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Finance Act 2018

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Introduction

Since Gordon Brown was Chancellor, tax professionals have become used to hefty Finance Bills arriving at least once a year. This Finance Bill 2017-2018 (referred to as FB 2018) is the third Finance Bill presented to Parliament in 2017. The Finance Bill 2017-2018 is a refreshingly slim 190 pages, but it contains some significant tax proposals, which when passed will form the Finance Act 2018.

The Act received Royal Assent on 15 March 2018.

Direct taxes

Rates and allowances

As normal the first sections of a Finance Bill relate to rates and allowances.

Section 1 imposes a charge to income tax for the tax year 2018-19.

Section 2 charges Corporation Tax for the financial year beginning 1 April 2019. Parliament charges CT for each financial year. This section charges CT for the financial year beginning 1 April 2019. The rate of CT for the financial year 2019 was set at 19% in section 7 of the Finance (No 2) Act 2015.

Section 3 provides that the main rates of income tax for 2018-19 are: the 20% basic rate, the 40% higher rate and the 45% additional rate. It is for Parliament to impose income tax for a year. This section sets the 'main rates', which will apply to 'non-savings, non-dividend' income of taxpayers in England, Wales and Northern Ireland. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament

Section 4 subsection (1) provides the default rates of income tax for 2018-19: the 20% default basic rate, the 40% default higher rate and the 45% default additional rate. Subsection (2) provides the savings rates of income tax for 2018-19: the 20% savings basic rate, the 40% savings higher rate and the 45% savings additional rate. Income Tax is an annual tax.

This section sets the 'savings rates' which will apply to savings income of all UK taxpayers and the 'default rates' which will apply to the non-savings, non-dividend income of taxpayers who are not subject to either the UK main rates of income tax or the Scottish rates of income tax.

Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament. Changes announced in the Scottish Budget on 14 December 2017 increase the higher rate and additional rate of income tax by 1% each and split the basic rate band into three bands, giving a total of five tax bands in 2018/19 (up from three tax bands in 2017/18).

On 20 February 2018 the Scottish Parliament set the following income tax rates and bands for 2018/19.

Bands	**Band name**	**Rates (%)**
Over £11,850*-£13,850	Starter Rate	19
Over £13,850-£24,000	Basic Rate	20
Over £24,000-£43,430	Intermediate Rate	21
Over £43,430-£150,000**	Higher Rate	41
Above £150,000**	Top Rate	46

* Assumes person is in receipt of the Standard UK Personal Allowance

** Personal Allowance is reduced by £1 for every £2 earned over £100,000

This means the Scottish higher rate threshold is £43,430 in 2018/19 (personal allowance of £11,850), compared with the higher rate threshold in the rest of the UK of £46,350.

The addition of new tax bands and the differences in rates adds further complexity and increases the number of Scottish taxpayers who will need to file Returns. Other mismatches need to be considered.

Mismatches remain for Scottish taxpayers in relation to the differences between the higher rate threshold in Scotland and the rest of the UK in 2018/19 - see below:

Mismatch	Commentary
Class 1 and Class 4 NIC	The upper earnings limit for Class 1 and the upper profits limit for Class 4 are aligned with the higher rate threshold that applies in the rest of the UK. Employed Scottish taxpayers will face a marginal rate of 53% on earnings between £43,430 (Scottish higher rate of 41% plus Class 1 primary rate of 12%) and £46,350. The marginal rate for the self-employed at this profits level will be 50% (Scottish higher rate of 41% plus Class 4 main rate of 9%).
Savings and dividends	Rates and thresholds for Scottish taxpayers are the same as in the rest of the UK so starting rate for savings, savings and dividend nil rate bands need to be considered for Scottish taxpayers, who may be higher rate taxpayers for non-savings income but basic rate taxpayers for savings income.

Capital gains tax	The rate of capital gains tax depends on the remaining basic rate band for income tax. As capital gains tax is reserved, the higher rate threshold for capital gains tax for Scottish taxpayers remains aligned with the higher rate threshold for the rest of the UK. Therefore, it is possible to be a higher rate taxpayer in Scotland but have remaining basic rate band for the purposes of capital gains tax.

Issue	Commentary
Personal pension contributions	As the Scottish basic rate remains 20%, the relief at source rules should not be affected. However, for those paying tax at a rate above 20%, the relevant tax bands need to be extended by the value of the gross contribution. This means that taxpayers earning over £24,000 (personal allowance £11,850 plus basic rate band £12,150) may need to file a Return to claim relief. Note that the starter rate is not extended as the rate is lower than the Scottish basic rate. The UK basic rate, dividend ordinary rate, higher rate and dividend upper rate bands may also need to be extended if the Scottish taxpayer has any taxable savings income and dividend income.
Gift aid donations	Currently, these amounts are deemed to be paid net of 20% basic rate tax. Anyone paying tax at the starter rate of 19% who gives money to charity may find themselves with a need to complete a Return to pay over the difference. Anyone paying tax at a rate above 20% will need to extend the relevant tax bands as necessary to obtain relief, increasing the number of people who need to complete a Return.
PAYE settlement agreements (PSA)	Where Scottish taxpayers are included in the employer PSA from 2018/19 onwards, the employer will need to consider the marginal rate of these individuals more carefully to ensure the amount of the benefit is grossed up correctly.

Section 5 provides that for the tax year 2018-19 section 21 ITA 2007 (indexation) does not apply to the starting rate limit for savings set out in section 12(3) of the ITA 2007). The starting rate limit for savings for the tax year 2018-19 therefore remains at £5,000.

The starting rate for savings can apply to an individual's taxable savings income (such as interest on bank or building society deposits). The extent to which an individual's savings income is liable to tax at the starting rate for savings, rather than the basic rate of income tax, depends upon the total of their 'non-savings' income (including income from employment, profits from self-employment and pensions income). Should an individual's non-savings income in excess of that individual's personal allowance in a tax year exceed the starting rate limit for savings, the starting rate is not available. Where an individual's non-savings income in a tax year is less than the starting rate limit their savings income is taxable at the starting rate up to that limit.

Income tax is charged at the 0% starting rate for savings, rather than the basic rate of income tax, on that element of an individual's income up to the starting rate limit which is savings income.

This section sets the starting rate limit for savings for 2018-19 at £5,000. This section does not override Section 21 of the Income Tax Act 2007 in relation to the starting rate limit for savings in 2019-20 and subsequently.

The starting rate of income tax and the starting rate limit are not devolved matters.

Section 6 enables Marriage Allowance claims to be made after one or both of the parties to a marriage or civil partnership has died, either by a surviving spouse/civil partner or by the personal representatives of a deceased party. In line with existing Marriage Allowance rules, backdating of these claims will be allowed by up to four years.

Marriage Allowance allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer. The government introduced Marriage Allowance in 2015, which allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer.

Employment

There are 4 changes of varying importance to employment tax.

Section 7 extends the existing deduction from seafarers' earnings to employees of the Royal Fleet Auxiliary. Crown employees are unable to claim the deduction and employment in the Royal Fleet Auxiliary is Crown employment. This section excludes employees of the Royal Fleet Auxiliary from the meaning of Crown employment for the purposes of the seafarer's earnings deduction (SED), which therefore entitles Royal Fleet Auxiliary employees to claim it.

The Royal Fleet Auxiliary is a civilian manned fleet owned by the Ministry of Defence that provides logistical support to the Royal Navy. Employees of the Royal Fleet Auxiliary have been claiming a deduction under SED on a concessionary basis. The government has decided to legislate this concession, and this section provides certainty to employees of the Royal Fleet Auxiliary that this treatment can continue.

<u>Section 8</u> introduces a new income tax exemption for allowances paid to or in respect of members of the armed forces for or towards the cost of accommodation. The exemption will have effect in relation to payments of allowances made on or after a date to be specified by the Treasury, once regulations have been made to set out the types of allowance that will qualify for the exemption in more detail.

Under their current accommodation model, the Ministry of Defence provides most members of the armed forces with accommodation. This accommodation is exempt from a benefit in kind tax charge by virtue of section 99 ITEPA.

The Ministry of Defence is intending to allow members of the armed forces to give up their entitlement to accommodation in exchange for an allowance to be used to rent or maintain accommodation in the private market. This section is intended to allow the Ministry of Defence to pay members of the armed forces the accommodation allowance tax-free, to continue the existing treatment of the current accommodation model.

<u>Section 9</u> provides for a one percent increase in the diesel supplement for company car tax and the car fuel benefit charge. This increase will apply to all diesel cars first registered from 1 January 1998 to 31 August 2017. The increase will also apply for diesel cars first registered from 1 September 2017 that either do not meet or are not certified against new standards for nitrogen oxide (NOx) emissions under the “real driving emissions” (RDE2) regime (known as “Euro 6d”), or which do not have a certified NOx emissions figure under RDE2 standards. The diesel supplement will not apply to cars registered after 1 September 2017 if their certified NOx emissions meet the new standard.

The car benefit charge is normally calculated by taking the manufacturer’s list price (plus the cost of any accessories) and multiplying it by an appropriate percentage, which reflects the level of Carbon Dioxide (CO2) emissions produced. There is also an additional supplement for diesel cars on the basis that diesel engines produce harmful particulates and pollutants in addition to CO2. The car fuel benefit charge is calculated similarly, however it uses a “multiplier” rather than the car’s list price.

The government has made commitments to improve air quality standards especially in respect of NOx emissions which can be extremely harmful to health. This modest increase in the level of the diesel supplement is designed to encourage providers and users of company cars to turn to the least polluting models and supports the National Air Quality Plan.

It has been difficult in the past for employers and fleet managers to identify which diesel cars produce the lowest amounts of NOx. However, a new standard (RDE2) is being introduced which will allow NOx emissions to be quantified and recorded on the relevant certification. The appropriate certification for newly registered diesel cars will be produced by manufacturers.

The diesel supplement will apply, as now, to those cars propelled solely by diesel and registered between 1 January 1998 and 31 August 2017. It will also apply to models registered on or after 1 September 2017 which have a certified NOx emissions value exceeding the RDE2 standard of 80 milligrams per kilometre when driven, or for which no value is certified. Diesel cars registered on or after 1 September 2017 will be subject to the 3 per cent diesel supplement for the period 1 September 2017 to 5 April 2018 irrespective of their NOx emissions value.

Section 10 removes foreign service relief on termination payments for UK residents. This will ensure that all employees who are UK resident in the tax year their employment is terminated will be liable to income tax on their termination payment in the same way regardless of whether they have worked abroad. Foreign service relief is retained for seafarers.

The government believes income tax relief for foreign service has become outdated and unnecessary. In August 2016, HMRC published draft legislation for technical consultation on changes to the taxation of termination payments as a whole, including the removal of foreign service relief. The consultation highlighted territorial issues with the legislation relating to foreign service.

The government therefore announced at Budget 2017 that it would withdraw the original proposal in order to reconsider and bring forward new legislation ready for implementation from April 2018.

Those who have worked abroad but are resident in the UK in the year their employment is terminated will be taxed in the same way as others who have not worked abroad. They will continue to benefit from the existing £30,000 income tax exemption and an unlimited employee National Insurance contributions (NICs) exemption for payments associated with the termination of employment.

Reductions in the case of foreign service (sometimes referred to as 'foreign service exemption') is retained for seafarers.

Guidance will be needed to assist employers (and employees and HMRC) in determining whether a ‘terminal bonus’ is a bonus payment for past services, taxable as general earnings, or part of the termination award, taxable under section 401, ITEPA 03. Guidance will also be needed to deal with:

- Foreign tax credits, where the termination award is liable to tax in both the UK and an overseas territory;
- Employers’ determination of a (former) employee’s residence status at the time a termination award is paid;
- Social security obligations in the UK (ie whether and when a liability to NICs arises); and
- The tax treatment of termination payments straddling the 2017/18 and 2018/19 tax years.

Disguised remuneration

This area of taxation was introduced to stop many of the employment tax planning schemes

Section 11 (and Schedule 1) introduces the next set of changes as part of the measure to tackle disguised remuneration tax avoidance schemes. The section introduces new sections to the employment income provided through third parties' rules in Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). These new sections introduce a new close companies' gateway and consequential double taxation relief provisions, and clarify when section 554A of Part 7A of ITEPA 2003 (Part 7A) applies.

The section also introduces changes to the new charge on outstanding loans from disguised remuneration schemes (the loan charge), which was legislated in Finance (No. 2) Act 2017. These include the introduction of a requirement for employees in scope of the loan charge to provide additional information to HMRC about the loans they have received, and some further changes due to the introduction of the new close companies' gateway in Part 7A. Finally, the section introduces a new subsection to the PAYE: employee of non-UK employer rules in section 689 of ITEPA 2003.

These changes are part of a package of proposals announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes. These changes will help to meet the government's objective of tackling tax avoidance and will ensure that users of disguised remuneration avoidance schemes pay their fair share of tax and National Insurance contributions.

The future use of disguised remuneration avoidance schemes is being prevented by strengthening the current rules. This section introduces the new close companies' gateway to the current rules. Other changes to the current rules were enacted in Finance Act 2016, Finance Act 2017 and Finance (No.2) Act 2017.

The existing use of disguised remuneration avoidance schemes will be tackled by the new charge on disguised remuneration loans that remain outstanding on 5 April 2019, which was legislated for in Finance (No.2) Act 2017. This section makes further provision in connection with that new charge.

The majority of these changes, including the close companies' gateway and the loan charge information, were subject to a consultation on draft legislation that ran from 13 September 2017 to 25 October 2017.

An information requirement for the self-employed has been introduced in Section 12 Schedule 2.

A technical note providing details around changes made to this legislation since the technical consultation which closed on 25 October 2017, has been published and can be found on the gov.uk site.

Close companies' gateway

The close companies' gateway (a new s 554AA) applies where:

- an individual (A) is a director or employee of a close company;
- there is an arrangement to which A is a party or which otherwise covers or relates to A;
- the main purpose, or one of the main purposes, of the arrangement is the avoidance of tax;
- it is reasonable to suppose that the relevant arrangement is a means, wholly or partly, of providing 'A-linked payments or benefits or loans';
- the close company enters into a relevant transaction at time when A has a material interest in that company (or had such an interest in the immediately preceding year), and it is reasonable to suppose that the relevant transaction is entered into in pursuance of the relevant arrangement, or is otherwise connected with it; and
- a relevant third person takes a relevant step, and it is reasonable to suppose that the money or asset which is the subject of the relevant step represents the money or asset which is the subject of the relevant transaction (or vice versa).

The following changes were made to the close companies' gateway in the latest draft of the legislation:

- A purpose test has been introduced to ensure that genuine commercial arrangements are not caught. This test considers whether the arrangement seeks to avoid a wider range of taxes, as it includes corporation tax and the loans to participators rules.
- A time limit of one year has been applied to determining whether an individual had a material interest in the close company at the time of a relevant transaction.
- In order to ensure a Part 7A charge does not arise where a relevant step and a relevant transaction are only loosely connected, the value of the relevant step must now derive from the relevant transaction.
- A further change has been to introduce priority rules to make clear when the loans to participators regime will take priority over Part 7A (new s 554Z2A). This will be the case where a charge under s455 CTA 2010 is paid in full on time, is nil as relief has been given under s458 CTA 2010, or is not paid on time but HMRC agreed that the loans to participators rules should apply (rather than Part 7A).

<u>Release of loans</u>

The Finance Act 2017 amended ITEPA 2003 Part 7A to include a new 'relevant step' of transferring a loan (which does not initially fall within the DR legislation) to a third party, and writing off or releasing a loan. Transferring a right to repayment of a loan will also be a 'relevant step' where that right is transferred to the employee who received the loan.

There is an exclusion from this charge where the loan does not exceed the threshold in s180 ITEPA 2003 (currently £10,000), and the employee is either an employee or prospective employee of the third party to which the loan is transferred. The s 180 threshold applies to all outstanding employment-related loans, so the total of all loans made to an employee may not exceed £10,000 in order to rely on this exclusion. This exclusion should ensure that the transfer of employment-related loans (such as travel season ticket loans) as part of a normal commercial transaction, such as the sale of a business, will not give rise to a Part 7A charge.

Loans outstanding in April 2019

The new Part 7A charge on historic loans is in Schedule 11 Finance Act 2018.

A new 'relevant step' applies where a loan or a quasi-loan was made on or after 6 April 1999 and is still outstanding on 5 April 2019. A 'quasi-loan' exists where a third party acquires a right to a payment or to the transfer of assets; and there is a connection between the acquisition of that right and a payment (including a loan) or transfer of assets to an employee.

The relevant step takes place on the 'relevant date', which is 5 April 2019; or, in limited cases where the loan is an 'approved fixed term loan', on the approved repayment date for that loan. The amount subject to tax is the outstanding amount of the loan or quasi-loan at the time the relevant step is taken. As a result, all outstanding loans held by a taxpayer will be taxed in the same tax year. This may mean that the taxpayer will pay tax at a higher marginal rate than would have been the case if the loans had been treated as earnings at the time they were made.

To counter avoidance, if the right to repayment of the loan is transferred to the employee or the employer before 5 April 2019, so that there is no third party to the arrangement on that date, the transfer is ignored and a relevant step will take place on 5 April 2019 as if the loan were still with the third party.

Computing the amount of the loan

The loan amount is broadly the amount outstanding under the loan less amounts repaid.

The principal amount of a loan is the original amount loaned plus any amount which has subsequently become part of the principal amount but excluding any capitalised interest. Repayments are the total of any principal repaid before 17 March 2016 (by any means) plus any repayments of principal made in money by the borrower after that date.

The limit on what counts as a repayment after 17 March 2016 means that simply writing off or releasing a loan will not count as a repayment, and a Part 7A charge will arise in April 2019 even though the debt itself may have been extinguished. (If a loan is written off, and that write off is subject to income tax, ITEPA 2003 s 554Z5 prevents double taxation.)

Repayments are disregarded if they are connected with a tax avoidance arrangement or where the payment (or a sum or asset representing that payment) is the subject of a further relevant step taken after the payment is made but before 5 April 2019, unless the tax arising on that subsequent relevant step has been paid by that date.

Provisions have been included setting out how loans made in currencies other than sterling will be calculated. Broadly, the outstanding amount of the loan must be calculated in the currency the loan was originally made in and then converted into sterling on the date the tax charge arises.

Different rules apply where the loan was made in a depreciating currency and 'it is reasonable to suppose' that depreciation was the main or one of the main reasons for selecting that currency. Here, the amount loaned and any repayments made must be converted into sterling on the date they are made, and the outstanding balance of the loan is calculated using those converted amounts.

<u>Exclusions from the loan charge</u>

- Transfer of employment-related loans:

  No Part 7A charge arises where an employment-related loan is transferred by the employer to a third party, provided the loan does not exceed the threshold in s180 ITEPA 2003 and the employee is either an employee or prospective employee of the third party.

- Commercial transactions, transactions under employee benefit packages, and employee car ownership schemes:

  These existing Part 7A exclusions have been replicated in Sch 11, and apply where a loan was originally made as part of a commercial transaction or in connection with an employee benefit package or employee car ownership scheme.

- Cashless exercise:

  A loan which is made for the purposes of enabling an employee to exercise an employment-related securities option will not give rise to a Part 7A charge under the new 'relevant step' introduced by Sch 11. A point to note here is that a cashless exercise loan will still constitute a 'relevant step' for the purposes of existing s554C ITEPA 2003 , and so it will still be necessary to rely on the existing exclusion for cashless exercise (s 554N) to prevent a Part 7A charge arising.

- Acquisition of unlisted employer shares:

  A loan that was used to acquire shares in the employer (or a member of the same group of companies as the employer) will not give rise to a Part 7A charge, provided the shares were acquired within twelve months of the loan being made and the shares are not listed on a recognised stock exchange at any time during the period of the loan or while the employee held the shares.

Where the employee ceases to hold the shares but the loan is still outstanding, the employee has 12 months to repay the loan. If it remains outstanding at the end of that 12 month period, a Part 7A charge will arise.

Section 12 (and Schedule 2) introduces a requirement for self-employed individuals in the scope of the loan charge to provide additional information to HMRC about the loans they have received.

This schedule is part of a package of measures announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes.

The existing use of disguised remuneration avoidance schemes will be tackled by the new charge on disguised remuneration loans that remain outstanding on 5 April 2019, which was legislated for in Finance (No.2) Act 2017. This section makes further provision in connection with that new charge.

Schedule 12 of Finance (No.2) Act 2017 introduced the new charge on outstanding disguised remuneration loans for self-employed individuals and partners. This schedule requires information be provided specifically for the loan charge.

Schedule 1 makes further changes to tackle existing and future use of disguised remuneration avoidance schemes. This includes an information requirement for employees in the scope of the loan charge.

Pensions

Section 13 (and Schedule 3) amends the Finance Act 2004 (FA 2004), as it relates to the registration of pension schemes for UK tax reliefs.

The Pension Schemes Act 2017 introduced an obligation on the Pensions Regulator (tPR) to operate an authorisation and supervision regime for Master Trust schemes. This change to Finance Act 2004 will allow HMRC to align the pension scheme tax registration process with tPR's authorisation and supervision regime. Following this change, where a Master Trust scheme is not authorised by tPR, HMRC can refuse to register, or can de-register the pension scheme.

Similar changes to the tax registration process have been made to allow HMRC to refuse to register or to de-register a pension scheme where one of the sponsoring employers is a dormant company. This change follows the Pension scams consultation in which the Government committed to tightening HMRC rules to stop scammers opening fraudulent pension schemes.

This change supports the Government's objectives of fairness in the tax system by making changes to the tax registration for pension schemes to make it more effective at preventing fraud.

Investments

These sections have been introduced to refocus the investment reliefs affected.

Section 14 amends the requirements for investments to qualify for relief under the Enterprise Investment Scheme (EIS), the Seed Enterprise Investment Scheme (SEIS) or the Venture Capital Trusts (VCT) scheme. It introduces an overarching risk-to-capital condition to prevent investment in companies whose activities are mostly geared towards the preservation of the capital invested rather than the long-term growth and development of the company. The changes will take effect in accordance with regulations made by HM Treasury.

This measure was announced at Autumn Budget 2017.

The government published a consultation, 'Financing growth in innovative firms' on 1 August 2017 which asked for views on reducing lower risk capital preservation' investments in the venture capital schemes.

Evidence was provided in response to the consultation suggesting that a significant subset of EIS investment in 2016-17 was focused on capital preservation. The government's response document was published on 22 November 2017.

The government intends the venture capital schemes (the EIS, SEIS and VCTs) to be focused on support for companies with high growth potential. The risk to capital condition is a principled approach to reduce opportunities to use the schemes for tax motivated investment. It will enable the government to avoid excluding further specific types of activity, which would risk excluding genuine entrepreneurial businesses.

See https://www.gov.uk/guidance/use-the-enterprise-investment-scheme-eis-to-raise-money-for-research-development-or-innovation

Section 15 prevents specified transitional provisions in the FA 2007 and FA 2012 having the effect of excluding certain investments from constituting a relevant investment. This section will ensure that all risk finance investments, whenever made, are relevant investments for the purposes of the Enterprise Investment Scheme, the Social Investment Tax Relief scheme and Venture Capital Trusts. The provisions take effect for new investments made on or after 1 December 2017.

A new ‘lifetime’ limit on the total amount of relevant investments a company may receive was introduced to the EIS and VCT rules in 2015. The limit is applied by provisions in sections 173A, 173AA, 173AB, 280B, 292A, 292AA and 292AB. The limit is £12 million for most companies and £20 million for knowledge-intensive companies.

This section ensures that the lifetime limit rules work as intended by counting all relevant investments towards the limit, whenever they were received.

Section 16 (and Schedule 4) increases certain investment limits under the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT) scheme in relation to knowledge-intensive companies (KICs). The Schedule introduces a revised definition of a KIC for this purpose. A different date from which the permitted maximum age limit for KICs is determined is also introduced. These changes will take effect in accordance with regulations made by HM Treasury

The EIS and VCT relief schemes are two of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early stage trading companies with high potential for growth and development.

Both schemes have limits to the amount an individual can invest in any one year. They also limit the amount of tax-advantaged funding a company can receive annually and require these investments to be made within a certain number of years from when the company first commences trading (‘the initial investment period’).

Schedule 4 increases certain of these limits specifically for knowledge-intensive companies. This is to facilitate and encourage additional investment in innovative companies developing and exploiting new technologies.

The changes were announced at Autumn Budget 2017 as part of the government’s response to the Patient Capital Review.

Section 17 (and Schedule 5) makes a number of changes to the rules relating to investments made by Venture Capital Trusts (VCTs). The Schedule:

- Restricts the application of an anti-abuse rule as it relates to mergers of VCTs with effect from 6 April 2014,
- Increases the proportion of VCT funds that must be held in qualifying holdings to 80%,
- Requires a VCT to invest 30% of funds raised within 12 months following the end of the accounting period in which they are raised, and
- Inserts a final date after which certain ‘grandfathering’ provisions will no longer apply.

This Schedule contains a number of provisions relating to VCTs and their investments.

Paragraph 1 ensures that the anti-abuse rule in section 264A ITA 2007 works as intended. Its purpose is to deter “bed and breakfasting” by individuals claiming multiple amounts of income tax relief on what is essentially the same capital in the same company. Under the legislation as currently drafted, the tax relief claimed by an individual who had invested in one VCT would be reduced if they had sold shares back to a separate VCT within a six month period, if the two VCTs were to merge at some point. Paragraph 1 ensures that the reduction in income tax would apply only where, broadly, the individual would have been aware of the merger, and the potential reduction in income tax relief, before they subscribed for the shares.

The provisions in paragraphs 2 to 10 were announced at Autumn Budget 2017. The government published a consultation, 'Financing growth in innovative firms', on 1 August 2017 which asked for views on the value for money provided by the venture capital schemes, including VCTs. The government's response document was published on 22 November 2017.

The government brought forward amendments at Public Bill Committee to ensure that qualifying loans made by VCTs are unsecured and that returns on loan capital above 10% represent no more than a commercial return on the principal.

Partnerships

Section 18 (and Schedule 6) introduce new provisions to provide clarity over aspects of the taxation of partnerships. The Schedule specifies how the current rules and reporting requirements operate in particular circumstances where a partnership has partners who are bare trustees for another person or that are partnerships. It ensures that partnership returns contain sufficient information, makes clear that the allocation of partnership profits shown on the partnership return is the allocation that applies for tax purposes and provides a new structured mechanism for the resolution of disputes about the allocation of profits between partners.

It also provides a relaxation in the information that is to be shown on the partnership return for investment partnerships that report under the International Tax Compliance Regulations 2015.

The rules governing the calculation of partnership profits and the return of those profits are clear in the majority of situations, but their application in certain modern commercial arrangements is not always without doubt. These changes and clarifications seek to address areas of uncertainty and complexity identified as problematic by stakeholders. The changes are in five parts.

Part 1 ensures consistent treatment where a beneficiary in a bare trust arrangement is entitled absolutely to any income of that bare trust but is not themselves a partner in the firm. This puts beyond doubt that they will be subject to the same rules for calculating profits etc. and reporting as actual partners.

Part 2 makes it clear that the basis period rules will apply consistently to persons allocated trade profits or losses by a partnership, irrespective of whether they are allocated directly or whether the profits or losses are allocated to other intermediate partnerships first.

Part 3 ensures that partnerships that are partners in other partnerships will always have access to the appropriate profit calculations and can complete their own partnership statement correctly. This will reduce the likelihood of errors or mistakes and ensure that the correct tax is calculated for partners in such structures.

Part 4 provides a reduction in the administrative burden for certain investment partnerships that report to HMRC under the Common Reporting Standard (CRS) or the Foreign Account Tax Compliance Act (FATCA), so that they are no longer obliged to provide tax references for all their partners.

Part 5 provides certainty over the amount of profit or loss that is allocated to a partner and reported to HMRC, and provides a defined process through which a partner can resolve a dispute over the amount they been allocated without reliance on existing compliance processes.

Changes to profit sharing provisions

The most important changes in the Finance Act are the proposed changes to the proportions in which profits of a partnership are allocated to the partners for tax purposes.

The (income) profits of the partnership's business are first computed for the whole partnership. They are then allocated among the partners. Until now, this allocation has been determined 'in accordance with that firm's profit sharing arrangements' (i.e. the rights to share in the profits and losses) in place during the period of account in question. This has allowed profits to be allocated according to the most tax efficient outcome for the partners, if that is provided for in the partnership agreement (and commercially agreed).

The changes amend s 850 ITTOIA 2005 so that the allocation to a partner of the profits of a trade of a partnership must be in proportion to the 'partner's percentage' of the profits (defined below):

- If the profit sharing provisions in place during the period of account provide for a fixed percentage (or other fixed proportion) in relation to a trade or business, it is defined as that fixed percentage ('Rule 1').
- In any other case, the partner's share of the economic or accounting profits of the partnership for the period (from all trades and businesses) is expressed as a percentage ('Rule 2').

These new rules have two main consequences.

First, they ensure that the profits of a partnership for tax purposes (which may be greater or, less than the accounting profits) are allocated to the partners pro rata to the accounting profits.

Second, they limit the ability to stream profits from particular sources to particular partners, instead requiring the same percentage of income to be allocated from each trade or business source.

Note that the rules apply only to income profits. They do not apply to capital gains.

If the partners are all individuals and share all the profits of a partnership according to a points or percentage system, that system will produce their percentage share and they will be taxed in accordance with rule 1.

Where the same partnership has more than one trade or business (eg, a property business and an accountancy trade)), where the partners have points or percentages in each of the different trades or businesses, rule 1 will continue to apply separately to each business.

If the partnership agreement (which operates throughout the period of account) states that a management committee may determine the partners' shares based on their performance in the period, rule 2 applies. If the partnership has both a property and an accountancy business, rule 2 would give each partner a pro rata share of the property and trading income.

If the partnership agreement sets out how profits are to be determined, but how they are eventually allocated depends on events that happen during the accounting period (for example, by reference to formula), this should be covered by rule 1 as a fixed proportion.

In many cases this will make no difference. However it clearly could, for example, if certain partners have available losses of one type or another and so have been used to being able to stream particular items to obtain the best result, this will no longer be possible.

Partners with different characteristics: streaming of profits

Under the new provisions you cannot cherry pick between the trades and businesses from which profits are allocated, if the partnership in question has more than one.

Under rule 1, the partnership agreement can provide for a fixed percentage for each trade or business, in which case one has to live with the economic risks of the different businesses.

This will be relevant to partnerships which hold investments in underlying funds from which streams of investment income will arise. If this investment income is not apportioned by fixed percentages (such that rule 1 applies), it will be apportioned to the partners pro rata.

Corporation Tax

Section 19 amends Part 6A of the Corporation Tax Act (CTA) 2009 to increase the rate of the Research and Development Expenditure Credit from 11 % to 12%.

The RDEC was introduced for companies undertaking qualifying activity and incurring qualifying expenditure on 1 April 2013. It was introduced as a standalone credit to be brought into account as a receipt in calculating profits. The previous general rate was set as 11% of qualifying R&D expenditure.

For profit making companies the credit discharges the corporation tax liability that the company would have to pay. Companies with no corporation tax liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due. The rate of the R&D expenditure credit is to be increased from 11% to 12% for expenditure incurred on or after 1 January 2018.

Section 20 amends the legislation that defines ‘proceeds of realisation’. It applies when the consideration received on the disposal of an intangible fixed asset is something other than money. It puts beyond doubt that the amount to be recognised is the cash equivalent of the market value of the consideration. The amendment is effective from 22 November 2017. A related change is made by section 21.

The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009. In general terms, Part 8 follows amounts recognised in a company's accounts to calculate the taxable profit or allowable loss.

When there is a disposal of an intangible fixed asset, the legislation requires that the profit or loss is calculated by reference to the proceeds of realisation that is recognised for accounting purposes. If, however, the proceeds of realisation are not wholly cash, for example the intangible fixed asset is exchanged for shares, the accounts may report the cost of the new asset at the net book value of the asset disposed of rather than at the market value of the asset that has been acquired.

This section puts beyond doubt that where the consideration includes something other than cash, the amount recognised as the proceeds of realisation for the purposes of section 739 is the market value in cash of whatever is received as consideration. This ensures that disposals for non-cash consideration are taxed consistently with disposals where the payment is wholly in cash.

A complementary change is made by section 21 to ensure that the market value rule can apply to licences of intangible fixed assets between related parties as it applies to transfers of intangible fixed assets

Section 21 introduces legislation to ensure licensing (or similar) transactions between related parties involving intangible fixed assets recognise the market value of the licence. It is effective from 22 November 2017.

One requirement of Part 8 is that transfers of relevant intangible assets between related parties takes place at least at market value (if an adjustment under Part 4 of TIOPA for arm's length provision is not a greater value).

This section applies a similar market value rule to grants of licences and other rights between related parties.

Section 22 amends Chapter 4 of Part 8 of CTA 2010 to include a definition of tariff receipts for the purposes of Ring Fence Corporation Tax and Supplementary Charge. This will have effect for accounting periods beginning on or after 1 January 2018.

This measure clarifies that activities by petroleum licence holders in the UK and on the UK Continental Shelf which give rise to tariff income, in relation to UK oil and gas assets, are oil extraction activities. This means profits from these activities are subject to Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC).

This clarification is provided by amending the definition of tariff receipt in legislation to make clear that there is no distinction for RFCT and SC purposes between the treatment of third party income arising from old (PRT) and new (non-PRT) oil fields. The original definition of tariff receipt was in section 6 of the Oil Taxation Act 1983, which has now been incorporated into the new definition in section 291(2).

Section 23 introduces Schedule 7, which introduces a number of amendments to the Hybrid and Other Mismatches legislation in Part 6A Taxation (International and Other Provisions) Act 2010 (TIOPA) 2010. These amendments clarify how the following matters are dealt with by the hybrids regime:

- withholding tax;
- taxes charged at a nil rate;
- taxes on capital;
- the quantification of certain mismatches;
- the scope of the rules in relation to multinational companies;
- the treatment of certain related party payments;
- the recognition of dual inclusion income; and
- the treatment of certain accounting adjustments.

The hybrid and other mismatches regime is set out in Part 6A TIOPA 2010, and was introduced by Schedule 10 Finance Act 2016. The regime deals with mismatches involving entities, permanent establishments and financial instruments.

Hybrid mismatch arrangements can involve either double deductions for the same expense, or deductions for expense without any corresponding receipt being taxable.

The hybrid and other mismatches regime addresses arrangements that give rise to hybrid mismatch outcomes and generate a tax mismatch, and in doing so fully implements, and, as a matter of policy, in some areas goes further than, the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 2 recommendations.

Section 24 (and Schedule 8) make certain technical amendments to the corporate interest restriction (CIR) rules in Part 10 and Schedule 7A of TIOPA to ensure that the regime works as intended.

The CIR rules restrict the ability of large businesses to reduce their taxable profits through excessive UK interest expense. They are part of the government's wider changes to encourage alignment of the location of taxable profits with the location of economic activity, and are consistent with the UK's more territorial approach to corporate taxation.

The CIR rules were enacted in Schedule 5 to the Finance (No.2) Act 2017.

As a result of further engagement with affected businesses, certain technical amendments to the legislation have been identified that are necessary for the regime to work as intended.

Section 25 introduces a new corporation tax (CT) exemption for the Education Authority of Northern Ireland.

Following the reform of local government, The Education Act (Northern Ireland) 2014 reorganized the bodies dealing with the provision of state education across Northern Ireland. The five Education and Library Boards were replaced by the Education Authority from 1 April 2015. The Education and Library Boards were exempt from CT. Under pre-existing legislation the Education Authority would be liable to CT.

This measure introduces legislation to similarly exempt the Education Authority.

Chargeable Gains

Section 26 freezes the level of indexation allowance that is given in calculating a company's chargeable gains at the value that would apply to the disposal of an asset in December 2017 for assets acquired on or before 1 January 2018. Assets acquired from 1 January 2018 onwards will not attract any indexation allowance on disposal. The changes have effect for disposals of assets on or after 1 January 2018.

Companies do not pay tax on the portion of their capital gains attributable to inflation. To achieve this, when calculating a gain on the disposal of an asset, companies apply an indexation factor to expenditure on the acquisition, enhancement or disposal of the asset that reflects movements in the retail prices index over the period since the expenditure was incurred.

Indexation allowance has been applied to the calculation of chargeable gains since April 1982. For individual taxpayers, the allowance was first frozen at March 1998 levels, then finally abolished in April 2008.

Assets owned prior to 1 January 2018

Companies that currently own assets that will be subject to a CGT payment when they are sold, will have any indexation relief capped at the RPI for December 2017. Accordingly, they will still get a measure of relief up to this date.

Assets acquired on or after 1 January 2018

Assets acquired on or after 1 January 2018 will no longer be able to claim indexation relief.

Companies should therefore be aware that if inflation continues to rise they will be paying tax on the inflationary value of the chargeable asset sold.

According to HMRC:

> *The measure aligns the treatment of capital gains by companies with that for individuals and non-incorporated businesses for whom indexation allowance was abolished in 2008. It will also align the treatment of capital disposals with disposals of similar assets as part of a company's trading activities.*
>
> *In addition, it will simplify tax computations and remove a source of potential errors.*

Section 27 ensures that tax postponed under section 140 Taxation of Chargeable Gains Act 1992 (TCGA) does not become due on the occasion of a subsequent corporate restructuring involving the exchange of shares in an overseas transferee company where the substantial shareholdings exemption (SSE) applies to the share exchange. The changes have effect for disposals of shares and securities on or after 22 November 2017.

This section has been introduced to support the Government's intention to ensure that the tax system supports UK companies undertaking international business, and that the tax system does not present barriers to commercial transactions.

The SSE provisions treat any gain or loss on a disposal of shares as exempt from corporation tax on chargeable gains where the relevant conditions are fulfilled. Section 127 TCGA treats certain exchanges of shares or securities made as part of a corporate reconstruction as not amounting to a disposal and acquisition of separate assets, but instead deems the new shares or securities to be the same asset as the old shares or securities. The interaction of these provisions resulted in a postponed chargeable gain becoming chargeable on a further restructure of a UK Company's overseas business.

The change made by this section means that a share for share exchange within section 127 TCGA will not amount to a disposal of the original shares received following a transfer of the trade and assets of a foreign branch of the company, irrespective of whether the SSE also applies to the same share exchange.

Section 28 extends the scope of section 176 TCGA 1992. Section 176 limits the relief available to a company in respect of capital losses accruing on a disposal of shares by disallowing losses attributable to earlier 'depreciatory transactions' which materially reduced the value of the shares. The section means that section 176 will apply where a depreciatory transaction has taken place at any time on or after 31 March 1982. This restores the time limit which applied to disposals made before 19 July 2011. The changes have effect for disposals on or after 22 November 2017, and also for some disposals treated as taking place before that date because a negligible value claim has been made.

This section seeks to ensure that the depreciatory transaction rules cannot be prevented from applying by simply holding on to a company from which value has been stripped for six years before claiming loss relief in excess of any genuine economic loss to the group.

A loss accruing on the disposal of shares by a company may be increased by a prior "depreciatory transaction" which takes value out of the shares. Examples of depreciatory transactions are the payment of a dividend, or the transfer of an asset for payment of less than market value, by the company whose shares are disposed of. To counteract this increase in the loss, the rules in sections 176 and 177 TCGA were introduced in 1968 and apply, for the purposes of corporation tax, to restrict the allowable loss by such an amount as is "just and reasonable" to counter the effect of the depreciatory transaction.

Finance Act 2011 introduced a limit to when this restriction is made. For disposals on or after 19 July 2011 an adjustment is only required in respect of depreciatory transactions occurring within the six years prior to the date of disposal. This section removes the limit introduced in 2011.

Where shares become of negligible value a claim can be made under section 24 TCGA to treat the shares as disposed of and reacquired, giving rise to a capital loss. Such a claim can specify an earlier date when the shares were of negligible value for the loss to accrue. Without the extension of the commencement provision by sub-section (2)(b), losses arising from claims made after 22 November 2017 could continue to benefit from the restricted six-year limit on depreciatory transactions by specifying a date before 22 November for the claim to take effect.

Capital Allowances

Section 29 extends First Year Tax Credits until 31 March 2023 and reduces the rate of eligible claims to two-thirds of the corporation tax rate. The changes have effect on or after 1 April 2018.

It applies to the products and technologies covered by the energy-saving (energy) and environmentally-beneficial (water) first year allowances schemes.

It supports the Government's policy to reduce the consumption of energy by business, by encouraging their investment in the most efficient plant and machinery.

HM Revenue & Customs (HMRC) will update the guidance after Royal Assent.

Double taxation relief

Section 30 limits the amount of double taxation relief (DTR) available to a company for foreign tax paid on income of a foreign permanent establishment (PE) of the company where losses of the PE have been relieved against income other than those of the PE in the foreign territory. The change applies from 22 November 2017.

The DTR rules in Part 2 TIOPA 2010 provide for credit relief for foreign tax paid on a company's qualifying income from a foreign PE against corporation tax on the income.

The changes made by this section will amend the DTR rules where a foreign PE has made a loss that has been relieved for the purposes of the foreign tax rules against income other than of the PE in the foreign territory. It will restrict the amount of foreign tax that is treated as available for DTR for an accounting period to reflect the extent to which a loss of the PE has been relieved in this way in the period and earlier periods. This will ensure that DTR is confined to circumstances where income of a PE has effectively suffered double taxation.

Section 31 introduces amendments to the double taxation relief targeted anti-avoidance rule (DTR TAAR) contained in Part 2 TIOPA 2010. The amendments make two changes to that legislation.

The first change removes the requirement for HM Revenue and Customs to give a counteraction notice in order to apply the DTR TAAR and will have effect for returns with a filing date on or after 1 April 2018.

The second change will extend the scope of one of the categories of prescribed schemes to which the TAAR applies to include tax payable by any connected persons. The second change will have effect for payments of foreign tax made on or after 22 November 2017.

The DTR TAAR is a wide ranging anti-avoidance rule, which applies if there is a scheme or arrangement where the main purpose or one of the main purposes is to obtain allowance by way of credit for foreign tax and the scheme is a prescribed scheme. A prescribed scheme is one that meets one or more of the descriptions set out in sections 84 to 88 TIOPA 2010.

Where it applies, the existing legislation in section 81 and 90 TIOPA 2010 requires HMRC to issue a counteraction notice requiring the taxpayer to make such adjustments as are necessary to counteract the effect of the scheme or arrangement.

This section will remove the requirement for HMRC to issue a counteraction notice and instead require the taxpayer to consider whether the DTR TAAR applies as part of the taxpayer's self-assessment. This aligns the DTR TAAR with more recent TAARs that do not include requirements for counteraction notices.

The existing legislation in section 87 TIOPA 2010 sets out one of the prescribed schemes to which the DTR TAAR can apply. It applies in situations where a scheme or arrangement has the effect of reducing the amount of UK tax payable by a person.

The section slightly extends section 87 TIOPA 2010 to apply to situations where a scheme or arrangement has the effect of reducing the total amount of UK tax payable by a person and any person connected with that person.

This section will modernise the DTR TAAR and will also promote fairness in the tax system by deterring taxpayers from entering into abusive DTR schemes or arrangements.

Section 32 amends the powers for giving effect in domestic law to international arrangements for the relief of double taxation. It confirms that arrangements modifying existing arrangements can be given effect, and that the provisions of arrangements given effect can delegate functions to public authorities. The provisions of the section will be regarded as always having had effect. The section has effect from Royal Assent.

This section ensures that the UK can give full effect to the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI) which it signed on 7 June 2017.

In the process of reviewing whether the existing power at section 2 TIOPA was sufficient to implement the MLI, doubts were raised in some quarters as to whether that section gave effect to arrangements, such as the MLI, which served mainly to restrict relief. Doubts were also expressed as to whether that section was clear enough that DTAs could include provisions delegating functions to public authorities (such as the function of determining residence for the purposes of the arrangements and the resolution of disputes that are a feature of provisions of the MLI).

The government believes that there are strong arguments that the existing power at section 2 TIOPA is sufficient to give effect to arrangements that serve mainly to restrict relief and to provisions that delegate functions to competent authorities. However, in order to put the matter beyond doubt and ensure that the important improvements to DTAs made by the MLI can quickly be brought into effect, it was thought prudent to amend the power.

Some existing arrangements already given effect under both section 2 TIOPA and section 158 IHTA have served mainly to restrict relief under existing arrangements. Also all arrangements given effect under those sections already include provisions conferring functions on the public authorities of the contracting jurisdictions. To put beyond doubt that these arrangements have always had full effect, the section therefore extends to arrangements in respect of gift and death taxes and is regarded as always having applied (including to arrangements made under provisions succeeded by section 2 TIOPA and section 158 IHTA).

Miscellaneous

Section 33 (and Schedule 9) amends Schedule 19 to the Finance Act 2011 (FA 2011) to make changes to the bank levy.

For periods of account ending on or after 1 January 2021, bank levy will be chargeable only on equity and liabilities recognised on the UK balance sheets of banks and building societies. Certain overseas entities within UK banking and building society groups will be excluded from the bank levy charge, and any overseas branches (foreign permanent establishments) of UK resident entities can also be disregarded.

The Schedule also provides for the amount of UK equity and liabilities subject to the bank levy to be reduced where a UK bank holds certain types of loss absorbing investments in an overseas subsidiary. Various other changes and administrative updates to the bank levy will apply for periods of account ending on or after 1 January 2018, or from Royal Assent to the Finance Bill.

Section 34 amends the rules on the deduction of income tax from payments of yearly interest. It provides that such a deduction will not apply to securities admitted to trading on a multilateral trading facility (MTF) operated by an EEA-regulated recognised stock exchange (RSE). It further widens the definition of alternative finance investment bonds to include securities admitted to trading on such an MTF.

There has been a decline in the use of the UK as a trading venue for corporate debt since 2009. Against that background, the UK Debt Market Forum, set up by the Financial Conduct Authority in 2015, identified a need to improve the competitiveness of UK MTFs as alternatives to traditional debt markets.

It has become clear that current requirements to withhold tax on interest are a barrier to the establishment of MTFs in the UK. This is because debt traded on a UK MTF would not benefit from an existing exemption from withholding requirements - the Qualifying Eurobond Exception (QEE) - while similar debt traded on some overseas MTFs would. This means that UK MTFs suffer a competitive disadvantage, making them commercially unattractive.

This measure ensures that UK debt markets can compete internationally on an equal footing by ending the anomaly which leads UK companies to issue debt on overseas venues in order to benefit from an existing UK exemption from withholding tax on interest.

Section 35 (and Schedule 10) introduces anti-avoidance provisions in relation to payments and benefits made from offshore trusts. They have effect from 6 April 2018.

Income arising, and gains accruing, to the trustees of an offshore trust are, broadly, treated as arising or accruing as follows:

Sections 86 and 87 of TCGA 1992: Section 86 treats gains accruing to the trustees of a settlor-interested offshore trust as accruing to a UK resident settlor who is also domiciled or (from 6 April 2017) deemed domiciled in the UK; otherwise section 87 attributes the gains to beneficiaries to the extent that they receive a capital payment that is matched to the gain.

Chapter 5 of Part 5 of ITTOIA 2005: Chapter 5 treats income arising to the trustees of a settlor-interested offshore trust as arising to the settlor (irrespective of whether the settlor enjoys the income). Capital sums (such as loans) paid to such settlors in excess of the trustees' undistributed income is also treated as income arising to the settlor. Where the remittance basis applies to the settlor, foreign source income is taxed in the year in which it is remitted.

Chapter 2 of Part 13 of ITA 2007: Chapter 2 applies where a person transfers assets as a result of which income becomes payable to a person abroad, such as to the trustees of an offshore trust. It deems income to arise to the transferor where that person is UK resident and has power to enjoy the income that arises to the trustees; receives a capital sum from the person abroad; or receives a benefit provided out of the transferred assets that is matched to the income. Rules prevent double taxation under Chapter 2 and other provisions (such as Chapter 5 of Part 5 of ITTOIA 2005). Where the remittance basis applies to the transferor, foreign source income is taxed in the year in which it is remitted.

Income treated as arising, and gains treated as accruing, as above, may not be immediately liable to UK tax where the person is not UK tax resident or is a UK resident non-UK domicile remittance basis user.

The measure tackles the ability to 'wash-out' income or gains due by routing payments via non-UK residents or UK resident remittance basis users.

The measure was announced in December 2016 at paragraphs 2.3.1 (treatment of capital gains in trusts) and 2.3.5 (recycling benefits from protected settlements) of the government's response to further consultation on reforms to the taxation of non- domiciles. The consultation response can be found at:

https://www.gov.uk/government/consultations/reforms-to-the-taxation-of-non- domiciles-further-consultation

In a technical briefing on the non-domicile reforms published on 21 March 2017 the government announced that because the draft legislation was incomplete certain elements, included the provisions relating to this measure, would be included in a future Finance Bill. The technical briefing can be found at: https://www.gov.uk/government/publications/non-domicile-taxation-technical-briefing-on-overseas-trusts/non-domicile-taxation-technical-briefing-on-overseas- trusts.

Section 36 allows unincorporated property businesses the option of calculating their allowable deductions for expenditure incurred on vehicles by the use of simplified flat rates based on business miles travelled, commonly referred to as “mileage rates”. Mileage rates are already available for self-employed traders and employees, so this measure brings greater consistency between taxpayers.

This measure has been introduced to make the treatment of unincorporated property businesses more consistent with the self-employed in allowing use of the simplified expenses mileage rates to calculate the allowable deductions for business expenditure incurred on vehicles.

This is a step towards the government’s ambition of simplifying the tax system, by allowing the use of mileage rates amongst individuals regardless of their source of income.

Use of mileage rates for landlords was requested by stakeholders in the consultation on the use of cash basis for property businesses in Autumn 2016.

Section 37 removes transitional provisions in Finance (No.2) Act 2015 that determine how carried interest is taxed when the amounts which arise relate to disposals made before certain dates in 2015. The amendments have effect for amounts of carried interest arising on or after 22 November 2017. It provides that all amounts of carried interest arising on or after 22 November 2017 are within scope of Chapter 5 of Part 3 of Taxation of Chargeable Gains Act (TCGA) 1992.

Legislation determining the taxation of carried interest, which is a form of performance related reward for investment managers, was introduced with effect from 8 July 2015 in Finance (No.2) Act 2015. Transitional rules included in that Act excluded amounts of carried interest which had been subject to delays in payment for genuine commercial reasons and which were in relation to disposals of partnerships assets before 8 July 2015, or (in other circumstances) before 22 October 2015.

This section creates a single, consistent treatment for amounts of carried interest arising on or after 22 November 2017 irrespective of the timing of connected disposals of partnership assets.

Indirect taxes

VAT

Section 38 deals with joint and several liability of operators of online marketplaces and the requirement on operators of online marketplaces to display valid VAT numbers.

These new provisions are part of a package of measures announced at Budget 2017 which build on measures announced in Budget 2016. They support the Government's policy of tackling online fraud and creating a level and fair playing field for all businesses selling goods online.

The new provisions:

a. Extend the scope of existing joint and several liability provisions to include UK businesses. An operator of an online marketplaces can be held jointly and severally liable for VAT payable by any person selling goods through the online marketplace who fails to comply with any requirement imposed by VATA. The online marketplace operator can avoid being held jointly and severally liable if it removes the business from its marketplace within a specified period. The Commissioners of HMRC can remove the notice of liability from the online marketplace operator where, for example, the business complies with its VAT obligations.

b. Legislate for a new joint and several liability provision where a person offering goods for sale though an online marketplace is not established in the UK and is in breach of a Schedule 1A VATA registration requirement. If the online marketplace operator allows an unregistered non-UK business to continue to sell goods through its marketplace 60 days after it knows or should know that the non-UK business is required to be registered for VAT, it will be held jointly and severally liable for the unpaid VAT. However, the liability will cease from the point that the non-UK business complies with its obligation to register under Schedule 1A VATA.

c. Introduce a new requirement on online marketplace operators to display valid VAT numbers on their online marketplaces with a regulatory penalty for breach. The operator of an online marketplace will be required to check the validity of all the VAT registration numbers provided to it and display valid VAT registration numbers on its website within 10 days of being provided with them. It will also be required to ensure that all the VAT registration numbers displayed on its website are valid and take steps to remove any invalid ones that it becomes aware of within 10 days of becoming so aware.

The new provisions are intended to encourage non-compliant UK and non-UK businesses that sell goods through online marketplaces to register for VAT, comply with their obligations under VATA and pay the VAT due on sales made in the UK.

Section 39 amends section 33(3) of the Value Added Tax Act 1994 to extend refunds of VAT to a number of public bodies. These are:

- the combined authorities,
- police and crime commissioners undertaking the function of the fire and rescue authority,
- the London Fire Commissioner,
- the Scottish Fire and Rescue Service and
- the Scottish Police Authority.

The amendments effected by this section are mainly as a result of changes to the structure of local government, the police services and the fire and rescue services. Public bodies providing such services have historically benefitted from the refund scheme. Without this amendment new bodies taking over the responsibilities of those public bodies would only benefit from the refund scheme through individual orders made by the Treasury under section 33(3)(k) of the Value Added Tax Act 1994. At the same time the opportunity has been taken to include some types of fire and rescue authorities, which have hitherto benefitted from refunds of VAT through orders made by the Treasury under section 33(3)(k) of the Value Added Tax Act 1994.

Stamp Duty Land Tax

Section 40 (and Schedule 11) contains provisions to amend Schedule 4ZA of the Finance Act 2003 which covers the higher rates for additional dwellings etc of stamp duty land tax (SDLT) that apply to certain purchases of residential property.

The main Schedule was inserted into the Finance Act 2003 by section 128 of the 2016 Finance Act. The main Schedule contains legislation to charge higher rates of SDLT when a company buys residential property and when individuals who already own residential property do so.

The changes made by this legislation will ensure that the main Schedule works better when someone:

- gets divorced,
- exchanges property with a spouse,
- adds to an existing interest in their main residence, or
- is a child whose affairs are subject to the Court of Protection etc.

The changes will also prevent abuse by requiring the purchaser to dispose of the whole of their former main residence, and to do so to someone who is not their spouse, before benefitting from replacement main residence relief.

Section 41 introduces a new relief from SDLT on purchases by first-time buyers of a single residential property (a dwelling) where the price paid is not more than £500,000. No SDLT will be payable on the first £300,000 of the purchase price. 5% will be chargeable on the remainder. The measures applies to transactions with an effective date on or after 22 November 2017.

SDLT is a tax on purchases of land in England, Wales and Northern Ireland. SDLT is expected to be devolved to Wales with effect from 1 April 2018. SDLT was devolved to Scotland in April 2015.

There are two main charging regimes within SDLT: one for transactions in residential property; the other for transactions involving non-residential and mixed use property (e.g. commercial property transactions).

Purchasers are charged at a percentage of the consideration they pay for an interest in land (e.g. the price paid for the property).

The standard rates of SDLT for all residential property transactions are as follows:

Relevant consideration	Percentage
Up to £125,000	0%
More than £125,000 and up to £250,000	1%
More than £250,000 and up to £500,000	4%
More than £500,000 and up to £925,000	5%
More than £925,000 and up to £1,500,000	10%
The remainder	12%

An additional rate of 3% applies on top of the above rates to acquisitions by any person who already owns another residential property.

This section introduces a new relief from the standard residential rates of SDLT for individuals who are purchasing their first property as their main or only residence for a consideration (e.g. purchase price) of up to £500,000.

The new rates that will apply to these transactions are as follows:-

Relevant consideration	Percentage
Up to and including £300,000	0%
Any remainder (so far as not exceeding £500,000)	5%

These revised rates will be available to first-time buyers for transactions with an effective date (which is usually the date of completion) on or after 22 November 2017.

All claims to first-time buyers' relief must be made in a land transaction return.

HMRC GUIDANCE NOTE

This guidance note provides details about conditions to be met for the new SDLT relief announced at Autumn Budget 2017 for first-time buyers on properties.

The relief will apply from 22 November 2017 to purchases by individuals of residential property for £500,000 or less, provided the purchaser intends to occupy the property as their only or main residence.

Where the purchase price is over £300,000 but does not exceed £500,000 they will pay 5% on the amount above £300,000. Mixed-use properties do not qualify.

Linked transactions

If the purchase of a dwelling is linked to another transaction then no relief will be available unless the other transaction is the purchase of garden, grounds or interests or rights in land that subsist for the benefit of the dwelling, such as rights of way.

First time buyer

A purchaser must not, either alone or with others, have previously acquired a major interest in a dwelling or an equivalent interest in land situated anywhere in the world. This includes previous acquisitions by inheritance or gift, or by a financial institution on behalf of a person under an alternative finance scheme. Relief is not denied by virtue of a previous acquisition as a trustee unless the purchaser was also a beneficiary of the trust. Holiday homes and furnished holiday lettings are dwellings if suitable to be used as such.

Claiming the relief

The relief must be claimed on a land transaction return, or an amendment to a return, by entering code 32 in the appropriate field of the return.

www.gov.uk/government/publications/stamp-duty-land-tax-relief-for-first-time-buyers

Land and buildings transaction tax (SCOTLAND)

The nil rate for first-time buyers of residential property is expected to be £175,000 (the nil rate band for all other buyers of residential property is £145,000). Assuming the full £175,000 relief is utilised on the purchase of a property, the saving would be 2% of £30,000 (or £600). It is expected that this will mean 80% of first-time buyers in Scotland will pay no LBTT.

The new nil rate for first-time buyers is expected to be introduced in April 2018, but it will be subject to consultation. If the definition of first-time buyer follows the definition for stamp duty land tax (SDLT), it will only apply to an individual who has never owned residential property before.

The Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill is currently progressing through Parliament. Its aim is to provide retrospective relief from the additional dwelling supplement (the 3% LBTT surcharge that applies to purchases of additional residential properties) where a couple purchase a property having sold a prior property they both occupied, but where only one party was named on the title deeds.

Landfill Tax

Section 42 (and Schedule 12) amends Part 3 of FA 1996 to include disposals at sites without an environmental disposal permit (but which ought to have) within the charge to Landfill Tax. It will also introduce changes to what constitutes a taxable disposal for Landfill Tax purposes. This will take effect for disposals on or after 1 April 2018, subject to any transitional arrangements.

At Spring Budget 2017, the government announced it would consult on whether to extend the scope of Landfill Tax to disposals of material at sites operating without the appropriate environmental licence or permit. These illegal waste sites operate outside the scope of Landfill Tax making the activity attractive to rogue operators who exploit the disparity of tax treatment to undercut legitimate operators.

The government published a consultation paper in March 2017 which set out the reasons for extending the scope of Landfill Tax and asked for responses on a number of areas including how to define an illegal waste site and who should be liable for the tax.

The government published the summary of responses to the consultation on 13 September 2017, and following strong support from industry, confirmed its intention to legislate to extend the scope of Landfill Tax to illegal waste sites from 1 April 2018. To ensure the simplest transition for the industry is subject to the new rules, the government decided to combine the legislation on the revised scope with the previously announced changes to clarify what material is taxable.

HMRC will work with industry to publicise the changes and provide guidance before 1 April 2018, including a clear statement about the responsibilities of innocent parties.

Landfill Tax was devolved to Scotland in April 2015 and will be devolved to Wales from April 2018. These changes will thus not apply to sites in Scotland and Wales.

Excise Duties

Section 43 provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of the Finance Act 1994. These changes will come into effect in relation to the carriage of passengers beginning on or after 1 April 2019.

APD rates are dependent on a passenger's class of travel and final destination. The reduced rates apply to the lowest class of travel available on the aircraft, the standard rates to any other class, and the higher rates to travel in aircraft of 20 tonnes or more equipped to carry fewer than 19 passengers. There are two destination bands: Band A includes destinations whose capital is up to 2,000 miles from London and Band B includes all other destinations.

The airline industry made a request to the Government to give sufficient advance notice of changes in APD rates. In response to this the Spring Budget 2017 announced the APD rates for 2018 to 2019 and the Autumn Budget 2017 announced the rates for 2019 to 2020.

Section 44 provides for changes to certain rates of VED by amendments of the Vehicle Excise and Registration Act 1994 (VERA). Vehicle Excise Duty (VED) is collected by the Driver and Vehicle Licensing Agency (DVLA) and is based on the level of CO2 emissions a car produces.

The rate of VED chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emission data. Generally, cars and vans registered prior to March 2001, and all motorcycles, are taxed by reference to the engine size. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle’s carbon dioxide emissions. A reduced rate of VED applies when a vehicle uses certain alternative fuels or meets other conditions set out in VERA.

The government has made commitments to improve air quality standards especially in respect of NOx emissions which can be extremely harmful to health. This modest increase in the level of the diesel supplement is designed to encourage providers and users of company cars to turn to the least polluting models. A new test (RDE) is being introduced which will require vehicle manufacturers to ensure NOx emissions in typical real-world driving are controlled to within declared maximum levels.

The RDE test measures a car’s emissions in real world driving situations, described as real driving emissions trips – for example, the level of emissions produced when an engine is under load, say, by driving uphill. It will be carried out on cars older than 6 months which have been driven 100,000 kilometres or less. The manufacturer will declare emission figures which it guarantees will be met under any valid RDE test. The legitimacy of the declaration is planned to be verified through testing by approval authorities, market surveillance authorities and even non-governmental bodies, using accredited laboratories.

The diesel supplement will apply to models registered on or after 1 April 2018 which have a declared maximum RDE figure for NOx emissions exceeding 80 milligrams per kilometre, or for which no value is declared.

Section 45 provides for changes to the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) and to the Minimum Excise Tax (MET) on cigarettes. These changes have effect from 6pm on 22 November 2017.

This section increases excise duty on all tobacco products by 2% above the rate of inflation (Retail Price Index) in accordance with the November 2017 announcement. The excise duty rate for hand-rolling tobacco is increased by an additional 1%. The section also increases the MET on cigarettes from £268.63 to £280.15 per 1000 cigarettes

The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 28p, a 30 gram pack of hand-rolling tobacco by 41p, 10 grams of cigars by 14p and a 30 gram pack of pipe tobacco by 18p.

The changes to the MET on cigarettes support public health objectives and tackle the very cheapest cigarettes. A MET sets a minimum level of excise duty for any packet of cigarettes. This means that the total excise duty on a packet of cigarettes is the higher of either the usual application of duties or the MET. The MET was introduced in Finance Bill 2017 and came into effect on 20 May 2017.

Miscellaneous and Final

Customs enforcement powers

Section 46 extends the scope of section 24 of the Finance Act 1994 ("section 24") to enable an officer of HMRC to inspect, examine and take account of goods held on a premises which that officer reasonably believes is used for the purpose of carrying on a trade or business in respect of goods which may be liable to customs duty; and to require specified individuals to provide the officer with reasonable assistance for that purpose.

The basic power for examining and taking account of goods is contained in section 159 of the Customs and Excise Management ("CEMA") 1979. However, this basic power is restricted to use at places appointed by the Commissioners for the purposes of doing so, such as ports, airports, approved warehouses etc.

Today officers often have to investigate sophisticated frauds involving customs goods, the majority of which are inland, at a trader's premises, as well undertaking routine compliance visits. The use of the basic power under CEMA is not permitted. The only power officers have is section 24 of the Finance Act 1994.

Section 24 gives a power for officers of HMRC to enter premises which are being used in connection with a trade or business which involves goods liable to customs duty and to inspect any goods found on those premises. As currently enacted the power given by section 24 does not include any power to require that goods or containers moved or unpacked for the purpose of a closer examination.

These amendments give express powers for officers to require that goods and containers be moved, opened, and unpacked, power to search the contents of containers, a power to mark goods and containers for the purposes of taking an account, and a power to require certain specified individuals to provide reasonable assistance for the purposes of inspecting, examining and taking account of goods.

In addition, these amendments provide that a person made subject to a requirement to provide assistance under section 24 will bear their own costs in relation to anything done pursuant to that section. Where an officer has done anything HMRC will bear the costs of the officer's time.

These amendments bring the scope of the power under section 24 into line with the power which HMRC has to inspect imported and warehoused goods, and goods loaded for export as stores given by section 159 of the Customs and Excise Management Act 1979.

Section 47 makes an amendment to section 163 of the Customs and Excise Management Act 1979 ("section 163") to clarify the powers officers have to use reasonable force to gain entry to a vehicle.

Many of the customs powers and requirements in CEMA were originally designed to deal with smuggling and routine compliance checks at approved places such as ports and airports. However, officers are now frequently dealing with sophisticated diversion frauds involving excise goods, the majority of which are at inland premises, post-clearance, and not within the confines of these places.

Today officers are increasingly finding abandoned vehicles, at places other than approved places, with excise goods visible inside. On these occasions it is crucial that officers are in no doubt as to the powers they have when forcing entry to the vehicle in order to secure the goods.

Section 163 allows an officer, constable, or member of Her Majesty's armed forces or coast guard to stop and search a vessel or vehicle which they suspect is carrying goods which are chargeable with duty which has not been paid, being unlawfully removed, or otherwise liable to forfeiture under the customs and excise Acts.

This section amends section 163 to clarify the circumstances in which officers are empowered to use force in order to gain entry to a vehicle for the purposes of carrying out a search; and ensures that a search may still be carried out in cases where, for example, a vehicle has been locked or abandoned.

Updating of statutory references

Section 48 - Following the introduction of a new regime for calculating a car's CO2 emissions, known as the "Worldwide harmonized Light-duty vehicles Test Procedures" (WLTP), the government is amending the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and the Vehicle Excise and Registration Act 1994 (VERA) to clarify that a car's CO2 emissions for the purpose of these rules will remain based on the existing testing regime, known as the "New European Driving Cycle" (NEDC). These changes have effect for the car benefit charge and car fuel benefit charge in the tax year 2017-18 and subsequent tax years, and for Vehicle Excise Duty (VED) in relation to licences taken out on or after 29 November 2017.

The car benefit charge is normally calculated by taking the manufacturer's list price (plus the cost of any accessories) and multiplying it by an appropriate percentage, which reflects the level of Carbon Dioxide (CO2) emissions produced. The car fuel benefit charge is calculated similarly, however it uses a "multiplier" rather than the car's list price.

HM Revenue and Customs (HMRC) collects the car benefit charge and car fuel benefit charge, and the Driver and Vehicle Licensing Agency (DVLA) collects VED. Both are collected according to the CO2 emissions of a vehicle. To determine the CO2 emissions of a vehicle HMRC and DVLA use the figure as set out on the vehicle's certificate of conformity.

From the 1 September 2017 a new emissions test procedure was introduced (WLTP) and the certificate of conformity now shows CO2 emissions figures based upon the new emissions test procedure in addition to those based upon the existing methodology (NEDC). These changes clarify that the CO2 figures under the existing NEDC methodology (i.e. the 'New European Driving Cycle' basis) should continue to be used. The section also updates certain definitions.

Final

Section 49 provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "CAA 2001" as an abbreviation for the Capital Allowances Act 2001.

Section 50 provides for the bill to be known as "Finance Act 2018" upon Royal Assent.