position as regards –
- (a) capital gains tax,
- (b) corporation tax in respect of chargeable gains,
- (c) inheritance tax,
- (d) stamp duty land tax, or
- (e) stamp duty reserve tax. 35
- (4) A person who the officer considers is needed to assist with the  
valuation, measurement or determination may enter and inspect  
the premises or property with the officer.
- Carrying out inspections under paragraph 12A*
- 12B (1) An inspection under paragraph 12A may be carried out only if 40  
condition A or B is satisfied.
- (2) Condition A is that –

- (a) the inspection is carried out at a time agreed to by a relevant person, and
  - (b) the relevant person has been given notice in writing of the agreed time of the inspection.
- (3) “Relevant person” means – 5
  - (a) the occupier of the premises, or
  - (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.
- (4) Condition B is that –
  - (a) the inspection has been approved by the tribunal, and 10
  - (b) any relevant person specified by the tribunal has been given at least 7 days’ notice in writing of the time of the inspection.
- (5) A notice under sub-paragraph (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power. 15
- (6) If a notice is given under this paragraph in respect of an inspection approved by the tribunal (see paragraph 13), it must state that the inspection has been so approved.
- (7) An officer of Revenue and Customs seeking to carry out an inspection under paragraph 12A must produce evidence of authority to carry out the inspection if asked to do so by – 20
  - (a) the occupier of the premises, or
  - (b) any other person who appears to the officer to be in charge of the premises or property.” 25
- 6 (1) Paragraph 13 (approval of tribunal) is amended as follows.
  - (2) In sub-paragraph (1), insert at the end “(and for the effect of obtaining such approval see paragraph 39 (penalties))”.
  - (3) In sub-paragraph (1A) (inserted by Schedule 47), insert at the end “(except as required under sub-paragraph (2A))”. 30
  - (4) In sub-paragraph (2), after “an inspection” insert “under paragraph 10, 10A or 11”.
  - (5) After that sub-paragraph insert –
    - “(2A) The tribunal may not approve an inspection under paragraph 12A unless – 35
      - (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
      - (b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the officer of Revenue and Customs about that inspection, 40
      - (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
      - (d) the tribunal has been given a summary of any representations made, and 45



- (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.
- (2B) Paragraph (c) of sub-paragraph (2A) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.”
- 7 In paragraph 17(b) (power to record information), after “premises,” insert “property, goods,”. 5
- 8 (1) Paragraph 21 (restrictions on giving taxpayer notices) is amended as follows.
- (2) In sub-paragraph (7), for “VAT position” substitute “position as regards any tax other than income tax, capital gains tax or corporation tax”. 10
- (3) In the heading, insert at the end “*following tax return*”.
- 9 After that paragraph insert –
- “*Taxpayer notices following land transaction return*
- 21A (1) Where a person has delivered a land transaction return under section 76 of FA 2003 (returns for purposes of stamp duty land tax) in respect of a transaction, a taxpayer notice may not be given for the purpose of checking that person’s stamp duty land tax position in relation to that transaction. 15
- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met. 20
- (3) Condition A is that a notice of enquiry has been given in respect of –
- (a) the return, or
- (b) a claim (or an amendment of a claim) made by the person in connection with the transaction, 25
- and the enquiry has not been completed.
- (4) In sub-paragraph (3) “notice of enquiry” means a notice under paragraph 12 of Schedule 10, or paragraph 7 of Schedule 11A, to FA 2003.
- (5) Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that – 30
- (a) an amount that ought to have been assessed to stamp duty land tax in respect of the transaction may not have been assessed,
- (b) an assessment to stamp duty land tax in respect of the transaction may be or have become insufficient, or 35
- (c) relief from stamp duty land tax in respect of the transaction may be or have become excessive.
- (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person’s position as regards a tax other than stamp duty land tax.” 40
- 10 In paragraph 28 (restrictions on inspection of business documents), and in the heading before that paragraph, omit “*business*”.

11 After paragraph 34 insert –

*“Involved third parties*

- 34A (1) This paragraph applies to a third party notice or a notice under paragraph 5 if –
- (a) it is given to an involved third party (see paragraph 61A), 5
  - (b) it is given for the purpose of checking the position of a person, or a class of persons, as regards the relevant tax, and
  - (c) it refers only to relevant information or relevant documents. 10
- (2) In relation to such a third party notice –
- (a) paragraph 3(1) (approval etc of third party notices) does not apply,
  - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply, and 15
  - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds.
- (3) In relation to such a notice under paragraph 5 –
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, an authorised officer of Revenue and Customs to obtain the approval of the tribunal, and 20
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds.
- (4) The involved third party may not appeal against a requirement in the notice to provide any information, or produce any document, that forms part of the involved third party’s statutory records. 25
- (5) In relation to an involved third party, “relevant documents”, “relevant information” and “relevant tax” are defined in paragraph 61A. 30

*Registered pension schemes etc*

- 34B (1) This paragraph applies to a third party notice or a notice under paragraph 5 if it refers only to information or documents that relate to any pensions matter.
- (2) “Pensions matter” means any matter relating to – 35
- (a) a registered pension scheme,
  - (b) an annuity purchased with sums or assets held for the purposes of a registered pension scheme or a pre-2006 pension scheme, or
  - (c) an employer-financed retirement benefits scheme. 40
- (3) In relation to such a third party notice –
- (a) paragraph 3(1) (approval etc of third party notices) does not apply,
  - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply, and 45

- (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds.
- (4) In relation to such a notice under paragraph 5—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, an authorised officer of Revenue and Customs to obtain the approval of the tribunal, and 5
- (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds.
- (5) A person may not appeal against a requirement in the notice to provide any information, or produce any document, that forms part of any person’s statutory records. 10
- (6) Where the notice relates to a matter within sub-paragraph (2)(a) or (b), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the scheme administrator in relation to the pension scheme. 15
- (7) Where the notice relates to a matter within sub-paragraph (2)(c), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the responsible person in relation to the employer-financed retirement benefits scheme. 20
- (8) Sub-paragraphs (6) and (7) do not apply if the notice is given to a person who, in relation to the scheme or annuity to which the notice relates, is a prescribed description of person.

*Registered pension schemes etc: interpretation*

- 34C In paragraph 34B— 25
- “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act);
- “pension scheme” has the same meaning as in Part 4 of FA 2004; 30
- “pre-2006 pension scheme” means a scheme that, at or in respect of any time before 6 April 2006, was—
- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
- (b) a former approved superannuation fund (as defined in paragraph 1(3) of Schedule 36 to FA 2004), 35
- (c) a relevant statutory scheme (as defined in section 611A of ICTA) or a pension scheme treated as if it were such a scheme, or
- (d) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA; 40
- “prescribed” means prescribed by regulations made by the Commissioners;
- “registered pension scheme” means a pension scheme that is or has been a registered pension scheme within the meaning of Part 4 of FA 2004 or in relation to which an application for registration under that Part of that Act has been made; 45

- “responsible person”, in relation to an employer-financed retirement benefits scheme, has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act);
- “scheme administrator”, in relation to a pension scheme, has the same meaning as in Part 4 of FA 2004 (see section 270 of that Act).” 5
- 12 In paragraph 35 (special cases: groups of undertakings), in sub-paragraph (4A)(c) (inserted by Schedule 47) –
- (a) for “paragraph 21” substitute “paragraphs 21 and 21A”, and 10
- (b) for “applies” substitute “apply”.
- 13 In paragraph 37 (special cases: partnerships), after sub-paragraph (2) insert –
- “(2A) Where, in respect of a transaction entered into as purchaser by or on behalf of the members of the partnership, any of the partners has – 15
- (a) delivered a land transaction return under Part 4 of FA 2003 (stamp duty land tax), or
- (b) made a claim under that Part of that Act, 20
- paragraph 21A (restrictions where taxpayer has delivered land transaction return) has effect as if that return had been delivered, or that claim had been made, by each of the partners.”
- 14 After paragraph 61 insert –
- “Involved third parties
- 61A (1) In this Schedule, “involved third party” means a person described in the first column of the Table below. 25
- (2) In this Schedule, in relation to an involved third party, “relevant information”, “relevant document” and “relevant tax” have the meaning given in the corresponding entries in that Table.

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>	30
1.	A body approved by an officer of Revenue and Customs for the purpose of paying donations within the meaning of Part 12 of ITEPA 2003 (donations to charity: payroll giving) (see section 714 of that Act)	Information and documents relating to the donations	Income tax	35
2.	A plan manager (see section 696 of ITTOIA 2005 (managers of individual investment plans))	Information and documents relating to the plan, including investments which are or have been held under the plan	Income tax	40
				45

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>	
3.	An account provider in relation to a child trust fund (as defined in section 3 of the Child Trust Funds Act 2004)	Information and documents relating to the fund, including investments which are or have been held under the fund	Income tax	5 10
4.	A person who is or has been registered as a managing agent at Lloyd's in relation to a syndicate of underwriting members of Lloyd's	Information and documents relating to, and to the activities of, the syndicate	Income tax Capital gains tax Corporation tax	15
5.	A person involved (in any capacity) in an insurance business (as defined for the purposes of Part 3 of FA 1994)	Information and documents relating to contracts of insurance entered into in the course of the business	Insurance premium tax	20
6.	A person who makes arrangements for persons to enter into contracts of insurance	Information and documents relating to the contracts	Insurance premium tax	25
7.	A person who— (a) is concerned in a business that is not an insurance business (as defined for the purposes of Part 3 of FA 1994), and (b) has been involved in the entry into a contract of insurance providing cover for any matter associated with that business	Information and documents relating to the contracts	Insurance premium tax	30 35 40
8.	A person who, in relation to a charge to stamp duty reserve tax on an agreement, transfer, issue, appropriation or surrender, is an accountable person (as defined in regulation 2 of the Stamp Duty Reserve Tax Regulations S.I. 1986/1711 (as amended from time to time))	Information and documents relating to the agreement, transfer, issue, appropriation or surrender	Stamp duty reserve tax	45 50
9.	A responsible person in relation to an oil field (as defined for the purposes of Part 1 of OTA 1975)	Information and documents relating to the oil field	Petroleum revenue tax	55

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>	
10.	A person involved (in any capacity) in subjecting aggregate to exploitation in the United Kingdom (as defined for the purposes of Part 2 of FA 2001) or in connected activities	Information and documents relating to matters in which the person is or has been involved	Aggregates levy	5
11.	A person involved (in any capacity) in making or receiving taxable commodities (as defined for the purposes of Schedule 6 to FA 2000) or in connected activities	Information and documents relating to matters in which the person is or has been involved	Climate change levy	10
12.	A person involved (in any capacity) with any landfill disposal (as defined for the purposes of Part 3 of FA 1996)	Information and documents relating to the disposal	Landfill tax”.	15
				20

- 15 (1) Paragraph 62 (meaning of “statutory records”) is amended as follows.
- (2) In sub-paragraph (1), for paragraph (b) substitute –  
 “(b) any other enactment relating to a tax,”. 25
- (3) In sub-paragraph (2)(b), for “VATA 1994 or any other enactment relating to value added tax” substitute “any other enactment relating to a tax”.

SCHEDULE 49

Section 97

POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

*Requirement for contact details for debtor* 30

- 1 (1) This Schedule applies where –
- (a) a sum is payable by a person (“the debtor”) to the Commissioners under or by virtue of an enactment or under a contract settlement,
  - (b) an officer of Revenue and Customs reasonably requires contact details for the debtor for the purpose of collecting that sum, 35
  - (c) the officer has reasonable grounds to believe that a person (“the third party”) has any such details, and
  - (d) the condition in sub-paragraph (2) is met.
- (2) That condition is that –
- (a) the third party is a company, a local authority or a local authority association, or 40
  - (b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.
- (3) This Schedule does not apply if –
- (a) the third party is a charity and obtained the details in the course of providing services free of charge, or 45

- (b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.

*Power to obtain details*

- 2 (1) An officer of Revenue and Customs may by notice in writing require the third party to provide the details. 5
- (2) The notice must name the debtor.

*Complying with notices*

- 3 If a notice is given to the third party under this Schedule, the third party must provide the details – 10
- (a) within such period, and
- (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.

*Right to appeal*

- 4 (1) The third party may appeal against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement. 15
- (2) Paragraph 32 of Schedule 36 to FA 2008 (procedure on appeal to tribunal) applies to an appeal under this paragraph as it applies to an appeal relating to a notice under that Schedule. 20

*Penalty*

- 5 (1) This paragraph applies if the third party fails to comply with the notice.
- (2) The third party is liable to a penalty of £300.
- (3) Paragraphs 44 to 49 and 52 of Schedule 36 to FA 2008 (assessment and enforcement of penalties etc) apply in relation to a penalty under this paragraph as they apply in relation to a penalty under paragraph 39(1)(a) of that Schedule (and references in those provisions to an information notice include a notice under this Schedule). 25

*Power to change amount of penalty*

- 6 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sum for the time being specified in paragraph 5 such other sum as appears to them to be justified by the change. 30
- (2) In sub-paragraph (1), “relevant date” means – 35
- (a) the date on which this Act is passed, and
- (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to any failure which began before the date on which they come into force.

- (4) Regulations made by the Treasury under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

*Application of provisions of TMA 1970* 5

- 7 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts –
  - (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and 10
  - (c) section 115 (delivery and service of documents).

*General interpretation*

- 8 In this Schedule –
  - “business” includes –
    - (a) a profession, and 15
    - (b) a property business;
  - “charity” means a company, body of persons or trust established for charitable purposes only;
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs; 20
  - “contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted;
  - “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment; 25
  - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978);
  - “local authority” has the meaning given in section 999 of ITA 2007;
  - “local authority association” has the meaning given in section 1000 of that Act; 30
  - “property business” has the same meaning as in ITTOIA 2005 (see section 263(6) of that Act).

SCHEDULE 50

Section 98

RECORD-KEEPING

*Insurance premium tax* 35

- 1 (1) Paragraph 1 of Schedule 7 to FA 1994 (insurance premium tax: records) is amended as follows.
  - (2) In sub-paragraph (3) –
    - (a) after “may” insert “–
    - (a) ”, and 40



- (b) insert at the end –
- “(b) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations, and
- (c) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate.” 5
- (3) For sub-paragraphs (4) to (6) substitute –
- “(4) A duty under the regulations to preserve records may be discharged – 10
- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and by any means,
- subject to any conditions or exceptions specified in writing by the Commissioners.” 15
- 2 In consequence of the amendment made by paragraph 1(3), in the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, in Schedule 4, omit paragraph 89(4)(a).

*Stamp duty land tax*

- 3 Part 4 of FA 2003 (stamp duty land tax) is amended as follows. 20
- 4 Schedule 10 (stamp duty land tax: returns, enquiries, assessments and appeals) is amended in accordance with paragraphs 5 to 7.
- 5 (1) Paragraph 9 (duty to keep and preserve records) is amended as follows.
- (2) In sub-paragraph (2), for “for six years after the effective date of the transaction and until any later” substitute “until the end of the later of the relevant day and the”. 25
- (3) After that sub-paragraph insert –
- “(2A) “The relevant day” means –
- (a) the sixth anniversary of the effective date of the transaction, or 30
- (b) such earlier day as may be specified in writing by the Commissioners for Her Majesty’s Revenue and Customs (and different days may be specified for different cases).”
- (4) After sub-paragraph (3) insert –
- “(4) The Commissioners for Her Majesty’s Revenue and Customs may by regulations – 35
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
- (b) provide that those records include supporting documents so specified. 40
- (5) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty’s Revenue and Customs in

- accordance with the regulations (and not withdrawn by a subsequent notice).
- (6) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”
- 6 For paragraph 10 (preservation of information instead of original records) substitute – 5
- “10 The duty under paragraph 9 to preserve records may be satisfied –
- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and by any means, 10
- subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty’s Revenue and Customs.”
- 7 Accordingly, in the heading before paragraph 10, for “*instead of original records*” substitute “*etc*”. 15
- 8 Schedule 11 (record-keeping where transaction is not notifiable) is amended in accordance with paragraphs 9 to 11.
- 9 (1) Paragraph 4 (duty to keep and preserve records) is amended as follows.
- (2) In sub-paragraph (2), for “for six years after the effective date of the transaction” substitute “until the end of – 20
- (a) the sixth anniversary of the effective date of the transaction, or
- (b) such earlier day as may be specified in writing by the Commissioners for Her Majesty’s Revenue and Customs (and different days may be specified for different cases).” 25
- (3) After sub-paragraph (3) insert –
- “(4) The Commissioners for Her Majesty’s Revenue and Customs may by regulations –
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and 30
- (b) provide that those records include supporting documents so specified.
- (5) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty’s Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice). 35
- (6) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.” 40
- 10 For paragraph 5 (preservation of information instead of original records) substitute –
- “5 The duty under paragraph 4 to preserve records may be satisfied –
- (a) by preserving them in any form and by any means, or 45

- (b) by preserving the information contained in them in any form and by any means,  
subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty’s Revenue and Customs.”
- 11 Accordingly, in the heading before paragraph 5, for “*instead of original records*” substitute “*etc*”. 5
- 12 Schedule 11A (claims not included in returns) is amended in accordance with paragraphs 13 and 14.
- 13 (1) Paragraph 3 (duty to keep and preserve records) is amended as follows.
- (2) Omit sub-paragraphs (3) and (4). 10
- (3) After sub-paragraph (4) insert –
- “(4A) The Commissioners for Her Majesty’s Revenue and Customs may by regulations –
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and 15
- (b) provide that those records include supporting documents so specified.
- (4B) Regulations under this paragraph may make provision by reference to things specified in a notice published by the Commissioners for Her Majesty’s Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice). 20
- (4C) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.” 25
- 14 After that paragraph insert –
- “Preservation of information etc*
- 3A The duty under paragraph 3 to preserve records may be satisfied –
- (a) by preserving them in any form and by any means, or 30
- (b) by preserving the information contained in them in any form and by any means,  
subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty’s Revenue and Customs.”
- Aggregates levy* 35
- 15 Schedule 7 to FA 2001 (aggregates levy: information and evidence etc) is amended as follows.
- 16 (1) Paragraph 2 (records) is amended as follows.
- (2) For sub-paragraphs (4) and (5) substitute –
- “(4) A duty under regulations under this paragraph to preserve records may be discharged – 40
- (a) by preserving them in any form and by any means, or

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	(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Commissioners.”	
(3)	In sub-paragraph (9), omit “approval or” and “given or”.	5
17	Omit paragraph 3 (evidence of records that are required to be preserved).	
	<i>Climate change levy</i>	
18	Schedule 6 to FA 2000 (climate change levy) is amended as follows.	
19	(1) Paragraph 125 (records) is amended as follows.	
	(2) For sub-paragraphs (4) and (5) substitute—	10
	“(4) A duty under regulations under this paragraph to preserve records may be discharged—	
	(a) by preserving them in any form and by any means, or	
	(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Commissioners.”	15
(3)	In sub-paragraph (9), omit “approval or” and “given or”.	
20	Omit paragraph 126 (evidence of records that are required to be preserved).	
	<i>Landfill tax</i>	20
21	In paragraph 2 of Schedule 5 to FA 1996 (landfill tax: records), for sub-paragraphs (4) to (7) substitute—	
	“(4) A duty under regulations under this paragraph to preserve records may be discharged—	
	(a) by preserving them in any form and by any means, or	25
	(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Commissioners.”	
	SCHEDULE 51	Section 99 30
	TIME LIMITS FOR ASSESSMENTS, CLAIMS ETC	
	<i>Insurance premium tax</i>	
1	Schedule 7 to FA 1994 (insurance premium tax) is amended as follows.	
2	In paragraph 8(4) (recovery of overpaid tax), for “three years” substitute “4 years”.	35
3	In paragraph 22(9) (interest payable by Commissioners), for “three years” substitute “4 years”.	

- 4 (1) Paragraph 26 (assessments: time limits) is amended as follows.
- (2) In sub-paragraph (1), for the words from “three years after” (in the first place) to the end substitute “4 years after the relevant event”.
- (3) After that sub-paragraph insert –
- “(1A) In this paragraph “the relevant event”, in relation to an assessment, means –
- (a) the end of the accounting period concerned, or
- (b) in the case of an assessment under paragraph 25 of an amount due by way of a penalty other than a penalty referred to in paragraph 25(2), the event giving rise to the penalty.”
- (4) In sub-paragraph (3), for “sub-paragraph (1)” substitute “sub-paragraph (1A)”.
- (5) For sub-paragraph (4) substitute –
- “(4) An assessment of an amount due from a person in a case involving a loss of tax –
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 53(1) or (2) or 53AA(1) or (3),
- may be made at any time not more than 20 years after the relevant event.
- (5) In sub-paragraph (4)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.”

*Inheritance tax*

- 5 IHTA 1984 is amended as follows.
- 6 In section 131 (transfers within 7 years before death: the relief), after subsection (2) insert –
- “(2ZA) A claim under subsection (2)(b) must be made not more than 4 years after the transferor’s death.”
- 7 In section 146(2)(a) (Inheritance (Provision for Family and Dependants) Act 1975), after “claim for the purpose” insert “not more than 4 years after the date on which the order is made”.
- 8 In section 150 (voidable transfers), insert at the end –
- “(3) A claim under this section must be made not more than 4 years after the claimant knew, or ought reasonably to have known, that the relevant transfer has been set aside.”
- 9 In section 179 (sale of shares etc from deceased’s estate: the relief), after subsection (2) insert –
- “(2A) A claim under this Chapter must be made not more than 4 years after the end of the period mentioned in subsection (1)(a).”

- 10 In section 191 (sale of land from deceased's estate: the relief), after subsection (1) insert –  
“(1A) A claim under this Chapter must be made not more than 4 years after the end of the period mentioned in subsection (1)(a).”
- 11 (1) Section 240 (underpayments) is amended as follows. 5  
(2) In subsection (2), for “six years” substitute “4 years”.  
(3) For subsection (3) substitute –  
“(3) Subsection (2) has effect subject to subsections (4) and (5).  
(4) Proceedings in a case involving a loss of tax brought about carelessly by a person liable for the tax (or a person acting on behalf of such a person) may be brought at any time not more than 6 years after the later of the dates in subsection (2)(a) and (b). 10  
(5) Proceedings in a case involving a loss of tax brought about deliberately by a person liable for the tax (or a person acting on behalf of such a person) may be brought at any time not more than 20 years after the later of those dates. 15  
(6) Subsection (7) applies to any case not falling within subsection (2) where too little tax has been paid in respect of a chargeable transfer, provided that the case does not involve a loss of tax brought about deliberately by a person liable for the tax (or a person acting on behalf of such a person). 20  
(7) Where this subsection applies –  
(a) no proceedings are to be brought for the recovery of the tax after the end of the period of 20 years beginning with the date on which the chargeable transfer was made, and 25  
(b) at the end of that period any liability for the tax and any Inland Revenue charge for that tax is extinguished.  
(8) In relation to cases of tax chargeable under Chapter 3 of Part 3 of this Act (apart from section 79), the references in subsections (4), (5) and (6) to a person liable for the tax are to be treated as including references to a person who is the settlor in relation to the settlement.” 30
- 12 After that section insert –  
**“240A Underpayments: supplementary**  
(1) This section applies for the purposes of section 240.  
(2) A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss. 35  
(3) Where –  
(a) information is provided to Her Majesty's Revenue and Customs,  
(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and 40  
(c) that person fails to take reasonable steps to inform Her Majesty's Revenue and Customs,

any loss of tax brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

- (4) References to a loss of tax brought about deliberately by a person include a loss of tax brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.” 5

13 In section 241(1) (overpayments), for “six years” substitute “4 years”.

#### *Stamp duty land tax*

14 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

15 (1) Schedule 10 (returns, enquiries, assessments and appeals) is amended as follows. 10

(2) In paragraph 25(3) (determination of tax chargeable if no return delivered), for “six years” substitute “4 years”.

(3) In paragraph 27(2)(a) (determination superseded by actual self-assessment), for “six years” substitute “4 years”. 15

(4) Paragraph 31 (time limit for assessment) is amended in accordance with sub-paragraphs (5) to (8).

(5) In sub-paragraph (1), for “six years” substitute “4 years”.

(6) For sub-paragraph (2) substitute –

“(2) An assessment of a person to tax in a case involving a loss of tax brought about carelessly by the purchaser or a related person may be made at any time not more than 6 years after the effective date of the transaction to which it relates (subject to sub-paragraph (2A)). 20

(2A) An assessment of a person to tax in a case involving a loss of tax – 25

(a) brought about deliberately by the purchaser or a related person,

(b) attributable to a failure by the person to comply with an obligation under section 76(1) or paragraph 3(3)(a), 4(3)(a) or 8(3)(a) of Schedule 17A, or 30

(c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty’s Revenue and Customs), 35

may be made at any time not more than 20 years after the effective date of the transaction to which it relates.”

(7) In sub-paragraph (4)(a), for “three years” substitute “4 years”.

(8) After sub-paragraph (5) insert –

“(6) In this paragraph “related person”, in relation to a purchaser, means – 40

(a) a person acting on behalf of the purchaser, or

- (b) a person who was a partner of the purchaser at the relevant time.”
- (9) After paragraph 31 insert –
- “Losses brought about carelessly or deliberately*
- 31A (1) This paragraph applies for the purposes of paragraph 31. 5
- (2) A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss.
- (3) Where –
- (a) information is provided to Her Majesty’s Revenue and Customs, 10
- (b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
- (c) that person fails to take reasonable steps to inform Her Majesty’s Revenue and Customs, 15
- any loss of tax brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.
- (4) References to a loss of tax brought about deliberately by a person include a loss of tax brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.” 20
- (10) In paragraph 34(2) (relief in case of mistake in return), for “six years” substitute “4 years”.
- 16 (1) Paragraph 8 of Schedule 14 (time limit for determination of penalties) is amended as follows. 25
- (2) In sub-paragraph (2) –
- (a) for “six years” substitute “4 years”, and
- (b) after “began to be incurred” insert “(“the relevant date”)”.
- (3) In sub-paragraph (3), insert at the end “(subject to any of the following provisions of this paragraph allowing a longer period)”. 30
- (4) After sub-paragraph (4) insert –
- “(4A) Where a person is liable to a penalty in a case involving a loss of tax brought about carelessly by the person (or by another person acting on that person’s behalf), the penalty may be determined, or the proceedings may be brought, at any time not more than 6 years after the relevant date (subject to sub-paragraphs (4B) and (5)). 35
- (4B) Where a person is liable to a penalty in a case involving a loss of tax –
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), 40
- (b) attributable to a failure by the person to comply with an obligation under section 76(1) or paragraph 3(3)(a), 4(3)(a) or 8(3)(a) of Schedule 17A, or



	(c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty's Revenue and Customs),	5
	the penalty may be determined, or the proceedings may be brought, at any time not more than 20 years after the relevant date.	
	(4C) Paragraph 31A of Schedule 10 (losses brought about carelessly or deliberately) applies for the purpose of this paragraph.”	
	<i>Petroleum revenue tax</i>	10
17	OTA 1975 is amended as follows.	
18	(1) The Table in paragraph 1(1) of Schedule 2 (applying provisions of TMA 1970 in relation to management and collection of petroleum revenue tax) is amended as follows.	
	(2) In the entry relating to section 33 of TMA 1970, in the second column, for the entry relating to subsection (1) substitute “In subsection (1), for “year of assessment” substitute “chargeable period”.”	15
	(3) Omit the entries relating to sections 34 and 36 of TMA 1970.	
19	In paragraph 10 of Schedule 2 (assessments to tax and determinations of loss etc), after sub-paragraph (1) insert –	20
	“(1A) An assessment under sub-paragraph (1) may be made at any time not more than 4 years after the end of the chargeable period to which it relates (subject to paragraphs 12A and 12B).”	
20	(1) Paragraph 12 of Schedule 2 (further assessments and determinations) is amended as follows.	25
	(2) After sub-paragraph (1) insert –	
	“(1A) An assessment (or an amendment of an assessment) under sub-paragraph (1) may be made at any time not more than 4 years after the end of the chargeable period to which the assessment relates (subject to sub-paragraph (1B) and paragraphs 12A and 12B).	30
	(1B) The time limits in sub-paragraph (1A) and paragraphs 12A and 12B do not apply to an amendment of an assessment where the amendment is made in consequence (directly or indirectly) of –	
	(a) the granting of relief under section 7(2) or (3) to any participator for allowable losses accruing in any chargeable period, or	35
	(b) a notice of variation served under paragraph 9 of Schedule 5 on any responsible person in respect of a claim for any claim period.”	
	(3) In sub-paragraph (2) –	40
	(a) omit “(notwithstanding anything in section 34 of the Taxes Management Act 1970 (ordinary time limit for assessment))”,	
	(b) for “six years” substitute “4 years”, and	
	(c) insert at the end “(subject to paragraphs 12A and 12B)”.	

- 21 In paragraph 12A(1) of Schedule 2 (time limit for assessment following extension of time for delivery of return), for “five years” substitute “4 years”.
- 22 In that Schedule, after paragraph 12A insert –
- “12B(1) In a case involving a relevant situation brought about carelessly by a participator (or a person acting on behalf of a participator), an assessment (or an amendment of an assessment) under this Schedule on the participator may be made at any time not more than 6 years after the end of the relevant chargeable period (subject to sub-paragraph (2)). 5
  - (2) In a case involving a relevant situation brought about deliberately by a participator (or a person acting on behalf of a participator), an assessment (or an amendment of an assessment) on the participator may be made at any time not more than 20 years after the end of the relevant chargeable period. 10
  - (3) “Relevant situation” means a situation in which – 15
    - (a) there is a loss of tax,
    - (b) the assessable profit charged to tax by or stated in an assessment for a chargeable period ought to be or to have been larger,
    - (c) the allowable loss stated in an assessment or a determination of loss for a chargeable period ought to be or to have been smaller, or 20
    - (d) an assessment to tax should have been made for a chargeable period but was not made.
  - (4) “Relevant chargeable period” means – 25
    - (a) in the case of a further assessment under paragraph 12(2), the chargeable period in which the excessive allowable loss accrued, and
    - (b) in any other case, the chargeable period to which the assessment relates. 30
  - (5) Where the participator carried on a trade or business with one or more other persons at any time in the chargeable period for which the assessment under sub-paragraph (1) or (2) is made, an assessment to tax in respect of the profits of that trade or business may also be made on any of the participator’s partners. 35
  - (6) In determining the amount of the tax to be charged on a person for a chargeable period in an assessment in a case mentioned in sub-paragraph (1) or (2) (including an assessment under sub-paragraph (5)), effect must be given to any relief or allowance to which that person would have been entitled for that period if a valid claim or application had been made. 40
  - (7) Sub-paragraph (6) only applies if the person on whom the assessment is made so requires.
  - (8) Subsections (5) to (7) of section 118 of the Taxes Management Act 1970 (losses and situations brought about carelessly or deliberately) apply for the purposes of this paragraph as they apply for the purposes of that Act. 45

- (9) In subsection (6)(b) of that section (as it applies for the purposes of this paragraph), the reference to the person who provides the information has effect as if it included any person who becomes the responsible person for the oil field after the information is provided.” 5
- 23 (1) Paragraph 2 of Schedule 5 (allowance of expenditure other than abortive exploration expenditure: claim period) is amended as follows.
- (2) In sub-paragraph (1), for “six years” substitute “4 years”.
- (3) In sub-paragraph (7) –
- (a) in paragraph (c), for “four years” substitute “2 years”, and 10
- (b) in the words after that paragraph, for “six years” substitute “4 years”.
- 24 (1) Paragraph 9 of Schedule 5 (allowance of expenditure other than abortive exploration expenditure: notice of variation) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) omit the words from “, within” to “field”, 15
- (b) for “in the notice” substitute “in a notice of a decision under paragraph 3 above given to the responsible person for an oil field”, and
- (c) for “that period” substitute “the permitted period”.
- (3) Omit sub-paragraphs (1A) to (1C) and (2A). 20
- (4) After sub-paragraph (2A) insert –
- “(2B) In this paragraph “permitted period” means the period of 4 years beginning with the date on which the notice of the decision under paragraph 3 was given (but see sub-paragraph (2C)).
- (2C) Where the relevant amount was overstated in the notice of decision as a result of an inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) in connection with the claim –
- (a) if the inaccuracy was careless, the permitted period is extended to 6 years, and 30
- (b) if the inaccuracy was deliberate, the permitted period is extended to 20 years.”
- (5) Omit sub-paragraph (11).
- (6) Insert at the end –
- “(12) For the purposes of this section, an inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) is careless if it is due to a failure by the person to take reasonable care. 35
- (13) An inaccuracy in a statement or declaration made by the responsible person (or a person acting on behalf of the responsible person) is to be treated as careless if – 40
- (a) the responsible person, the person who acted on behalf of the responsible person or any person who becomes the responsible person for the oil field after the statement or

- declaration is made discovers the inaccuracy some time after it is made, and
- (b) that person fails to take reasonable steps to inform Her Majesty’s Revenue and Customs.”
- 25 (1) Schedule 6 (allowance of expenditure (other than abortive exploration expenditure) on claim by participator) is amended as follows. 5
- (2) In paragraph 1(2) (claim period), for “six years” substitute “4 years”.
- (3) In paragraph 2 (applying provisions of Schedule 5), in the Table, in the entry relating to paragraph 9 of Schedule 5, omit the words in the second column.
- 26 In paragraph 1(3) of Schedule 7 (allowance of abortive exploration expenditure), in the Table, in the entry relating to paragraph 9 of Schedule 5, in the second column omit – 10
- (a) the words “In sub-paragraph (1C) omit paragraph (c)” and “omit sub-paragraph (2A)”, and
- (b) the words from “and in sub-paragraph (11)” to the end. 15

*Aggregates levy*

- 27 Part 2 of FA 2001 (aggregates levy) is amended as follows.
- 28 In section 32(1) (repayments of overpaid aggregates levy), for “three years” substitute “4 years”.
- 29 (1) Paragraph 4 of Schedule 5 (time limits for assessments) is amended as follows. 20
- (2) In sub-paragraph (1)(b), for “three years” substitute “4 years”.
- (3) For sub-paragraph (3) substitute –
- “(3) An assessment of an amount due from a person in a case involving a loss of aggregates levy – 25
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 24(2) or paragraph 1 of Schedule 4, 30
- may be made at any time not more than 20 years after the end of the accounting period to which it relates (subject to sub-paragraph (4)).
- (3A) In sub-paragraph (3)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.” 35
- (4) In sub-paragraph (4) –
- (a) in paragraph (a), for “three years” substitute “4 years”, and
- (b) omit paragraph (b) (and the “and” before it). 40
- 30 In paragraph 2(10) of Schedule 8 (interest payable by Commissioners), for “three years” substitute “4 years”.

- 31 (1) Paragraph 4 of Schedule 10 (time limits on penalty assessments) is amended as follows.
- (2) In sub-paragraph (1), for “three years” substitute “4 years”.
- (3) For sub-paragraph (2) substitute –
- “(2) An assessment of a person to a civil penalty in a case involving a loss of aggregates levy –
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or
- (b) attributable to a failure by the person to comply with an obligation under section 24(2) or paragraph 1 of Schedule 4,
- may be made at any time not more than 20 years after the conduct to which the penalty relates (subject to sub-paragraph (3)).
- (2A) In sub-paragraph (2)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (3) –
- (a) in paragraph (a), for “three years” substitute “4 years”, and
- (b) omit paragraph (b) (and the “and” before it).

*Climate change levy*

- 32 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 33 In paragraph 64(1) (repayments of overpaid climate change levy), for “three years” substitute “4 years”.
- 34 In paragraph 66(10) (interest payable by the Commissioners), for “three years” substitute “4 years”.
- 35 (1) Paragraph 80 (time limits for assessments) is amended as follows.
- (2) In sub-paragraph (1)(b), for “three years” substitute “4 years”.
- (3) For sub-paragraph (3) substitute –
- “(3) An assessment of an amount due from a person in a case involving a loss of levy –
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or
- (b) attributable to a failure by the person to comply with an obligation under paragraph 53 or 55,
- may be made at any time not more than 20 years after the end of the accounting period to which it relates (subject to sub-paragraph (4)).
- (3A) In sub-paragraph (3)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.”
- (4) In sub-paragraph (4) –

- (a) in paragraph (a), for “three years” substitute “4 years”, and
  - (b) omit paragraph (b) (and the “and” before it).
- 36 (1) Paragraph 108 (time limits on penalty assessments) is amended as follows.
- (2) In sub-paragraph (1), for “three years” substitute “4 years”.
- (3) For sub-paragraph (2) substitute – 5
- “(2) An assessment of a person to a penalty in a case involving a loss of levy –
  - (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or
  - (b) attributable to a failure by the person to comply with an obligation under paragraph 53 or 55, 10
- may be made at any time not more than 20 years after the conduct to which the penalty relates (subject to sub-paragraph (3)).
- (2A) In sub-paragraph (2)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.” 15
- (4) In sub-paragraph (3) –
- (a) in paragraph (a), for “three years” substitute “4 years”, and
  - (b) omit paragraph (b) (and the “and” before it). 20

*Landfill tax*

- 37 Schedule 5 to FA 1996 (landfill tax) is amended as follows.
- 38 In paragraph 14(4) (recovery of overpaid tax), for “three years” substitute “4 years”.
- 39 In paragraph 29(8) (interest payable by Commissioners), for “three years” substitute “4 years”. 25
- 40 (1) Paragraph 33 (assessments: time limits) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) for “three years” (in the first place) substitute “4 years”, and
  - (b) for the words from “the end of” to the end substitute “the relevant event”. 30
- (3) After that sub-paragraph insert –
- “(1A) In this paragraph “the relevant event”, in relation to an assessment, means –
  - (a) the end of the accounting period concerned, or 35
  - (b) in the case of an assessment under paragraph 32 of an amount due by way of a penalty other than a penalty referred to in paragraph 32(2), the event giving rise to the penalty.”
- (4) In sub-paragraph (3), for “sub-paragraph (1)” substitute “sub-paragraph (1A)”. 40

- (5) For sub-paragraph (4) substitute –
- “(4) An assessment of an amount due from a person in a case involving a loss of tax –
- (a) brought about deliberately by the person (or by another person acting on that person’s behalf), or 5
- (b) attributable to a failure by the person to comply with an obligation under section 47(2) or (3),
- may be made at any time not more than 20 years after the relevant event (subject to sub-paragraph (5)).
- (4A) In sub-paragraph (4)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of that person.” 10
- (6) In sub-paragraph (5) –
- (a) in paragraph (a), for “three years” substitute “4 years”, and 15
- (b) omit paragraph (b) (and the “and” before it).

*Minor and consequential provision*

- 41 In section 36 of TMA 1970 (loss of tax brought about carelessly or deliberately etc), in subsections (2) and (3), for “for the purpose” substitute “in a case”. 20
- 42 In Schedule 39 to FA 2008, omit paragraph 66 (saving for provisions of TMA 1970 as applied by OTA 1975).
- 43 In consequence of the amendments made by this Schedule, omit –
- (a) in FA 1990, section 122, and
- (b) in FA 1997, in Schedule 5, paragraph 6(2)(b) and (c). 25

## SCHEDULE 52

Section 100

## RECOVERY OF OVERPAID TAX ETC

## PART 1

## INCOME TAX AND CAPITAL GAINS TAX

*Claims for recovery of overpaid tax etc* 30

- 1 In TMA 1970, for sections 33 and 33A substitute –

**“33 Recovery of overpaid tax etc**

Schedule 1AB contains provision for and in connection with claims for the recovery of overpaid income tax and capital gains tax.”

2 After Schedule 1AA to that Act insert—

“SCHEDULE 1AB

Section 33

RECOVERY OF OVERPAID TAX ETC

*Claim for relief for overpaid tax etc*

- 1 (1) This paragraph applies where— 5
- (a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or
  - (b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due. 10
- (2) The person may make a claim to the Commissioners for repayment or discharge of the amount.
- (3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule. 15
- (4) Paragraphs 3 to 7 (and sections 42 to 43C and Schedule 1A) make further provision about making and giving effect to claims under this Schedule. 20
- (5) Paragraph 8 makes provision about the application of this Schedule to amounts paid under contract settlements.
- (6) The Commissioners are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided— 25
- (a) by this Schedule and Schedule 1A (following a claim under this paragraph), or
  - (b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.
- (7) For the purposes of this Schedule, an amount paid by one person on behalf of another is treated as paid by the other person. 30

*Cases in which Commissioners not liable to give effect to claim*

- 2 (1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 4(5)).
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of— 35
- (a) a mistake in a claim, election or notice,
  - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,
  - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or 40



- 
- (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains. 5
- (4) Case C is where the claimant –
- (a) could have sought relief by taking such steps within a period that has now expired, and
- (b) knew, or ought reasonably to have known, before the end of that period that such relief was available. 10
- (5) Case D is where the claim is made on grounds that –
- (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or 15
- (b) have been put to Her Majesty’s Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 (settling of appeals by agreement)). 20
- (6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following –
- (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a “relevant appeal”) was determined by a court or tribunal (or is treated as having been so determined), 25
- (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and 30
- (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- (7) Case F is where the amount in question was paid or is liable to be paid –
- (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty’s Revenue and Customs, or 35
- (b) in accordance with an agreement between the claimant and Her Majesty’s Revenue and Customs settling such proceedings. 40
- (8) Case G is where –
- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant’s liability to income tax or capital gains tax (other than a mistake in a PAYE assessment or PAYE calculation), and 45
- (b) liability was calculated in accordance with the practice generally prevailing at the time.
- (9) Case H is where –

- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in a PAYE assessment or PAYE calculation, and
  - (b) the assessment or calculation was made in accordance with the practice generally prevailing at the end of the period of 12 months following the tax year for which the assessment or calculation was made. 5
- (10) For the purposes of Cases G and H—
  - (a) “PAYE assessment” means an assessment on the claimant made in accordance with section 709 of ITEPA 2003 (assessment in connection with PAYE deductions), and 10
  - (b) “PAYE calculation” means a calculation of the amount of a deduction or repayment made or to be made under PAYE regulations in respect of tax estimated to be payable by the claimant. 15

*Making a claim*

- 3 (1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.
- (2) In relation to a claim made in reliance on paragraph 1(1)(a), the relevant tax year is— 20
  - (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA of this Act, the tax year to which the return (or, if more than one, the first return) relates, and
  - (b) otherwise, the tax year in respect of which the payment was made. 25
- (3) In relation to a claim made in reliance on paragraph 1(1)(b), the relevant tax year is the tax year to which the assessment, determination or direction relates.
- (4) A claim under this Schedule may not be made by being included in a return under section 8, 8A or 12AA of this Act. 30

*The claimant: one person accountable for amounts payable by another etc*

- 4 (1) Sub-paragraph (2) applies where, under a relevant enactment, a person (“P”) is accountable to the Commissioners for—
  - (a) an amount representing income tax or capital gains tax that is or is estimated to be payable by another person (“T”), or 35
  - (b) any other amount that, under a relevant enactment, has been or is to be set off against a liability of T.
- (2) A claim under this Schedule in respect of the amount may be made only by T. 40
- (3) Sub-paragraph (4) applies where—
  - (a) a person (“P”) has paid an amount described in sub-paragraph (1)(a) or (b) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but 45

- (b) P was not so accountable.
- (4) A claim under this Schedule in respect of the amount may be made only by P.
- (5) The Commissioners are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T. 5
- (6) “Relevant enactment” means –
- (a) PAYE regulations,
- (b) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or 10
- (c) any other provision of or made under the Taxes Acts.

*The claimant: partnerships*

- 5 (1) This paragraph applies where –
- (a) a trade, profession or business is carried on by two or more persons in partnership, 15
- (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
- (c) the amount is excessive by reason of a mistake in a partnership return. 20
- (2) A claim under this Schedule in respect of the amount –
- (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
- (b) may not be made by any other person.
- (3) In relation to such a claim, references in this Schedule to the claimant are to any of the relevant partners. 25
- (4) “Relevant partner” means –
- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or 30
- (b) the personal representative of such a person.

*Assessment of claimant in connection with claim*

- 6 (1) This paragraph applies where –
- (a) a claim is made under this Schedule,
- (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or determination on the claimant in respect of any chargeable period, and 35
- (c) such an assessment or determination could be made but for a relevant restriction.
- (2) “Discovery assessment or determination” means – 40
- (a) an assessment under section 29(1), or
- (b) a discovery assessment or discovery determination under Schedule 18 to the Finance Act 1998 (company tax return etc).

- (3) The following are relevant restrictions –
  - (a) the conditions in section 29(3) to (5),
  - (b) the restrictions in paragraphs 42 to 45 of Schedule 18 to the Finance Act 1998, and
  - (c) the expiry of a time limit for making a discovery assessment or determination. 5
- (4) Where this paragraph applies –
  - (a) the relevant restrictions are to be disregarded, and
  - (b) the discovery assessment or determination is not out of time if it is made before the final determination of the claim. 10

*Amendment of partnership return etc in connection with claim*

- 7 (1) This paragraph applies where –
  - (a) a claim is made under this Schedule,
  - (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership, 15
  - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and 20
  - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions –
  - (a) the conditions in section 30B(4) to (6), and 25
  - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies –
  - (a) the relevant conditions are to be disregarded, and
  - (b) the amendment is not out of time if it is made before the final determination of the claim. 30

*Contract settlements*

- 8 (1) In paragraph 1(1)(a), the reference to an amount paid by way of income tax or capital gains tax includes an amount paid under a contract settlement in connection with income tax or capital gains tax believed to be due from any person. 35
- (2) Sub-paragraphs (3) to (6) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.
- (3) In relation to a claim under this Schedule in respect of that amount – 40
  - (a) the references to the claimant in paragraph 2(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,

- (b) the references to the claimant in paragraph 2(8) and (10) (Cases G and H) have effect as if they were references to the taxpayer,
- (c) the references to the claimant in paragraphs 6(1)(b) and 7(1)(b) have effect as if they were references to the taxpayer, and 5
- (d) references to tax in Schedule 1A (as it applies to a claim under this Schedule) include such an amount.
- (4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment or determination on the taxpayer in respect of any chargeable period. 10
- (5) The Commissioners may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination. 15
- (6) The obligations of the Commissioners and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).
- (7) In this paragraph –
- “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment; 20
- “discovery assessment or determination” has the same meaning as in paragraph 6.

#### *Interpretation*

- 9 (1) In this Schedule “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs. 25
- (2) For the purposes of this Schedule, a claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise).”

#### *Consequential amendments* 30

- 3 TMA 1970 is amended as follows.
- 4 For the heading before section 32 substitute “*Overpaid tax, excessive assessments etc*”.
- 5 (1) Section 43A (further assessments etc) is amended as follows.
- (2) After subsection (2A) insert – 35
- “(2B) For the purposes of this section and section 43B below, a claim under Schedule 1AB is relevant in relation to an assessment for a year of assessment if it relates to that year of assessment.”
- (3) In subsection (3), for “a claim” substitute “any other claim”.
- 6 (1) In paragraph 1 of Schedule 1A (claims etc not included in returns), in the definition of “partnership claim”, after “46(2)(b) of” insert “, or paragraph 5 of Schedule 1AB to,”. 40

- 7 (1) Paragraph 4 of that Schedule (giving effect to claims and amendments) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) for “and (4)” substitute “to (5)”, and
  - (b) omit “and to any other provision in the Taxes Acts which otherwise provides”. 5
- (3) In sub-paragraph (2), for “and (4)” substitute “to (5)”.
- (4) Insert at the end –
- “(5) This paragraph has effect subject to any provision in the Taxes Acts that –
  - (a) requires or allows effect to be given to a claim by other means, or
  - (b) provides that an amount is not to be discharged or repaid.” 10
- 8 In Schedule 3ZA (date by which payment to be made after amendment or correction of self-assessment), omit paragraph 10 (amendment following claim for error or mistake relief). 15
- 9 (1) Section 70H of CAA 2001 (lessee: requirement for tax return treating lease as long funding lease) is amended as follows.
- (2) In subsection (2), for “for relief under the error or mistake provisions in respect of” substitute “under the recovery provisions for relief in respect of an amount paid or liable to be paid that is excessive by reason of”. 20
- (3) In subsection (3) –
- (a) for ““the error or mistake provisions”” substitute ““the recovery provisions””, and
  - (b) for “section 33 of” substitute “Schedule 1AB to”. 25

*Transitional provision*

- 10 (1) In relation to a relevant claim, paragraph 3(1) of Schedule 1AB to TMA 1970 (inserted by this Part of this Schedule) has effect as if for “more than 4 years after” there were substituted “more than 5 years after the 31st January next following”. 30
- (2) “Relevant claim” means a claim within paragraph 3(2)(a) of Schedule 1AB to TMA 1970 that –
- (a) is made before 1 April 2012 by a person other than a company, and
  - (b) satisfies sub-paragraph (3).
- (3) A claim satisfies this sub-paragraph if notice requiring the return (or, if more than one, the first return) mentioned in paragraph 3(2)(a) of Schedule 1AB to TMA 1970 was not given within one year of the end of the tax year to which the return relates. 35

*Saving for petroleum revenue tax*

- 11 The amendments of TMA 1970 made by this Part of this Schedule do not have effect for the purposes of that Act as applied by paragraph 1 of Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax). 40

PART 2

CORPORATION TAX

*Claims for recovery of overpaid tax etc*

- |    |  |    |
|----|--|----|
| 12 | Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.   | 5  |
| 13 | For paragraph 51 (and the heading before that paragraph) substitute—   |    |
|    | <i>“Claim for relief for overpaid tax etc</i>  |    |
| 51 | (1) This paragraph applies where—  |    |
|    | (a) a person has paid an amount by way of tax but believes that the tax was not due, or  | 10 |
|    | (b) a person has been assessed as liable to pay an amount by way of tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due. |    |
|    | (2) The person may make a claim to the Commissioners for Her Majesty’s Revenue and Customs for repayment or discharge of the amount.   | 15 |
|    | (3) Paragraph 51A makes provision about cases in which the Commissioners for Her Majesty’s Revenue and Customs are not liable to give effect to a claim under this paragraph.            |    |
|    | (4) The following make further provision about making and giving effect to claims under this paragraph—  | 20 |
|    | (a) paragraphs 51B to 51F and Part 7 of this Schedule, and   |    |
|    | (b) Schedule 1A to the Taxes Management Act 1970 (which is applied by that Part).  |    |
|    | (5) Paragraph 51G makes provision about the application of this paragraph and paragraphs 51A to 51F to amounts paid under contract settlements.  | 25 |
|    | (6) The Commissioners for Her Majesty’s Revenue and Customs are not liable to give relief in respect of a case described in subparagraph (1)(a) or (b) except as provided—               | 30 |
|    | (a) by this Schedule and Schedule 1A to the Taxes Management Act 1970 (following a claim under this paragraph), or   |    |
|    | (b) by or under another provision of the Corporation Tax Acts.   |    |
|    | (7) For the purposes of this paragraph and paragraphs 51A to 51G, an amount paid by one person on behalf of another is treated as paid by the other person.                              | 35 |

*Cases in which Commissioners not liable to give effect to a claim*

- |     |   |    |
|-----|---|----|
| 51A | (1) The Commissioners for Her Majesty’s Revenue and Customs are not liable to give effect to a claim under paragraph 51 if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 51C(5)). | 40 |
|-----|---|----|

- 
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of –
- (a) a mistake in a claim, election or a notice,
  - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice, 5
  - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or
  - (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account. 10
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Corporation Tax Acts.
- (4) Case C is where the claimant – 15
- (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew, or ought reasonably to have known, before the end of that period that such relief was available.
- (5) Case D is where the claim is made on grounds that – 20
- (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
  - (b) have been put to Her Majesty’s Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 of the Taxes Management Act 1970 (settling of appeals by agreement)). 25
- (6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following – 30
- (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a “relevant appeal”) was determined by a court or tribunal (or is treated as having been so determined), 35
  - (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and
  - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal. 40
- (7) Case F is where the amount in question was paid or is liable to be paid –
- (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty’s Revenue and Customs, or 45
  - (b) in accordance with an agreement between the claimant and Her Majesty’s Revenue and Customs settling such proceedings.
- (8) Case G is where –



- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to corporation tax, and
- (b) liability was calculated in accordance with the practice generally prevailing at the time. 5

*Making a claim*

- 51B (1) A claim under paragraph 51 may not be made more than 4 years after the end of the relevant accounting period.
- (2) In relation to a claim made in reliance on paragraph 51(1)(a), the relevant accounting period is – 10
- (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a company tax return or returns, the accounting period to which the return (or, if more than one, the first return) relates, and
  - (b) otherwise, the accounting period in respect of which the amount was paid. 15
- (3) In relation to a claim made in reliance on paragraph 51(1)(b), the relevant accounting period is the accounting period to which the assessment, determination or direction relates.
- (4) A claim under paragraph 51 may not be made by being included in a company tax return. 20

*The claimant: one person accountable for amounts payable by another*

- 51C (1) Sub-paragraph (2) applies where a person (“P”) is accountable to the Commissioners for Her Majesty’s Revenue and Customs under a relevant enactment for an amount that has been or is to be set off against a liability of another person (“T”) under a relevant enactment. 25
- (2) A claim under paragraph 51 in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where – 30
- (a) a person (“P”) has paid an amount described in sub-paragraph (1) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
  - (b) P was not so accountable. 35
- (4) A claim under paragraph 51 in respect of the amount may be made only by P.
- (5) The Commissioners for Her Majesty’s Revenue and Customs are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T. 40
- (6) “Relevant enactment” means –
- (a) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
  - (b) any other provision of or made under the Taxes Acts. 45

*The claimant: partnerships*

- 51D (1) This paragraph applies where –
- (a) a trade, profession or business is carried on by two or more persons in partnership,
  - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and 5
  - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under paragraph 51 in respect of the amount –
- (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and 10
  - (b) may not be made by any other person.
- (3) In relation to such a claim, references in paragraphs 51A to 51F to the claimant are to any of the relevant partners.
- (4) “Relevant partner” means – 15
- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or
  - (b) the personal representative of such a person.

*Assessment of claimant in connection with claim* 20

- 51E (1) This paragraph applies where –
- (a) a claim is made under paragraph 51,
  - (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or discovery determination on the claimant in respect of any accounting period, and 25
  - (c) such an assessment or determination could be made but for a relevant restriction.
- (2) The following are relevant restrictions –
- (a) the restrictions in paragraphs 42 to 45, and 30
  - (b) the expiry of a time limit for making a discovery assessment or discovery determination.
- (3) Where this paragraph applies –
- (a) the relevant restrictions are to be disregarded, and
  - (b) the discovery assessment or discovery determination is not out of time if it is made before the final determination of the claim. 35
- (4) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise). 40

*Amendment of partnership return etc in connection with claim*

- 51F (1) This paragraph applies where –
- (a) a claim is made under paragraph 51,

- 
- (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
  - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) of the Taxes Management Act 1970 (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and 5
  - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions – 10
    - (a) the conditions in section 30B(4) to (6) of the Taxes Management Act 1970, and
    - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies – 15
    - (a) the relevant conditions are to be disregarded, and
    - (b) the amendment is not out of time if it is made before the final determination of the claim.
- (4) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise). 20

*Contract settlements*

- 51G (1) In paragraph 51(1)(a), the reference to an amount paid by a company by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due. 25
- (2) Sub-paragraphs (3) to (6) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.
- (3) In relation to a claim under paragraph 51 in respect of that amount – 30
  - (a) the references to the claimant in paragraph 51A(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
  - (b) the reference to the claimant in paragraph 51A(8) (Case G) has effect as if it were a reference to the taxpayer, 35
  - (c) the references to the claimant in paragraphs 51E(1)(b) and 51F(1)(b) have effect as if they were references to the taxpayer, and
  - (d) references to tax in Schedule 1A to the Taxes Management Act 1970 (as it applies to a claim under this Part of this Schedule) include such an amount. 40
- (4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment or discovery determination on the taxpayer in respect of any chargeable period. 45

- (5) The Commissioners for Her Majesty’s Revenue and Customs may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination.
- (6) The obligations of the Commissioners for Her Majesty’s Revenue and Customs and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5). 5
- (7) “Contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners for Her Majesty’s Revenue and Customs under or by virtue of an enactment.” 10
- 14 Accordingly, in the heading of Part 6, at the beginning insert “OVERPAID TAX,”.
- 15 (1) Paragraph 62 (consequential claims etc that may be made) is amended as follows. 15
- (2) After sub-paragraph (1) insert –
- “(1A) This paragraph applies to a claim under paragraph 51 relating to the accounting period in respect of which the amendment or assessment is made.”
- (3) In sub-paragraph (2), for “a claim” substitute “any other claim”. 20
- 16 In paragraph 88 (conclusiveness of amounts stated in return), insert at the end –
- “(8) Nothing in this paragraph affects a power of the company making the return to make a claim under paragraph 51 (claim for relief for overpaid tax).” 25

*Consequential amendment*

- 17 In Schedule 1A to TMA 1970 (claims etc not included in returns), in paragraph 1, in the definition of “partnership claim”, after “Act” insert “or paragraph 51D of Schedule 18 to the Finance Act 1998 (claims for overpaid corporation tax)”. 30

SCHEDULE 53

Section 101

LATE PAYMENT INTEREST

PART 1

SPECIAL PROVISION: AMOUNT CARRYING LATE PAYMENT INTEREST

*Payments on account and balancing payment* 35

- 1 (1) This paragraph applies where as regards a tax year –
- (a) payments on account are payable by a person (“P”),
- (b) P makes a claim under section 59A(3) or (4) of TMA 1970 (reduction of payments on account) in respect of those amounts, and

- (c) a balancing payment becomes payable by P.
- (2) Late payment interest is to be calculated as if each of the payments on account had been equal to the lesser of the following amounts –
- (a) the aggregate of that payment on account and 50% of the balancing payment, and 5
  - (b) the amount which would have been payable as a payment on account if the claim under section 59A(3) or (4) had not been made.
- (3) In determining for the purposes of this paragraph what amount (if any) is payable by P as a balancing payment –
- (a) it is to be assumed that both of the payments on account have been paid, 10
  - (b) no account is to be taken of any amount which has been paid on account otherwise than under section 59A(2) of TMA 1970, and
  - (c) no account is to be taken of any amount which is payable by way of capital gains tax. 15
- (4) In this paragraph –
- “balancing payment” means an amount payable –
    - (a) in accordance with section 59B(3), (4) or (5) of TMA 1970, or
    - (b) in accordance with section 59B(6) of that Act in respect of income tax assessed under section 29 of that Act; 20  - “payment on account” means an amount payable in accordance with section 59A(2) of TMA 1970.

*Payments on account and overpayment*

- 2 (1) This paragraph applies where as regards any person (“P”) and a tax year –
- (a) payments on account become payable by P, and 25
  - (b) an overpayment becomes repayable to P.
- (2) Late payment interest is payable only on the amount by which each of the payments on account exceeds 50% of the overpayment.
- (3) In determining for the purposes of this paragraph what amount (if any) is repayable to P as an overpayment –
- (a) no account is to be taken of any amount which has been paid on account otherwise than under section 59A(2) of TMA 1970, and
  - (b) no account is to be taken of any amount which is payable by way of capital gains tax. 30
- (4) In this paragraph –
- “overpayment” means an amount repayable in accordance with section 59B(3), (4) or (5) of TMA 1970;
  - “payment on account” means an amount payable in accordance with section 59A(2) of that Act. 35

PART 2

SPECIAL PROVISION: LATE PAYMENT INTEREST START DATE

*Amendments and discovery assessments etc*

- 3 (1) This paragraph applies to any amount which is due and payable as a result of – 5
- (a) an amendment or correction to an assessment or self-assessment (“assessment A”),
  - (b) an assessment made by HMRC in place of or in addition to an assessment (“assessment A”) which was made by a taxpayer, or
  - (c) an assessment made by HMRC in place of an assessment (“assessment A”) which ought to have been made by a taxpayer. 10
- (2) The late payment interest start date in respect of that amount is the date which would have been the late payment interest start date if – 15
- (a) assessment A had been complete and accurate and had been made on the date (if any) by which it was required to be made, and
  - (b) accordingly, the amount had been due and payable as a result of assessment A.
- (3) In the case of a person (“P”) who failed to give notice as required under section 7 of TMA 1970 (notice of liability to tax), the reference in subparagraph (1)(c) to an assessment which ought to have been made by P is a reference to the assessment which P would have been required to make if an officer of Revenue and Customs had given notice under section 8 of that Act. 20
- (4) In this paragraph “assessment” means any assessment or determination (however described) of any amount due and payable to HMRC.

*Amounts postponed pending appeal under TMA 1970* 25

- 4 (1) This paragraph applies to any amount if payment of the amount is postponed under section 55 of TMA 1970 pending the determination of an appeal against an assessment of income tax or capital gains tax.
- (2) The late payment interest start date in respect of that amount is the date which would have been the late payment interest start date if there had been no appeal. 30

*Overpayment of tax*

- 5 (1) This paragraph applies to any amount of income tax or capital gains tax which is assessed and recoverable by virtue of an assessment under section 30 of TMA 1970 (recovery of overpayment of tax etc). 35
- (2) The late payment interest start date in respect of that amount is 31 January next following the tax year in respect of which the assessment under section 30 is made.

*Recovery of payment of tax credit or interest*

- 6 In respect of any amount charged by an assessment mentioned in section 252(5) of ICTA (recovery of payment of tax credit or interest on such a 40

payment), the late payment interest start date is the date when the payment of tax credit or interest was made.

*Inheritance tax payable by instalments*

- |   |  |  |
|---|--|--|
| 7 | <p>(1) The late payment interest start date for each instalment of an amount to which this paragraph applies is the date on which that instalment is to be paid.</p> <p>(2) This paragraph applies to any amount of inheritance tax which is payable by instalments under section 229 of IHTA 1984.</p> <p>(3) This paragraph also applies to any amount of inheritance tax which is payable by instalments under section 227 of IHTA 1984 if the value on which the amount is payable is attributable to –</p> <p style="padding-left: 20px;">(a) the value of qualifying property within subsection (2)(b) or (c) of that section (shares or securities, or business or interest in a business), or</p> <p style="padding-left: 20px;">(b) value treated as reduced under Chapter 2 of Part 5 of that Act.</p> <p>(4) But this paragraph does not apply to an amount by virtue of sub-paragraph (3)(a) if the qualifying property is shares or securities of a company which –</p> <p style="padding-left: 20px;">(a) falls within sub-paragraph (5), but</p> <p style="padding-left: 20px;">(b) does not fall within sub-paragraph (6) or (7).</p> <p>(5) A company falls within this sub-paragraph if its business consists wholly or mainly of one or more of the following –</p> <p style="padding-left: 20px;">(a) dealing in securities, stocks or shares, land or buildings, or</p> <p style="padding-left: 20px;">(b) making or holding investments.</p> <p>(6) A company falls within this sub-paragraph if its business consists wholly or mainly in being a holding company (as defined in section 1159 of the Companies Act 2006) of one or more companies not falling within sub-paragraph (5).</p> <p>(7) A company falls within this sub-paragraph if its business is carried on in the United Kingdom and is –</p> <p style="padding-left: 20px;">(a) wholly that of a market maker, or</p> <p style="padding-left: 20px;">(b) that of a discount house.</p> <p>(8) A company is a market maker if –</p> <p style="padding-left: 20px;">(a) it holds itself out at all normal times in compliance with the rules of The Stock Exchange as willing to buy and sell securities, stocks or shares at a price specified by it, and</p> <p style="padding-left: 20px;">(b) it is recognised as doing so by the Council of The Stock Exchange.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|--|

*Certain other amounts of inheritance tax*

- |   |  |           |
|---|--|-----------|
| 8 | <p>An amount of inheritance tax which is underpaid in consequence of any of the following provisions –</p> <p style="padding-left: 20px;">(a) section 146(1) of IHTA 1984,</p> <p style="padding-left: 20px;">(b) section 19 of the Inheritance (Provision for Family and Dependants) Act 1975, or</p> <p style="padding-left: 20px;">(c) Article 21 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979,</p> | <p>40</p> |
|---|--|-----------|

does not carry late payment interest before the order mentioned in that provision is made.

- 9 In the case of an amount which is payable under section 147(4) of IHTA 1984, the late payment interest start date is the day after the end of the period of 6 months beginning with the date of the testator’s death. 5

*VAT due from persons not registered as required*

- 10 (1) This paragraph applies where an amount of value added tax is due from a person (“P”) in respect of a period during which P was liable to be registered under VATA 1994 but was not registered.
- (2) The late payment interest start date in respect of the amount is the date which would have been the late payment interest date in respect of that amount if P had become registered when P had first become liable to be so. 10

*Unauthorised VAT invoices*

- 11 (1) This paragraph applies where an unauthorised person issues an invoice showing an amount as being value added tax or as including an amount attributable to value added tax. 15
- (2) The late payment interest start date in respect of the amount which is shown as being value added tax, or which is to be taken as representing value added tax, is the date of the invoice.
- (3) In this paragraph “unauthorised person” has the meaning given in paragraph 2 of Schedule 41 to FA 2008. 20

*Death of taxpayer*

- 12 (1) This paragraph applies if –
- (a) a person chargeable to an amount of revenue dies before the amount becomes due and payable, and 25
  - (b) the executor or administrator is unable to pay the amount before obtaining probate or letters of administration or (in Scotland) the executor is unable to pay the amount before obtaining confirmation.
- (2) The late payment interest start date in respect of that amount is the later of the following – 30
- (a) the date which would be the late payment interest start date apart from this paragraph, and
  - (b) the day after the end of the period of 30 days beginning with the grant of probate or letters of administration or (in Scotland) the grant of confirmation. 35

PART 3

SPECIAL PROVISION: DATE TO WHICH LATE PAYMENT INTEREST RUNS

*Deduction of income tax at source*

- 13 (1) This paragraph applies to any income tax which –



- (a) was payable under Chapter 15 of Part 15 of ITA 2007 (collection: deposit-takers, building societies and certain companies) in respect of payments within section 946 of that Act made in a return period,
- (b) was not paid on the date when it was due under section 951 of that Act, and 5
- (c) has subsequently been discharged or repaid under section 953 of that Act because the person who made the payments received payments on which it suffered income tax by deduction in a later return period.
- (2) The income tax carries late payment interest until the earliest of—
- (a) the date when the income tax was paid, 10
- (b) the date when the person delivered a return for the later return period, and
- (c) the end of the period of 14 days beginning with the end of the later return period,
- but section 101 does not otherwise apply to the income tax. 15
- (3) In this paragraph “return period” means a period for which a return is required to be made under Chapter 15 of Part 15 of ITA 2007.

*Property accepted in lieu of inheritance tax*

- 14 If, in the case of any amount of inheritance tax—
- (a) HMRC agree under section 230 of IHTA 1984 to accept property in satisfaction of the amount, and 20
- (b) under terms of that acceptance the value to be attributed to the property for the purposes of the acceptance is determined as at a date earlier than that on which the property is actually accepted,
- the terms may provide that the amount of tax which is satisfied by the acceptance of the property does not carry late payment interest after that date. 25

PART 4

EFFECT OF INTEREST ON RELIEFS

- 15 (1) Where conditions A and B are met— 30
- (a) the appropriate adjustment is to be made of the amount of late payment interest payable, and
- (b) accordingly, the appropriate repayment (if any) is to be made of any late payment interest previously paid.
- (2) Condition A is that any amount of late payment interest is payable on— 35
- (a) any amount on account of income tax which is due and payable in accordance with section 59A(2) of TMA 1970, or
- (b) any amount of income tax or capital gains tax which becomes due and payable in accordance with section 55 or 59B of TMA 1970.
- (3) Condition B is that relief from the tax is given by a discharge of any of that amount of tax. 40
- Paragraph 16 makes provision about the circumstances in which P is entitled to have a relief treated as being given by discharge.
- (4) In this paragraph—

- “the appropriate adjustment” is such adjustment as is necessary to secure that the total amount of late payment interest, if any, paid or payable on the amount of tax in question is the same as it would have been if the tax discharged had never been charged;
- “the appropriate repayment” is such repayment as is necessary to give effect to the appropriate adjustment. 5
- 16 (1) Where –
- (a) income tax or capital gains tax has been paid for a chargeable period (“period A”), and
  - (b) relief from any amount of that tax is given to a person (“P”) by repayment, 10
- P is entitled to require that the amount repaid be treated for the purposes of paragraph 15(3), so far as it will go, as if it were a discharge of a qualifying charge to tax.
- (2) A qualifying charge to tax is any amount of tax charged on P (whether alone or together with other persons) by or by virtue of any assessment for or relating to period A. 15
- (3) But sub-paragraph (1) does not permit an amount to be applied –
- (a) to any assessment made after the relief was given, or
  - (b) to more than one assessment so as to reduce, without extinguishing, the amount of tax charged. 20

## SCHEDULE 54

Section 102

### REPAYMENT INTEREST

#### PART 1

#### REPAYMENT INTEREST START DATE: GENERAL RULE 25

##### *Introductory*

- 1 (1) This Part sets out the general rule for determining the repayment interest start date.
- (2) The general rule is subject to the special provision made by Part 2.

##### *Repayment of amounts paid to HMRC 30*

- 2 In the case of an amount which has been paid to HMRC, the repayment interest start date is the later of date A and (where applicable) date B.
- 3 Date A is the date on which the amount was paid to HMRC.
- 4 Date B is, in the case of an amount which –
- (a) has been paid in connection with a liability to make a payment to HMRC, and
  - (b) is to be repaid by them, 35
- the date on which the payment became due and payable to HMRC.

*Payment of amounts on return or claim*

- 5 (1) In the case of an amount which—
- (a) has not been paid to HMRC, and
  - (b) is payable by virtue of a return having been filed or a claim having been made,
- 5
- the repayment interest start date is the later of the dates mentioned in subparagraph (2).
- (2) The dates are—
- (a) the date (if any) on which the return was required to be filed or the claim was required to be made, and
  - (b) the date on which the return was in fact filed or the claim was in fact made.
- 10

PART 2

SPECIAL PROVISION AS TO REPAYMENT INTEREST START DATE

*Income tax deducted at source* 15

- 6 In the case of a repayment of income tax deducted at source for a tax year, the repayment interest start date is 31 January next following that year.

*Carry back of losses and averaging*

- 7 In the case of any amount which is to be repaid as a result of a claim for relief under—
- (a) paragraph 2 of Schedule 1B to TMA 1970 (carry back of loss relief from later year to earlier year), or
  - (b) Chapter 16 of Part 2 of ITTOIA 2005 (claim for averaging of profits of farmers etc over two consecutive years),
- 20
- the repayment interest start date is 31 January next following the year that is the later year in relation to the claim. 25

*MIRAS*

- 8 In the case of any payment under regulations under section 375(8) of ICTA (MIRAS: payments equivalent to deductions which could have been made), the repayment interest start date is 31 January next following the tax year in which the interest payment mentioned in section 375(8)(c) was made. 30

*Income accumulated under certain trusts*

- 9 In the case of a repayment made in consequence of a claim under section 228 of the Income Tax Act 1952 (relief in respect of income accumulated under trusts), the repayment is to be treated as if it were a repayment of income tax paid by the claimant for the tax year in which the contingency mentioned in that section happened. 35

*Certain amounts of inheritance tax*

- 10 An amount of inheritance tax which is overpaid in consequence of any of the following provisions— 40

- (a) section 146(1) of IHTA 1984,  
 (b) section 19 of the Inheritance (Provision for Family and Dependants) Act 1975, or  
 (c) Article 21 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, 5  
 does not carry repayment interest before the order mentioned in that provision is made.
- 11 In the case of an amount which is repayable on a claim under section 146(2) or 150 of IHTA 1984, the repayment interest start date is the date on which the claim is made. 10
- 12 In the case of an amount which is repayable under section 147(2) of IHTA 1984, the repayment interest start date is the date on which the tax was paid.

## PART 3

## SUPPLEMENTARY

- Attribution of repayments* 15
- 13 (1) This paragraph applies for the purpose of determining, for the purposes of this Schedule, how a repayment to a person (“P”) in respect of income tax for a tax year is to be attributed to payments made in respect of that tax.
- (2) Such a repayment is to be attributed to payments in the following order –
- (a) first, to so much of any payment made by P under section 59B of TMA 1970 as is a payment in respect of income tax for that year, 20
- (b) second, in two equal parts to each of the payments (if any) made by P under section 59A of that Act on account of income tax for that year, and
- (c) third, to income tax deducted at source for that year. 25
- (3) In so far as it is attributable to a payment made in instalments, a repayment is to be attributed to a later instalment before being attributed to an earlier one.

*Interpretation*

- 14 In this Schedule any reference to income tax deducted at source for a tax year is a reference to – 30
- (a) income tax deducted (or treated as deducted) from any income, or treated as paid on any income, in respect of that year, and
- (b) amounts which, in respect of that year, are tax credits to which section 397(1) or 397A(2) of ITTOIA 2005 applies, 35
- but does not include a reference to amounts which, in that year, are deducted at source under PAYE regulations in respect of previous years.

## SCHEDULE 55

Section 106

## PENALTY FOR FAILURE TO MAKE RETURNS ETC

*Penalty for failure to make returns etc*

- 1 (1) A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date. 5
- (2) Paragraphs 2 to 13 set out –
- (a) the circumstances in which a penalty is payable, and
- (b) subject to paragraphs 14 to 17, the amount of the penalty.
- (3) If P’s failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)). 10
- (4) In this Schedule –
- “filing date”, in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC; 15
- “penalty date”, in relation to a return or other document, means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).
- (5) In the provisions of this Schedule which follow the Table –
- (a) any reference to a return includes a reference to any other document specified in the Table, and 20
- (b) any reference to making a return includes a reference to delivering a return or to delivering any such document.

	<i>Tax to which return etc relates</i>	<i>Return or other document</i>	
1	Income tax or capital gains tax	(a) Return under section 8(1)(a) of TMA 1970 (b) Accounts, statement or document required under section 8(1)(b) of TMA 1970	25
2	Income tax or capital gains tax	(a) Return under section 8A(1)(a) of TMA 1970 (b) Accounts, statement or document required under section 8A(1)(b) of TMA 1970	30
3	Income tax or corporation tax	(a) Return under section 12AA(2)(a) or (3)(a) of TMA 1970 (b) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970	
4	Income tax	(a) Annual return of payments and net tax deducted for the purposes of PAYE regulations (b) Return of revised payments and net tax deducted for those purposes where those amounts are revised after end of tax year	35
5	Income tax	Return under section 254 of FA 2004 (pension schemes)	40
6	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Return under regulations under section 70 of FA 2004	

	<i>Tax to which return etc relates</i>	<i>Return or other document</i>	
7	Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998	
8	Inheritance tax	Account under section 216 or 217 of IHTA 1984	
9	Stamp duty land tax	Land transaction return under section 76 of FA 2003 or further return under section 81 of that Act	5
10	Stamp duty land tax	Return under paragraph 3, 4 or 8 of Schedule 17A to FA 2003	
11	Stamp duty reserve tax	Notice of charge to tax under regulations under section 98 of FA 1986	10
12	Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to OTA 1975	
13	Petroleum revenue tax	Statement under section 1(1)(a) of PRTA 1980	

*Amount of penalty: occasional returns and annual returns*

- 2 Paragraphs 3 to 6 apply in the case of a return falling within any of items 1 to 5 and 7 to 13 in the Table. 15
- 3 P is liable to a penalty under this paragraph of £100.
- 4 (1) P is liable to a penalty under this paragraph if (and only if) –
- (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
  - (b) HMRC decide that such a penalty should be payable, and 20
  - (c) HMRC give notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c). 25
- (3) The date specified in the notice under sub-paragraph (1)(c) –
- (a) may be earlier than the date on which the notice is given, but
  - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).
- 5 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date. 30
- (2) The penalty under this paragraph is the greater of –
- (a) 5% of any liability to tax which would have been shown in the return in question, and 35
  - (b) £300.
- 6 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4). 40

(3)	If the withholding of the information is deliberate and concealed, the penalty is the greater of –	
(a)	100% of any liability to tax which would have been shown in the return in question, and	
(b)	£300.	5
(4)	If the withholding of the information is deliberate but not concealed, the penalty is the greater of –	
(a)	70% of any liability to tax which would have been shown in the return in question, and	
(b)	£300.	10
(5)	In any other case, the penalty under this paragraph is the greater of –	
(a)	5% of any liability to tax which would have been shown in the return in question, and	
(b)	£300.	
<i>Amount of penalty: CIS returns</i>		15
7	Paragraphs 8 to 13 apply in the case of a return falling within item 6 in the Table.	
8	P is liable to a penalty under this paragraph of £100.	
9	(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 2 months beginning with the penalty date.	20
	(2) The penalty under this paragraph is £200.	
10	(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.	25
	(2) The penalty under this paragraph is the greater of –	
	(a) 5% of any liability to make payments which would have been shown in the return in question, and	
	(b) £300.	
11	(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.	30
	(2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess the amount that P is liable to pay to HMRC in accordance with Chapter 3 of Part 3 of FA 2004, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).	35
	(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of –	
	(a) 100% of any liability to make payments which would have been shown in the return in question, and	40
	(b) £3,000.	
	(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of –	

- (a) 70% of any liability to make payments which would have been shown in the return in question, and
  - (b) £1,500.
- (5) In any other case, the penalty under this paragraph is the greater of—
  - (a) 5% of any liability to make payments which would have been shown in the return in question, and 5
  - (b) £300.
- 12 (1) P is liable to a penalty under this paragraph if (and only if)—
  - (a) P’s failure continues after the end of the period of 12 months beginning with the penalty date, and 10
  - (b) the information required in the return relates only to persons registered for gross payment (within the meaning of Chapter 3 of Part 3 of FA 2004).
- (2) Where, by failing to make the return, P withholds information which relates to such persons, the penalty under this paragraph is— 15
  - (a) if the withholding of the information is deliberate and concealed, £3,000, and
  - (b) if the withholding of the information is deliberate but not concealed, £1,500.
- 13 (1) This paragraph applies— 20
  - (a) at any time before P first makes a return falling within item 6 in the Table, to any return falling within that item, and
  - (b) at any time after P first makes a return falling within that item, to that return and any earlier return.
- (2) In respect of any return or returns to which this paragraph applies— 25
  - (a) paragraphs 10(2)(b) and 11(5)(b) do not apply, and
  - (b) P is not liable to penalties under paragraphs 8 and 9 which exceed, in total, £3,000.
- (3) In sub-paragraph (1)(b) “earlier return” means any return falling within item 6 which has a filing date earlier than the date on which P first made a return. 30

*Reductions for disclosure*

- 14 (1) Paragraph 15 provides for reductions in the penalty under paragraph 6(3) or (4) or 11(3) or (4) where P discloses information which has been withheld by a failure to make a return (“relevant information”).
- (2) P discloses relevant information by— 35
  - (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
  - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid. 40
- (3) Disclosure of relevant information—
  - (a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover the relevant information, and
  - (b) otherwise, is “prompted”. 45



- (4) In relation to disclosure “quality” includes timing, nature and extent.
- 15 (1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC must reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.
- (2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC must reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure. 5
- (3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC must reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure. 10
- (4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC must reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.
- (5) But HMRC must not under this paragraph – 15
- (a) reduce a penalty under paragraph 6(3) or (4) below £300, or
  - (b) reduce a penalty under paragraph 11(3) or (4) below the amount set by paragraph 11(3)(b) or (4)(b) (as the case may be).

*Special reduction*

- 16 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule. 20
- (2) In sub-paragraph (1) “special circumstances” does not include –
- (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to – 25
- (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings for a penalty.

*Interaction with other penalties and late payment surcharges*

- 17 (1) Where P is liable for a penalty under any paragraph of this Schedule which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax. 30
- (2) In sub-paragraph (1) the reference to “any other penalty” does not include – 35
- (a) a penalty under any other paragraph of this Schedule, or
  - (b) a penalty under Schedule 56 (penalty for late payment of tax).
- (3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

*Assessment*

- 18 (1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must – 40

- (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued. 5
- (3) An assessment of a penalty under any paragraph of this Schedule –
  - (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), 10
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return. 15
- 19 (1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with the filing date. 20
- (3) Date B is the last day of the period of 12 months beginning with –
  - (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
  - (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil. 25
- (4) In sub-paragraph (3)(a) “appeal period” means the period during which –
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 24(2)(b). 30

### *Appeal*

- 20 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P. 35
- 21 (1) An appeal under paragraph 20 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal). 40
- (2) Sub-paragraph (1) does not apply –
  - (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Act.

- 22 (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may –
- (a) affirm HMRC’s decision, or 5
  - (b) substitute for HMRC’s decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 16 –
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or 10
  - (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 16 was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review. 15
- (5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 21(1)).

*Reasonable excuse*

- 23 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure. 20
- (2) For the purposes of sub-paragraph (1) –
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control, 25
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased. 30

*Determination of penalty geared to tax liability where no return made*

- 24 (1) References to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates. 35
- (2) In the case of a penalty which is assessed at a time before P makes the return to which the penalty relates –
- (a) HMRC is to determine the amount mentioned in sub-paragraph (1) to the best of HMRC’s information and belief, and
  - (b) if P subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return). 45

- (3) In calculating a liability to tax which would have been shown in a return, no account is to be taken of any relief under subsection (4) of section 419 of ICTA (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section.

*Partnerships*

5

- 25 (1) This paragraph applies where –  
(a) the representative partner, or  
(b) a successor of the representative partner,  
fails to make a return falling within item 3 in the Table (partnership returns).
- (2) A penalty in respect of the failure is payable by every relevant partner. 10
- (3) In accordance with sub-paragraph (2), any reference in this Schedule to P is to be read as including a reference to a relevant partner.
- (4) An appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by –  
(a) the representative partner, or 15  
(b) a successor of the representative partner.
- (5) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.
- (6) In this paragraph – 20  
“relevant partner” means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;  
“representative partner” means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return; 25  
“successor” has the meaning given by section 12AA(11) of TMA 1970.

*Double jeopardy*

- 26 P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence. 30

*Interpretation*

- 27 (1) This paragraph applies for the construction of this Schedule.
- (2) The withholding of information by P is –  
(a) “deliberate and concealed” if P deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld, and 35  
(b) “deliberate but not concealed” if P deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.
- (3) “HMRC” means Her Majesty’s Revenue and Customs. 40

- (4) References to a liability to tax, in relation to a return falling within item 6 in the Table (construction industry scheme), are to a liability to make payments in accordance with Chapter 3 of Part 3 of FA 2004.
- (5) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination. 5

## SCHEDULE 56

Section 107

## PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

*Penalty for failure to pay tax*

- 1 (1) A penalty is payable by a person (“P”) where P fails to pay an amount of tax specified in column 3 of the Table below on or before the date specified in column 4. 10
- (2) Paragraphs 3 to 8 set out –
- (a) the circumstances in which a penalty is payable, and
- (b) subject to paragraph 9, the amount of the penalty.
- (3) If P’s failure falls within more than one provision of this Schedule, P is liable to a penalty under each of those provisions. 15
- (4) In the following provisions of this Schedule, the “penalty date”, in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after the date specified in or for the purposes of column 4 of the Table). 20

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>	
<i>PRINCIPAL AMOUNTS</i>				
1	Income tax or capital gains tax	Amount payable under section 59B(3) or (4) of TMA 1970	The date falling 30 days after the date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid	25
2	Income tax	Amount payable under PAYE regulations (except an amount falling within item 20)	The date determined by or under PAYE regulations as the date by which the amount must be paid	30
3	Income tax	Amount shown in return under section 254(1) of FA 2004	The date falling 30 days after the date specified in section 254(5) of FA 2004 as the date by which the amount must be paid	
4	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Amount payable under section 62 of FA 2004 (except an amount falling within item 17, 23 or 24)	The date determined by or under regulations under section 62 of FA 2004 as the date by which the amount must be paid	35
5	Corporation tax	Amount shown in company tax return under paragraph 3 of Schedule 18 to FA 1998	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)	40

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>	
6	Corporation tax	Amount payable under regulations under section 59E of TMA 1970 (except an amount falling within item 17, 23 or 24)	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)	5
7	Inheritance tax	Amount payable under section 226 of IHTA 1984 (except an amount falling within item 14 or 21)	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount	10
8	Inheritance tax	Amount payable under section 227 or 229 of IHTA 1984 (except an amount falling within item 14 or 21)	For the first instalment, the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount For any later instalment, the date falling 30 days after the date determined under section 227 or 229 of IHTA 1984 as the date by which the instalment must be paid	15
9	Stamp duty land tax	Amount payable under section 86(1) or (2) of FA 2003	The date falling 30 days after the date specified in section 86(1) or (2) of FA 2003 as the date by which the amount must be paid	20
10	Stamp duty reserve tax	Amount payable under section 87, 93 or 96 of FA 1986 or Schedule 19 to FA 1999 (except an amount falling within item 17, 23 or 24)	The date falling 30 days after the date determined by or under regulations under section 98 of FA 1986 as the date by which the amount must be paid	25
11	Petroleum revenue tax	Amount charged in an assessment under paragraph 11(1) of Schedule 2 to OTA 1975	The date falling 30 days after the date determined in accordance with paragraph 13 of Schedule 2 to OTA 1975 as the date by which the amount must be paid	30
<i>AMOUNTS PAYABLE IN DEFAULT OF A RETURN BEING MADE</i>				
12	Income tax or capital gains tax	Amount payable under section 59B(5A) of TMA 1970	The date falling 30 days after the date specified in section 59B(5A) of TMA 1970 as the date by which the amount must be paid	35
13	Corporation tax	Amount shown in determination under paragraph 36 or 37 of Schedule 18 to FA 1998	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)	40
14	Inheritance tax	Amount shown in a determination made by HMRC in the circumstances set out in paragraph 2	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount	45
15	Stamp duty land tax	Amount shown in determination under paragraph 25 of Schedule 10 to FA 2003 (including that paragraph as applied by section 81(3) of that Act)	The date falling 30 days after the filing date for the return in question	50
16	Petroleum revenue tax	Amount charged in an assessment made where participator fails to deliver return for a chargeable period	The date falling 6 months and 30 days after the end of the chargeable period	55

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>	
17	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 12 to 15) which is shown in an assessment or determination made by HMRC in the circumstances set out in paragraph 2	The date falling 30 days after the date by which the amount would have been required to be paid if it had been shown in the return in question	5
<i>AMOUNTS SHOWN TO BE DUE IN OTHER ASSESSMENTS, DETERMINATIONS, ETC</i>				
18	Income tax or capital gains tax	Amount payable under section 55 of TMA 1970	The date falling 30 days after the date determined in accordance with section 55(3), (4), (6) or (9) of TMA 1970 as the date by which the amount must be paid	10
19	Income tax or capital gains tax	Amount payable under section 59B(5) or (6) of TMA 1970	The date falling 30 days after the date specified in section 59B(5) or (6) of TMA 1970 as the date by which the amount must be paid	15
20	Income tax	Amount shown in determination made by HMRC where it appears that tax payable under PAYE regulations has not been paid	The date determined by or under PAYE regulations as the date by which the amount must be paid	20
21	Inheritance tax	Amount shown in— (a) an amendment or correction of a return showing an amount falling within item 7 or 8, or (b) a determination made by HMRC in circumstances other than those set out in paragraph 2	The later of— (a) the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount, and (b) the date falling 30 days after the date on which the amendment, correction, assessment or determination is made	25 30
22	Petroleum revenue tax	Amount charged in an assessment, or an amendment of an assessment, made in circumstances other than those set out in items 11 and 16	The date falling 30 days after— (a) the date by which the amount must be paid, or (b) the date on which the assessment or amendment is made, whichever is later	35 40
23	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an amendment or correction of a return showing an amount falling within any of items 1 to 6, 9 or 10	The date falling 30 days after— (a) the date by which the amount must be paid, or (b) the date on which the amendment or correction is made, whichever is later	45
24	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	The date falling 30 days after— (a) the date by which the amount must be paid, or (b) the date on which the assessment or determination is made, whichever is later	50

*Assessments and determinations in default of return*

55

2 The circumstances referred to in items 14, 17, 21 and 24 are where—

- (a) P or another person is required to make or deliver a return falling within any item in the Table in Schedule 55,
- (b) that person fails to make or deliver the return on or before the date by which it is required to be made or delivered, and
- (c) if the return had been made or delivered as required, the return would have shown that an amount falling within any of items 1 to 10 was due and payable. 5

*Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more*

- 3 (1) This paragraph applies in the case of—
  - (a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table, 10
  - (b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and
  - (c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies). 15
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount. 20
- 4 (1) This paragraph applies in the case of a payment of tax falling within item 5 or 6 in the Table.
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 3 months beginning with the penalty date, P is liable to a penalty of 5% of that amount. 25
- (4) If any amount of the tax is unpaid after the end of the period of 9 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Amount of penalty: PAYE and CIS amounts*

- 5 (1) Paragraphs 6 to 8 apply in the case of a payment of tax falling within item 2 or 4 in the Table. 30
- (2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3(1)(b) or (c).
- 6 (1) P is liable to a penalty under this paragraph of an amount determined by reference to the number of defaults in relation to the same tax that P has made during the tax year. 35
- (2) P makes a default in relation to a tax when P fails to pay an amount of that tax in full on or before the date on which it becomes due and payable.
- (3) But the first failure during a tax year to pay an amount of tax does not count as a default in relation to that tax during that tax year. 40
- (4) If P makes 1, 2 or 3 defaults during the tax year, P is liable to penalty of 1% of the total amount of those defaults.



- (5) If P makes 4, 5 or 6 defaults during the tax year, P is liable to penalty of 2% of the total amount of those defaults.
- (6) If P makes 7, 8 or 9 defaults during the tax year, P is liable to penalty of 3% of the total amount of those defaults.
- (7) If P makes 10 or more defaults during the tax year, P is liable to penalty of 4% of the total amount of those defaults. 5
- (8) In this paragraph –
- (a) in accordance with sub-paragraph (1), the references in sub-paragraphs (4) to (7) to a default are references to a default in relation to the tax mentioned in sub-paragraph (3), 10
- (b) the amount of a default is the amount which P fails to pay, and
- (c) a default counts for the purposes of sub-paragraphs (4) to (7) even if the default is remedied before the end of the tax year.
- 7 If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount. 15
- 8 If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Special reduction*

- 9 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule. 20
- (2) In sub-paragraph (1) “special circumstances” does not include –
- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to – 25
- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

*Suspension of penalty during currency of agreement for deferred payment*

- 10 (1) This paragraph applies if – 30
- (a) P fails to pay an amount of tax when it becomes due and payable,
- (b) P makes a request to HMRC that payment of the amount of tax be deferred, and
- (c) HMRC agrees that payment of that amount may be deferred for a period (“the deferral period”). 35
- (2) If P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty.
- (3) But if – 40
- (a) P breaks the agreement (see sub-paragraph (4)), and
- (b) HMRC serves on P a notice specifying any penalty to which P would become liable apart from sub-paragraph (2),

P becomes liable, at the date of the notice, to that penalty.

- (4) P breaks an agreement if –
- (a) P fails to pay the amount of tax in question when the deferral period ends, or
  - (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it. 5
- (5) If the agreement mentioned in sub-paragraph (1)(c) is varied at any time by a further agreement between P and HMRC, this paragraph applies from that time to the agreement as varied. 10

### Assessment

- 11 (1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must –
- (a) assess the penalty,
  - (b) notify P, and 15
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notice of the assessment of the penalty is issued. 20
- (3) An assessment of a penalty under any paragraph of this Schedule –
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
  - (b) may be enforced as if it were an assessment to tax, and 25
  - (c) may be combined with an assessment to tax.
- (4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of unpaid tax.
- (5) A supplementary assessment may be made in respect of a penalty under paragraph 6 if – 30
- (a) notice of the assessment of the penalty was issued before the end of the tax year, and
  - (b) before the end of the year, P makes a further default (so that the penalty for the earlier default is increased). 35
- 12 (1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with the date specified in or for the purposes of column 4 of the Table (that is to say, the last date on which payment may be made without incurring a penalty). 40
- (3) Date B is the last day of the period of 12 months beginning with –
- (a) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or

- (b) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In sub-paragraph (3)(a) “appeal period” means the period during which—
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn. 5

*Appeal*

- 13 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P. 10
- 14 (1) An appeal under paragraph 13 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal). 15
- (2) Sub-paragraph (1) does not apply—
  - (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Act.
- 15 (1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision. 20
- (2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—
  - (a) affirm HMRC’s decision, or
  - (b) substitute for HMRC’s decision another decision that HMRC had power to make. 25
- (3) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 9—
  - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or 30
  - (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 9 was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1)). 35

*Reasonable excuse*

- 16 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure. 40
- (2) For the purposes of sub-paragraph (1)—

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and 5
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- Double jeopardy* 10
- 17 P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.
- Interpretation*
- 18 (1) This paragraph applies for the construction of this Schedule.
- (2) “HMRC” means Her Majesty’s Revenue and Customs. 15
- (3) References to tax include construction industry deductions under Chapter 3 of Part 3 of FA 2004.
- (4) References to a determination, in relation to an amount payable under PAYE regulations or under Chapter 3 of Part 3 of FA 2004, include a certificate.
- (5) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination. 20

SCHEDULE 57

Section 109

AMENDMENTS RELATING TO PENALTIES

PART 1

AMENDMENTS OF SCHEDULE 24 TO FA 2007 25

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 In paragraph 2 (under-assessment by HMRC), insert at the end –
- “(4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph) –
  - (a) “assessment” includes determination, and 30
  - (b) accordingly, references to an under-assessment include an under-determination.”
- 3 In paragraph 5 (normal rule for calculating potential lost revenue), for subparagraph (4)(b) substitute –
- “(b) any relief under subsection (4) of section 419 of ICTA 35 (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section;”.

- 4 In paragraph 9(1)(b) and (c) (reductions for disclosure), for “supply or false information” substitute “supply of false information”.
- 5 In paragraph 13 (assessment), insert at the end –  
     “(7) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.” 5
- 6 For paragraph 16(2) (appeals) substitute –  
     “(2) Sub-paragraph (1) does not apply –  
         (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or 10  
         (b) in respect of any other matter expressly provided for by this Act.”
- 7 (1) Paragraph 19 (companies: officers’ liability) is amended as follows.  
 (2) In sub-paragraph (3) –  
     (a) after “a body corporate” insert “other than a limited liability partnership”, 15  
     (b) in paragraph (a), omit the “or” at the end, and  
     (c) after that paragraph insert –  
         “(aa) a manager, and”.
- (3) After sub-paragraph (3) insert – 20  
     “(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.”
- (4) Insert at the end –  
     “(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.” 25
- 8 Omit paragraph 28(da) (interpretation of references to assessment).
- 9 In paragraphs 30 and 31 (consequential amendments) for “paragraph 7” substitute “paragraphs 7 and 7B”.

PART 2 30

AMENDMENTS OF SCHEDULE 41 TO FA 2008

- 10 Schedule 41 to FA 2008 (penalties for failure to notify and certain other wrongdoing) is amended as follows.
- 11 For paragraph 18(2) (appeals) substitute –  
     “(2) Sub-paragraph (1) does not apply – 35  
         (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or  
         (b) in respect of any other matter expressly provided for by this Act.”
- 12 (1) Paragraph 22 (companies: officers’ liability) is amended as follows. 40

- (2) In sub-paragraph (3) –
- (a) after “a body corporate” insert “other than a limited liability partnership”,
  - (b) in paragraph (a), omit the “or” at the end,
  - (c) after that paragraph insert – 5  
“*(aa) a manager, and*”.
- (3) After sub-paragraph (3) insert –
- “(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.”
- (4) Insert at the end – 10
- “(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.”

### PART 3

#### OTHER AMENDMENTS 15

- 13 (1) TMA 1970 is amended as follows.
- (2) In section 100(2) (determination of penalties by officer), omit paragraph (g) and the “or” before it.
- (3) After section 103 insert –
- “103ZA Disapplication of sections 100 to 103 in the case of certain penalties 20**
- Sections 100 to 103 do not apply to a penalty under –
- (a) Schedule 24 to FA 2007 (penalties for errors),
  - (b) Schedule 36 to FA 2008 (information and inspection powers),
  - (c) Schedule 41 to that Act (penalties for failure to notify and certain other wrongdoing), 25
  - (d) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or
  - (e) Schedule 56 to that Act (penalties for failure to make payments on time).”
- 14 In FA 2008 omit – 30
- (a) paragraph 74 of Schedule 36 (information and inspection powers);
  - (b) paragraph 20(3) of Schedule 40 (amendment of Schedule 24 to FA 2007).

### SCHEDULE 58

Section 110

#### RECOVERY OF DEBTS UNDER PAYE REGULATIONS 35

##### *PAYE regulations*

- 1 Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.
- 2 In subsection (1), omit “for Her Majesty’s Revenue and Customs”.

- 3 (1) Subsection (2) is amended as follows.
- (2) For “PAYE regulations may, in particular, include” substitute “The provision that may be made in PAYE regulations includes”.
- (3) In the list of provisions, in item 1, in paragraph (a), omit “for Her Majesty’s Revenue and Customs”.
- (4) In item 2, for “or remaining unpaid (or treated as overpaid or remaining unpaid)” substitute “(or treated as overpaid) on account of, or any amounts other than relevant debts remaining unpaid (or treated as remaining unpaid)”.
- (5) After item 2 insert –
- “2A. Provision –
- (a) for deductions to be made in respect of relevant debts of a payee,
- (b) as to the circumstances in which such deductions may be made, and
- (c) where such deductions are made, as to the date on which the relevant debts are to be treated as paid.”
- (6) In item 3, for “income tax has been and is” substitute “amounts have been and are”.
- 4 After subsection (3) insert –
- “(3A) PAYE regulations under item 2A in the above list may not make provision enabling deductions totalling more than £2,000 to be made from a payee’s income for a tax year without the payee’s consent.
- (3B) The Treasury may by order amend the amount specified in subsection (3A).”
- 5 In subsection (7A)(a), after “tax” insert “or other amounts”.
- 6 After that subsection insert –
- “(7AA) In this section “relevant debt”, in relation to a payee, means –
- (a) a sum payable by the payee to the Commissioners under or by virtue of an enactment, other than an excluded debt, and
- (b) a sum payable by the payee to the Commissioners under a contract settlement.
- (7AB) For the purposes of subsection (7AA) –
- (a) child tax credit or working tax credit that the payee is liable to repay is an excluded debt, and
- (b) if the payee is an employer, any amount that the payee is required to deduct from the PAYE income of employees for a tax year is an excluded debt until the tax year has ended.”
- 7 In subsection (7C), before the definition of “payer” insert –
- ““the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “contract settlement” means an agreement made in connection with the liability of the payee or another person to make a

payment to the Commissioners under or by virtue of an enactment.”

*Consequential provision*

- 8 In section 29(5) of the Tax Credits Act 2002 (recovery of overpayments) –  
(a) for “tax” substitute “income tax”, and 5  
(b) insert at the end “that is not a relevant debt (within the meaning of section 684 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 9 (1) Part 11 of ITEPA 2003 (pay as you earn) is amended as follows.  
(2) In section 682(1) (scope of Part), insert at the end “and includes provision in respect of the deduction of certain other amounts from, and the repayment of certain other amounts with, PAYE income”. 10  
(3) In section 685 (tax tables) –  
(a) in subsection (1), omit “for Her Majesty’s Revenue and Customs”, and  
(b) in subsection (2)(b), for “or 2” substitute “, 2 or 2A”. 15
- 10 (1) The Treasury may by order make provision –  
(a) amending or repealing provisions of Part 11 of ITEPA 2003,  
(b) amending, repealing or revoking provisions of enactments or instruments that refer to provisions of that Part, and  
(c) amending, repealing or revoking provisions of enactments or instruments that apply, or confer power to apply, PAYE regulations or otherwise refer to such regulations. 20  
(2) An order under this paragraph may only make provision to the extent that it is appropriate in consequence of, or in connection with, the amendments made by this Schedule. 25  
(3) An order under this paragraph may include transitional provision and savings.  
(4) An order under this paragraph is to be made by statutory instrument.  
(5) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons. 30

SCHEDULE 59

Section 118

CLIMATE CHANGE LEVY: REMOVAL OF REDUCED RATE

PART 1

NEW PROVISION FOR REMOVAL OF REDUCED RATE

- 1 In Schedule 6 to FA 2000 (climate change levy), after paragraph 45A insert – 35  
*“Removal of reduced rate where targets set by climate change agreement not met*  
45B (1) This paragraph applies where, by virtue of such a certificate as is mentioned in paragraph 44(1), a facility is to be taken as being



- covered by a climate change agreement for a period specified in that certificate (“the certification period”).
- (2) If it appears to the Secretary of State that the progress made in the certification period towards meeting targets set for the facility by the agreement has been such as under the provisions of the agreement is unsatisfactory, the Secretary of State may issue a certificate under this paragraph. 5
- (3) The certificate must (in addition to specifying the facility, agreement and certification period to which it applies) specify – 10
- (a) T, that is, the value (expressed in terms of a reduction in tonnes of carbon dioxide equivalent) of achieving the targets set for the facility by the agreement, and
- (b) P, that is, the value (expressed in the same terms) of the progress made by the facility, during the certification period, towards meeting those targets. 15
- (4) Where a certificate has been issued under this paragraph –
- (a) each taxable supply made to the facility at any time falling within the certification period is to be treated as not being a reduced-rate supply, and
- (b) accordingly, an amount (determined in accordance with sub-paragraph (5)) is payable by way of levy on that taxable supply. 20
- (5) The amount payable under this paragraph on a taxable supply is –
- $$\frac{T - P}{T} \times 0.8R \quad 25$$
- where –
- T and P have the values mentioned in sub-paragraph (3);
- R is the amount which would have been payable by way of levy on the supply (had it not been a reduced-rate supply) at the time that it was made, in accordance with paragraph 42(1)(a). 30
- (6) The Secretary of State must send the certificate to –
- (a) the Commissioners, and
- (b) the person who is the operator of the facility.
- (7) A certificate under this paragraph may be issued after the certification period ends. 35
- (8) A person liable to account for levy under this paragraph –
- (a) is liable to account for it otherwise than by reference to an accounting period, and
- (b) must not (by virtue of regulations under paragraph 41) become liable to pay it as from a date before the date on which the certificate under this paragraph is issued. 40
- (9) Levy due under this paragraph is payable in addition to any levy already payable on any supply made in the certification period.
- (10) In this paragraph – 45

“certification period”, in a case where the certificate referred to in sub-paragraph (1) has been varied under paragraph 45, means the period for which that certificate has effect as varied;

“tonne of carbon dioxide equivalent” has the meaning given in the Climate Change Act 2008.” 5

## PART 2

### CONSEQUENTIAL AMENDMENTS

2 Schedule 6 to FA 2000 is amended as follows.

3 (1) Paragraph 40 (persons liable to account for levy) is amended as follows. 10

(2) In sub-paragraph (1), after “sub-paragraph (2)” insert “or (3)”.

(3) After sub-paragraph (2) insert –

“(3) In the case of levy charged on a taxable supply under paragraph 45B, the person liable to account for the levy is the operator of the facility to which the supply was made.” 15

4 In paragraph 41(2A) (application of Part 7 where person liable to account otherwise than by reference to accounting period), after “regulations under sub-paragraph (1)(a)(ii) above” insert “or by virtue of paragraph 45B(8)”.

5 In paragraph 42 (amount payable by way of levy), after sub-paragraph (1) insert – 20

“(1A) Sub-paragraph (1) is subject to paragraph 45B.”

6 In paragraph 44(2) (definition of “reduced-rate supply” to have effect subject to paragraph 45), for “paragraph 45” substitute “paragraphs 45 and 45B”.

7 In paragraph 45A (deemed supplies), after sub-paragraph (2) insert –

“(3) This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B.” 25

8 (1) Paragraph 91 (interpretation etc of Part 7 of the Schedule) is amended as follows.

(2) In sub-paragraph (5) (modification of references to accounting periods in case of levy due otherwise than by reference to such periods), after “regulations under paragraph 41(1)(a)(ii)” insert “or by virtue of paragraph 45B(8)”. 30

9 In paragraph 147 (interpretation), in the definition of “reduced-rate supply”, for “paragraph 45” substitute “paragraphs 45 and 45B”.

## SCHEDULE 60

Section 119

## LANDFILL TAX: PRESCRIBED LANDFILL SITE ACTIVITIES

*Introduction*

- 1 Part 3 of FA 1996 (landfill tax) is amended as follows.

*Prescribed landfill site activities to be treated as disposals* 5

- 2 After section 65 insert –

**“65A Prescribed landfill site activities to be treated as disposals**

- (1) An order may prescribe a landfill site activity for the purposes of this section.
- (2) If a prescribed landfill site activity is carried out at a landfill site, the activity is to be treated – 10
- (a) as a disposal at the landfill site of the material involved in the activity,
  - (b) as a disposal of that material as waste, and
  - (c) as a disposal of that material made by way of landfill. 15
- (3) Connected provision may be made by order.
- (4) Provision may be made under this section in such way as the Treasury think fit.
- (5) An order under subsection (1) may prescribe a landfill site activity by reference to conditions. 20
- (6) Those conditions may, in particular, relate to either or both of the following –
- (a) whether the landfill site activity is carried out in a designated area of a landfill site, and
  - (b) whether there has been compliance with a requirement to give information relating to – 25
    - (i) the landfill site activity, or
    - (ii) the material involved in the landfill site activity, including information relating to whether the activity is carried out in a designated area of a landfill site. 30
- (7) An order under this section –
- (a) may amend, or otherwise modify, this Part or any other enactment relating to landfill tax, but
  - (b) may not alter any rate at which landfill tax is charged.
- (8) Subsections (5) to (7) do not limit the generality of subsection (4). 35
- (9) In this section –
- “connected provision” means provision which appears to the Treasury to be necessary or expedient in connection with provision made under subsection (1);
- “designated area” means an area of a landfill site designated in accordance with – 40

- (a) an order under this section, or  
(b) regulations under Part 1 of Schedule 5;  
“landfill site activity” means any of the following descriptions  
of activity, or an activity that falls within any of the following  
descriptions – 5
- (a) using or otherwise dealing with material at a landfill  
site;  
(b) storing or otherwise having material at a landfill site.”
- 3 In section 71(7) (orders and regulations), after paragraph (c) insert –  
“(ca) an order under section 65A above which produces the result 10  
that a landfill site activity which would not otherwise be  
prescribed for the purposes of section 65A is so prescribed;  
(cb) an order under section 65A above which amends this Part or  
any enactment contained in an Act;”.
- Material temporarily held* 15
- 4 Omit section 62 (taxable disposals: regulations about material temporarily  
held at a landfill site).
- Material at landfill sites*
- 5 Part 1 of Schedule 5 (information) is amended as follows.
- 6 For the heading before paragraph 1 substitute – 20  
“*Information: general*”
- 7 After paragraph 1 insert –  
“*Information: material at landfill sites*
- 1A (1) Regulations may make provision about giving the Commissioners  
information relating to material at a landfill site or a part of a 25  
landfill site.  
(2) Regulations under this paragraph may require a person to give  
information.  
(3) Regulations under this paragraph may –  
(a) require a person, or authorise an officer of Revenue and 30  
Customs to require a person, to designate a part of a  
landfill site (an “information area”), and  
(b) require material, or prescribed descriptions of material, to  
be deposited in an information area.  
(4) Regulations under this paragraph may make provision about 35  
information relating to what is done with material.  
(5) Sub-paragraphs (2) to (4) do not prejudice the generality of sub-  
paragraph (1).”
- 8 For the heading before paragraph 2 substitute –

*“Records: registrable persons”*

9 After paragraph 2 insert –

*“Records: material at landfill sites*

- 2A (1) Regulations may require a person to make records relating to material at a landfill site or a part of a landfill site. 5
- (2) Regulations under this paragraph may make provision about records relating to what is done with material.
- (3) Sub-paragraphs (2) to (7) of paragraph 2 apply in relation to regulations under this paragraph as they apply in relation to regulations under paragraph 2. 10
- (4) But, in the application of paragraph 2(3)(a) in relation to regulations under this paragraph, the reference to registrable persons has effect as a reference to persons.”

*Site restoration*

10 Omit section 43C (site restoration). 15

11 In Part 1 of Schedule 5 (information), after paragraph 1A (inserted by paragraph 7) insert –

*“Information: site restoration*

- 1B (1) Before commencing restoration of all or part of a landfill site, the operator of the site must – 20
- (a) notify the Commissioners in writing that the restoration is to commence, and
- (b) provide such other written information as the Commissioners may require generally or in the particular case. 25
- (2) In this paragraph “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.
- (3) The following are relevant instruments – 30
- (a) a planning consent,
- (b) a waste management licence, and
- (c) a permit authorising the disposal of waste on or in land.”

*Landfill tax returns*

12 In section 49(b) (accounting for tax and time for payment), omit “as may be prescribed”. 35

*Commencement and savings*

13 (1) The repeal made by paragraph 10 comes into force on 1 September 2009.

- (2) The amendment made by paragraph 11 (information about site restoration) has effect in relation to restoration of landfill sites commencing on or after 1 September 2009.
- (3) The repeal of section 62 made by paragraph 4, and the repeal in section 49 made by paragraph 12 – 5
- (a) do not affect any regulations made under the repealed provisions before the passing of this Act, and
  - (b) do not prevent the powers conferred by the repealed provisions from being used after the passing of this Act to revoke any regulations made under the powers before that time. 10

## SCHEDULE 61

Section 123

### ALTERNATIVE FINANCE INVESTMENT BONDS

#### PART 1

#### INTRODUCTORY

*Interpretation* 15

- 1 (1) In this Schedule –
- “alternative finance investment bond” means arrangements within section 48A of FA 2005 (alternative finance investment bond: introduction);
  - “bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by that section; 20
  - “HMRC” means Her Majesty’s Revenue and Customs;
  - “prescribed” means prescribed in regulations made by HMRC;
  - “qualifying interest” means a major interest in land (within the meaning given by section 117 of FA 2003) except that it does not include a lease if the lease is for – 25
    - (a) a term of years of 21 years or less, or
    - (b) in Scotland, a period of 21 years or less.
- (2) Except where the context otherwise requires, any expression which is used in this Schedule and in Part 4 of FA 2003 has the meaning which it has in that Part. 30

#### PART 2

#### ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER ARRANGEMENTS

*Issue, transfer and redemption of rights under bond not be treated as chargeable transaction*

- 2 Section 48B(2) of FA 2005 (effect of bond for purposes of tax) applies for the purposes of stamp duty land tax as it applies for the purposes of income tax and capital gains tax. 35

*Relief not available where bond-holder acquires control of underlying asset*

- 3 (1) Paragraph 2 does not apply if control of the underlying asset is acquired by –
- (a) a bond-holder, or
  - (b) a group of connected bond-holders. 5
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if –
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and 10
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- 4 (1) But paragraph 3(1) does not apply (and, accordingly, section 48B(2) of FA 2005 applies by virtue of paragraph 2) in either of the following cases. 15
- (2) The first case is where –
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and 20
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible. 25
- (3) The second case is where BH –
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph – 30
- “connected” is to be read in accordance with section 839 of ICTA, and “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

PART 3 35

TRANSACTIONS RELATING TO UNDERLYING ASSETS CONSISTING OF LAND

*INTRODUCTORY*

*General conditions for operation of reliefs etc*

- 5 (1) This paragraph defines conditions A to G for the purposes of paragraphs 6 to 18. 40
- Paragraphs 20 and 22 set out circumstances in which the reliefs provided by paragraphs 6 to 18 are not available even if conditions A to G are met.

- (2) Condition A is that one person (“P”) and another (“Q”) enter into arrangements under which—
- (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
  - (b) P and Q agree that when the interest ceases to be held by Q as mentioned in sub-paragraph (3)(b), Q will transfer the interest to P. 5
- (3) Condition B is that—
- (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in sub-paragraph (2)), and 10
  - (b) the interest in land to which those arrangements relate is held by Q as a bond asset.
- (4) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—
- (a) Q and P enter into a leaseback agreement, or 15
  - (b) such other condition or conditions as may be specified in regulations made by the Treasury is or are met.
- (5) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q,—
- (a) a lease (if the interest transferred is freehold or, in Scotland, the interest of the owner), or 20
  - (b) a sub-lease (if the interest transferred is leasehold or, in Scotland, the tenant’s right over or interest in a property subject to a lease).
- (6) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides HMRC with the prescribed evidence that—
- (a) in England and Wales, a satisfactory legal charge has been entered in the register of title kept under section 1 of the Land Registration Act 2002, 25
  - (b) in Scotland, a satisfactory standard security has been registered in the Land Register of Scotland, or 30
  - (c) in Northern Ireland, a satisfactory charge has been entered in the register of titles kept under section 10 of the Land Registration Act (Northern Ireland) 1970.
- (7) A charge or security is satisfactory for the purposes of condition D if it—
- (a) is a first charge on, or a security ranking first granted over, the interest transferred to Q, 35
  - (b) is in favour of the Commissioners for Her Majesty’s Revenue and Customs, and
  - (c) is for the amount mentioned in sub-paragraph (8). 40
- (8) That amount is the total of—
- (a) the amount of stamp duty land tax which would (apart from paragraph 6(2)) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and 45
  - (b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.



- (9) Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.
- (10) Condition F is that Q holds the interest in the land as a bond asset until the termination of the bond. 5
- (11) Condition G is that –
- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and
  - (b) the second transaction is effected not more than 10 years after the first transaction. 10
- (12) The Treasury may by regulations amend sub-paragraph (11)(b) by substituting for the period mentioned there such other period as may be specified.

*STAMP DUTY LAND TAX* 15

*Relief from stamp duty land tax: first transaction*

- 6 (1) This paragraph applies if –
- (a) the first transaction relates to an interest in land in the United Kingdom, and
  - (b) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of that transaction. 20
- (2) Where this paragraph applies the first transaction is exempt from charge to stamp duty land tax.
- (3) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18. 25
- (4) This paragraph is also subject to paragraph 20.
- 7 (1) This paragraph applies if –
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
  - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or
  - (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met. 30
- (2) This paragraph also applies if condition D is not met.
- (3) The relief provided by paragraph 6(2) is withdrawn and stamp duty land tax is chargeable on the first transaction in accordance with this paragraph. 35
- (4) The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for relief under paragraph 6(2)) if the chargeable consideration for that transaction had been the market value of the interest at the time of that transaction. 40
- (5) Interest is due and payable on the amount of that tax as from the end of the period of 30 days after the effective date of that transaction until the tax is paid.

- (6) Q must deliver a further land transaction return before the end of the period of 30 days after the date on which this paragraph first applies.
- (7) The return must include a self-assessment of the amount of tax chargeable.
- (8) Tax payable must be paid not later than the filing date for the further return.
- (9) Schedule 10 to FA 2003 (returns, assessments and other matters) applies to a return under this paragraph as it applies to a return under section 76 of that Act (general requirement to deliver land transaction return), with the following modifications –
- (a) references to the transaction to which the return relates are to the event by virtue of which this paragraph applies, and
  - (b) references to the effective date of the transaction are to the date on which that event occurs.

*Relief from stamp duty land tax: second transaction*

- 8 (1) The second transaction is exempt from charge to stamp duty land tax if –
- (a) each of conditions A to G is met, and
  - (b) the provisions of Part 4 of FA 2003 relating to the first transaction are complied with.
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

*Discharge of charge when conditions for relief met*

- 9 If, after the effective date of the second transaction, Q provides HMRC with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the charge or security registered in pursuance of condition D.

TAXATION OF CAPITAL GAINS

*Relief from taxation of capital gains: first transaction*

- 10 (1) This paragraph applies if each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction.
- (2) That transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by Q or a disposal by P.
- (3) If condition C is met by virtue of Q and P having entered into a leaseback agreement, the granting of the lease or sub-lease is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q.
- (4) Sub-paragraphs (2) and (3) are subject to paragraph 11 (treatment of transactions where any of conditions D to G is not met).
- (5) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (6) This paragraph is also subject to paragraph 20.

- 11 (1) This paragraph applies if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
  - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or 5
  - (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met.
- (2) This paragraph also applies where (in the case of an interest in land in the United Kingdom) condition D is not met.
- (3) Where this paragraph applies, paragraph 10(2) and (3) (disregard of transactions for purposes of TCGA 1992) do not apply. 10
- (4) Where, by virtue of sub-paragraph (3), any chargeable gain or loss is treated as accruing to a person, that gain or loss is to be treated as accruing—
- (a) in the case mentioned in sub-paragraph (1)(a), immediately before the transfer from Q to P; 15
  - (b) in any case mentioned in paragraph (b) or (c) of sub-paragraph (1), at the time mentioned in that paragraph;
  - (c) in the case mentioned in sub-paragraph (2), at the end of the period mentioned in paragraph 5(6).
- Relief from taxation of capital gains: second transaction* 20
- 12 (1) The second transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q if—
- (a) each of conditions A to C and E to G is met, and
  - (b) in the case of an interest in land in the United Kingdom, condition D is met. 25
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

#### CAPITAL ALLOWANCES

- Introductory* 30
- 13 (1) Paragraphs 14 to 17 make provision about the treatment, for the purposes of CAA 2001, of transactions relating to land in connection with an alternative finance investment bond.
- (2) Any expression which is used in any of paragraphs 14 to 17 and in CAA 2001 has the meaning which it has in that Act. 35

#### *Treatment for purposes of capital allowances*

- 14 (1) This paragraph applies to an asset if—
- (a) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction, and
  - (b) the asset falls within sub-paragraph (2). 40
- (2) An asset falls within this sub-paragraph if it is part of the subject matter of the first transaction and constitutes—

- (a) plant or machinery, or
  - (b) an industrial building (or part of an industrial building).
- (3) For the purposes of CAA 2001 –
- (a) expenditure incurred by Q in acquiring the asset by virtue of the first transaction is not to be regarded as capital expenditure; 5
  - (b) Q is not to be regarded as becoming, and P is not to be regarded as ceasing to be, the owner of the asset by virtue of that transaction.
- (4) Sub-paragraph (3) applies in relation to the transactions mentioned in sub-paragraph (5) as it applies in relation to the first transaction (but reading the references to Q as references to P and the reference to P as a reference to Q). 10
- (5) The transactions are –
- (a) any leaseback agreement entered into by Q and P in order that condition C is met, and
  - (b) the second transaction.
- (6) This paragraph is subject to paragraphs 15 to 17. 15

*Loss or destruction of asset*

- 15 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset –
- (a) is part of the subject matter of the first transaction, and
  - (b) constitutes plant or machinery. 20
- (3) The second condition is that, at any time when the asset is held as a bond asset, one of the following events occurs –
- (a) the person with possession of the asset loses possession of it in circumstances where it is reasonable to assume that the loss is permanent, or 25
  - (b) the asset ceases to exist as such (as a result of destruction, dismantling or otherwise).
- (4) That event is to be treated as a disposal event (in relation to P) occurring in the chargeable period in which that event occurs.
- (5) For the purposes of sub-paragraph (4), the disposal value that P is required to bring into account is – 30
- (a) where the case falls within item 3 or 4 of the Table in section 61(2) of CAA 2001 and the amount received by P as mentioned in that item is other than zero, that amount;
  - (b) in any other case, the market value of the asset at the time of the event. 35

*Q retaining asset when no longer held for purposes of bond*

- 16 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes – 40
- (a) plant or machinery, or
  - (b) an industrial building (or part of an industrial building).

- (3) The second condition is that Q—
- (a) ceases to hold the asset as a bond asset (whether at the end of the bond term or at any other time), but
  - (b) does not transfer the asset to P or any other person.
- (4) At the time that Q ceases to hold the asset as a bond asset, Q is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset. 5
- (5) Accordingly, Q's ceasing to hold the asset as a bond asset is to be treated—
- (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the cessation takes place, and 10
  - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the cessation takes place.
- (6) For the purposes of sub-paragraph (5)—
- (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer, and 15
  - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer. 20

*Q transferring asset to third person*

- 17 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes—
- (a) plant or machinery, or 25
  - (b) an industrial building (or part of an industrial building).
- (3) The second condition is that Q transfers the asset to any person other than P.
- (4) At the time that Q transfers the asset, that other person is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset.
- (5) Accordingly, the transfer is to be treated— 30
- (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the transfer takes place, and
  - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the transfer takes place. 35
- (6) For the purposes of sub-paragraph (5)—
- (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer; 40
  - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer.

SUPPLEMENTARY

*Substitution of asset*

- 18 (1) This paragraph applies if –
- (a) conditions A to C and G are met in relation to an interest in land (“the original land”), 5
  - (b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,
  - (c) P and Q enter into further arrangements falling within paragraph 5(2) relating to an interest in other land (“the replacement land”), and 10
  - (d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
- (2) Paragraphs 6 to 17 apply –
- (a) in relation to the original land with the modification set out in sub-paragraph (3), and 15
  - (b) in relation to the replacement land with the modifications set out in sub-paragraph (4).
- (3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land. 20
- (4) In relation to the replacement land –
- (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
  - (b) condition G applies as if the reference in paragraph 5(11)(b) to the first transaction were a reference to the first transaction relating to the original land. 25
- (5) If the replacement land is in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when – 30
- (a) Q provides HMRC with the prescribed evidence that condition G is met in relation to the original land, and
  - (b) condition D is met in relation to the replacement land.
- (6) If the replacement land is not in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when Q provides HMRC with the prescribed evidence that – 35
- (a) condition G is met in relation to the original land, and
  - (b) each of conditions A to C is met in relation to the replacement land.
- (7) This paragraph also applies where the replacement land is replaced by further replacement land; and in that event – 40
- (a) the references to the original land (except those in sub-paragraph (4)) are to be read as references to the replacement land, and
  - (b) the references to the replacement land are to be read as references to the further replacement land.

*HMRC to notify Registrar of discharge of charge*

- 19 (1) Where a charge or security is discharged in accordance with paragraph 9 or 18(5) or (6), HMRC must –
- (a) in the case of a charge on land in England and Wales, notify the Chief Land Register of the discharge in accordance with land registration rules (within the meaning of the Land Registration Act 2002), 5
  - (b) in the case of a security granted over land in Scotland, register the discharge in the Land Register of Scotland, and
  - (c) in the case of a charge on land in Northern Ireland, notify the Registrar of Titles of the discharge. 10
- (2) HMRC must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

*Relief not available where bond-holder acquires control of underlying asset*

- 20 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by – 15
- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if – 20
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders. 25
- (3) In accordance with sub-paragraph (1), in the case of the reliefs provided by paragraphs 6 and 10 – 30
- (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraphs 6 and 10 do not apply, and
  - (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, paragraphs 7 and 11 apply. 35
- 21 (1) But paragraph 20 does not prevent the reliefs being available in either of the following cases.
- (2) The first case is where –
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and 40
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible. 45

(3)	The second case is where BH—	
(a)	underwrites a public offer of rights under the bond, and	
(b)	does not exercise the right of management and control of the bond assets.	
(4)	In this paragraph—	5
	“connected” is to be read in accordance with section 839 of ICTA, and	
	“underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.	
	<i>Relief not available if purpose of arrangements is improper</i>	10
22	(1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 5(2)—	
	(a) are not effected for genuine commercial reasons, or	
	(b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.	15
	(2) In sub-paragraph (1) “tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty land tax.	
	<i>Regulations</i>	
23	(1) Regulations under any paragraph of this Schedule—	20
	(a) may make provision generally or only for specified purposes, or different provision for different purposes, and	
	(b) may make consequential, supplementary or incidental provision (including amendments of any enactment).	
	(2) Regulations under any paragraph of this Schedule are to be made by statutory instrument.	25
	(3) A statutory instrument containing regulations under any paragraph of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.	
	PART 4	30
	SUPPLEMENTARY	
	<i>Consequential amendments of FA 2003</i>	
24	FA 2003 is amended as follows.	
25	After section 73B insert—	
	<b>“73C Alternative finance investment bonds</b>	35
	Schedule 61 to the Finance Act 2009 makes provision for relief from charge in the case of arrangements falling within section 48A of the Finance Act 2005 (alternative finance investment bonds).”	



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- 26 In section 86 (payment of tax), after subsection (5) insert –
- “(5A) The above provisions are also subject to paragraph 7 of Schedule 61 to the Finance Act 2009 (payment of tax where land ceases to qualify for relief in respect of alternative finance investment bonds).”
- Consequential amendments of FA 2005* 5
- 27 (1) Section 48B of FA 2005 (alternative finance investment bond: effects) is amended as follows.
- (2) In subsections (2) and (3) for “any tax other than the Corporation Tax Acts” substitute “income tax or capital gains tax”.
- (3) After subsection (8) insert – 10
- “(9) Schedule 61 to the Finance Act 2009 makes –
- (a) further provision about the treatment for the purposes of TCGA 1992 of arrangements falling within section 48A, and
- (b) provision about their treatment for the purposes of stamp duty land tax and capital allowances.” 15
- Consequential amendment of CTA 2009*
- 28 In CTA 2009, in Schedule 1, omit paragraph 651(a).
- Commencement*
- 29 (1) The following provisions of this Schedule come into force on the day on which this Act is passed – 20
- (a) Part 2,
- (b) Part 1 so far as relating to that Part, and
- (c) paragraphs 24, 25, 27 and 28.
- (2) The following provisions of this Schedule have effect where the effective date of the first transaction (within the meaning given by paragraph 5(2)) is on or after the day on which this Act is passed – 25
- (a) Part 3,
- (b) Part 1 so far as relating to that Part, and
- (c) paragraph 26.

# Finance Bill

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# B I L L

To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance.

*Brought from the Commons on 8th July 2009*

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