Tolley®CPD

Finance (No.2) Bill 2023

Notes prepared by Ros Martin for Tolley CPD

Disclaimer

Tolley CPD takes every care when preparing this material. However, no responsibility can be accepted for any losses arising to any person acting or refraining from acting as a result of the material contained in these notes.

All rights reserved. No part of these notes may be reproduced or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of Tolley CPD.

Contents

CONTENTS 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX 5

RATES AND ALLOWANCES 5
INCOME TAX 5

CORPORATION TAX (LECTURE B1374 – 15.07 MINUTES) 5

CAPITAL ALLOWANCES (LECTURE B1372 – 15.07 MINUTES) 5
First year allowances 5
Annual investment allowance 6
Electric vehicle charge points 6
BUSINESS RELIEFS 8
Research and development (Lecture B1373 – 13.12 minutes) 8
Patent box 11
Energy (Oil and Gas) Profits Levy (Lecture B1374 – 15.07 minutes) 12
Cultural reliefs (Lecture B1374 – 15.07 minutes) 12
Seed enterprise investment scheme (Lecture B1375 – 14.17 minutes) 13
CSOP (Lecture B1375 – 14.17 minutes) 13
Enterprise Management Incentive schemes (Lecture B1375 – 14.17 minutes) 14
PENSIONS (LECTURE P1372 – 12.44 MINUTES) 14
Lifetime allowance (LTA) charge 14
Annual allowance 15
Other matters 16
SOCIAL SECURITY 17
QUALIFYING CARE RELIEF 17
ESTATES IN ADMINISTRATION (LECTURE P1374 – 13.06 MINUTES) 18
INSURANCE 20
MISCELLANEOUS CORPORATION TAX ISSUES 20
Corporate interest restrictions (Lecture B1374 – 15.07 minutes) 20
Investment vehicles (Lecture B1374 – 15.07 minutes) 27
INTERNATIONAL MATTERS 29
Share exchanges (Lecture P1373 – 14.47 minutes) 29
Transfer pricing records (Lecture B1374 – 15.07 minutes) 31
Double tax relief 32
CHARGEABLE GAINS 32
Payments under the lump sum exit scheme (Lecture P1373 – 14.47 minutes) 32
Contracts completed after notification period (Lecture P1373 – 14.47 minutes) 33
Separated spouses and civil partners (Lecture P1373 – 14.47 minutes) 34
Carried interest (Lecture P1373 – 14.47 minutes) 36
Relief on disposal of joint interests in land 36

ALCOHOL DUTY 37

MULTINATIONAL AND DOMESTIC TOP-UP TAX (LECTURE B1374 – 15.07 MINUTES) 42

ELECTRICITY GENERATOR LEVY (LECTURE B1374 – 15.07 MINUTES) 43

OTHER TAXES 45

Stamp Duty Land Tax 45
VAT 45
Import duty 45
Other duties 46

MISCELLANEOUS.................... 48

Freeports and investment zones....................48

ADMINISTRATION (LECTURE P1375 – 12.06 MINUTES) 48

MANAGEMENT OF CUSTOMS AND EXCISE (LECTURE P1375 – 12.06 MINUTES) 49

CONDITIONALITY (LECTURE P1375 – 12.06 MINUTES).................... 49

CHARITIES AND CASC (LECTURE P1375 – 12.06 MINUTES) 50

Homes for Ukraine 50
OTS 50
Dormant assets scheme 50
Other 51

Income tax, corporation tax and capital gains tax

Rates and allowances

Income tax

The main rates of income tax, the default rates of income tax and the savings rate of income tax remain at 20%, 40% and 45% (Clauses 2 and 3). The savings rate limit remains at £5,000 as the legislation specifically removes the indexation of that figure (Clause 4).

Corporation tax (Lecture B1374 – 15.07 minutes)

The main rate of corporation tax for the FY2024 will be 25% (clause 5) and the small profits rate will be 19% (clause 6). The marginal rate fraction is 3/200th (clause 6).

Capital allowances (Lecture B1372 – 15.07 minutes)

First year allowances

Clause 7 provides for a new section to be inserted into CAA2001, being s45S, which gives a new first-year allowance for plant and machinery.

S45S gives the allowance where the following conditions are met:

- Expenditure is incurred on or after 1 April 2003 but before 1 April 2026;
- It is incurred by a company within charge to corporation tax;
- It is expenditure on plant and machinery which is new and unused;
- It is not excluded by virtue of disqualifying arrangements (new s45T) or by the general exclusions which apply to first-year allowances.

As a reminder, the general exclusions of s46(2) CAA 2001 are:

- Expenditure incurred in the period when the trade is discontinued,
- Cars (including electric cars)
- Long-life assets
- Lessors
- Where the expenditure is connected with a change in the nature or conduct of the trade or business by someone other than the purchaser of the asset and obtaining a first-year allowance is one of the main benefits from making the change
- Plant and machinery bought initially for a non-qualifying activity (or used for a long funding lease), then later used in a qualifying activity
- Plant and machinery used previously for one property letting business (including furnished holiday lettings) and then used for another property letting business where the market value is used to determine the expenditure for the new property letting business.

Note that there is an exemption from the general exclusions (so FYA would be available) where the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building.

Disqualifying arrangements are within s45T if:

- The main purpose or one of the main purposes of the arrangements is to enable the expenditure to qualify under these provisions and
- It is reasonable to conclude that the arrangements include steps that are contrived, abnormal or lacking a genuine purpose or designed to exploit any shortcoming of the legislation.

The first-year allowance where this legislation applies is 100% for expenditure which is not special rate expenditure and 50% for expenditure which is special rate expenditure. The normal definitions of these items apply subject to the exclusions highlighted above.

A balancing charge will always arise on the disposal of an asset which falls within these provisions (new s59A and s59B CAA2001). This is equal to 100% of the proceeds of sale for any plant on which 100% FYA was claimed and 50% of the proceeds for any plant on which the 50% FYA was claimed, with the balance of proceeds coming off the pool. Note that, like with super-deduction expenditure, the effect of these rules is that, although the expenditure will have gone into the appropriate pool, business records will need to allow each individual item of expenditure to be tracked.

There are also anti-avoidance provisions (s59C CAA2001) where arrangements are entered into where the main purpose is the avoidance or reduction of a balancing charge on disposal of these assets.

Annual investment allowance

Clause 8 confirms that the higher level of annual investment allowance (AIA) of £1m per annum will continue beyond 1 April 2023. There is no end date on this. There are no transitional provisions to consider as the AIA has been at this level for some time.

Electric vehicle charge points

Clause 9 confirms that the availability of 100% FYA on electric vehicle charging points within s45EA CAA2001 is extended to 31 March 2025, having been due to expire on 31 March 2023.

Analysis of the capital allowances changes

The new FYA regime seems superfluous other than for large companies with high CAPEX on P&M, as most businesses will simply claim AIA on expenditure. If you can claim either, then it is up to each company which they wish to claim. There may be an advantage to claiming AIA if there is residual expenditure in the pool as the expenditure is pooled (even though there is nil value to be added to the pool) and disposal proceeds will be deducted from the pool, so there may be reduced balancing charges if the asset is then sold than under the FYA regime. With special rate pool expenditure, it will be better to claim AIA at 100%, where that is available, rather than FYA at only 50%.

Example of interaction

We have a company that has incurred expenditure as follows:

- £63,258 on a new machine for its factory
- £49,377 on a second-hand machine for its factory
- £22,000 on replacing and upgrading a lift in its office block
- £42,190 on a car with CO_2 emissions such that it falls within the main rate pool.

The tax written down value of the pool at the beginning of the year is £22,654 for the main pool and nil for the special rate pool.

Capital allowances position

The new machine is eligible for both AIA and the new 100% FYA. The only difference is in how the eventual disposal will be treated. By claiming AIA, the proceeds will come off the pool on sale, thus potentially reducing any balancing charge.

The second-hand machine is eligible for AIA. So full relief is available and the nil residue goes into the pool. Note that the new FYAs are not available on second-hand assets.

The lift will fall within the special rate pool and would be eligible either for AIA or 50% FYA. It will clearly be better to claim under AIA as the whole of the value can be relieved in the year of acquisition.

The car in not eligible for FYA or AIA and so goes into the main pool and 18% WDA can be claimed on the total.

Maximum allowances are therefore going to be £63,258 + £49,377 + £22,000 + ((£22,654 + £42,190) x 18%) = £146,307. This is exactly the same as would have been available if the new FYA had not been introduced!

Effectively, the new rules only benefit companies with P&M expenditure exceeding the AIA available.

If in the following year, the new machine had been found to be obsolete, and is sold for £25,000, the capital allowance position would be:

1. If the FYA had been claimed, a balancing charge of £25,000. TWDV of pool would be £53,172 and so the 18% allowance for the year would be £9,571. This would give a net charge of £15,429 and a TWDV carried forward of £43,601.
2. If AIA had been claimed, no balancing charge would arise but the pool would be reduced to £28,172 and WDA for the year would be £5,071. TWDV carried forward would be £23,101.

Business reliefs

Research and development (Lecture B1373 – 13.12 minutes)

Clause 10 and Schedule 1 introduce various changes for the purposes of the relief available for companies incurring qualifying research and development. Unless otherwise noted, the changes apply to both the SME enhanced expenditure scheme (including a claim for tax credits) and RDEC.

All changes apply in relation to accounting periods beginning on or after 1 April 2023 with the exception of the additional information requirements, which apply in relation to claims made on or after 1 August 2023.

Claim notification

A claim to relief is only valid if a prior notification has been made of the intention to claim, unless the company has made an R&D claim during the period of three years ending with the last day of the 'claim notification period' or the claim is in respect of an accounting period which falls within the same period of account as another accounting period where a claim or claim notification has been made. For the purposes of whether a claim has been made in the previous three years, a claim for an accounting period beginning before 1 April 2023 would not be taken into account if the claim is made on or after 1 April 2023 by amendment to a previous company tax return.

The claim notification period begins with the first day of the period of account in which the accounting period falls and ends six months after the end of the relevant period of account. The claim must be in a format specified by HMRC.

Example

Company has a 12-month accounting period beginning 1 July 2023. The claim notification period would be 1 July 2023 to 31 December 2024. It previously made a claim for the period to 31 December 2021 (its accounting date has changed in the meantime) – with the actual claim being made on 15 October 2022. There is no need to notify the current claim.

If there had (instead) been a claim for the year to 30 June 2022 which was made by amendment of the return on 1 July 2023, this would not be a previous claim

Additional qualifying costs

Relief is only available in relation to qualifying costs. One category of such qualifying costs is 'software or consumable items' and that is being expanded to include data licences and cloud computing services.

A data licence is a licence to access and use a collection of digital data. Cloud computing services include the provision of access to, and maintenance of, remote data storage and hardware facilities or operating systems and software platforms.

There is an exclusion for expenditure connected with the grant of a licence or provision of a service giving:

- A right to sell data
- A right to publish, share or otherwise communicate data.

The guidance notes state that this is intended to limit relief to the extent that the commercial use of the licence or service is restricted to the particular R&D activity to which the claim relates.

There is also a restriction on expenditure attributable to a qualifying indirect activity (as specified in paragraph 31 of the Guidelines on the Meaning of Research and Development for Tax Purposes issued on 7 March 2023).

Administrative provisions

Various amendments are made to the general corporation tax administrative provisions as far as they relate to R&D:

- A new power is introduced which will allow HMRC to recover excessive or overpaid amounts of R&D tax credits (SME companies) or RDEC.
- A new time limit is clearly set out so that companies must made R&D tax relief claims within two years of the end of the period of account on which the return is based, unless the period of account is longer than 18 months, in which case the time limit is 42 months from the start of the period. If a claim to SME R&D relief is made and then it is found that the company was not eligible to make the claim, the company can submit an RDEC claim (or an amended RDEC claim as relevant) within 30 days of an amendment being issued to withdraw the initial R&D relief (or 30 days from the date on which any appeal against the amendment is finally determined).
- A new provision is introduced which specifies that any claim must include specified information (with that information to be determined via secondary legislation). This must be completed by a representative of the company or an agent acting on behalf of the company and will include:
    - Company details, including UTR, PAYE reference number, VAT registration number and business type;
    - Contact details of main senior internal R&D contact who is responsible for the claim and the agent involved in the claim;
    - Accounting period for which relief is claimed;
    - Full details of qualifying expenditure;
    - Amount of qualifying expenditure, for each project, of qualifying indirect activities;
    - Project details including
        - What is the main field of science and technology?
        - What was the baseline level of science or technology that the company planned to advance?
        - What advance did the company aim to achieve?
        - The scientific or technological uncertainty that the company faced.
        - How the project sought to overcome the uncertainty.
        - For 1 – 3 projects, all projects must be covered; for 4 – 10 projects, details of projects that account for at least 50% of total expenditure with a minimum of 3 being described; for 11 or more, projects that account for at least 50% of total expenditure with a minimum of 3 of the 10 largest.
    - Which tax relief is being claimed and the amount.
- A new power is provided to HMRC so that they can remove a claim from a return where the company has failed to meet the requirements for making a claim, either as no claim notification has been made or insufficient additional information is supplied. Where such a notice of

correction is given, the claimant may make representations if they believe it has been incorrectly provided. Such representations must be made within 90 days. The company cannot reject the correction as they would be able to do if HMRC made a correction in relation to anything else. If, following representations, HMRC continue to refuse the claim, then the company may make a new claim unless the claim has been rejected due to failure to make a claim notification.

Miscellaneous amendments

The following amendments have also been made:

- Changes are made regarding the SME status of a company:
    - An enterprise is treated as an SME throughout the accounting period even where a related partner or linked enterprise becomes large through exceeding any of the threshold conditions;
    - An enterprise is treated as an SME throughout the accounting period during which it had a related enterprise that exceeded any of the threshold conditions and in which it was acquired by another company which was an SME
- Relief is available where a company has not prepared accounts on a going concern basis because it has transferred its trade to another member of the group
- Amendment is made to the payments condition to make it clear that conditions for relief must be met when the claim is made, rather than in the accounting period the claim relates to.

Reminder of FA2023 provisions

A short Finance Bill was published after the Autumn Statement, which has been enacted as Finance Act 2023. One of the provisions included was an amendment to the relief available for R&D purposes as follows:

- The RDEC rate increases from 13% to 20%;
- The R&D enhancement reduces from 130% to 86%;
- The repayable tax credit reduces from 14.5% to 10%.

All of these take effect **for expenditure** on or after 1 April 2023.

It should be noted that it was announced at the Budget on 15 March 2023 that the reduction in the tax credit percentage will not apply to 'R&D intensive companies'. To be such a company, at least 40% of the total expenditure must relate to R&D. The change will be legislated in Finance Bill 2024 and claims will be able to be made once the legislation is in place. It will apply from 1 April 2023 but a claim will have to be made at the 10% rate and then amended once the legislation is in place, as far as we are currently aware.

Example of impact of the reduction in rates

Company incurs £100,000 on qualifying R&D and is eligible to claim under the SME scheme.

The previous additional deduction would be £130,000 giving corporation tax relief of £24,700 at current rate of 19% (this is the amount that is gained on the additional deduction only as the allowable costs would still get tax relief even if no additional relief was available).

From 1 April 2023, the additional deduction would be £86,000.

This will give relief at £16,340 if the company is paying tax at the small profits rate (which is unlikely given the level of the relief) or £21,500 if paying at main rate. The benefit if you are paying marginal rates of tax (normally 26.5%) on profits between the marginal relief limits will be higher.

If this was eligible for tax credit, then previously the company would get £33,350, based on the 130% increment plus the original expenditure. From 1 April 2023, the company will get £18,600, based on a lower deduction and lower repayment rate. This clearly represents a significant reduction in relief (56% of the previous figure).

If this company had been claiming under the RDEC scheme (assuming that they are in a net loss position), the RDEC would be £20,000 and the net repayable amount would be £15,000 (if paying at the main rate of CT) or £16,200 (if paying at the small profits rate), as you have to net off the corporation tax on the RDEC when calculating the repayment. So the company would be even worse off.

Patent box

Patent box allows companies to pay tax at 10% on the profits arising from the exploitation of qualifying intellectual property. The rate is achieved by calculating a deduction from taxable profit.

Clause 11 adjusts the formula for calculating that deduction so that it remains correct regardless of the rate of tax which a company is paying. It does this by substituting the phrase ‘applicable rate’ for the previous ‘main rate’ of corporation tax.

This takes affect for accounting periods beginning on or after 1 April 2023.

Energy (Oil and Gas) Profits Levy **(Lecture B1374 – 15.07 minutes)**

The Energy Profits Levy (EPL) was introduced in May 2022 to tax profits of oil and gas companies operating in the UK and on the UK Continental Shelf. There was an investment allowance that could be utilised by companies to reduce the profits on which the EPL was charged. At the time of the 2022 Autumn Statement, the rate of the levy was increased to 35% and the investment allowance rate reduced to 29%. These changes took effect from 1 January 2023.

Clause 12 introduces a higher allowance of 80% where expenditure is incurred on de-carbonisation of upstream petroleum production. This is to promote movement toward the Government's net zero target as this will reduce greenhouse gas emissions. It will apply for expenditure on or after 1 January 2023.

Expenditure will be treated as being incurred on decarbonisation of upstream petroleum production if it is incurred in qualifying circumstances and the main purpose (or one of the main purposes) of incurring the costs is to reduce the greenhouse gas emissions of the ring fence trade.

Expenditure is incurred in qualifying circumstances if it is incurred:

- On the provision of alternative energy source for the purposes of generating or storing power in the upstream petroleum facilities (including purchase, transport and installation)
- On modification of an asset so it becomes an alternative energy asset
- On the provision of an asset used to make connections to the electric grid
- For the purposes of reducing or eliminating flaring or venting
- For the purpose of capturing greenhouse gas emissions or
- For the purpose of monitoring or measuring greenhouse gas emissions.

In this context, an alternative energy source is one which generates or stores power from sources of energy other than fossil fuels. Upstream petroleum facilities are any facilities used by the company for the purposes of its oil extraction.

Cultural reliefs **(Lecture B1374 – 15.07 minutes)**

Clause 13 extends the sunset date of museum and galleries exhibition relief from 31 March 2024 to 31 March 2026. Expenditure after this date will no longer qualify for relief.

Clause 14 extends the period for which a higher rate of relief is available for theatre tax credit, orchestra tax credit and museum and galleries exhibition tax credit.

The rate has been at a higher level of 45% (for theatre tax relief and museums and galleries exhibition relief non-touring productions) or 50% (for orchestra tax relief and theatre tax relief and museum and galleries exhibition relief touring productions) since 27 October 2021. It was due to reduce from 1 April 2023 but will not now reduce until 1 April 2025, when it will be at a level of 30% or 35% before reverting back to 20% or 25% from 1 April 2026.

Seed enterprise investment scheme (Lecture B1375 – 14.17 minutes)

Various changes to the seed enterprise investment scheme (SEIS) are introduced by Clause 15.

These are:

- The maximum amount on which an individual can claim SEIS income tax relief and/or SEIS capital gains tax reinvestment relief in any tax year is increasing from £100,000 to £200,000
- The gross assets that a company can have immediately before the share issues and still be an SEIS qualifying company is increasing from £200,000 to £350,000
- The amount which a company can claim under SEIS is increasing from £150,000 to £250,000
- The maximum age of the trade for which SEIS can be claimed is increasing from two years to three years.

These changes will apply for shares issued on or after 6 April 2023.

CSOP (Lecture B1375 – 14.17 minutes)

Clause 16 increases the amount of options which can be issued under Company Share Option Plans (CSOPs) from £30,000 to £60,000. This represents the value of the shares when the options are first issued. This limit will be capable of being varied by secondary legislation going forward.

This clause also removes Para.20 Sch.4 ITEPA 2003, which currently states that the majority of the issued shares of the same class as the eligible shares (ie those subject to the CSOP) must be employee-controlled shares or open market shares, unless there is only one class of shares. This is referred to as the 'worth having' condition and was designed to limit the ability to create significant holdings of very low value shares to participate in the CSOP. There are consequential changes arising from this change.

Broadly speaking, a company's shares are 'employee-control shares' if they are held by employees or directors who together control the company. The shares are 'open market shares' if they were not acquired as a result of a right or opportunity as directors or employees (unless it was as a result of an offer to the public).

These changes will be of particular interest to growth companies that do not qualify for EMI (e.g. those that have outgrown the EMI employee limit and gross assets test but are currently prevented from operating a CSOP due to the restrictions on share classes, including venture-capital backed companies and others with multiple share classes).

These provisions will apply to options granted on or after 6 April 2023 as well as those that were granted before that date but have yet to be exercised.

Enterprise Management Incentive schemes (Lecture B1375 – 14.17 minutes)

Clause 17 makes a couple of technical amendments to the EMI provisions.

For options granted on or after 6 April 2023, it will no longer be a requirement that any restrictions applying to the shares be outlined in the share option agreement, nor will a declaration be needed that the employee who received the share options has signed a 'working time' declaration. The working time requirement (WTR) remains but it will not have to be confirmed in the paperwork. The WTR is (broadly) that the employee's committed working time for the company must be either an average of 25 hours per week or, if less, 75% of their overall working time.

Additionally, where the maximum entitlement to EMI options is exceeded, new provisions require the employer company to make arrangements for determining which options will and will not qualify under EMI. This must be done on or before 6 July following the end of the first year in which the options are exercised. The employer must specify how the determination has been made and this must be made available to any employee who is affected. If this is not done, options will be determined in chronological order of date of grant of the option, with apportionment where required.

Example

A company has issued share options under EMI to 15 employees over 20,000 share for each so a total of 300,000 shares in issue. They had valued the shares at £10 per share but HMRC subsequently challenge this and it is agreed that they are worth £11 each.

The total shares under option now reaches £3,300,000. Each individual is still under the £250,000 limit but the company will have to decide which shares are no longer qualifying. They have to notify the employees of their decision.

Pensions (Lecture P1372 – 12.44 minutes)

Lifetime allowance (LTA) charge

If the value of total tax-relieved pension rights exceeds the LTA at certain 'benefit crystallisation events' (e.g. when benefits are first taken from the fund, or aged 75), the excess has been subject to a LTA tax charge of:

- 25% if the excess is left in the fund to be drawn as taxable income, or
- 55% if it is drawn out as a lump sum.

The LTA was introduced in 2006 at £1.5 million, had risen to £1.8m by 2012, but was subsequently reduced 3 times before rising again to £1,073,100. Various types of 'protection' have been available, both on the introduction of the LTA and whenever it has been cut. So some taxpayers can have a higher value of pension rights before incurring a LTA charge.

Clause 18 abolishes the lifetime allowance (LTA) charge for pension purposes for 2023/34 and any subsequent tax year.

The lifetime allowance still exists for 2023/24 but the government intends to abolish it in a subsequent Finance Bill.

Clause 19 confirms that certain lump sums paid out in excess of the LTA in 2023/24 (or until the LTA is abolished) will be subject to the recipient's marginal rate of income tax. The lump sums caught are:

- A serious ill-health lump sum
- A lifetime allowance excess lump sum
- A defined benefits lump sum death benefit and
- An uncrystallised funds lump sum death benefit

All of these are defined in Part 4 FA2004.

These provisions effectively mean that rather than attracting the LTA charge in 2023/24 (at a rate of 55% if taken as a lump sum or 25% if taken as a taxable income stream), any value in excess of the LTA will be taxed at the individual's marginal rate of tax. For those who are taking the money out as a lump sum, the immediate impact will be a reduction of 10% (for those who are paying additional rates of tax) but possibly more. The real reduction arises from those who choose to withdraw money as income, since there will be no upfront 25% charge; the income will just be taxed as it is withdrawn.

In these provisions, reference to the lifetime allowance will either be the standard lifetime allowance (currently £1,073,100) or an enhanced value if this has been protected previously.

Individuals who have protected their LTA in the past may have been restricted from adding new funds to their pot as a condition of obtaining protection (e.g. if claiming 'fixed protection'). From 6 April 2023, it appears that individuals who held protection for their pension rights before 15 March 2023 will be able to accrue new pension benefits, join new arrangements or transfer their savings without losing the protection (although the protection will only apply for the purposes of the tax-free pension commencement lump sum in any case). This tax-free amount is 25% of the LTA figure (25% x £1,073,100 = £268,275), unless the person has 'protection'.

Annual allowance

Clause 20 increases the pension annual allowance to £60,000 (from £40,000) for 2023/24 onwards. This is the maximum amount of pension inputs permitted each year without the annual allowance charge being triggered, although there is carry forward of unused allowances for up to three years where a pension fund is already in existence. An individual cannot input more than their net relevant earnings (if gross contributions exceed £3,600), although where payments are made by the employer this cap does not apply. There is no change in the method of calculating pension input amounts for defined benefit schemes, which is not based not on the cash input to a scheme in the year, but instead looks at the increase in the member's pension rights for the year, applying a factor of 16 to the CPI-adjusted increase in benefits. Thus, a relatively small increase in salary, or working a lot of overtime, can result in a high pension input, as eventual benefits are linked to salary.

Clause 21 increases the money purchase annual allowance (MPAA) to £10,000 (from £4,000) for 2023/24 onwards. The MPAA applies when you have started to drawdown from your pension, other

than where you have just taken the tax-free lump sum or where you have taken the lump sum and used the balance to buy an annuity, which cannot reduce. It does not affect those who have benefits from a defined benefit scheme. There is no carry forward of unused MPAA.

Clause 22 amends the provisions relating to the tapering of the annual allowance, so that the adjusted income for the purposes of calculating the tapered allowance increases to £260,000 (from £240,000) and the minimum rate of allowance increases to £10,000. For every £2 that is earned over the threshold, the annual allowance reduces by £1.

Adjusted income includes employer pension contributions. 'Threshold income' (which excludes employer pension contributions) remains at its previous level of £200,000 as it is set at the adjusted income (now £260,000) less the annual allowance (now £60,000). An individual's income must exceed both these limits if tapering is to apply.

The combination of these changes means that the £10,000 minimum amount will apply for anyone who has income over £360,000, as opposed to £312,000, at which the £4,000 minimum previously applied.

Other matters

Enhanced lifetime allowance

Clause 23 protects the position of those individuals who have an enhanced lifetime allowance as at 5 April 2023, as it states that they will not lose their protection. It will also give entitlement to a higher lump sum, with the maximum lump sum (which can be paid tax-free) being whatever this would have been if this had been paid on 5 April 2023.

This clause reflects the announcement (to be legislated in a future Finance Bill) that once the lifetime allowance is abolished, the maximum tax-free lump sum will be limited to 25% of the current figure. This will be £268,275 for anyone with a standard lifetime allowance or a higher figure where the lifetime allowance stands at a higher protected figure.

Collective Money Purchase pension schemes

Clause 24 introduces additional measures relating to Collective Money Purchase pension schemes, which were enabled in the Pension Schemes Act 2021. This is a new type of pension scheme that allows a combined money purchase type scheme to be set up by a group of individuals so that they can benefit from scale of investment. This clause makes some amendments to the provisions as they apply for tax purposes so:

- A CMP scheme may make payments of periodic income when it is in the process of being wound up;
- A CMP scheme may transfer assets used to pay periodic income to another registered pension scheme, so that a drawdown pension may be paid from the new scheme;
- When a member dies over the 75 during the winding up period, any income which becomes payable to dependents is ignored for some purposes.

Net pay arrangements

Clause 25 brings into legislation provisions, which have previously been announced, relating to pension contributions paid under net pay arrangements. If an individual is making pension contributions under a net pay arrangement but their total taxable income is below the personal allowance, they will not benefit from any tax relief on those contributions. In contrast, those paid under a 'net pay' arrangement (where the pension scheme claims a 20% top-up on contributions made net of basic rate tax) still get the benefit of this basic rate top-up, even though they are a non-taxpayer. From 2024/25, top-up payments will be made to those individuals in relief at source schemes to compensate them for the lost tax relief.

If the income exceeds the personal allowance but income tax relief has not been achieved on the whole contribution, then a proportionate payment will be made. The payments will be made as soon as is practicable after the end of the tax year and the individual can decline the payment. It will be treated as employment income for the relevant tax year.

The guidance notes to the FB state that HMRC will notify those who are eligible and invite them to provide the details such that the top-up can be paid directly to their bank account. Note that the top-up payment will not be paid into their pension scheme.

Social security

Clause 26 provides for an exemption from income tax for payments made as training allowances to participants within the Jobs Growth Wales Plus Scheme. This is backdated and takes effect for payments made on or after 1 April 2022, when the scheme was introduced.

Participants might receive other payments under the scheme but it is only the training allowance of up to £30 per week which is exempt from tax.

Clause 27 contains a general provision which will allow the UK Government to clarify the tax treatment of social security payments made by the devolved administrations via statutory instrument rather than having to include these in primary legislation.

Qualifying care relief

Qualifying care relief allows those who are caring for children or adults to receive an amount of income which is free from income tax. Once the fixed amount is exceeded, the surplus is taxed in full without deductions. The allowance is comprised of two elements: a fixed amount per household and then a weekly amount for each person being cared for.

Clause 28 increases those limits and then provides that these limits will be increased automatically each year in line for CPI, rounded up as necessary (to the nearest £10 for the fixed allowance and the nearest £5 for the weekly allowance). The changes take effect from 6 April 2023.

The fixed amount increases to £18,140 (from £10,000). The weekly amount increases to £375 (from £200) for a child under 11 years old and to £450 (from £250) for older children and adults. These increases have been calculated to restore the value of the allowance when it was first introduced in 2003, as increases have not kept in line with inflation.

Estates in administration (Lecture P1374 – 13.06 minutes)

Clause 29 introduces Schedule 2, which makes various amendments to the taxation of beneficiaries of estates and trusts in order to the simplify the operation of the legislation.

Taxation of beneficiaries of estates

S656 and s657 ITTOIA 2005 are amended. These apply to income from UK estates (s656) and foreign estates (s657). The legislation states that the tax is charged on the income arising in the year and is grossed up for the purposes of computing the liability. The amendment removes reference to 'for that year' for the grossing up calculation.

S663 ITTOIA is then rewritten so that the grossing up is by reference to the tax rate paid by the personal representatives at the time the income arose, rather than when it is paid to the beneficiary.

As an example, an estate receives interest income of £1,000. The rate of tax when it is received is 20% so £200 is paid in tax. The balance of £800 is paid out to the beneficiary when the basic rate of tax has risen to 25%. The gross income treated as paid to the beneficiary is £1,000 and they will have extra tax to pay even if they are a basic rate taxpayer.

Similar amendments are made to s668 ITTOIA, which deals with a situation where an individual's share in an estate is reduced. Any amendment to the income is grossed up by reference to the rate borne by the personal representatives at the time the income arose rather than the point at which the adjustment to the income entitlement arises. There is a consequential provision to determine which income is treated as being paid in this circumstance. Firstly, you apportion income between different persons on a just and reasonable basis. Secondly, it is assumed that income is paid out of the income liable to the highest rate of income tax first.

S670 and s680 ITTOIA 2005 are amended, although the explanatory notes state that this is a re-ordering of the legislation rather than an actual change. It confirms that stock dividends and release of loans to participators in close companies are treated as having an income tax credit of 0%.

S680A and s680B ITTOIA 2005 are amended to make it clear that estate income which is derived from dividends is to be treated as dividend income of the beneficiary and that estate income which is derived from savings income is to be treated as savings income of the beneficiary. This clarifies that such income can be reduced by offset of the dividend allowance or savings allowance as appropriate.

Similar amendments are made to CTA2009 where the beneficiary is subject to corporation tax rather than income tax.

These changes come into effect from 6 April 2023 (income tax) or 1 April 2023 (corporation tax).

Low income trusts and estates

The legislation at s23 ITA 2007 which sets the template for calculation of income tax liability is amended so that net income at step 2 of this calculation is taken to be nil where the net income is £500 or less. This is described as the 'de minimis estates amount'. There is an equivalent provision for trusts called the 'de minimis trusts amount'. It is important to note that this is not a 'nil rate band' as if the net income is more than £500 it is taxed in full.

Where the trust is a relevant settlement, this £500 limit is divided by the total number of qualifying settlements (including the relevant settlement) although the limit cannot fall below £100. A relevant settlement is any other current settlement, unless it does not have any trust rate income for the tax year or, throughout the year, the income is treated as that of the settlor, a qualifying vulnerable beneficiary or it is a qualifying heritage maintenance settlement.

The provisions that tax the first slice of income for an accumulation or discretionary trust at the normal income tax rates, rather than the trust tax rates, will be repealed. This 'standard rate band' has been £1,000 for several years.

The impact on trusts is going to be relatively minor.

Example

Discretionary trust with income of £10,000 arising from property

Currently:

£1,000 @ 20%	£200
£9,000 @ 45%	£4,050
Total	£4,250

Going forward

£10,000 @ 45%	£4,500

It should be noted that this does not affect later parts of the calculation, such as the tax pool adjustment for payments to discretionary beneficiaries, so this does not disappear if the trust is within the de minimis trusts amount. This means that discretionary trusts with income under the de minimis are not going to be building up tax pool amounts, so that tax will have to be paid for distributions to be made to the beneficiaries.

Example

A trust has income of £450 per year for 10 years and then wants to distribute this to the beneficiaries.

No tax has been paid by the trust but any income being distributed will carry a tax credit. If the full £4,500 was paid out, the trust would be left having to find £3,681 of tax as the £4,500 would be grossed up at 45/55 to find the tax credit. In reality, the maximum that could be paid out would be £4,500 net of trust tax of 45% ie £2,475.

A beneficiary's liability to tax on estate income is removed, where that income has been paid from income within the 'de minimis aggregate income'. There are equivalent amendments to the corporation tax provisions in relation to beneficiaries' income from estates. There is no change for income from trusts due to the income still carrying the normal tax credit.

These changes will take effect from 6 April 2024 (income tax) or 1 April 2024 (companies).

Insurance

A number of amendments are made to the provisions relating to the taxation of insurance businesses, mainly to address anomalies in the way the existing legislation operates.

Long-term insurance businesses can be classified as 'BLAGAB' which stands for basic life assurance and general annuity business. Such businesses are ring-fenced, for example in relation to offset of losses.

Clause 30 introduces legislation to address an anomaly where books of life policies are transferred between insurers which would typically be effected by a reinsurance contract pending Court approval. A tax mismatch can arise if profits are taxed as BLAGAB by the vendor, as non-BLAGAB by the reinsurer and then as BLAGAB once the Court approval of the transfer is confirmed. An advantage can arise, for example, if the reinsurer generates losses which can be offset more widely than if they were BLAGAB losses. This clause confirms that the profits or losses arising to the reinsurer are within the BLAGAB. This applies from 15 December 2022 but is retroactive in that it applies to reinsurance contracts whenever they were entered into.

Clause 31 also applies where substantially all of the insurance risks of a BLAGAB are assumed by a reinsurer. The amounts received under the reinsurance can no longer count as deemed receipts within the I-E life tax calculation. The I-E computation taxes both the shareholder profit and policyholder investment return of the insurance company, simplified as investment return (I) less management expenses (E). This has been introduced at the request of the industry to remove uncertainty in application of the previous provisions. It comes into effect for accounting periods ending on or after 15 December 2022.

Clause 32 removes a charge to corporation tax where an insurer's liabilities are written down under an order made in accordance with s377A Financial Services and Markets Act 2000. The amount arising from the transaction will not be brought into account for the purposes of calculating the trading profit. This would occur where there is an improvement in solvency of a business. This will apply from the date of Royal Assent.

Clause 33 considers a situation where the courts can reduce the value of an insurer's liabilities (including the amounts they might have to pay out to policyholders under annuities) to avoid insolvency of the insurer. The pensions legislation is amended so that such a reduction in payment of an annuity will not incur an unauthorised pensions charge. This takes effect from Royal Assent.

Miscellaneous corporation tax issues

Corporate interest restrictions (Lecture B1374 – 15.07 minutes)

Clause 34 introduces Schedule 3 which contains further amendments to the Corporate Interest Restriction provisions. Once again these are badged as changes to clarify the way in which the provisions apply.

The basic provisions operate to restrict the amount of relief available for a company to a proportion of the adjusted net group interest expense or qualifying net group interest expense.

The starting point for each company is calculating the net tax-interest expense of a company which is the excess of the company's tax-interest expense amount over its tax-interest income (or the net tax-interest income if the income exceeds the expense).

Tax interest expense

S382 TIOPA 2010 defines the tax-interest expense of a company being amounts which are relevant loan relationship debits, amounts which are relevant derivative contract debits and amounts in respect of financing costs implicit in amounts payable under relevant arrangements or transactions.

Para.2 Sch.3 amends this section to exclude the finance costs of charities so that they are not brought into account as tax-interest expenses and so are not included in CIR calculations.

Carry forward of interest allowance or excess debt cap

Provisions apply so that groups can carry forward interest allowance or excess debt cap. S395A and s400A TIOPA 2010 provide that groups can carry forward these amounts where a new holding company is inserted in the group by way of a takeover part way through a period of account. Para.3 Sch.3 clarifies the wording of these provisions:

- S395A is amended by clarifying what is meant by the 'first period of account of the new group' (which begins on the day of the takeover) and the 'last period of account of the old group' (being the day before the takeover);
- S400A is amended to change reference to 'the group' to 'the new group' and aligning the definitions with those in s395A as quoted above.

Exclusion of income from tax-EBITDA

Tax-EBITDA is a crucial component of the CIR calculation and s407 ITOPA contains amounts which are excluded from the calculation of this figure. It includes any tax-interest expense amount or tax-interest income amount.

S388 TIOPA 2010 makes an adjustment to 'tax-interest income' which is not subject to tax in the UK due to a credit for foreign tax paid. There is a formula for calculating 'notional untaxed income'. S407 is amended to make it clear that excluded tax-interest income also includes amount that are removed from the calculation of tax-interest income by virtue of s388.

An additional category of excluded amounts is also added to s407 which is income tax losses being brought forward and utilised by non-resident companies who are newly within corporation tax. This is consistent with the treatment of corporation tax losses.

Relevant expense amount and relevant income amount

S411 TIOPA 2010 contains the definition of 'relevant expense amount' in the context of calculation of group interest and, by extension, group-EBITDA. One of the amounts included is currently 'interest payable in respect of relevant non-lending relationships'. Relevant non-lending relationships are defined within the loan relationship provisions starting at s478 CTA 2009. These are where a company is

a creditor or debtor in relation to a money debt which has not arisen from the lending of money but interest, foreign exchange gains or losses or impairment losses arise on those debts. An example might be an interest-bearing trade debt.

The legislation s411 is amended to bring in debits relating to relevant non-lending relationships or debits that would be brought in if the company was within charge to corporation tax but excluding exchange losses or impairment losses.

S41 also contains the definition of ‘relevant income amount’ again in the context of the calculation of group figures. Again it contains a provision to bring in credits relating to interest receivable in respect of relevant non-lending relationships. This is also amended to bring in credits relating to non-lending relationships or credits which would be brought in if the company was within charge to corporation tax but excluding exchange gains or the reversal of impairment losses.

Adjusted net group-interest expense

S413 TIOPA covers the calculation of the adjusted net group-interest expense. This is amended to remove potential mismatches created by non-UK resident property companies coming into the charge to corporation tax.

Firstly, s330ZA CTA 2009 allows a non-UK resident company which has loan relationship debits relating to its UK property business referable to a time before it starts to carry on that business which have not been brought into account for tax purposes to be claimed as a debit in the period in which they start to trade. This is the standard pre-commencement expenditure provisions which apply across UK tax law. Such an adjustment can be added to the adjusted net-group interest expense provided it have not been included in the calculation of this figure for an earlier period of account.

Secondly, s607ZA CTA 2009 allows costs relating to derivative contracts which a non-UK resident company is party to for the purposes of a UK property business which it enters into before the business commences to be brought into account for tax purposes (if they have not previously been accounted for) when the business starts. Again, this adjustment can be added to adjusted net-group interest expense provided it has not been included in the calculation of this figure for an earlier period of account.

Finally, amounts can be added to adjusted net-group interest expense where these amounts represent income in respect of a loan relationship or relevant derivative contract recognised in the financial statement of a group but not brought into account but are expected to be brought into account under s330ZA or s607ZA as explained above. A deduction would be made for expenses in respect of a loan relationship or relevant derivative contract recognised in the financial statement of a group but not brought into account but are expected to be brought into account under s330ZA or s607ZA as explained above.

However, unless the company elects otherwise, these adjustments are not to be made for a period of account of the worldwide group ending on or after 6 April 2020 and beginning before 1 April 2023.

The above provisions relate to pre-commencement expenditure for non-UK resident companies coming into the charge to UK corporation tax.

However, UK companies can also claim deductions for pre-trading expenditure and so equivalent amendments are made to s413 TIOPA 2010 in relation to normal pre-trading debits. These provisions take effect for elections (to bring amounts into account which relate to pre-trading costs) made from Royal Asset.

Qualifying net group-interest expense

S414 TIOPA 2010 explains the calculation of qualifying net group-interest expense. This contains an adjustment for expense expenses relating to equity notes. The intention is to prevent items that have equity features being included in this calculation and possible inflating the group ratio percentage. This is amended to refer to 'relevant equity notes'.

A relevant equity note is then defined as being a noted within s1016 CTA 2010 which categorises an equity as meeting any of the tests below:

- No particular redemption date;
- Redemption date (or latest redemption date) falls after the end of the permitted period;
- Redemption will occur after the end of the permitted period if a particular event occurs and the event is one which is certain or likely to occur; or
- The issuing company can secure that there is no particular by which the security is to be redeemed or that the date for redemption falls after the end of the permitted period.

For the purposes of s1016, the permitted period is 50 years but for CIR purposes, this alteration now sets this at 100 years.

Capitalised interest

The default position for calculating group-interest and group-EBITDA is to follow the amounts recognised in the group's financial statements. When calculating adjusted net group-interest expense, this includes all amounts of interest that are capitalised in the period.

It is possible for the group to elect to use the alternative calculation of the interest allowance so that the calculations more closely align with UK tax rules. From a UK tax perspective, the rules on capitalised interest make a distinction between the nature of the asset or liability in which the amounts are capitalised. Mostly, tax relief is available on capitalised amounts at the time they are capitalised. However, if the asset or liability is taxed in line with the account (called 'GAAP-taxable), the tax relief follows accounting treatment. This applies, for example, to trading stock and intangible fixed assets. In this case, no adjustment is made to the ANGIE calculation.

S423 TIOPA 2010 is amended to correct an anomaly where GAAP-taxable assets are appropriated from trading stock to fixed assets. If this occurs, the adjustments can again be brought into account in calculating ANGIE.

Non-consolidated investment election

Where a worldwide group has an investment in a non-consolidated entity any interest expense will not normally be included in the net group-interest expense for the group but the group-EBITDA will include the group's share of the entity's profit such that this can deflate the group ratio.

The investing group have the option of making an interest allowance (non-consolidated investment) election. This gives the investing group a share of the non-consolidated associate's net group-interest expense for the purpose of calculating ANGIE and QNGIE.

The meaning of non-consolidated associate is amended in s429 TIOPA 2010. Condition A, B, C or D have to be met. D is a new condition.

Condition A is amended so that instead of stating that 'the entity' is accounted for in the financial statements of the group, it will state that 'the ultimate parent's interest in the entity' is accounted for in the financial statements of the group.

New condition D is that:

- The entity is a partnership or a transparent entity other than a partnership and
- The ultimate parent's interest in the entity is accounted for in the financial statements of the group on the basis of fair value accounting.

An entity is transparent if it is not chargeable to corporation tax or income tax as a person or it is a collective investment vehicle which is transparent for income tax purposes within Schedule 5AAA TCGA 1992.

Public infrastructure

The public infrastructure election is available to exclude companies from the CIR provisions where they meet the relevant conditions. An election has to be made before the end of the relevant accounting period. S435 TIOPA 2010 is amended to align the deadline for making a joint group public infrastructure election with the deadline for individual group companies to make those elections.

The group election must be made before the end of the earliest elected accounting period and may not be made before the first day of the earliest elected accounting period. The 'earliest elected accounting period' is the first elected accounting period for an elected company and must begin no later than the first elected accounting period of each other elected company. For these purposes, the first elected accounting period of first of a company's accounting periods in relation to which the election is to have effect.

S436 TIOPA 2010 contains provisions as to what can be included as qualifying infrastructure activity. This has allowed a building under construction or one being let on a short-term basis to be a public infrastructure asset. The legislation is clarified and a new provision introduced to make it clear that this will not apply if the property is within a trading business, rather than a property investment business.

S438 TIOPA 2010 excludes from the tax-interest expenses of a qualifying infrastructure company any amounts which are defined as 'exempt' which broadly means payments to creditors who are not related parties of the company or where the creditor is itself a qualifying infrastructure company. S438A is inserted into the legislation which will allow payments made to third parties via overseas group companies to be exempted. The intermediate group company has to meet some of the public infrastructure tests.

The explanatory notes give the following example:

New section 438A is designed to operate iteratively to a stack of intermediate non-UK companies. For example, a UK Qualifying Infrastructure Company (QICCo) could borrow from a non-UK MidCo which borrows from a non-UK TopCo and which in turn borrows from a third party. New section 438A could then, assuming the relevant conditions are met, apply in relation to the loan from TopCo to MidCo (with TopCo being 'C'). New section 438A could then, again assuming the relevant conditions are met, apply in relation to the loan from MidCo to QICCo (with MidCo being 'C').

Partnership and other transparent entities

S447 TIOPA 2010 contains defines of partnerships for the purposes of these provisions. This is amended in line with the provisions for the non-consolidated entities so that an entity is transparent if it is not chargeable to corporation tax or income tax as a person or it is a collective investment vehicle which is transparent for income tax purposes within Schedule 5AAA TCGA 1992. Previous legislation only made reference to the entity not being chargeable to corporation tax or income tax as a person.

Investments held by investment managers

Investment managers will often invest in various groups alongside third parties through a vehicle which is typically a partnership. The investment will be required to consolidate that vehicle with the entities below it where certain conditions are met. This could give a large single worldwide group encompassing the investment manager and each investment.

This could lead to problems if each investment is independent as the CIR disallowance could be based on financial results of otherwise unconnected businesses.

S454A TIOPA contains provisions which allow these groups to be treated as independent entities and the Finance Bill amends those provisions so that they work as planned where the investment manager is a partnership or other transparent entity.

Determining the worldwide group

S475 TIOPA 2010 gives the definition of consolidated and non-consolidated subsidiary for the purposes of determining the worldwide group.

S475(1) currently states that X is a non-consolidated subsidiary of Y at any time that it is an actual subsidiary and if Y were required to measure its investment in X it would do so using fair value accounting or on the basis that X were an asset held for sale or held for distribution to owners.

The part of this definition after 'fair value accounting' is removed.

Appointment of a reporting company by HMRC

The legislation is amended so that the time limit for HMRC to appoint a reporting company for CIR purposes increases from 36 months to 4 years. This takes effect from Royal Assent.

Revised interest restriction return

Para.8 Sch.7A TIOPA 2010 is amended to make it clear that a group has to submit a revised interest restriction return where any of the figures contained in a previous return have become incorrect.

This has to be submitted within a period of three months beginning with the relevant day or it has no effect with an HMRC officer being able to extend this deadline. The relevant day is:

- the day where the previous figures become incorrect by virtue of a company amending an amount stated in its company tax return, the first day on which that amount can no longer be altered or
- in any other case, the day on which the figures were found to be incorrect.

The penalty provisions are amended to levy a penalty where the revised return is not submitted within the necessary time limit.

Enquiry into interest restriction return

Para.41 Sch.7A is amended to provide that HMRC always has at least 12 months in which to open an enquiry into an interest restriction return or an amended interest restriction return.

Determinations by officers of HMRC

HMRC have a right to issue a determination notice where there is no return made. Para.56 Sch.7A is amended to remove the right to issue a determination notice where there is no reporting company, as this has become obsolete now they have extended the time limit for a reporting company to be appointed by HMRC. A further amendment is made to ensure a group can always displace any determination notice by submitting an interest restriction return. These take effect from Royal Assent.

Consequential claims

Where a determination is made, either because no return has been made or following an enquiry, a group has had an extended period of time to make certain claims such as group relief or capital allowances claims which might otherwise be out of date.

An amendment is made to remove that extended time limit where a determination is made because no return has been received.

Other amendments

Schedule 24 FA2007 is amended so that changes to disallowances or reactivations under the CIR provisions are not taken into account when calculating potentially lost revenue for the purposes of calculating penalties for incorrect returns.

S457 CTA2009 is amended to make it clear that companies that are charities cannot carry forward or surrender as group relief financing costs incurred in respect of tax-exempt activities.

Commencement

Unless otherwise noted above, these provisions take effect for accounting periods that begin on or after 1 April 2023.

Old debt cap rules

There are some provisions made to the administration of the old debt cap rules which applied before the CIR was introduced from 1 April 2017. These are not considered further here due to the very limited application for most clients.

Investment vehicles **(Lecture B1374 – 15.07 minutes)**

UK Property Rich Collective Investment Vehicles

Prior to April 2019, the capital gains of non-resident Collective Investment Vehicles (CIVs) rarely needed to be considered but this changed when the new non-resident capital gains tax rules were introduced. Schedule 5AAA TCGA 1992 contained provisions to address some of the issues which arose from these changes.

In particular, allows two forms of election which move the tax point to the investor so that exempt investors would not be subject to a tax charge as they would be if the CIV was taxable.

One of the conditions for these elections to be valid is the 'Genuine Diversity of Ownership (GDO)' condition. The provisions are amended as required so that where a collective investment vehicle is part of 'multi-vehicle arrangements', the GDO condition can be satisfied by either the CIV in isolation or by the multi-vehicle arrangement as a whole.

Multi-vehicle arrangement is defined as 'arrangements comprising two or more vehicles under which an investor in one of those vehicles would reasonably regard that investment as an investment in the arrangements as a whole rather than exclusively in a particular vehicle'.

Consequential amendments are made to facilitate these changes which take effect from Royal Assent.

Real Estate Investment Trusts (REITs)

In order to qualify as a REIT, various conditions have to be met.

S529 CTA 2010 contains provisions relating to the property rental business of the company. Under current legislation Conditions A and B have to be met which are that there are at least 3 rental properties and no single property represents more than 40% of the total value of the rented property. This legislation is being amended so that as an alternative condition C can be met.

Condition C is that there is a property rental business involving at least one property the value of which exceeds £20m and which is rented or available for rent as a commercial unit.

There are various consequential amendments and the changes have effect from Royal Assent.

When an asset that has been used in the property rental business changes use to the residual business, there is a deemed disposal and reacquisition but is not a chargeable gain or allowable loss.

However, under s556 CTA 2010, if the property is developed and the cost of the development exceeds 30% of the value of the property and the property is sold within three years of completion of the development, the deemed disposal and reacquisition provisions are ignored so the property is treated as disposed of in the course of the residual business. S556 currently states that it is 30% of the fair value of the property at entry into the REIT regime or at acquisition, whichever later.

This is being amended so that it is 30% of the fair value at whichever of the following gives the greatest value:

- on entry into the REIT regime;
- when the property was acquired;
- the beginning of the accounting period in which the development commenced.

The provisions also apply where there is the disposal of a right or interest in a relevant property rich company which has developed property meeting the same basic conditions and the legislation is also amended for those transactions.

These provisions take effect for disposals made on or after 1 April 2023.

Collective investment schemes with Genuine Diversity of Ownership are also relevant in terms of companies qualifying as REITs. The amendment made relating to multi-vehicle arrangements explained above is also imported into s528ZB CTA 2010 for REIT purposes. This applies from Royal Assent.

Finally, an amendment is made such that where property income distributions are made to a partnership which includes some partners who are entitled to gross payments and some who are not, the company can deduct tax only from the proportion of the payment which relates to the partners who are not entitled to gross payment. A statement must be provided to the partnership showing the amounts deducted in relation to each partner. This takes effect from Royal Assent.

Qualifying Asset Holding Companies

FA2022 included provisions for a new type of investment vehicle which is effectively transparent with the investors being taxed directly on the income arising.

The current Finance Bill contains provisions making amendments to those initial provisions so they operate as originally intended. All these apply from Royal Assent unless otherwise noted.

The first amendment excludes securitisation companies from qualifying as QAHCs. This is defined as a company whose profits are brought into account for corporation tax purposes under Reg. 14 of SI 2006/3296 (the Taxation of Securitisation Companies Regulations). These amendments come into force on 15 March 2023. However, a securitisation company that was a QAHC immediately before that date will continue to qualify as long as it remains a QAHC.

A company will only qualify as a QAHC if it meets the ownership condition which includes a provision that the sum of relevant interests held by persons who are not Category A investors does not exceed 30%. There are anti-fragmentation provisions to stop these rules being manipulated and these are amended to ensure that beneficial entitlements held solely through one or more QAHCs are treated as being held directly by the relevant person.

In determining the relevant interest that a person holds, these provisions refer to s165 and s166 plus s169 – 178 CTA 2010. However, this focusses on identifying the lowest possible interest, whereas the QAHC rules focus on identifying the highest possible interest. The amendment states that where CTA2010 uses the term ‘less than’ it should be read as ‘more than’ when considering its application to QAHCs.

The legislation is amended so that an alternative investment fund which is not a collective investment scheme only because it is a body corporate (such as some limited partnerships) can still meet the qualifying fund definition by virtue of meeting the relevant GDO conditions in the Offshore Funds (Tax) Regulations 2009 (SI 2009/3001). Additionally, where it is necessary to determine whether a fund is close, the rules in Chapter 2 Part 10 CTA 2010 apply where the fund is a company with share capital. All other funds should apply those rules as if they were a company with share capital. This is treated as always having had effect.

The Genuine Diversity of Ownership conditions which apply to QAHCs are amended as outlined above for CIVs and REITs. Where a fund is part of a multi-vehicle arrangement, the GDO condition can be satisfied either by the fund in isolation or by the multi-vehicle arrangements taken as a whole.

QAHCs must meet the investment strategy condition and this currently precludes QAHCs from pursuing a strategy which involves the acquisition of listed securities other than in prescribed situations. This is amended so that the company can make an election treating all relevant equity securities as if they were not listed securities. If this election is in place, dividends or other distributions received from those equity securities are not exempt from corporation tax under s931A CTA 2009 (dividend exemption).

An amendment is made, treated as always having effect, such that the chargeable gains exemption applies where a QAHC invests in a derivative contract with an underlying subject matter of shares.

Finally, a new provision is introduced so that where a person has a beneficial interest in the profits of a company as a result of a qualifying alternative finance arrangement this will be a relevant interest for the purposes of these provisions. The definition of a qualifying alternative finance arrangement broadly follows the rules in Chapter 6 Part 6 CTA 2009. They will not qualify if they are analogous to normal commercial loans.

International matters

Share exchanges (Lecture P1373 – 14.47 minutes)

Legislation is introduced ensure that UK resident but non-domiciled individuals are taxed on gains and distributions received after value has been built up in a UK business in which they have a ‘material interest’. Clause 36 amends the existing legislation by introducing new s138ZB into TCGA 1992.

Where a share-for-share exchange takes place and the original company is a UK incorporated close company and the new company is a non-UK incorporated company (that would be close if it were a UK company), the securities in the new company are treated as if they are situated in the UK, where they are held by the original participator or their spouse (unless the transfer to the spouse was not on a no gain / no loss basis). Thus, remittance will not be available for dividends paid by the non-resident company, nor for capital gains made on disposal of the new securities.

It will only apply where the participator (taking into account their associates) had a material interest in the company, being more than 5% of the ordinary share capital or entitlement to more than 5% of the assets available for distribution to participators on a winding up. If the company does not have share capital, you would consider the interests of the members in determining if this condition is met.

The securities which are affected by this measure include:

- The exchanged shares or securities
- Any security in the new company acquired by the participator on or after the day of the exchange
- Securities held under stock lending arrangements, where the exchange security is part of those arrangements
- Any shares or securities subsequently issued in exchange for any security within these provisions, which fall within s135 or s136.

The new rules will only apply where an individual obtains non-UK securities in exchange for UK securities, with either section 135 or 136 TCGA 1992 applying; this means that HMRC have accepted that the share exchange is for commercial reasons.

The application of these provisions can be avoided by electing to disapply s135 or s136 TCGA 1992, so that the gain on the original transaction crystallises. The election is within new s138ZC TCGA 1992 and has to be made on or before the first anniversary of the 31 January following the tax year in which the exchange took place.

The legislation applies to shares or securities issued on or after **17 November 2022**.

The remittance basis provisions are also amended to show that assets falling within these provisions will not give rise to relevant foreign income.

Transfer pricing records (Lecture B1374 – 15.07 minutes)

These provisions put in place legislation relating to the record keeping requirements for those business who have to comply with Transfer Pricing provisions. This necessitates maintaining a master file and a local file in a specified format. The Government have consulted on these proposals so most of the detail is already known.

There is also to be a Summary Audit Trail (SAT) requirement but this is to be consulted on further before it is introduced.

The actual documentation required for Transfer Pricing purposes is specified in Regulations which have been published in draft form and will be finalised once Royal Assent of this Finance Bill has been received. The Regulations do not go into much detail as they link the information in the master file and the local file to the OECD transfer pricing guidelines.

Clause 37 introduces Schedule 5.

Firstly, this amends Para.21 Sch.18 FA1998 so that 'relevant transfer pricing records' have to be maintained. In general terms, relevant transfer pricing records are anything which are reasonably required to allow consideration of the calculation of profits and losses under the transfer pricing provisions plus supporting documentation. Regulations are to be put in place to specify the exact nature of those records.

The remainder of the changes in the Finance Bill relate to the impact of failures associated with these transfer pricing records.

Where a company has failed to comply with the requirement to keep records this will be presumed to be careless unless it is deliberate or the company satisfies HMRC that they took reasonable care to avoid the situation.

There are then equivalent amendments relating to income tax.

The penalty provisions in Schedule 24 FA2007 are amended to introduce specific rules relating to documents retained for transfer pricing purposes which contain errors leading to an underpayment of tax. Again, the penalties will be tax geared based on behaviour.

The information provisions within Schedule 36 FA2008 are amended. Para.21 specifies that a taxpayer information notice cannot be given if a return has been made (for either income tax or corporation tax purposes) unless one of the relevant conditions are met. A new condition (E) is introduced which is that the information notice is being given for the purposes of obtaining any specified relevant transfer pricing information or documents.

Normally an information notice can only be given for documents that are in the taxpayer's power or possession. The legislation is amended such that this restriction on HMRC's ability to ask for documents does not apply to relevant transfer pricing documents that are not in the taxpayer's power or possession but are in the power or possession of another person in the multinational enterprise of which A is a part. In this context multinational enterprise has the same meaning as within the BEPS regulations.

These provisions apply with effect for accounting periods or tax years beginning on or after 1 April 2023.

Double tax relief

Clause 38 contains a very targeted provision relating to extended time limit claims for double tax relief where the credit is calculated by reference to a foreign nominal rate of tax. These potential claims have arisen from a long-running group litigation and will have application to dividends received prior to 2009, when the dividend exemption was introduced.

The legislation restricts the ability to extend the time limit for claims made on or after 20 July 2022 for relief calculated by reference to a nominal rate of tax. Claims can still be made where they arise from an adjustment not linked to a nominal rate of tax, provided the adjustment occurred within six years of 20 July 2022.

Claims can still be made relating to accounting periods ending before 20 July 2022 where one of a number of conditions is met, including an ongoing enquiry or an undetermined appeal.

Chargeable gains

Payments under the lump sum exit scheme (Lecture P1373 – 14.47 minutes)

Farmers in England could apply for the Lump Sum Exit Scheme up until 30 September 2022 if they wished to retire from or otherwise leave farming. The farmer had to be in receipt of payments under the Basic Payment Scheme (BPS) in 2018 or earlier or have inherited agricultural land or succeeded to an Agricultural Holds Act 1986 tenancy after 15 May 2018. The rights to agricultural land had to be transferred or planted under a woodland creation scheme. Payments began to be made in November 2022 and will continue until 31 May 2024.

Clause 39 clarifies that amounts paid to a person under the lump sum exit scheme is to be treated as a capital payment which gives rise to a chargeable gain accruing on a disposal of an asset assuming they satisfy the relevant eligibility conditions. Otherwise it is to be treated as an income payment.

Some farmers will claim under the BPS in case they did not qualify under the lump sum scheme (perhaps because they could not give up their rights to land within the necessary time-limit) and the legislation provides that if they did receive payments under the BPS and then subsequently receives money under the lump sum scheme, the BPS payment is also to be treated as a capital payment for the disposal of an asset. If they do not subsequently meet the necessary eligibility criteria, the payment under the BPS will be treated as revenue in nature as would have been the normal position.

This applies regardless of when such payments are received.

Contracts completed after notification period (Lecture P1373 – 14.47 minutes)

Under normal provisions, the date of disposal for CGT purposes is the date of exchange where the contract is unconditional. This is found in s28 TCGA 1992. The date of conveyance or completion is not relevant other than where residential property is sold in which case that is the trigger date for the submission of any 60-day return. However, it is important to note that s28 only comes into operation if the contract is completed, so if the disposal actually takes place. This was confirmed in the House of Lords decision in *Jerome v Kelly*.

HMRC have four years from the end of the tax year (for individuals) or accounting period (for companies) to raise assessments and the taxpayers has the same period to claim any loss relating to the disposal. HMRC believe that their ability to raise assessments is prejudiced where there is a long delay between exchange and completion as they may not have sufficient time to react.

Clause 40 modifies the assessing time limits where an asset is conveyed or transferred after 'the ordinary notification period'. If this applies, the assessing time-limit operates by reference to the year in which the contract is completed, rather than the earlier exchange date. It also links claiming loss relief and the obligation to notify chargeability to the same periods. The tax will still be due in relation to the earlier period, as this is a purely administrative measure.

The 'ordinary notification period' is the period of 6 months from the end of the tax year for capital gains tax in which the disposal is treated as taking place and the period of 12 months from the end of the accounting period for corporation tax purposes.

This applies for contracts entered into on or after 1 April 2023 for corporation tax or on or after 6 April 2023 for all other purposes.

Example

A contract is exchanged for the disposal of an asset on 1 June 2023. There is a long completion period meaning that the sale is not completed until 31 October 2025. The gain arises in 2023/24 and under normal rules (assuming no carelessness or deliberate behaviour) HMRC would have until 5 April 2028 to raise an assessment if they are not otherwise notified.

However, under the new provisions, as conveyance happens outside of the ordinary notification period (which would end on 5 October 2024), the assessing time-limit operates by reference to the 2025/26 tax year so that HMRC have until 5 April 2030 to raise an assessment. The same time-limit would apply for claiming of a loss which arose on the disposal.

Separated spouses and civil partners (Lecture P1373 – 14.47 minutes)

Clause 41 introduces legislation relating to the capital gains tax issues for separating spouses and civil partners. This legislation has been published in draft form previously. These provisions take effect from 6 April 2023.

S58 TCGA 1992 is amended to extend the period when individuals can transfer assets on a no gain no loss basis. Under previous rules, the period ended at the end of the year of assessment in which separation occurred.

The basic period is now extended to the earlier of:

- The last day of the third tax year after the tax year in which the separation occurred; or
- The day on which a court grants an order or decree for divorce, annulment, dissolution of civil partnership, judicial separation or separation in accordance with a separation order.

In addition, a disposal will be on a no gain no loss basis whenever it occurs if the disposal is subject to an agreement or order in connection with the divorce or dissolution of the civil partnership under the provisions at s225B(2)(a) or (b) TCGA 1992.

Example

Anne and Kate are married but separated permanently on 26 October 2021; they are trying to split their assets as fairly as possible.

- Any asset transfers up to 5 April 2022 will have been NG/NL but any in 2022/23 will be at MV.
- However, for disposals after 5 April 2023, the new rules apply, so transfers in 2023/24 and 2024/25 (which are within three years of the end of the tax year of separation) will once again be NG/NL, unless the couple divorce earlier.

S225B TCGA 1992 is itself amended. Previously this legislation allowed an extension of the private residence relief period when an individual ceased to live in a house which had been their only or main residence and then subsequently disposes of that property to the spouse or civil partner. As long as the conditions were met, the period when the departing spouse was not occupying the property could be covered by private residence relief. This assumes that no other property had been subject to an election to be treated as the main residence (e.g. after separating, they moved into rental accommodation). The wording is amended such that this will now apply where the property is sold to someone other than the spouse or civil partner. The other conditions remain the same.

A claim has to be made for this to apply and that continues to be the case.

Finally, new s225BA TCGA 1992 is inserted so that where an interest in a property is sold from a departing spouse to the remaining spouse, and there is a deferred sale order, the gain on the deferred element of the consideration can be covered by private residence relief to the extent that the initial gain would have been covered.

Example

Richard and Liz married in June 2016 and moved into a house they had bought jointly for £200,000.

In June 2024 the couple separated and Richard moved into a flat he had owned before the marriage and which had been let in the meantime. He did not elect for the family home to continue to be his only or main residence.

In June 2026 Richard and Liz were divorced and as part of the divorce settlement, Richard transferred his 50% interest in the family home to Liz on the condition that Richard would be entitled to 50% of the eventual proceeds of disposal. The house was worth £400,000 in June 2026 and was sold in June 2028 for £500,000.

CGT implications:

The marital house ceases to be Richard's qualifying residence in June 2024.

Richard's disposal of his 50% interest in the house in June 2026 takes place at no-gain / no-loss (being a transfer on divorce after April 2023). Liz therefore acquires her additional 50% interest at Richard's original base cost giving her a 100% interest in the house with a base cost of £200,000.

In June 2026, Richard acquires a separate asset being the right to receive future consideration. As this is acquired as part of a no-gain / no-loss transaction, the asset has a base cost of nil.

In June 2028, Richard receives future consideration of £500,000 x 50% = £250,000 thereby making a gain of £250,000 on the disposal of the intangible right.

This gain will qualify for the same private residence relief as would have applied at the time of the disposal of the 50% interest in June 2026.

The PRR up to June 2026 is the period of Richard's actual occupation (June 2016 to June 2024 being 8 years), plus the final 9 months (giving 105 months out of a total period of ownership of 120 months).

Richard's chargeable gain in June 2028 will therefore be:

		£
Gain on sale of right		250,000
Less: PRR	£250,000 x 105/120	(218,750)
Chargeable gain		31,250

Note that if Richard had claimed for the marital home to continue to be his qualifying residence after the date of separation (which he can from April 2023), PRR would have continued to be available until

the date of the disposal of his interest on divorce. The subsequent gain on the disposal of his right in 2028 would therefore be fully covered by PRR and would be nil. However, the flat would not then be eligible for PRR between separation and divorce.

Liz will make a gain of £50,000 (being 50% of the £500,000 sales proceeds, less her CGT base cost of £200,000). This will be fully covered by PRR.

Carried interest **(Lecture P1373 – 14.47 minutes)**

Carried interest is a performance related reward for investment managers, typically working within PE houses and similar. Subject to extensive anti-avoidance provisions, carried interest arises as a chargeable gain accruing to the manager. It is therefore not taxable until received.

Clause 42 introduces legislation which will enable an individual to make an election to have the carried interest taxed on an arising basis. The election is irrevocable. It must state the first tax year for which it is to have effect and must be made by 31 January following the end of that tax year. The gain under this provision remains a carried interest gain and so will be taxed at 18% or 28%.

Where there are associated investment schemes (as defined within s809FZZ ITA2007) the election will apply to all of those schemes.

If the carried interest subsequently becomes taxable, then a claim can be made so that it is not taxed twice. Additionally, where tax has been paid under the election but the scheme ends with no further carried interest expecting to be received, then a loss may be claimed on the difference between the amount taxed and the amount actually received.

There is an anti-avoidance provisions which prevents the recognition of a loss where an election has been made and the main purpose, or one of the main purposes, of making the election was to cause a loss to be created.

These provisions are being introduced to align the UK provisions with provisions in other jurisdictions to make it easier for relevant individuals to claim double tax relief.

Relief on disposal of joint interests in land **(Lecture P1373 – 14.47 minutes)**

Amendments are made to s248B and s248E (exchange of joint interests in land) to clarify that these will apply where land is held by Scottish partnerships or Limited Liability Partnerships, assuming the relevant conditions are met. These provisions enable a modified roll-over relief to apply where there is exchange of joint interests in land subject to various conditions being met.

This is found in Clause 43 and applies for disposals made on or after 15 March 2023.

Alcohol duty

In 2020 the Government announced it was to conduct a review into the overhaul of Alcohol Duty and the legislative provisions within Finance Bill 2023 are the result of that review. The new duty has a single duty on all alcoholic products with standardised tax bands determining the actual tax to pay based on alcoholic strength. These provisions will come into effect at some time in 2023 but the exact date has yet to be determined.

It is likely that this is not going to be of general interest to most advisors so these provisions are not analysed in detail. Legislative references are included if readers wish to look at these in more detail.

Clause 44 defines alcoholic product to mean spirits, beer, cider, wine and any other fermented product but not if it has an alcoholic strength of 1.2% or less.

Schedule 6 classifies these products further:

- Spirits are defined (helpfully) as spirits of any description.
- Beer means ale, porter, stout, any other type of beer and any product sold as beer or a substitute for beer. It also includes a 'beer-based beverage;' which is any beverage which is a mixture of beer and any of fruit or ginger cordial, carbonated water, juice or squash, lemonade or limeade, unfermented ginger beer or any alcoholic product or other alcoholic substance.
- Cider means a product which is obtained from the fermentation of apple juice or pear juice which satisfies the juice content requirements (at least 35% of the volume of the pre-fermentation mixture) and is of an alcoholic strength of less than 8.5%. Sparkling cider is also defined.
- Wine means any product obtained from the alcoholic fermentation of fresh grapes.
- Other fermented product means a product which is obtained from alcoholic fermentation of any substance other than anything within another category.

Clause 45 defines alcoholic strength to mean the ratio of alcohol volume to total volume of a product determined when the product is at 20C.

Clause 46 states that the Treasury can amend Schedule 6 and also categorise a product with less than 1.2% alcoholic strength be treated as an alcoholic product.

Clause 47 charges an excise duty called alcohol duty on alcoholic products which are produced or imported into the UK. This is subject to any relevant exemptions.

Clause 48 introduced Schedule 7 which shows the rates of alcohol duty, subject to draught relief and small producer relief.

The duty is set in 4 bands:

- Less than 3.5%
- At least 3.5% but less than 8.5% - this is then subdivided depending on the nature of the product
- At least 8.5% but not exceeding 22%
- Exceeding 22%.

Clause 49 specifies when excise duty has to be paid, tying this in to existing provisions for payment.

Draught relief
Clause 50 introduces 'draught relief' which will charge qualifying draft products at the reduced rate shown in Schedule 8. It will be possible to elect to pay full rates.

Clause 51 defines qualifying draft products as those:

- With alcoholic strength of less than 8.5% and
- Are to be sold on draught

Clause 52 determines that draught products which are 'repackaged' other than to sell for immediate consumption are subject to full rates of duty (and this may be the reason why full rate would be paid above if they are to be sold as take-out products). Clause 53 explains that anyone who does repackage will be assessed on any duty shortfall and may be liable for a penalty.

Small producer relief
Clause 54 determines that alcohol duty will be discounted on 'small producer alcoholic products' in any production year (which is the period of 12 months beginning with 1 February each year). The discounted rates are shown in Schedule 9. This depends on the nature of the alcoholic product produced and the volume produced.

Clause 55 defines small producer alcoholic products as being products:

- With an alcoholic strength of less than 8.5%
- Produced on small production premises
- Are not produced under licence
- Do not fall within one of the exclusions in Clause 58 and
- Meet any additional conditions (if any) specified by HMRC.

Clause 56 defines small production premises as being premises where the current or previous production total (defined in Clause 57) does not exceed the small production limit, which is initially set at 4500 hectolitres. It would be the estimated figure for the current year. Additionally, less than half the alcohol production must be products produced under licence. The legislation also contains provisions where the producer is part of a group.

Clause 59 gives the formula for calculating the duty discount for products falling with these provisions.

Clause 60 gives the Commissioners the ability to assess the alcohol duty where an incorrectly low rate of alcohol duty is applied.

Clauses 61 – 67 apply where there is a merger/demerger of businesses who both qualify as small producers and how the conditions above are modified in those cases. Clauses 69 – 71 give various definitions applicable to this relief.

Other provisions
Clause 72 provides that alcohol duty is not charged which are produced for the person's own domestic use and are not spirits.

Clause 73 applies where the Commissioners are satisfied that the alcoholic products are being used only for the purposes of research into, or experiments in, the production of alcoholic products. In this case, the duty paid can be remitted or repaid.

Clause 74 enables remission or repayment of duty where the Commissioners are satisfied that alcoholic products have become spoilt or unfit for use.

Clause 75 allows repayment of alcohol duty where duty has been paid but the alcoholic products have been used as an ingredient in the manufacture of a qualifying food product or a beverage with an alcoholic strength of 1.2% or less. A qualifying food product means vinegar, chocolates containing alcohol (as long as 100kg of chocolate does not contain more than 8.5 litres of alcohol) or any other food which contains alcohol (as long as 100kg of the food would not contain more than 5 litres of alcohol). This does not apply if the product is a beverage intended for consumption in frozen form or a product intended for consumption as a substitute for a beverage.

Clause 76 removes the alcohol duty charge on spirits contained in medical articles imported into the UK (being articles with recognised use for medical purposes).

Clause 77 states alcohol duty is not charged on spirits contained in food and drink flavourings (used in preparation of food or beverages with alcoholic strength not exceeding 1.2%).

Clause 78 removes duty where a person proposes to use spirits in the manufacture of medical articles or for scientific purposes or for the purposes of art or manufacture (in the latter cases where denatured alcohol would not be suitable to be used).

Clause 79 states that the Commissioners may remit alcohol duty on spirits imported into the UK at a time when the spirits are contained in goods that are not for human consumption.

Clause 80 states that if a person makes unauthorised use of an article containing spirits which is exempt under s76 or remitted under 78, they are liable to a penalty with the article being liable to forfeiture. A person can make unauthorised use under permission from the Commissioners if they obtain written consent and pay the duty shortfall.

Clause 81 determines that the application of the above provisions will be subject to regulations or notices as to how they will be operated from a practical perspective.

Regulated activities

Clause 82 states that a person may not produce alcoholic products on any premises unless they are approved to do so or exempt from approval requirements. Approval will only be given if someone if a fit and proper person. Clause 83 states that approval may be given in respect of more than one category of alcoholic product, more than one set of premises and for such period as the Commissioners think fit. Approval can be revoked.

Clause 84 states that such approval is not required if alcohol is being produced for personal domestic use and are not spirits. Clause 85 states that approval is not required if the activities fall within Clause 73.

Clause 86 states that a person may not mix two or more alcoholic products unless this is:

1. In accordance with an approval under s82 or in an excise warehouse and the mixing takes place before the excise duty point.
2. All products being mixed fall within the same paragraph in s44(1) and are of the same alcoholic strength
3. The alcohol duty on all products being mixed has been paid and this is equal to or exceeds the duty that would be due on the mixed product.
4. Alcohol duty has been paid on each product being mixed with the mix is intended for consumption on the premises where it is being mixed and the method of mixing is of a description specified in a notice published by the Commissioners.

Clause 87 forbids dilution with water or any other substance if the mixing takes place after the alcohol duty point, the resulting product is intended for sale and the alcohol duty would have been greater than that paid if the mixing had taken place before the excise duty point.

Clause 88 allows regulations to be issued by the Commissioners relating to many different areas and

Clause 89 allows penalties to be levied for any contravention of any provisions.

Clause 90 states that alcohol duty is not charged on denatured alcohol although Clause 91 states that a person may not denature alcoholic products unless they hold an appropriate excise licence. Clause 92 allows regulations to be issued by the Commissioners relating to denatured alcohol and Clause 93 allows penalties to be levied for any contravention of any provisions. Clause 94 sets penalties if there are discrepancies in the amount of denatured alcohol which should be on premises and clause 95 states that duty must be paid where there are contraventions relating to denatured alcohol. Clause 96 allows premises to be examined and clause 97 contains a prohibition in the use of denatured alcohol for a variety of purposes.

Wholesaling of controlled alcoholic products

Clauses 98 – 107 contained provisions relating to wholesaling of controlled alcoholic products, defined as any product on which the alcohol duty is at a rate of greater than nil. This is a controlled activity and can only be done under the approval of HMRC which will maintain a register of approved wholesalers. Contravention of these provisions may give rise to a custodial sentence or a fine or both. Schedule 10 outlines the civil penalties relating to contravention of these provisions which are similar to the penalties relating to other taxes (linked to behaviour with reduction for disclosure).

Further legislation

Clause 108 introduces Schedule 11 which contains provisions relating to reviews and appeals.

Clause 109 states that an officer of HMRC may destroy, break up or spill anything seized under any forfeiture provisions contained within these rules.

Clause 110 amends provisions relating to removal of goods.

Clauses 111 introduces Schedule 12 which outlines the procedures relating to duty stamps. Clause 112 – 114 makes provisions relating to repeal of previous legislation and consequential amendments and introduces Schedule 13.

Transitional provisions

For the first 18 months of these provisions, clause 115 sets the duty of wine with an alcoholic strength of at least 11.5% but not exceeding 14.5% as if it were of an alcoholic strength of 12.5%.

Clause 116 contains a temporary provision which means alcohol duty is not charged on cider produced before the legislation comes into force and by a person who is currently exempt from registering.

Clauses 117 – 120 contain provisions relating to interpretation, use of regulations and commencement of these rules.

Multinational and domestic top-up tax (Lecture B1374 – 15.07 minutes)

A number of measures are introduced to comply with OECD Pillar 2 measures. In reality, this forms a considerably chunk of the Finance Bill but will apply to only the largest of companies.

The aim of the OECD initiative is to create a minimum corporation tax charge so that there are no tax havens. That charge would be levied in countries which implement relevant legislation and be passed on to the authorities in the relevant jurisdictions. Not surprisingly, there is a huge level of complexity in these provisions.

The legislation actually involved two taxed: the Multinational Top-Up Tax and the Domestic Top-Up Tax. The former will levy tax in the UK so that multi-national enterprises (MNE) are paying a minimum level of tax in each jurisdiction in which they operate and the latter ensures that entities within the UK are paying that minimum level of tax to avoid being subject to a charge in another jurisdiction.

In both cases the level of tax is 15%. These will apply for accounting periods beginning on or after 31 December 2023. This will only apply if the revenue of the multi-national group exceeds €750 million.

The legislation gives detailed provisions as to whether there is a liability in the UK and how the rate of tax for each entity is calculated. Detailed notes on these measures will be available in due course if details on these measures are required.

Electricity generator levy (Lecture B1374 – 15.07 minutes)

The Electricity Generator Levy (EGL) will apply to receipts arising from 1 January 2023 until 31 March 2028 on companies which generate electricity. It will be applied to 'exceptional amounts of generation receipts' being amounts in excess of a benchmarked price after deduction of certain costs. These provisions are covered only briefly below due to the niche nature of those businesses which will be affected by this legislation.

Clause 278 explains that the EGL is 45% of the exceptional generation receipts. It only applies where the undertaking exceeds the levy threshold which is 50,000 megawatt hours of electricity generated or a pro-rataed figure where the qualifying period is shorter than 12 months.

The exceptional generation receipts are calculated as follows:

1. Determine the generation receipts arising to the undertaking for the period
2. Multiply the electricity generated (expressed in megawatt hours) by the benchmark amount
3. Subtract the step 2 answer from the step 1 answer. If it is nil or negative, then there are no exceptional receipts and no EGL
4. Determine the allowable costs and subtract from step 3. If it is nil or negative, then there are no exceptional receipts and no EGL.
5. Subtract the revenue allowance.
6. If the result of step 5 is nil or negative, there is no EGL, otherwise the result is the amount of the exceptional generation receipts.

The revenue allowance is £10m per annum with this pro-rataed if the period is less than one year.

Clause 279 contains the relevant definitions including:

1. A 'generating undertaking' is a company that operates a relevant generating station or a group of companies that includes at least one member who operates a relevant generating station.
2. A generating station is 'relevant' if it generates electricity and is not a generating station that mainly generates electricity as a result of burning oil, coal or natural gas or using plant driven by water

It only applies to generating stations within the UK, the territorial sea of the UK or a Renewable Energy Zone.

Clause 280 sets the benchmark amount at £75 for the financial years ending in 2023 and 2024. It will then be increased for subsequent years in line with CPI (for the December before the start of the financial year) rounded to the nearest whole penny.

Clause 281 gives details of how to determine the amount of electricity is to be attributed to a generator station for the purposes of the EGL. It applies only to electricity generated by it which is supplied through a distribution system so that it does not cover private agreements. This also provides for an adjustment to be made for electricity which is expected to be generated but is not. Clause 282 matches receipts of an undertaking from wholesaling of electricity with power generated.

This takes account of payments or receipts under financial instruments intended to hedge its exposure to market risk as well as making adjustments for intra-group sales of power.

Clause 283 sets out the allowable costs which can be deducted at step 4 above in calculating the receipts liable to EGL. These are divided into exception generation fuel costs, exception revenue sharing costs and qualifying electricity purchase costs to the extent that they can be fairly and reasonable attributed to generation receipts of the undertaking and are not already reflected in the determination of the receipts. They must be allowable costs for the purposes of corporation tax and claimed in a CT return.

Clause 284 defines exceptional generation fuel costs as calculated as follows:

1. Determine the generation fuel costs for the station for the period
2. Divide the costs by the amount of electricity generated (in megawatt hours)
3. Determine the baseline fuel cost of the station
4. If step 2 is the same or less than step 3, there are no exceptional generation fuel costs.
5. If step 2 is greater than step 3, subtract the baseline fuel cost from step 2
6. Multiply the amount of electricity generated by the result of step 5 to give the exceptional generation fuel costs.

The baseline fuel cost is the lesser of the average generation fuel cost per megawatt hour for the reference period specified in the claim and £65 per megawatt hour. The reference period must be a period of at least 12 months in which there is a period of three months where the generating station was generating on 50% or more of the days in that 3-month period which commences no earlier than 1 January 2017 and end no later than 1 March 2020. There are rules if there is no 12-month period which fits this.

Clause 285 defines exceptional revenue sharing costs. This applies where generators do not directly incur input costs but enter into a revenue sharing agreement with a third party that obliges them to share receipts from generation in consideration for gaining access to a source of fuel. The example given is a generator having an agreement to process municipal waste at a landfill site with the generator using the waste in its generating station.

Clauses 286 – 291 apply these rules to groups of companies, partnerships and joint ventures. Clauses 292 – 300 contain provisions which attribute the liability for the levy between joint venture partners and minority shareholders.

The management and administration of the EGL is covered in clauses 301 – 3015. Final provisions including anti-avoidance provisions are included at clauses 306 – 312.

Other taxes

Stamp Duty Land Tax

Clause 313 introduces a small extension to the exemption from SDLT for registered social landlords. This exemption is dependent on the purchase being funded by a public subsidy. The legislation is amended to include funding provided under S31 Local Government Act 2003 as being a public subsidy. This is the funding of £500m announced in December 2022 which is to be provided to local authorities to secure additional housing stock for those fleeing conflict.

VAT

Clause 314 includes legislation which will apply if the UK introduces a deposit return scheme as part of the green agenda.

The provisions provide that VAT is only collected in relation to the price ultimately paid for these products, taking account of deposit amounts which have been repaid to customers. It will apply throughout the supply chain of products which are covered by the scheme. There will be a requirement for the suppliers who make the first sale of products to adjust their VAT returns to pay VAT on a proportion representing the products which are not returned and where the deposit is not reimbursed. The exact nature of the calculation will be specified by HMRC by way of secondary legislation if such schemes are introduced.

Import duty

Trade Remedies Authority

New provisions are introduced by Clause 315 and Schedule 20 relating to the way in which the Trade Remedies Authority (TRA) operate. The TRA have a responsibility to consider if remedies (including tariffs) need to be put in place to protect UK industry from unfair trading practices and unforeseen surges in imports. It is independent but changes will give the Government more flexibility over decision relating to these issues. It will have no impact from the perspective of UK taxpayers as it is a purely administrative provision.

Valuation of goods

Clause 316 introduces a new system where businesses can apply for a legally binding ruling to specify the method of custom's valuation to be used when importing specified goods into the UK. This provision has been introduced to enable the Government to meet the requirements of various newly negotiated trading partnerships.

Financial guarantees

Clause 317 changes the provisions which permit HMRC to require financial guarantees to be given for duty payable on imported goods where the liability may not be clear but which will enable HMRC to make release of goods. This now includes a statutory right for an importer to request a review of, or to appeal against, such guarantee requirements.

Other duties

As always applies, there are various provisions relating to different duties. These are summarised briefly below.

Fuel duties

Clause 318 clarifies the provisions enabling certain vehicles to use rebated diesel or biofuel or rebated fuel for providing electricity or heating. These are minor technical amendments where HMRC have realised the provisions are unduly punitive.

Tobacco duty

Clause 319 introduces the new rates of tobacco duty:

- Cigarettes are dutiable at normal duty or the MET whichever is higher. The MET is increased to £294.72 per 1,000 cigarettes plus 16.5% of normal retail price.
- Duty on cigars is increased to £367.61 per kilogram.
- Duty on hand-rolling tobacco is increased to £351.03 per kilogram.
- Duty on other smoking tobacco and chewing tobacco is increased to £161.62 per kilogram.
- Duty on tobacco for heating is increased to £302.93 per kilogram.

Soft drinks levy

Clause 320 and Schedule 21 bring into the scope of the Soft Drinks Levy liquid flavour concentrate manufactured in or imported into the UK to be used in dispensing machines that combine sugar with the concentrate when the beverage is dispensed. It does this by changing the definition of a 'soft drink' for the purposes of the provisions. An exemption will apply where the flavour concentrates are not combined with added sugar ingredients or where the combined sugar content of the mixed beverage is less than 5g of sugars per 100ml.

The change takes effect from 1 April 2023.

Air Passenger Duty

Clause 321 introduces a new domestic band of APD for flights within the UK and a new ultra-long-haul band covering destinations with capitals located more than 5,500 miles from London. This will apply for flights on or after 1 April 2023.

Banding is as follows. Reduced rate applies to the lowest class of travel on the aircraft, standard rate to any other journey on a normal craft and higher rate to private jets capable of carrying fewer than 19 passengers.

Band	Reduced rate	Standard rate	Higher rate
Domestic (flights within the UK)	£6.50	£13	£78
Band A (0 – 2000 miles)	£13	£26	£78
Band B (2001 – 5500 miles)	£87	£191	£574
Band C (over 5500 miles)	£91	£200	£601

Clause 322 confirm that the Northern Ireland rates (set at £0) will not change.

Vehicle excise duty

Clause 323 sets rates of Vehicle Excise Duty.

Clause 324 and Schedule 22 reintroduces the HGV levy which was suspended in August 2020 to support the haulage sector during the pandemic. This will be reintroduced from August 2023. As part of its reintroduction, there are some amendments to make the levy aligned with the environmental performance of the vehicle.

Clause 325 makes amendments relating to the ending of the exempt period.

Environmental taxes

New rates are set for landfill taxes, climate change levy and plastic packaging tax (Clauses 326 – 328).

Clause 329 provides changes to the aggregates levy exemptions.

Miscellaneous

Freeports and investment zones

FA2021 included various provisions relating to additional tax reliefs for sites which were designated as Freeport tax sites. That legislation is now amended by Clause 330 and Schedule 23 to provide the same reliefs to new Investment Zones. The amendments are mainly effected by replacing the phrase ‘Freeport tax site’ with the phrase ‘special tax site’ with that being defined as either a Freeport or Investment Zone.

Clause 331 changes the sunset date for the Freeport provisions (which was 30 September 2026) so that it will now be 30 September 2026 or such later date as may be specified by regulation. This allows the Government more flexibility to extend the time-frame for these reliefs.

Administration (Lecture P1375 – 12.06 minutes)

Right to repayment

Clause 332 removes the right of a taxpayer to assign the right to receive a repayment of income tax. This applies for notifications received by HMRC on or after 15 March 2023.

It should be noted that this is targeted at some agents who require clients to legally assign to them the right to receive a repayment and this can be associated with fraudulent claims being made by those agents. It should be noted that this does not remove a taxpayer’s ability to use a non-legally binding nomination where they wish their repayment to be made to a third party.

Late payment interest and penalties on VAT

New VAT interest rules commenced on 1 January 2023 and two amendments are made by Clause 333 to ensure they operate correctly.

Firstly, an amendment is made to ensure that where a business is using annual accounting, any instalments payments made late are not subject to late payment interest. Clause 334 also amends legislation to ensure that late payment penalties cannot apply to instalments under the annual accounting scheme.

Secondly, where HMRC are issuing assessments to recover over-repaid or over-credited VAT an amendment makes it clear that late payment interest runs from the date at which HMRC repaid or credited that amount.

These provisions come into force from 15 March 2023 and the late payment interest start date under the latter provision cannot be earlier that that date.

Clause 335 also makes a further amendment to the new interest provisions which removes from legislation a provision which states HMRC can ask for evidence as a condition of repaying input tax as this was never implemented by HMRC. This is therefore obsolete.

Insurance Premium Tax

Clause 336 broadens HMRC's existing powers in relation to making of amendments in relation to IPT by way of public notice rather than under statutory instruments.

Plastic Packaging Tax

Clause 337 makes an amendment to eliminate an inconsistency in the late payment penalty provisions for plastic packaging tax so that all businesses are liable for the same penalties regarding of how the liability arises.

Management of customs and excise **(Lecture P1375 – 12.06 minutes)**

Approval of aerodromes

New provisions are introduced by Clause 338 to enable HMRC to approve aerodromes for the purposes of Customs and Excise legislation where they are not already authorised as a customs and excise airport. Pilots can land at the latter provided there is a Certificate of Agreement in place. However, this is being tightened up so that operators will need to get approval with decisions being made about procedures to be put in place to ensure that there is no contravention of any provisions in relation to movement of people or goods. Consequential amendments are then applied by clause 337.

Temporary approval

Excise businesses must be approved by HMRC to conduct certain controlled activities. HMRC may revoke approval where a business fails to meet the 'fit and proper' criteria. Current legislation allows for temporary approval to be granted pending a review or appeal but this ends once this is determined. Clause 340 adds a discretionary power to HMRC's functions to extend a temporary approval period to enable businesses to wind down their activities before final revocation.

Conditionality **(Lecture P1375 – 12.06 minutes)**

Clause 341 extends tax conditionality (which currently applies in England and Wales) to:

- Licences to drive taxis and private hire cars, operate a booking office or be a metal dealer in Scotland
- Licences to drive taxis in Northern Ireland.

This applies for applications made on or after 1 April 2023 and means that issuing authorities must obtain evidence of tax compliance before the licence is issued.

Clause 342 then contains amendments which are consequential on the above.

Charities and CASC (Lecture P1375 – 12.06 minutes)

Post-Brexit, a change is made to the definition of a charity so that only UK charities can access the various reliefs available to them. Clause 343 does this by removing references to charities located outside the UK for the purposes of obtaining qualifying charitable status. This was previously available to charities situated within the EU and EEA. Non-UK charities which have already had their status approved by HMRC will remain within the UK regime until 5 April 2024 but for others the provisions take effect from 15 March 2023.

Clause 344 includes an equivalent amendment to the definition of a community amateur sports club so that reliefs are only available where it is a UK club. The same dates apply as above with the extension for previously qualifying non-UK clubs also being applicable.

Homes for Ukraine

Clause 345 and Schedule 24 introduce the following:

- Income tax and corporation tax exemption for 'thank you' payments made by local authorities to sponsors under the Homes for Ukraine Sponsorship Scheme. This applies to payments made from 14 March 2022 onwards.
- Temporary relief from ATED and higher rate SDLT charges in connection with provision of accommodation under the scheme by deeming the occupation to be under a qualifying property rental business. It should be noted that these provisions are subject to additional conditions so that they cannot be exploited.

OTS

Clause 346 confirms that the Office for Tax Simplification is abolished and removes all references within the legislation to this body.

Dormant assets scheme

The Dormant Assets Scheme enables banks and building societies to channel funds from dormant bank and building society accounts towards good causes. It was expanded in 2022 to include assets in the insurance and pensions sector. Taxpayers are also able to reclaim any funds that have been incorrectly transferred to the Reclaim Fund.

Clause 347 introduces provisions so that where an individual reclaims assets from the Reclaim Fund which were originally derived from a pension asset, the payments are treated for income tax purposes as if they were from the original pension fund. The provisions make it clear that this could mean unauthorised pension charges could become payable. No income tax liability will arise on any interest paid in relation to a dormant pension benefit.

If the owner dies before the asset is reclaimed, the owner will be treated for IHT purposes as still owning the original asset so that if it would not have been included within the estate under general principles, this is continued.

Other

International arrangements for exchanging information

Clause 348 introduces powers to give more flexibility to the Government to implement existing and future international exchange of information instruments.

Payments to Consolidated Fund

Clause 349 allows for transfer of money from the Court Funds Office which has remained unclaimed despite attempts to trace beneficiaries. It will be transferred to the Consolidated Funds. The Explanatory Notes to the Finance Bill suggest that some money in the fund has been in there since 1726.

Payments by HMRC

Clause 350 provides a prohibition on HMR exercising its statutory obligation to make payments to any person who is subject to the financial sanctions regulations. This would cover tax repayments but also includes set-offs and payments to persons under the control of someone who is sanctioned. Interest will continue to accrue on those sums in some cases.