Finance Act 2019

March 2019

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Introduction

The Chancellor introduced his Budget (which was his last scheduled Budget before Brexit) as a budget for Britain's future. He made it clear that the range of measures he announced were putting the Government on a path to the spending review this year where it would set out its long-term approach. Brexit would not directly affect the measures announced.

However, the Chancellor also made it clear that if economic circumstances were to change in the event of 'no deal' being reached then he would consider fiscal interventions and this might involve the upgrading of the Spring Statement to a full Budget.

The Finance Bill was published on 7 November 2018 and Royal Assent was given on 12 February 2019

These notes summarise the contents with comments and worked examples in appropriate places.

Direct taxes

Charge to tax

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

Section 1 – Income tax charge for tax year 2019-20

This section imposes a charge to income tax for the tax year 2019-20. Income tax is an annual tax. It is for Parliament to impose income tax for a year.

Section 2 – Corporation tax charge for financial year 2020

This section charges corporation tax (CT) for the financial year beginning 1 April 2020. This section charges CT for the financial year beginning 1 April 2020. The rate of CT for financial year 2020 was set at 17% in Finance Act 2016 Part 2 section 46.

Income tax rates, allowances and limits

Section 3 - Main rates of income tax for tax year 2019-20

This section sets the main rates of income tax for the tax year 2019-20. Income tax is an annual tax. 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.

The main rates of UK income tax are:

Basic rate	£12,501 to £50,000	**20%**
Higher rate	£50,001 to £150,000	**40%**
Additional rate	over £150,000	**45%**

Scottish rates and bands for 2019-20

The Scottish Government announced the following income tax rates and bands for 2019-20.

Bands	Band name	Rate
Over £12,500-£14,549	Starter Rate	19%
Over £14,550-£24,944	Scottish Basic Rate	20%
Over £24,945-£43,430	Intermediate Rate	21%
Over £43,431-£150,000	Higher Rate	41%
Above £150,000	Top Rate	46%

These will be considered by the Scottish Parliament and an agreed Scottish Rate Resolution will set the Scottish income tax rates and bands for the tax year 2019-20.

Welsh tax rates for 2019/20

From April 2019, the UK Government will reduce each of the three rates of income tax paid by Welsh taxpayers by 10p. The Welsh Government will then introduce its own rates in each tax band, which will be debated and approved by the Assembly with revenues from these rates forming a part of its budget. Welsh Government, in its tax policy report 2018, proposes to set the first Welsh rates of income tax at 10p.

Section 4 - Default and savings rates of income tax for tax year 2019-20

This section sets the default rates and savings rates of income tax for the tax year 2019-20. Income Tax is an annual tax. It is for Parliament to impose income tax for a year. This section sets the 'savings rates' that apply to savings income of all UK taxpayers and the 'default rates' which 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 and non-dividend income for Scottish taxpayers are set by the Scottish Parliament. These are unchanged from 2018-19.

Section 5 - Basic rate limit and personal allowance

This section sets the amount of the basic rate limit for income tax at £37,500 and sets the amount of the personal allowance at £12,500 for the tax years 2019-20 and 2020-21.

An individual's taxable income is charged to tax at the basic rate of tax up to the basic rate limit. The basic rate limit is subject to an annual increase based on the percentage increase to the CPI. Parliament can override the indexed amounts by a provision in the Finance Act.

Budget 2018 announced that the basic rate limit will be set at £37,500 for 2019-20 and 2020-21. The effect of this section is to override the anticipated indexed amount for the basic rate limit for 2019-20 and 2020-21.

An individual is entitled to a personal allowance for income tax. Income tax personal allowances are subject to indexation (an annual increase based on the percentage increase to the CPI). Parliament can override the indexed amounts by a provision in the Finance Act. Budget 2018 announced that the personal allowance will be increased to £12,500 for 2019-20 and 2020-21. The effect of this section is to override the anticipated indexed amount for the personal allowance for 2019-20 and 2020-21.

At Budget 2018 it was announced that the government would repeal the requirement for the Chancellor to consider the financial effect of increasing the personal allowance to an amount of less than £12,500 for individuals who are paid the national minimum wage, in consequence of the personal allowance now having reached £12,500.

Section 6 - Starting rate limit for savings for tax year 2019-20

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 2019-20 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 2020-21 and subsequently.

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

Employment and Social Security Income

Section 7 - Optional remuneration arrangements: arrangements for cars and vans

This section introduces amendments to the optional remuneration arrangements (OpRA) legislation introduced in section 7 and schedule 2 to the Finance Act 2017. The changes ensure that when a taxable car or van is provided through OpRA, the amount foregone includes costs connected with the car or van that are regarded as part of the benefit in kind under normal rules.

In addition, the changes adjust the value of any capital contribution towards a taxable car when the car is made available for only part of the year.

Under current rules, where the benefit of the availability of a taxable car or van is made through OpRA, the amount foregone by the employee in respect of the benefit is compared to the modified cash equivalent of the car or van – the greater value is reportable as the value of the benefit for tax and NICs purposes.

When the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) was originally introduced, the explanatory note was explicit that connected costs were regarded as part of the car benefit charge (and now also applies to the van benefit charge). During the introduction of section 7 and schedule 2 to the Finance Act 2017, which introduced the OpRA provisions, an oversight meant that no provision was made to ensure the calculation of the amount foregone for a taxable car or van should be the total amount foregone, including any connected costs.

In most instances information on the level of benefits from the benefit of the car and connected benefits are readily available and there should be no need to artificially disaggregate amounts foregone for the purpose of calculating the aggregate total amount foregone if so.

The deduction in any tax year for a capital contribution towards a taxable car is automatically reduced on a pro-rata basis under the normal car benefit charge rules if the car is made available for only part of a tax year. Similar provisions were not included in section 7 and Schedule 2 to the Finance Act 2017 for calculating the relevant amount when a taxable car is provided through OpRA. This means that currently, where a taxable car is provided through OpRA, the amount deductible for capital contributions is overstated where a car is available only for a part year.

Introduction of the OpRA legislation was announced at Autumn Statement 2016 and Finance Bill legislation was published in December 2016 for technical consultation. Neither of the issues subject to amendment in Finance Act 2018-19 were identified in the responses to the consultation.

Following introduction of the new OpRA rules in Finance Act 2017, HMT and HMRC were made aware of these anomalies. The government decided to take action to protect the Exchequer at the first opportunity.

Section 8 - Exemption for benefit in form of vehicle-battery charging at workplace

This section introduces a new exemption to Chapter 3 of Part 4 of ITEPA to encourage employers to provide charging facilities for all-electric and plug-in hybrid vehicles at or near the workplace. It removes any liability to income tax arising from the provision of charging facilities (including electricity) for individuals charging the batteries of vehicles other than taxable cars or vans at or near their workplace.

One of the current issues limiting the adoption of all-electric or plug-in hybrid vehicles by the general public is the worry about where they can be recharged. Many residential areas have limited charging facilities, especially where only on-street parking is available.

If an employer provides battery charging facilities (including electricity) for a vehicle which is not a taxable car or van, the employee is provided with a benefit in kind which is liable to income tax and NICs. Taxable cars and vans are exempt from any charge under separate provisions in ITEPA.

The government announced at Autumn Budget 2017 that they would introduce an exemption to remove any income tax or NICs liability for charging electric vehicles at work with effect from 6 April 2018. This supports Air Quality and Climate Change initiatives by incentivising the take-up of all-electric and plug-in hybrid vehicles.

The legislation provides that the exemption can apply where facilities are made available “at or near the workplace”. The words “at or near the workplace” are not defined in the legislation. However, HM Revenue and Customs take the same approach as for section 237 (parking facilities), where the charging facilities made available are within a reasonable distance from the place of work having regard to the nature of the locality.

The exemption does not extend to the reimbursement by employers of costs incurred by individuals or the provision of charging facilities when recharging vehicles away from the workplace. Where a vehicle is used in the performance of the duties of the employment, approved mileage allowance payments and mileage allowance relief may apply.

Section 9 - Exemptions relating to emergency vehicles

This section introduces three revisions to the tax treatment of emergency vehicles.

1. An extension to the current 'on-call' exemption to allow for ordinary commuting in an emergency vehicle when not on-call;

2. Provisions to ignore fuel as an 'additional expense' in working out the tax charge if certain conditions are met;

3. Transitional arrangements for the taxation of emergency vehicles for the period 6 April 2017 to 5 April 2020. This ensures that a small number of employees in the emergency services avoid an immediate significantly increased tax charge for having their emergency vehicle available for private use following changes to the 'use of assets' legislation in Finance Act 2017.

Typically, where a car is provided to an employee by an employer and is available for private use (including home to work commuting), the car benefit charge applies. However, these rules do not apply if the car is of a type not commonly used as a private vehicle and is unsuitable for private use. This definition applies to emergency vehicles with fixed flashing blue lights. This includes concealed lights as deployed in unmarked police cars.

An emergency services employee is defined in legislation as working in the provision of the following services: police, fire, fire and rescue, ambulance, and paramedic.

There is an existing exemption in Chapter 3 Part 4 of ITEPA for emergency vehicles if the only private use is for on-call commuting or for private journeys made while on-call. Emergency vehicles with more extended private use are not covered by that exemption. They fall within, and are taxed under, the use of assets legislation in Chapter 10 of Part 3 of ITEPA. These rules tax assets, of any kind, made available for private use by an employer. These typically include a wide range of assets such as: helicopters, TVs, washing machines and yachts.

HMRC had a long-standing practice of calculating the value of the benefit on these assets on the basis of time apportionment. However, this was later identified as an unlawful extra statutory concession on the basis of the *Wilkinson* rules. As a result, the use of assets legislation was amended by section 8 of the Finance Act 2017 with the intention of broadly reflecting long-standing practice in statute.

Draft legislation was published in December 2016 for technical consultation. However, there were no responses and no indication that a number of emergency service staff were using emergency vehicles for private use in a way that meant the relevant exemption did not apply. As a result of the changes to the use of assets legislation, some individuals faced a significant increase in the taxable value of the benefit.

Although ordinary commuting is typically considered a private expense, extending the 'on-call' exemption to allow for ordinary commuting in an emergency vehicle is designed to aid the provision of vital public services.

The government recognises that the emergency services require flexibility to maintain fast response times to perform a vital public service. The changes to legislation being introduced should ensure that a tax charge will not discourage employees from taking vehicles home. Extending the scope of the emergency vehicles exemption should mean that more employees in the emergency services have no liability to a benefit charge.

If the level of their current personal use means that employees are still taxable under the use of assets legislation, the transitional provisions will allow them, if they wish to do so, to review and possibly vary their contractual arrangements which might otherwise have significantly increased the tax charge for the private use of their emergency vehicle. Employees and employers will have time to consider whether or not to reduce the level of the private use of an emergency vehicle that is allowed in the knowledge that the new rules on use of assets will apply from 6 April 2020.

Section 10 - Exemption for expenses related to travel

This section removes the requirement for employers to check receipts or other forms of documentary evidence of the amounts spent by employees when using the HMRC benchmark scale rates to pay or reimburse their employees' qualifying subsistence expenses.

This section also makes necessary amendments to allow HMRC to introduce a statutory exemption for overseas scale rates, subject to the same checking requirements as benchmark scale rates.

Benchmark scale rate payments are payments or reimbursements in respect of certain types of subsistence expenses that are currently listed in regulations made under the power in section 289A(6)(a) ITEPA 2003: S.I. 2015/1948. These regulations cover meal allowances for employers to pay or reimburse their employees for food and drink costs that would otherwise be tax deductible.

The HMRC rates payable provided that the employee is on a qualifying journey are:

- Minimum of 5 hours away from workplace - £5 (+ £10 if working after 8pm)
- Minimum of 10 hours away from workplace - £10 (+ £10 if working after 8pm)
- Minimum of 15 hours and still away at 8pm - £25

The rates cover food and drink but do not include just a drink in a pub or a snack bar.

This section will provide that these expenses may be paid or reimbursed using benchmark scale rates without requiring an employer to check amounts spent in order to make the payments free from tax. Instead, legislation will only require employers to ensure that employees are undertaking qualifying travel on the occasions in respect of which a payment is made or reimbursed (i.e. travel for which a deduction would be allowed under Chapter 2 or 5 of Part 5 ITEPA 2003).

Overseas scale rates are amounts currently set out in HMRC guidance. Employers can use these rates for paying or reimbursing accommodation and subsistence expenses to employees, whose duties require them to travel abroad, free of tax and NICs.

These can be currently found at https://www.gov.uk/government/publications/scale-rate-expenses-payments-employee-travelling-outside-the-uk

This legislation will allow HMRC to bring the concessionary exemption for overseas scale rates into legislation. Similar to benchmark scale rates, there will be no requirement for employers to check amounts spent in order to pay or reimburse employee expenses using overseas scale rates free from tax, but they will need to ensure the employees are undertaking qualifying travel on the occasions in respect of which a payment is made or reimbursed.

Section 11 - Beneficiaries of tax-exempt employer-provided pension benefits

Employers often provide death and retirement benefits to employees. This section will amend the tax exemption which provides for employer paid premiums into life assurance products and employer contributions to certain overseas pension schemes to be paid free of tax. Currently, premiums and contributions are only exempt from tax if the beneficiary is the employee or a member of the employee's family or household. This section will allow the beneficiary to be any individual or registered charity.

When an employer provides for death benefits through a life assurance policy or provides retirement benefits through certain overseas pension schemes, the employee will usually name a beneficiary to receive any payment due upon their death and may be able to name a beneficiary to receive their retirement benefit. Prior to this section premiums paid into these schemes by the employer are tax exempt if the beneficiary of the employee's death or retirement benefit is the employee, a member of the employee's family or a member of their household.

The current tax definitions of family and household only cover: spouse, civil partners, parents, children and dependents, domestic staff and the employee's guests.

This measure modernises and amends the exemption to ensure the tax charge remains relevant and fair. Extending the exemption to include any individual as a beneficiary allows the employee to nominate their preferred recipient irrespective of their relationship in law. The amended exemption will also allow employees to nominate a registered charity, which is consistent with existing government policy of providing tax relief on charitable donations.

Section 12- Tax treatment of social security income

This section confirms the tax treatment of four existing and five new social security benefits.

The Scottish government is introducing five new social security payments: young carer grant; best start grant; funeral expense assistance; discretionary housing payments; and carer’s allowance supplement.

The government is also confirming the tax treatment of another four social security benefits:

- the council tax reduction scheme, discretionary housing payments and the flexible support fund, overseen by the UK Government and
- the discretionary support scheme, overseen by the Northern Ireland Executive

Social security benefits are administered by a number of different UK government departments and the devolved administrations. The tax treatment of social security benefits is legislated for within income tax legislation. The tax treatment of new benefits should be confirmed when each one is introduced.

The Scottish government's fiscal framework underpins the powers over tax and welfare that are devolved to Scotland through the Scotland Act. This states that "any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed taxable.

Chargeable gains: interests in UK land etc

Section 13 and Schedule 1 - Disposals by non-UK residents etc

This section and Schedule 1 build on recent changes to the taxation of gains arising on the disposal of land and property.

Since April 2015, certain non-resident persons (including individuals, trustees and closely-held companies) have been generally chargeable to capital gains tax (NRCGT) on gains arising on the disposal of UK residential property interests.

Prior to that, in 2013, certain persons (mainly companies), wherever resident, became chargeable to capital gains tax on gains arising on disposals of residential property that were chargeable to the annual tax on enveloped dwellings (ATED-related gains).

In November 2017, in its consultation *Taxing gains made by non-residents on UK immovable property*, the government consulted on proposals to extend the UK's tax base to gains arising to all non-UK residents on direct and indirect disposals of all forms of UK land, and to harmonise the rules relating to ATED-related CGT. A response document and draft legislation were published in July 2018. This section and Schedule 1 give effect to these proposals, including the abolition of the charge to ATED-related CGT.

Section 13 and Schedule 1 introduce from 6 April 2019 new provisions to bring gains from disposals of interests in UK land by non-UK residents into charge.

They also charge non-UK resident companies to corporation tax on their gains from disposals of interests in UK land, and abolish the charge to capital gains tax on gains arising on disposals of residential property chargeable to the annual tax on enveloped dwellings (ATED-related gains).

Subsection 2(2A) of CTA 2009 currently excludes from the charge to corporation tax those chargeable gains accruing to companies from the disposal of residential property that are chargeable to capital gains tax as ATED-related gains or because the company is not UK resident. As these gains will be chargeable to corporation tax, subsection 2(2A) is no longer necessary.

Schedule 1 amends the law relating to the taxation of chargeable gains so as to:

(a) extend the cases in which gains accruing to persons not resident in the United Kingdom are chargeable to tax;

(b) abolish the specific charge to tax on ATED-related chargeable gains; and

(c) provide that gains accruing to companies are chargeable only to corporation tax.

Section 14 and Schedule 2 - Disposals of UK land etc: payments on account of capital gains tax

This section and Schedule 2 extend from 6 April 2019 existing capital gains tax (CGT) reporting and payment on account obligations on non-UK residents disposing of UK property to include new interests chargeable to tax; and also introduce from 6 April 2020 reporting and payment on account obligations for residential property gains chargeable on UK resident persons and UK branches and agencies of non-UK resident persons.

Schedule 2 makes provision

(a) requiring returns and payments on account to be made, for the purposes of capital gains tax and corporation tax, in respect of any direct or indirect disposal of an interest in land in the United Kingdom:

(i) by a person not resident in the United Kingdom, or

(ii) by a person in the overseas part of a tax year, and

(b) requiring returns and payments on account to be made, for the purposes of capital gains tax, in respect of any disposal on which a residential property gain accrues where the disposal is:

(i) by a person resident in the United Kingdom, or

(ii) by a person not resident in the United Kingdom of an asset connected to the person's branch or agency.

At Autumn Statement 2015 the government announced the introduction from April 2019 of a requirement on UK residents to make payments on account of CGT for residential property gains. Budget 2017 announced deferral of its introduction until April 2020.

In April 2018, in its consultation "Payment window for residential property gains", the government conducted a technical consultation on the proposals announced at Autumn Statement 2015 and removing the exceptions from making a payment on account that apply to non-residents. This section and Schedule give effect to these proposals.

International matters

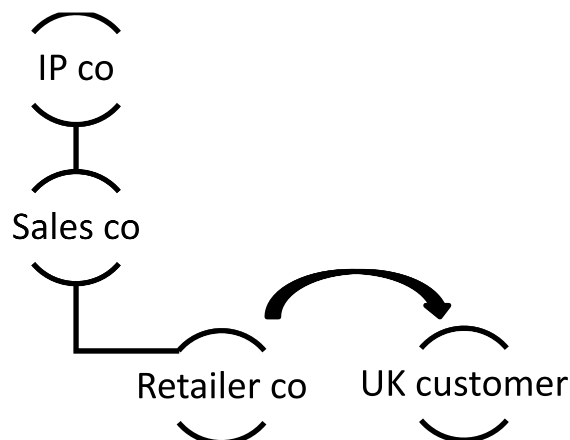
Section 15 & Schedule 3 - Offshore receipts in respect of intangible property

This section and Schedule 3 introduce a new regime from 2019/2020 which applies an income tax charge to certain receipts of non-UK resident persons, who are not resident in a full treaty territory, which are in respect of intangible property. The charge is calculated by reference to the extent to which such receipts are referable to the sale of goods or services in the UK.

This measure was previously referred to as the 'royalties withholding tax' when the government issued a consultation in December 2017. In this consultation document, HMRC noted that it was targeting multinational groups that realise income from UK sales in low-tax offshore jurisdictions where intangible property is held. Following responses on the concept of a withholding tax, the approach was changed to be a direct tax on the non-UK entities.

The tax will be charged on 'UK-derived' amounts, these are amounts that are revenue or capital and which relate to intangible property and that intangible property enables, facilitates or promotes UK sales either directly or indirectly. The UK sales referred to means any goods, services or other property which are provided in the UK or provided to persons in the UK either in the same tax year or any other tax year.

The consultation provides several examples, one of which is reproduced below:



IP Co holds intangibles assets in a low-tax jurisdiction, IP Co licences this intangible to Sales Co, a company in the same group which is located in a different country to IP Co.

Sales Co uses the intangible property to manufacture laptop computers which it then sells to Retailer Co, a third-party company, located in the UK. Retailer Co sells the laptops to UK customers.

The licence income of IP Co for the intangible property has enabled the UK sales by Sales Co to UK Retailer Co, therefore IP Co would be assessed on the income it receives which are referable to these sales.

There are exemptions to the charge which are summarised as follows:

- total value of the person's UK sales does not exceed £10m, this includes sales to connected persons;
- all or substantially all the activity in relation to the intangible property, which generates the UK-derived amount, currently and has at all times taken place in the territory in which the relevant person is resident. This means the intangible property would have been created, developed and maintained in that territory;
- The amount of tax that is paid in the non-UK territory in respect of UK-derived amounts is at least half of the corresponding tax in the UK. This may be unlikely as the UK tax

would be based on income whereas tax in the non-UK territory is likely to be charged on income less costs.

There are joint and several liability provisions within the legislation for any unpaid tax or interest that can be applied to any person in the same control group. Control group is defined as being consolidated for accounting purposes or a 51% investment. There are also anti-avoidance provisions.

<u>Section 16 and Schedule 4</u> - Avoidance involving profit fragmentation arrangements

This measure introduces new anti-avoidance legislation to ensure that business profits cannot be taken out of the charge to UK tax by arranging for them to be attributed to offshore persons or entities. The new legislation has effect for value transferred on or after 6th April 2019 (income tax) or 1st April 2019 (corporation tax).

Currently under ITTOIA 2005, s 6 profits of a trade arising to a UK resident are chargeable to UK tax wherever the trade is carried on. The profits of a trade of dealing in or developing UK land arising to a non-UK resident are chargeable to UK tax wherever the trade is carried on. Profits of a trade arising to a non-UK resident are chargeable to UK tax only if they arise:

- from a trade carried on wholly in the UK;
- in the case of a trade carried on partly in the UK and partly elsewhere, from the part of the trade carried on in the UK.

Similarly, for a company, under CTA 2009, s 5, a UK resident company is chargeable to corporation tax on all its profits wherever arising. A non-UK resident company is within the charge to corporation tax only if:

- it carries on a trade of dealing in or developing UK land;
- it carries on a trade in the UK through a permanent establishment in the UK.

A non-UK resident company which carries on a trade in the UK through a permanent establishment in the UK is chargeable to corporation tax on its profits that are chargeable profits as defined in CTA 2009, s 19 (profits attributable to its permanent establishment in the UK) subject to any exemption.

Following consultation in 'Tax Avoidance involving Profit Fragmentation' dated 10 April 2018, the amended legislation aims to tackle tax avoidance arrangements that involve the fragmentation of UK business profits (profit fragmentation) whereby some or all of those profits are said to arise in the hands of an offshore entity in a jurisdiction where there is significantly lower tax than in the UK. The UK entity can be an individual or company and the relevant overseas party can be any kind of entity including one that is not recognised under UK law. For larger entities there are specific rules that counteract such arrangements already, such as hybrids mismatch rules, transfer pricing or diverted profits tax. Therefore, these changes are directed at SMEs that are excluded from these existing rules. HMRC note that the arrangements involve the UK business purporting that business receipts have been earned by the offshore entity, when that entity does not have the substance to earn those profits; or the

payment of fees and expenses to the offshore entity that are much higher than is justified by the work done by that entity.

Profit fragmentation can apply where the following four conditions are all met:

- provision has been made between the UK resident party and the overseas party, which is known as the material provision;
- this material provision results in the transfer of value from the UK resident party to the overseas party where that value derived from the profits of a business which is chargeable to income tax or corporation tax;
- this value transferred is greater than it would be between independent parties acting at arm's length; and
- any of the 'enjoyment conditions' are met – see below.

If these conditions apply appropriate adjustments to expenses, income, profit or losses must be made by the UK party.

The enjoyment conditions essentially consider whether the related individual and/or a person connected with them is able to enjoy the benefit of the amounts that have been transferred to the offshore entity. The enjoyment conditions may be met where the arrangements ensure that the related individual does not have legal entitlement to the amounts, if the practical outcome is that they, their family or other connected persons are able to make use of these amounts, directly or indirectly.

The legislation lists examples of transfers of value, although this list is not exhaustive, and it includes:

- sales and contracts made otherwise than for full consideration;
- the transfer of property or rights by assigning share capital, rights in a partnership or an interest in settled property;
- the creation of an option affecting the disposition of any property;
- the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

There are exceptions from the profit fragmentation arrangements where the arrangements do not result in a mismatch of tax or where the main purpose for the arrangements was not the avoidance of tax. The calculation of a tax mismatch is extensive but essentially means that:

- the UK resident party has an increase in expenses or a reduction in income in calculating tax payable;
- the resulting reduction in UK tax payable exceeds the increase in tax payable by the overseas party, and that the increase in tax paid by the overseas party is less than 80% of the reduction in tax paid by the UK resident party.

There are carve-outs from the mismatch condition for payments to pension schemes by employers, to charities and certain offshore trusts or authorised investment funds, this could create a tax mismatch but are exempted.

The original consultation suggested that the legislation would also include rules that allowed HMRC to issue a preliminary notice, a charging notice and a payment of the tax due within 30 days with a subsequent review period. This proposal raised extensive concerns at consultation stage and so has currently been postponed.

Section 17 and Schedule 5 - Non-UK resident companies carrying on UK property businesses etc

This section and Schedule charges the profits of a UK property business and other UK property income of non-UK resident companies to corporation tax rather than to income tax as at present. The change has effect from 6 April 2020.

Following these changes, a non-UK resident company is within the charge to corporation tax if:

- it carries on a trade of dealing in or developing UK land;
- it carries on a trade in the UK through a permanent establishment in the UK;
- it carries on a UK property business; or
- it has other UK property income.

The last two bullet points were added by the FA 2019 changes. The income that is chargeable to corporation tax will be profits of the property business or the property and profits from loan relationships or derivatives that enable the company to generate that income.

Other UK property income is defined as:

- rent receivable in connection with the concerns listed in CTA 2009, s 39(4), including mines, quarries, canals, fishing rights, markets and fairs etc;
- rent receivable for UK electric line wayleaves;
- post cessation receipts arising from a UK property business.

As a result of these changes there are several consequential amendments to other areas of corporation tax, the main ones are as follows:

Duty to notify chargeability to corporation tax

A company does not have to give notice of chargeability to corporation tax under either FA 1998, Sch 18 or FA 2004, s 55 for an accounting period if its liability to tax is fully offset by tax deducted at source and it has no chargeable gains in that period.

Capital allowances

This change of tax regime will not be regarded as a disposal event under CAA 2001, s 64. As there is a cessation of the income tax business on transition, it is possible that balancing adjustments would be created on the transfer to corporation tax. To alleviate this, capital allowances will be transferred on a tax-neutral basis at tax written down value, thereby avoiding any large balancing charges on transfer to the corporation tax regime.

Foreign permanent establishments of the non-UK resident company

Companies can elect for the relevant profits/losses of a permanent establishment carried on outside the UK to be left out account when calculating the charge to UK corporation tax. It is not possible to make this election in relation to profits of a trade of dealing in or developing UK land. It will also not be possible to make this election in relation to profits or losses of the company's UK property business, other UK property income of the company or profits arising from loan relationships or derivative contracts that the company is a party to in relation to the UK property business or UK property income

Income tax losses grandfathered

Losses that have arisen within the income tax regime and remain unused at the commencement date will be grandfathered. These income tax losses can be carried forward to the corporate tax regime and offset against future UK property business profits (or profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of that business) for so long as the company continues to carry on the UK property business.

Profits of an earlier accounting period are to be relieved in priority to a later accounting period. The loss will not be available for offset against other types of income receivable by the non-UK resident company that are also chargeable to corporate tax. It will not be possible to surrender these income tax losses as group relief.

Derivatives and the disregard regulations

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations, SI 2004/3256 ('the disregard regulations') will be available to companies with property income once they are brought within corporation tax. FA 2019 provides that just and reasonable adjustments are to be made where there is 'tax asymmetry' between the two regimes.

Quarterly payments

The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ('the QIPs Regulations') will not have effect for the company's first corporation tax accounting period.

Administrative matters

The transition will involve the non-resident's income tax property business ceasing on 5 April 2020 and the commencement of a new corporation tax period on 6 April 2020. A non-resident company that has a period of account that straddles 5 April 2020 will therefore be required to submit two tax returns — one under the income tax regime for any profits arising up to and

including 5 April 2020, and one under the corporation tax regime for profits arising from 6 April 2020.

As many non-resident companies have a March or December year-end, this will involve an exercise to apportion income and expenses to each period.

It will be necessary for non-resident companies, including those already known to HMRC from registration under the non-resident landlord scheme, to register with HMRC for corporation tax. Companies will also need to re-file details of their tax agents if those agents are to continue acting on their behalf for corporation tax, as no automatic carry-over of income tax authorisation is expected.

Other areas not detailed

The legislation does not however give further details on the application of other aspects of the corporation tax regime to non-UK resident companies with property income such as the corporate interest restrictions and loss relief.

Section 18 and Schedule 6 – Diverted profits tax (DPT)

This section and Schedule amend the diverted profits tax legislation in Part 3 of Finance Act (FA) 2015, to ensure those rules work effectively where avoidance arrangements give rise to tax planning opportunities, to make clear that diverted profits will be taxed under either corporation tax or diverted profits tax, and introduce modifications to the mechanics of the diverted profits tax legislation.

DPT at a rate of 25% was introduced in 2015 as a measure to counteract arrangements within groups to erode the UK tax base. There are essentially three situations when DPT could be brought into effect:

- charge on a UK company where entities or transactions lack economic substance (FA 2015, s 80 charge);
- charge on a non-UK company where entities or transactions lack economic substance (FA 2015, s 81 charge);
- charge on a non-UK company avoiding a UK taxable presence (FA 2015, s 86 charge).

There are amendments to the time periods in which HMRC can issue a preliminary notice for section 80 and 81 charges. Previously this was 24 months from the end of the accounting period to which it relates. FA 2019 Sch 6, para 9(2) amends this to be no more than six months after the last day on which an amendment to the company tax return could be made.

After a preliminary notice has been issued by HMRC in respect of DPT the company has 30 days to make representations and HMRC then have another 30 days to issue a charging notice and the company must then make the DPT payment. After this there is a review period that is for 12 months following the 30-day charging notice deadline. Under FA 2019, Sch 6, para 11 this is extended to 15 months.

There is also the introduction of new sections that allow a company to amend its tax return after a charging notice has been issued and within the first 12 months of the review period, to bring into account the taxable diverted profits.

Section 19 - Hybrid and other mismatches: scope of Chapter 8 and "financial instrument"

This section introduces amendments to the Hybrid and other Mismatches regime in Part 6A of TIOPA 2010 in relation to the treatment of permanent establishments and regulatory capital.

Generally, the UK hybrid and other mismatch rules were introduced by Finance Act 2016 and deal with mismatches involving entities, financial instruments and permanent establishments. Mismatches can involve either double deductions for the same expense, or deductions for an expense without any corresponding receipt being taxable.

These minor amendments to the hybrid and other mismatch regime have been introduced to ensure the UK hybrid rules are fully compliant with the requirements of Anti tax-avoidance Directive (EU 2016/1164 as amended by EU 2017/952). They also enable a new exemption for certain regulatory capital to be introduced by regulation following the repeal of the existing regulations which currently define that exemption – see further details in section 89 Schedule 20 of this Act below.

The new legislation brings mismatches that involve 'disregarded permanent establishments (PEs)' into the hybrid regime. These PEs are where a company that is resident in the UK carries on a business in another jurisdiction, but that jurisdiction does not recognise the existence of that PE. Mismatches that involve disregarded PEs are counteracted by bringing an amount into income that is equal to the mismatch for the UK resident multinational company.

Section 20 - Controlled foreign companies: finance company exemption and control

This section introduces amendments to the Controlled Foreign Companies (CFC) regime in Part 9A TIOPA 2010 in relation to the finance company exemption and the definition of control.

An additional control test is added for accounting periods commencing on or after 1 January 2019 in order to comply with the EU requirements of the Anti-tax avoidance directive (EU2016/1164) which takes into account associated enterprises (new TIOPA 2010, s 371RG).

A person 'P' is an associated enterprise in relation to 'C', a UK resident company if P directly or indirectly has a 25% investment in C or vice versa or another person directly or indirectly has a 25% investment in each of P and C. For these purposes the definition of a 25% investment is defined at TIOPA 2010, s 259ND.

If a CFC has an accounting period which straddles 1 January 2019, the period is split into two separate periods and any necessary apportionments made on a time basis or, if not appropriate, a just and reasonable basis.

A CFC may make a claim for exemption of certain intra-group non-trading finance profits that would otherwise pass through the CFC charge gateway because they are non-trading finance profits which meet the qualifying conditions – the 'finco' exemption. In order to make this claim the profits must arise from qualifying loan relationships and the business premises condition at TIOPA 2010, s 371DG must also be met.

However, in order to comply with the EU rules within the Anti-tax avoidance directive (EU 2016/1164), FA 2019, s 20 amends the definition of qualifying loan relationship profits which would be covered by this exemption (TIOPA 2010, s 137IA(4)). For CFC accounting periods beginning on or after 1 January 2019, the profits eligible for the exemption are non-trading finance profits from all the CFC's qualifying loan relationships taken together which:

- fall within TIOPA 2010, s 371EC (capital investment from the UK); and
- do not fall within TIOPA 2010, s 371EB (UK activities).

So the profits eligible for the finco exemption are limited to those which fall only within TIOPA 2010, s 371EC (UK connected capital) and exclude those which pass the gateway test in Chapter 5 (TIOPA 2010, ss 371EA-371EE) by virtue of UK significant people functions. Prior to 1 January 2019 this restriction did not apply. Groups will therefore need to undertake reviews of significant person functions on all loan balances on 1 January 2019, which could be an extensive task.

If a CFC has an accounting period which straddles 1 January 2019, the period is split into two separate periods and any necessary apportionments made on a time basis or, if not appropriate, a just and reasonable basis.

Section 21: Permanent establishments: preparatory or auxiliary activities

This section modifies the definition of permanent establishment (PE) by restricting the exemption for preparatory and auxiliary activities in CTA 2010, s 1143.

A non-resident company has a liability to UK corporation tax if it has a PE in the UK. If the activities carried on by the PE are preparatory or auxiliary in character compared to the business of the whole company, it currently will not be regarded as a PE by virtue of CTA 2010, s 1143. The preparatory or auxiliary activities would include storing goods, purchasing goods and collecting information for the non-resident company.

Some groups have split up their activities to take advantage of this exemption and so FA 2019 modifies the definition to deny the exemption when the non-resident company has artificially fragmented their operations.

Fragmented businesses are where the non-UK resident company, either alone or with closely related entities carries on complementary functions which are part of a cohesive business operation. They could be carried on in the same place in the UK or in different locations in the UK. If the overall activity of these functions is not one that is preparatory or auxiliary in nature, then the exemption would not apply.

The exemption would also be denied if one of the entities has a permanent establishment in the UK by reason of carrying out part of any of those functions.

Section 22 and Schedule 7: Payment of CGT exit charges

This section and Schedule introduce CGT exit charge payment plans allowing:

- trusts ceasing to be UK resident; or

- non-UK resident individuals who trade through a UK branch or agency.

to defer, in certain cases, payment of the capital gains tax (CGT) that may arise when, for example, a trust ceases to be tax resident in the UK or, in the case of a non-UK resident individual who trades through a UK branch, assets cease to be used in that UK trade. The deferred CGT will be subject to interest under the usual rules. The change ensures that UK rules taxing such gains are compatible with EU law.

This measure is in response to the judgment in *Trustees of the P Panayi Accumulation & Maintenance Settlements v HMRC (Case C-646/15)*, which related to an exit charge arising under s 80. The CJEU found that as s 80 required the immediate payment of the CGT and offered no deferral mechanism, it breaches the principle of proportionality and constitutes an unjustified restriction on freedom of establishment.

The deferral of payment is effected by the taxpayer entering into a CGT exit charge payment plan (ECPP).

The proposed changes set out in the schedule implement recent decisions of the Court of Justice of the European Union where the compatibility of member state exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with the Freedom of Establishment of EU nationals.

The changes apply only to individuals that are nationals of the EU or EEA, who trade through a branch or agency in the UK, and trustees of UK resident trusts both of whom are seeking to exercise their rights of establishment within the EU/EEA.

Where after exercising those rights:

- the individuals cease trading in the UK or move trading assets outside of the UK; or
- the UK resident trust moves its residence out of the UK,

a charge, “the exit charge”, may arise on any unrealised gains on assets they hold. This provision allows, in certain circumstances, for those persons to defer payment of that charge and to opt to pay it in six equal instalments, with interest.

Section 23 and Schedule 8 – Corporation tax exit charges

This section and Schedule make changes to corporation tax exit charges, including the rules for deferred payment of exit charges on a transfer of assets or tax residence between the UK and an EEA state by companies resident in the UK or an EEA state.

The changes are needed in order to comply with Article 5 of the Anti-tax Avoidance Directive ('ATAD', EU directive 2016/1164).

Under current UK rules, a company incurring exit charges can enter into an exit charge payment plan (ECPP) and can choose between two methods for deferral. These are the simple instalment and realisation methods, with the latter having a maximum deferral period of 10 years. The changes required by ATAD include:

- the replacement of the two current methods of deferral with a single method requiring 6 equal instalments on an annual basis (similar to the simple instalment method currently available), ie a maximum deferral of five years;
- the addition of a further event that triggers full payment of the exit charge before the end of the deferral period, ie continuing failure to make an ECPP payment (this is in addition to the existing triggers such as insolvency);
- the repeal of provisions that allow the postponement of corporation tax on chargeable gains and corporation tax on intangible fixed asset gains where a UK parent company of a migrating company has assumed the liability of the migrating company's tax charges on the occurrence of certain future events;
- provisions to prevent a gain that has been subject to tax in an EU member state that applies an ATAD compliant exit charge also being subject to UK tax, ie eliminating the risk of double taxation by treating the asset as having been acquired for its market value at the time that the other state levied an EU exit charge.

The changes take place from 1 January 2020.

Section 24 - Group relief etc: meaning of “UK related” company

This section extends the definition of ‘UK related’ company for the purposes of group relief to include non-UK resident companies that are within the charge to corporation tax.

For the purposes of group relief claims (for current year relief and carried forward relief), both the surrendering company and the claimant company must be members of the same group of companies and also a UK resident company or a non-UK resident company carrying on a trade in the UK through a permanent establishment, for the accounting period specified in the claim.

The wording ‘a UK permanent establishment’ is amended to being ‘within the charge to corporation tax’ retrospectively by FA 2019, s 24. This allows non-UK resident companies that are subject to corporation tax on transactions in UK land under CTA 2010, Part 8ZB, to be able to claim group relief. To allow such claims the time limit for a group relief claim (both current and carried forward relief) that relies on the FA 2019 amendment is extended to 31 December 2019. The FA 2019 amendment will also mean non-UK resident companies whose UK property gains and income, that are chargeable to corporation tax from 6 April 2019 and 2020 respectively, can claim group relief.

Corporation tax - Miscellaneous

Section 25 and Schedule 9 - Intangible fixed assets: restrictions on goodwill and certain other assets

This section and Schedule amend Part 8 of the Corporation Tax Act (CTA) 2009 to allow fixed rate relief for goodwill and certain other assets acquired in business acquisitions occurring on or after 1 April 2019. The amount of relief will be determined by reference to the value of any qualifying IP assets acquired with the business. The section and Schedule also reintroduce a restriction on relief for certain related party incorporations.

There has been extensive consultation on the relief for intangibles fixed assets (IFAs) for corporate tax as there has been several changes to the treatment of IFAs since 2002 which has left IFAs being treated differently depending on their date of acquisition or creation. The amendments in FA 2019 just add in another treatment for assets acquired on or after 1 April 2019 so have not really simplified this area.

Some historical context is useful here; in summary the treatment of IFAs acquired or created after 1 April 2002 but before 3 December 2014 was that most debits and credits in relation to IFAs were treated as deductions or taxable income. Changes were made from 3 December 2014 to restrict debits for assets acquired from connected parties; these were generally targeted at incorporations of unincorporated businesses. This restriction was then extended on 8 July 2015 to include any transactions involving goodwill, customer related intangibles, unregistered trademarks and licences on such items. Therefore, the connected party rules were no longer required and were repealed. Relief was only available for the debits as a non-trading debit on realisation of the IFA. FA 2019 is reintroducing limited relief for intangibles and so the connected party rules have also been resurrected.

It should be noted that IFAs that do not fall within the specific restricted categories of expenditure, for example software treated as an IFA, are still eligible for relief under pre-July 2015 rules; amortisation of these items would be allowable.

The new rules will allow relief for acquisitions or creation of 'relevant assets' occurring on or after 1 April 2019. The relevant assets are those which were previously restricted as at 8 July 2015 ie goodwill, customer related intangibles, unregistered trademarks and licences on such items. There are restrictions on the relief.

Relief is only available if the relevant asset is acquired as part of a business, which is going to be continued and which also included the acquisition of 'qualifying IP assets'. Qualifying IP assets are essentially patents, registered designs, copyright or design rights, plant breeders' rights or plant varieties rights, or a licence or other right in respect of such items.

The expenditure on relevant assets that will be eligible for relief will be limited to 6 times the value of any qualifying IP assets acquired with the business. The relief will also be given at a fixed rate of 6.5% of cost per annum rather than on an accounting basis.

Example

Under a business combination a company acquires goodwill of £80K and other qualifying IP assets of £10K. Amortisation of the goodwill in the first year, for tax purposes at 6.5%, is £5,200. The qualifying expenditure on the goodwill will be limited to £60K (6 x qualifying IP assets of £10K), and the amount of amortisation allowed as a deduction in the first year will be £60K/£80K = 0.75 x £5,200 = £3,900.

There are several anti-avoidance rules which deny relief for any debits where the IFA has been acquired in transactions which involve related parties. Related parties are defined for IFAs in CTA 2009, s 835 but this is extended to include the participation condition in TIOPA 2010, s 148.

On or after 1 April 2019, where an individual sole trader or a partnership is incorporated (and therefore the individual or a partner is a related party to the company) and the company

acquires goodwill or another relevant IFA from the prior business which was internally generated, there is no relief for debits charged to profit and loss as incurred or on a change of accounting policy in relation to this asset. Upon realisation of the relevant asset any debit will be a non-trading debit.

This incorporation restriction is modified where the relevant IFA was acquired from a third party and is acquired by the company as part of the incorporation of the business on or after 1 April 2019. Partial relief is available as long as the amount paid by the company for the IFA is more than the notional accounting value of the asset. The notional accounting value is the value that the IFA would have had in hypothetical GAAP-compliant accounts drawn up by the transferor immediately prior to the acquisition by the company. In this instance the amount of expenditure on relevant assets that is eligible for full relief is limited to the notional accounting value of the relevant assets previously acquired from third parties.

Section 26 - Intangible fixed assets: exceptions to degrouping charges etc

This section reforms the degrouping rules in Part 8 of the Corporation Tax Act 2009. It provides that where a company leaves a group as a result of a qualifying share disposal no charge or allowance shall arise.

A degrouping charge is triggered when a company leaves a group holding an intangible asset that it acquired within the previous six years by way of an intra-group tax neutral transfer.

The FA 2019 change means a de-grouping charge will no longer arise where a company leaves a group as a result of a share disposal that qualifies for the Substantial Shareholding Exemption (SSE) under TCGA 1992, Sch 7A, para 1. In such circumstances the assets that would have been subject to a de-grouping charge will remain at their tax written-down value and continue to attract relief as they did prior to de-grouping. This treatment will not apply if the share disposal is part of a wider arrangement under which the acquirer is to dispose of the shares to another person.

This aligns the tax treatment of intangible assets with those assets that are taxable under the chargeable gains regime. It should be noted however, that chargeable gains rules work by adding the de-grouping charge to the gain on the disposal of the shares, thereby allowing it to be covered by SSE.

This effectively rebases the assets to market value free of tax. If this treatment was applied to intangible assets and, prior to the de-grouping, the company had claimed a deduction for amortisation of the intangible asset which exceeded the amount the asset had declined in value compared to market value, then there would be have been excessive relief for the company. HMRC could not claw this excess back and the acquirer may also be able to claim amortisation on the higher market value. For intangible assets, therefore, a de-grouping that occurs as a result of a share disposal that qualifies for SSE will be tax neutral for assets within the IFA regime.

The above changes have effect in relation to a company that ceases to be a member of a group on or after 7 November 2018.

Further amendments to the legislation mean that there is an extension of this no de-grouping rule to transactions, from 21 December 2018, where SSE would have applied but for paragraph

6 Schedule 7AC TCGA 1992; which in particular gives TCGA 1992, s 139 TCGA (reconstruction involving the transfer of a business) priority over the SSE.

Section 27 and Schedule 10 - Corporation tax relief for carried-forward losses

This section and Schedule make changes to the loss reform legislation in Part 7ZA of the Corporation Tax Act 2010 (CTA 2010) to ensure that it meets the policy objectives which are to restrict relief for certain carried-forward losses and also allow these to be used more flexibly.

From 1 April 2017, the corporate tax treatment of carried forward losses was substantially amended. These changes introduced more flexibility to allow the set off of losses accruing on or after 1 April 2017 against total profits subject to certain conditions.

The trade-off for the increased flexibility on the use of carried forward losses is a restriction on the amount of profits against which the carried forward losses can be offset. Broadly, where profits exceed £5 million (the 'deductions allowance') only 50% of these profits are available for offset. Profits under £5 million are available for offset in full. This restriction applies to all losses carried forward, both pre-1 April 2017 and post 1 April 2017 losses.

FA 2019 makes amendments to the calculation of losses and the operation of the regime for insurers within the Basic Life Assurance and General Annuity Business to prevent companies from accessing excessive amounts of the deductions allowance.

There also general amendments to the corporate tax carried forward loss rules that are as set out below.

The total amount of profits against which carried forward losses can be set is known as the relevant maximum and is the total of the company's deductions allowance and 50% of the company's relevant profits. FA 2019 adds a definition of relevant profits where losses arise on or after 1 April 2017 and the losses can be set against total profits. In this case the relevant profits of the company are the company's qualifying profits (essentially profits excluding distributions, any deductions for restricted trading losses and non-trading loan relationship deficits and after taking off furnished holiday let losses) less in-year reliefs (for example group relief) less the company's deductions allowance for the accounting period. This was really just a tightening up of the legislation's definitions.

The calculation of the deductions allowance where the company is part of a group is amended by paragraph 12 so that a company cannot be allocated a share of the deductions allowance from a group of which it is the parent if it is also a member of another group.

Where there is a change in ownership of a company and within a specified timeframe, a major change in the business of the transferred company or a co-transferred company on or after 1 April 2017, there is a restriction on the utilisation of losses carried forward. Losses carried forward which were incurred before the change in ownership cannot be set against the company's affected profits, essentially profits in the next five years that are from the activities which resulted in the change in business. FA 2019 extends this rule so that losses that are transferred from another company under common ownership prior to the change in ownership of the transferred company cannot be deducted against affected profits after the change in ownership. (FA 2019, s 26, Sch 9, para 29).

In addition, where there is a change in ownership of a company on or after 1 April 2017 and after the change an asset is transferred to the company from a group company on a tax neutral basis and the asset is then sold within five years resulting in a chargeable gain, any trade losses carried forward cannot be used against the gain. This rule also applies where a gain is transferred to the company within five years by an election under TCGA 1992, s 171A.

Again FA 2019 extends this rule so that losses that are transferred from another company under common ownership prior to the change in ownership of the transferred company cannot be deducted against a relevant gain after the change in ownership. (FA 2019, s 26, Sch 9, para 29).

Section 28 and Schedule 11 - Corporate interest restriction (CIR)

This section and Schedule make certain technical amendments to the Corporate Interest Restriction (CIR) rules in Part 10 and Schedule 7A of the Taxation (International and Other Provisions) Act (TIOPA) 2010 to ensure that the regime works as intended.

The CIR rules were enacted in Finance (No.2) Act 2017 and were subject to minor amendments in Finance Act 2018, they limit the amount of interest deduction available to larger businesses. CIR only applies to individual companies or groups of companies that deduct over £2 million net interest in a 12-month period. The items that are restricted are called tax-interest expenses and can be divided into three main categories:

- relevant loan relationship debits;
- relevant derivative contract debits; and
- the finance expense element of a finance lease, debt factoring or similar arrangement, or a service level agreement to the extent that the agreement is accounted for as a financial liability.

The amendments include the following adjustments:

- any tax deduction from the write-off of an intangible asset which includes capitalised interest to be included in tax interest;
- unused interest allowance and excess debt cap can be carried forward to a new group where a top company is inserted above the previous parent company as long as certain conditions are met;
- amendments to the calculation of adjusted net-group interest expense (ANGIE), group EBITDA and the qualifying net group interest expense (QNGIE) under certain elections for calculating CIR;
- amendments to the public infrastructure test;

- the treatment of real estate investment trusts (REITs) under CIR;
- a longer time period for appointing or revoking the appointment of a group reporting company – previously six months – increased to 12 months from the end of the accounting period;
- an extension to the filing of an interest restriction form where there is a takeover and a group ceases to exist because it is part of a new group – the time limit is extended to 24 months after the beginning of period of account.

There are differing commencement dates depending on the relevant change and these are set out in FA 2019, Sch 11 para 22.

Section 29 and Schedule 12 - Debtor relationships of company where money lent to connected companies

This Schedule prevents a tax mismatch where two linked loan relationships would otherwise be taxed on a different basis, commonly due to only one having hybrid features (such as the requirement to convert into shares).

The changes have been introduced to ensure that the tax treatment of linked loan relationships is aligned. Otherwise, when a company borrows funds and lends them on to other companies in the same group, so that it bears little economic exposure to the loans in combination and reports minimal profit or loss in its accounts, it could nevertheless be taxed on movements in the fair value of the external loan.

This tax mismatch would arise if both the loans are accounted for on a fair value basis. Loans within groups are taxed, regardless of this accounting, on an amortised cost basis, but the external loan would be taxed in line with the accounting treatment. For accounting purposes fair value movements on the two loans would offset each other, but the fair value movements on the external loan would be brought into tax. These amounts brought into tax would not reflect changes in the economic position of the company.

One situation where mismatches may occur is where a banking or insurance company issues debt instruments to meet regulatory capital requirements.

Previously the Taxation of Regulatory Capital Securities Regulations 2013 may have prevented any tax mismatches arising in this situation. However, as part of the changes to the tax treatment of hybrid capital instruments in FA 2019, these Regulations are being revoked (see section 89 below).

The Schedule introduces new rules that identify where an external loan relationship and loan relationships internal to the group are linked. A qualifying link is established if the capital raised under the external loan relationship is wholly or mainly used by the company receiving it to lend money under one or more connected companies relationships. They provide that in such cases both external and internal loan relationships are taxed on an amortised cost basis. This will eliminate tax mismatches in all similar situations, including those involving the regulatory capital of a financial business.

If the external loan is also subject to a hedging relationship in relation to a derivative contract, then the company, in applying an amortised cost basis for tax purposes, can adjust the carrying value as if it were part of a designated fair value hedge.

These rules will commence for accounting periods beginning on or after 1 January 2019.

Section 30 - Construction expenditure on buildings and structures

This section and subsequent regulations provide for capital allowances for qualifying expenditure incurred on or after 29 October 2018 on the construction of a building or structure in qualifying use – a Structures and Buildings Allowance (SBAs). This measure will provide relief for qualifying capital expenditure on new non-residential structures and buildings. Relief will be available for eligible expenditure incurred where all the contracts for the physical construction works are entered into on or after 29 October 2018. Relief will not be available for the costs of land or dwellings and no relief will be provided for work-spaces within domestic settings, such as home-offices.

Where the structure or building is used for qualifying activities the business will be able to claim the SBA over a 50-year period ie at a rate of 2%. There will not be a system of balancing charges or balancing allowances on a subsequent disposal of the asset. Instead, a purchaser will continue to claim the annual allowance of 2% of the original cost. Therefore, the amount of the original expenditure on construction may need to be verified if SBA is not already being claimed. The buyer will then be entitled to claim the remainder of the relief on the costs they have not themselves incurred.

Qualifying activities are:

- a trade, including a ring-fence trade in the oil and gas sector;
- a profession or vocation;
- a UK or overseas property business that is an ‘ordinary’ business for the purposes of the Capital Allowances Act 2001;
- a concern listed in ITTOIA 2005, s 12(4) or CTA 2009, s 39(4) (mines, transport undertakings etc.);
- managing the investments of a company with investment business, to the extent that any profits or gains from the activity are chargeable to tax.

Qualifying expenditure includes:

- offices, retail and wholesale premises, walls, bridges, tunnels, factories and warehouses;
- renovations or conversions of existing commercial structures or buildings;
- the costs of construction but only the net direct costs related to physically constructing the asset, after any discounts, refunds or other adjustments.

An overseas structure or building will qualify for SBA where it is in use by the person claiming the relief for a qualifying activity and to the extent the profits of the activity are chargeable to tax in the UK.

Capital expenditure undertaken on a structure or building after the date on which it enters into use will qualify for the SBA, but as a separate allowance.

Excluded expenditure includes:

- residential property and other buildings that function as dwellings, so this would include university or school accommodation but would not include hotels or care homes although this is subject to consultation;
- land or acquiring rights over land;
- integral features and fixtures that are functional assets within a structure or building, such as its lighting or heating system as these will continue to qualify as plant and machinery under the special rate allowance.

Timing and amount of relief

Relief for the SBA will be available from when the structure or building is brought into use for the first time for a qualifying activity. However, where an asset is being constructed for a qualifying activity that has not yet commenced, then expenditure will not qualify if incurred more than seven years before that qualifying activity commences.

If SBAs are not claimed, they will not be able to be carried forward to a later period and will be lost.

Where an asset ceases to be used for an activity that qualifies for relief, then relief can be claimed for a further period of up to two years. After that no further SBAs can be claimed for the period of non-qualifying use. SBAs will commence to be available should the building revert to qualifying use.

If a structure or building is damaged and can no longer be used for qualifying activity, SBAs will remain available for a period of two years, allowing reconstruction work to take place. If the reconstruction takes longer allowances will not be available after that two-year period until the reconstructed structure or building comes back into qualifying use. This two-year period may be extended up to five years where the structure or building substantially no longer exists following extensive damage.

Example

Company A buys a new office building from a developer at a total cost of £15m of which £5m relates to the land leaving a construction cost of £10m. It brings it into use for the purposes of its trade at the beginning of its accounting period ending on 31 December 2021. The annual writing down allowance will be:

£10m x 2% = £200,000 SBA each year, for 50 years.

On 31 December 2030 the building is sold to Company B for use in its trade. The price paid was £12m of which £7m relates to the land.

Company B will be entitled to claim SBA on the original construction costs of £10m, less the portion already received by company A.

Company A will have received SBA for 10 years of £2m. The allowable cost when calculating its capital loss on the land and building (which are a single asset for capital gains purposes) is reduced by that amount. The capital loss of £3m (£15m - £12m) is reduced to £1m.

In 2032 Company B decides that the building needs improvement and it becomes unoccupied for two years during a £4m renovation project. The company can continue to claim the original £200,000 allowance because this period it is less than two years (or up to five years where the building substantially no longer exists following extensive damage). When the building is brought back into use then a separate SBA of £4m x 2% = £80,000 can also be claimed from 2032 onwards.

Leased assets

Both the lessor and the lessee will be eligible to claim SBAs in respect of any qualifying expenditure that they themselves incur on construction works as long as each is using the asset for a qualifying activity, usually a property investment business for the lessor. Where a person is entitled to SBAs in respect of an asset which they lease, and the lease expires or terminates before the end of the 50 years, then the SBAs will be able to be transferred to the person holding the retained interest, as long as they hold their interest as part of a qualifying activity.

To reflect situations where the grant of a lease is akin to the sale of the property interest the following rules will apply where:

- the amount paid as a capital sum for a lease (including the element of a lease under 50 years allocated to capital) is 75% or more of the sum of that capital amount and the value of the retained interest in the property, then the lessee will become entitled to the full amount of the SBA attributable to the asset being leased
- only part of the property is subject to a lease the test will apply only to that part and allowances will transfer if the capital sum is 75% or more of the value of that part
- this is less than 75% all the allowances will stay with the lessor
- the term of the lease is ≤ 35 years, all the allowances will stay with the lessor
- the value of the interest in the property retained by the lessor will include the value of the right to receive the rent due under the lease

Example

Company X owns a building on which it claims the SBA, the building including land cost £25 million. It then grants a lease over the entire building to Company Y which will use it in its trade. The term of the lease is 40 years and Company X receives a premium of £50 million but only a token rent is payable. Company X's retained interest in the property is agreed to be £10 million.

The income tax rules mean that for a 40-year lease 22% of the premium is chargeable to income tax leaving £39 million as capital gains proceeds.

The proportion of the capital gains base cost that can be deducted is calculated as disposal proceeds using the formula: disposal proceeds / (disposal proceeds + value of asset retained). This is 39 / (39 + 10), approximately 80%.

Because the lease is for over 35 years and more than 75% of the capital gains base cost is applied in calculating the gain, this means that Company X is no longer entitled to claim SBA. Company Y will be able to claim instead.

Section 31 - Special rate expenditure on plant and machinery

This section reduces the rate of special writing down allowance for new and unrelieved expenditure from the relevant date of 1 April 2019 (corporation tax) or 6 April 2019 (income tax). The special rate is reduced from 8% to 6%.

The main categories of special rate expenditure are on long-life assets, thermal insulation, integral features and expenditure incurred on or after 1 April 2018 on cars with CO2 emissions of more than 110 grams.

For businesses whose chargeable period spans 1 April (corporation tax) or 6 April (income tax), a hybrid rate will have effect for unrelieved expenditure in the special rate pool.

Section 32 and Schedule 13 - Temporary increase in annual investment allowance

This section and schedule increases the maximum amount of the annual investment allowance (AIA) to £1,000,000 for a temporary period from 1 January 2019 to 31 December 2020.

Businesses with accounting periods which straddle the commencement date or the final date will need to calculate the amount of the AIA they can claim. Schedule 13 sets out how these calculations are made.

Increase in AIA to £1 million on 1 January 2019

The first step of the calculation is to treat the period before and after the change in rate as separate periods. The separate AIA entitlements for these notional chargeable periods are calculated on the basis of a time apportionment, as they would under the general rule in CAA 2001, s 51A. So, for the year ended 31 March 2019, the relevant AIA calculations are:

- nine months ended 31 December 2018 = (9/12) x £200,000 = £150,000
- three months ended 31 March 2019 = (3/12) x £1,000,000 = £250,000

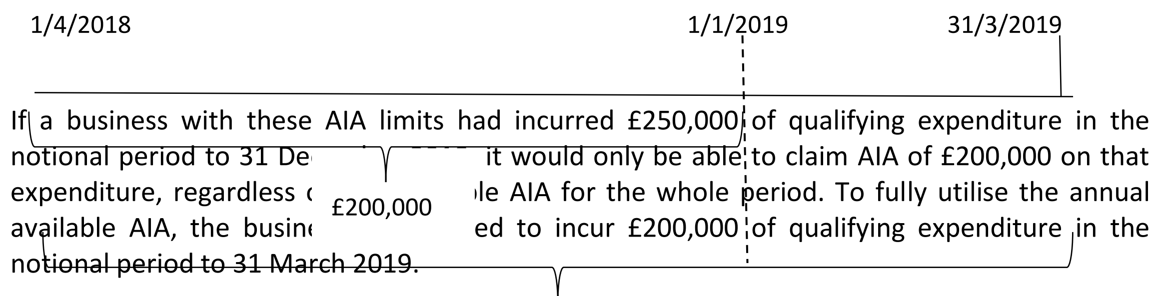
These are then added together to give the total for the period. So for the year ended 31 March 2019, the total AIA available to a business would be £400,000.

However, there is a limit applied to the period arising before 1 January 2019. The maximum AIA available before the increase is what would have been available had the increase not been made. For businesses drawing up accounts for 12 months, this simply means that the maximum

AIA available on expenditure incurred during the notional chargeable period ending 31 December 2018 is £200,000.

Therefore, for the year ended 31 March 2019, the maximum AIA entitlement for a business is:

- nine months ended 31 December 2018: £200,000
- year ended 31 March 2019: £400,000



If a business with these AIA limits had incurred £250,000 of qualifying expenditure in the notional period to 31 De it would only be able to claim AIA of £200,000 on that expenditure, regardless c le AIA for the whole period. To fully utilise the annual available AIA, the busin ed to incur £200,000 of qualifying expenditure in the notional period to 31 March 2019.

As can be seen, a business can incur qu liture that exceeds the AIA for a notional period, while still having unused AIA in the full accounting period.

Decrease in AIA to £200,000 from 1 January 2021

As the £1 million maximum for AIA is temporary, Sch 13, para 2 also includes the rules for periods straddling the end date of the increase. This rule operates slightly differently from the rules for calculating the AIA for periods straddling 31 March 2019.

The first step is, again, to calculate the AIA that would be available for two notional periods either side of the change in rate. For a 31 March 2021 year-end, the total AIA would be calculated as:

- nine months ended 31 December 2020 = (9/12) x £1,000,000 = £750,000
- three months ended 31 March 2021 = (3/12) x £200,000 = £50,000

An AIA of £800,000 would be available to a business for the year ended 31 March 2021. However, the notional period commencing on 1 January 2021 has its own maximum.

Unlike the transitional rules for the increase in AIA, the rules do not simply calculate what would have been available for the whole period had the increase not occurred.

Instead, the maximum AIA for the second notional period is the time apportioned amount calculated above. That is, for the year-end 31 March 2021, the following AIA maximums apply:

- year ended 31 March 2021: £800,000
- three months ended 31 March 2021: £50,000

Were a business with a year ending 31 March 2021 to incur £600,000 of qualifying expenditure in the nine months ending 31 December 2020 and £250,000 in the three months ended 31

March 2021, the restriction on the second notional period would mean only £650,000 of expenditure could be written off immediately.

Businesses with large capital expenditure in straddling periods will therefore need to be careful. In an extreme situation, a business could end up with an AIA of less than £200,000. As a hypothetical example, were a business with a March 2021 year-end to incur all of its capital expenditure of £800,000 between January and March 2021, it could only utilise £50,000 of AIA.

This principle may, more realistically, affect businesses with later year-ends. A business with the year ending 31 October 2021 will find its AIA entitlement effectively reduced below £200,000 unless it incurs qualifying expenditure of at least £50,000 in the three months ended 31 December 2020. That is, it incurs qualifying expenditure at a rate equivalent to £200,000 annually.

The most obvious means of mitigating this risk is for businesses to bring forward capital expenditure in order to prevent AIA entitlement being wasted.

Section 33 - First-year allowances and first-year tax credits

This section will end, from April 2020, the first year allowance (FYA) for all products on the Energy Technology List and Water Technology List, including the associated first-year tax credit (FYTC).

The FYA schemes currently allow 100% of the cost of an investment in qualifying plant and machinery to be written off against the taxable income of the period and the FYTC provides a tax credit for loss making businesses who invest on qualifying items listed on the technology lists.

Section 34 - First-year allowance: expenditure on electric vehicle charge points

This section extends the 100% first-year allowance for electric charge-points for four years until 31 March 2023 for Corporation Tax and 5 April 2023 for Income Tax purposes.

Section 35 - Qualifying expenditure: buildings, structures and land

This section clarifies the legislation to ensure that it is explicit about the scope of the relief and to put it beyond doubt that land excavation costs for the purpose of creating an asset that functions as plant in common law are not allowable if the asset is excluded under section 21 or 22 CAA 2001.

This legislation change arises as a result of the decision in *SSE Generation v HMRC* [2018] UKFTT 416. SSE Generation reviewed the tax treatment of a hydro-electric scheme which included conduits of water through the scheme. Some of these conduits had been created by excavating rough channels through the rock that were then lined with rocks or concrete.

At first review CAA 2001, s 22, List B specifically excludes expenditures on aqueducts from being included plant machinery, so HMRC argued capital allowances were not due. There are however exceptions to s 22 which are set out in CAA 2001, s 23, List C, which include the alteration of land for the purpose only of installing plant or machinery. SSE Generation argued that the aqueducts were still plant under general case law so, although the expenditure was

initially disallowed as being on an aqueduct, it was possible remove that restriction because the only purpose of altering the land was to install the conduit itself, the conduit being an item of plant or machinery. The FTT agreed with the taxpayer and allowed the claim.

The FA 2019 change inserts into both CAA 2001, s 21 (items which are buildings) and s 22 a note that any reference in List C to plant does not include anything where expenditure is excluded by either s 21 or s 22.

The amendment is treated as always having had effect but does not apply to claims for capital allowances made before 29 October 2018.

Section 36 and Schedule 14: Changes to accounting standards etc

Section 36 and Schedule 14 implement a package of changes for income tax and corporation tax rules as a result of the adoption of International Financial Reporting Standard 16 (IFRS 16), for all entities which apply International Financial Reporting Standards (IFRS), or Financial Reporting Standard 101 Reduced Disclosure Framework (FRS 101). The legislation takes effect for periods of account commencing on or after 1 January 2019.

Currently, lessees and lessors are required to make a distinction between finance and operating leases. Where the lessee has substantially all the risks and rewards incidental to the ownership of an asset, it recognises a finance lease asset and liability on its balance sheet. Where the lessee does not have substantially all the risks and rewards incidental to the ownership of the asset, it recognises lease payments as an expense over the lease term, and is considered to have an operating lease. This treatment will continue under FRS 102, the main Financial Reporting Standard.

The new accounting standard (IFRS 16) will remove the distinction between finance leases and operating leases for a lessee (but not a lessor). Going forward, under IFRS 16, a lessee will recognise all leases on its balance sheet leading to a financial lease liability and a 'right of use' asset (this is apart from certain exempted leases which are short term or of low value).

The FA 2019 changes mean that the existing tax treatment of leased assets, including the capital allowance regime on long funding leases, will be maintained although with some modifications.

Currently the amount charged to P&L for an operating lease ie rental deductions, is the amount of the tax deduction and no adjustment is made for tax purposes. For finance leases the amount treated as the tax deduction on the lease is the finance charge and the depreciation on the asset in the period. On adoption of IFRS 16, under the FA 2019 changes, operating leases will have the same tax treatment as finance leases with the finance charge (interest under IFRS 16) and depreciation being allowable deductions. The consultation on the impact of the changes of leasing accounting standards notes that these amounts will follow what is charged in the accounts although those amounts may be different under IFRS to the amounts that would have been charged under UK GAAP.

The changes introduced by IFRS 16 were anticipated in 2011 and FA 2011 s 53 required lessees to disregard the accounting changes on leases as a result of IFRS 16 and instead apply historic accounting standards to calculate the tax deductions. This was effectively a holding measure until the impact of leasing changes could be consulted on and, now that the new rules are to be

implemented, FA 2011, s 53 is repealed. This now means that the business can follow the IFRS 16 accounts for the relevant tax-deductible amounts as noted above.

Transition to IFRS 16

Normally the tax treatment of amounts arising as result of a change in accounting policy is to tax or deduct the adjustment which arises in the first period of accounts for which the new basis of accounting is adopted (CTA 2009, s181). However, for the change to IFRS 16, any transitional adjustment will be spread so that the adjustments are recognised over the mean average length of the leases. The explanatory notes set out the steps of the spreading computation and give the following example:

Step 1

Calculate the net debits and credits brought into account for each lease. The legislation ensures that the net amount includes only amounts recognised in equity which are in consequence of the transition to IFRS 16.

Step 2

Calculate a percentage for each lease ('the relevant percentage') by dividing the amount under Step 1 for that lease by the total amounts for the lessee for all leases found under Step 1 (treating such amounts as positive amounts) and multiplying by 100.

Step 3

Multiply the relevant percentage found under Step 2 by the remaining period outstanding in days of the lease as at the date of transition. The term of a lease is determined in accordance with GAAP.

Step 4

Add together all of the amounts calculated under Step 3. This will result in the weighted average or weighted mean of remaining periods of the leases affected by IFRS 16 transitional accounting adjustments taken to equity.

Step 5

The spreading period is the number of days found under Step 4 beginning with the day on which the first period of account begins.

Example

A lessee adopts IFRS on 1 January 2019.

	Step 1	**Step 2**	**Step 3**

Lease (remaining lease term on IFRS 16 adoption)	Transitional accounting adjustment	Relevant %	Applying relevant % to remaining lease on adoption of IFRS 16
Lease 1 (1,826 days)	£(10,000,000) credit	26.32% (£10M/£38M x 100)	481 (1,826 days x 26.32%)
Lease 2 730 days)	£8,000,000 debit	21.05% (£8M/£38M x 100)	154 (730 days x 21.05%)
Lease 3 (1,826 days)	Nil	Nil	Excluded
Lease 4 (1,461 days)	£20,000,000 debit	52.63% (£20M/£38M x 100)	769 (1,461 days x 52.63%)
Overall	**Net £18,000,000 debit**	**100%**	**1404 days = Step 4 total**

If the lessee has a period of account that runs from 1 January 2019 to 31 December 2019 they would claim as a deduction £4,679,487 (=365/1,404*£18,000,000).

These transitional adjustments will have a deferred tax impact on the deferred amounts.

If a business has early-adopted IFRS 16, the above transitional adjustment will be treated as taking place in the first accounting period beginning on or after 1 January 2019. There are also rules for when the lease is transferred to a connected party. On the cessation of the business the remaining amount is brought into account immediately before the cessation.

Long funding leases

The long funding lease rules in CAA 2001 ss 70A-70YJ, provide that where a plant or machinery lease is, in substance, a funding lease for the lessee (because the effect of the lease is substantially equivalent to the lessee having borrowed funds to acquire the asset) the lessee is entitled to claim capital allowances on the asset even though they are not the legal owner. The legislative changes ensure that those rules will continue to apply as intended for an IFRS 16 lessee.

The definition of a long funding lease has been simplified so that a lease whose term is less than seven years (previously five years) is short and therefore, by definition, not a long funding lease. The detailed rules for leases between five and seven years which could be deemed to be short have been repealed.

All leases will be treated in the same way and so there is no need to distinguish between finance and operating leases for the long funding lease rules.

Where a business had an operating lease which for tax purposes was treated as a long funding lease prior to the adoption of IFRS 16 and this lease is then treated as a right-of-use asset on adoption of IFRS 16, the tax treatment will be grandfathered and the lease will continue to be treated under the long funding lease regime.

IFRS 16 and the corporate interest restriction (CIR) rules

The CIR rules operate to limit interest and other financing costs that are deductible for corporation tax purposes and currently these rules include finance charges on finance leases as tax interest. The FA 2019 changes means that finance and operating leases will be treated the same when establishing the amount of tax deduction and therefore this would have impacted on the CIR rules. The legislative changes therefore introduce amendments to the definition of tax-interest amounts.

Where a lessee has a right-of-use asset under IFRS 16, the legislation will require the company to determine whether they would have accounted for the lease as a finance lease if they were required to determine whether the lease was a finance lease or not for accounting purposes. For leases classified as finance leases for tax purposes, any finance charges in the accounts are tax-interest amounts for CIR. For leases that are not classified as finance leases, or leases that would not have been classified as finance leases had the lessee been required to make such a classification under GAAP, any finance charges in the accounts are not tax-interest amounts for CIR. Therefore, lessees will not suffer any interest restriction on amounts paid in respect of operating leases.

Sections 37 & 38 and Schedule 15 relate to Oil activities and PRT and are outside the scope of these notes

Miscellaneous Reliefs

Section 39 and Schedule 16 – Entrepreneurs' relief

This section and Schedule introduce various amendments to the rules for entrepreneurs' relief (ER). These are:

- Increasing the period of time during which specified conditions must be met in order for ER to be available when assets are disposed of. The period will increase from one year to two years.

- Introducing two new tests into the definition of a claimant's 'personal company' that applies for ER purposes. Both of the new tests must be met, along with the existing two tests, throughout the specified period in order for relief to be due. The new tests require the claimant to have (as a minimum) 5% interests in the company's distributable profits and in the assets available to equity holders on a winding-up.

- Enabling individuals whose shareholding is 'diluted' below the 5% qualifying threshold for entrepreneurs' relief as a result of a new share issue to obtain relief for chargeable

gains on the shares up to that time.

Entrepreneurs' relief was introduced in 2008 to support business investment and growth of new enterprises. Claimants include self-employed small business owners and individuals who own substantial stakes in limited companies which employ them.

This section and Schedule improve the effectiveness of ER by requiring claimants to have an interest in their business for a longer period of time, and ensuring that claimants disposing of shares had a minimum economic stake in the company. The government considers longer-term involvement and entitlement to share in the profits and assets of a company to be more characteristic of entrepreneurial activity.

Changes allowing ER to be claimed on gains made prior to an individual's shareholding being 'diluted' below the 5% threshold in certain circumstances have been introduced as part of the government's response to the Patient Capital Review. This section and Schedule act to remove a perceived barrier to growth by allowing these individuals to treat their shareholding as having been disposed of and reacquired at market value at the time of dilution. It also allows them to defer the gain that results from this until the shares are actually disposed of, thus avoiding a 'dry' tax charge. This problem was highlighted in McQuillam case.

This is in line with the government's policy of supporting enterprise creation and growth in the UK.

The Budget changes to the conditions for entrepreneurs' relief proved difficult to bring into the law. Consequently the government announced a further test to provide a shortcut to what it intended to achieve.

What was the aim?

In the 2018 Budget, the Chancellor announced that two additional conditions would apply with immediate effect to change the definition of a "personal company" for shareholders who claimed entrepreneurs' relief. The aim was to restrict the relief to shareholders who have a genuine material stake (at least 5%) in the company.

For a shareholder to claim the entrepreneurs' relief on gains arising from shares, or assets used by the company, the company must be their "personal company" and they must be an employee or officer of that company, or of another company in the same trading group.

Personal company definition

For a company to be their personal company the shareholder must meet four conditions with regard to their shares:

1. hold at least 5% of the ordinary share capital;

2. control at least 5% of the voting rights which are exercisable by virtue of that shareholding;

3. have a right to at least 5% interest in the distributable profits; and

4. have a right to at least 5% of the net assets due to the equity holders on a winding-up of the company.

Tests 3. and 4. are the new additions which were taken from the CT regime , intended to prevent abuse of corporation tax group relief, and into the entrepreneurs' relief rules.

There were questions over how a shareholder could determine whether they were entitled to dividends Such an entitlement does not come into being until a dividend resolution is passed by all the eligible shareholders.

Late amendment

The CIOT and other professional bodies had been in discussions with HMRC over the wording of the draft legislation, and late on 21 December 2018 the government tabled an amendment. This amendment added an alternative test for a "personal company" based on the shareholder's entitlement to proceeds in the event of a hypothetical sale of the whole company. This new test basically asks: "will the shareholder be entitled to at least 5% of the proceeds in the event of the disposal of the whole company?"

This test assumes that the entire company is sold for its market value on the last day of the qualifying period (ie the date of disposal of the shares/ assets which are the subject of the ER claim), and ignores anti-avoidance rules for the purpose of this hypothetical sale. This new test doesn't rely on the definitions in the Corporation Tax Act 2010 and it can be used instead of the tests 3. and 4. above.

However, the new tests 3. and 4. have stayed to "provide certainty to those with straightforward company structures".

Note that any disposals made between 29 October 2018 and 20 December 2018 must apply tests 3. and 4. rather than the new hypothetical sale test which only comes into being from 21 December 2018.

Section 40 – Gift aid etc: restrictions on associated benefits

This section simplifies the number of thresholds and changes the limits on the value of benefits that can be given to donors without affecting the Gift Aid qualifying status of a donation to a charity.

The legislation proposes the following new restrictions to associated benefits that donors can receive without losing their Gift Aid status on their donation:

- Where the donation is £100 or less, the maximum benefit is 25% of the donation;
- Where more than £100, the maximum benefit is the sum of £25 + 5% of the amount of donation exceeding £100, i.e. 25% for the first £100 and 5% for the excess.

The changes will apply in relation to gifts by individuals and payments by companies made to charities on or after 6 April 2019.

Gift Aid is generally only allowed on donations that are freely given. However, certain small

benefits are allowed to be given as a thank you to donors without the charity losing Gift Aid tax relief on the donation, provided the value of benefits is within certain limits. At present, there are three different thresholds that determine the value of benefits that charities may give to donors whilst still being able to claim Gift Aid on the full amount of the donation. The same thresholds also apply to benefits given to companies for making a donation to a charity.

The changes in this section will introduce a simpler and a more generous two threshold benefit valuation rule for charities making it easier to claim Gift Aid on eligible donations and so increase the overall number and value of claims.

Section 41 – Charities: exemption for small trades etc

This section increases the non-primary purpose small trading tax exemption limit for charities. The changes come into effect on or after 1 April 2019 for changes to the Corporation Tax Act and on or after 6 April 2019 for the Income Tax Act.

A charity does not pay tax on profits that it makes from charitable trading that is part of its primary purpose, for example, sale of tickets for a theatrical production staged by a theatre. Where a charity's trading does not relate to its primary purpose, for example, a charity sells Christmas cards to raise additional funds, its profits are also exempt from tax if its turnover is below the small trading tax exemption limits. Two of these are currently set at £5,000 where turnover is under £20,000 and £50,000 where turnover exceeds £200,000. The exemption recognises that in practice charities may engage in some small scale non-primary purpose trading, and means that they do not incur a tax liability on the profits of that trade. This measure will increase the above small trading exemption limits for charities to £8,000 and £80,000 respectively.

Section 42 - Relief for first-time buyers in cases of shared ownership

This section extends the relief from stamp duty land tax ("SDLT") for first time buyers purchasing a property under a shared ownership scheme, to include purchases where no market value election is made and the purchaser decides to pay the SDLT in stages.

SDLT is a tax on purchases of land in England, and Northern Ireland. SDLT was 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).

Relief for first time buyers was introduced at Autumn Budget 2017 and applies where the purchaser is a first time buyer buying their first home. Relief is available where the relevant consideration for the residential property is £500,000 or less. Where the relief is claimed SDLT is charged at 0% on the first £300,000 of consideration, and then at 5% on any remainder of consideration so far as not exceeding £500,000.

A first time buyer is defined as an individual who has never owned an interest in a residential property in the United Kingdom or anywhere else in the world and who intends to occupy the property as their main residence.

Qualifying shared ownership schemes are provided by approved bodies such as local authorities and housing associations, and help people buy a home by allowing them to buy a share in the home, and pay rent on the remainder.

First time buyers purchasing through a qualifying shared ownership scheme, are eligible for the relief when they are first granted the lease, or in the case of a shared ownership trust on the declaration of the trust. Relief is available on that first transaction where they elect to pay SDLT on the market value of the property (market value election).

This section introduces amendments to Schedule 9 of Finance Act 2003 to extend the relief to include purchases where the first time buyer does not make a market value election on that first transaction. Where the relevant conditions are met the relief will apply to the first transaction only.

Because of the nature of shared ownership arrangements, the SDLT payable on the first transaction can include tax due on the net present value of the rent. This section also introduces relief in respect of the rent payments, so that where first time buyers' relief is claimed no SDLT will be payable on the rent.

Staircasing transactions where the purchaser increases their ownership in the property will not be eligible for the relief. Staircasing transactions will not though disqualify the first transaction on which the relief is claimed by virtue of paragraphs 4B or 12 of Schedule 9 FA2003 which deals with staircasing transactions.

The section has effect for relevant shared ownership transactions where the effective date is on or after 29 October 2018.

Section 43 - Repayment to first-time buyers in cases of shared ownership

This section extends the normal time limit for SDLT repayment claims, for first-time buyers who have bought a property via a shared ownership arrangement and who are now eligible for relief (or for increased relief) as a result of new section 42. The extended time limit runs until 29 October 2019.

This section allows first-time buyers who bought their property before 29 October 2018 without the benefit of the new rules, to claim repayment as though the new rules had been in place at the introduction of first-time buyers' relief.

Section 44 - Higher rates of tax for additional dwellings etc

This section will extend the time allowed to claim back the higher rates of tax for additional dwellings of Stamp Duty Land Tax (HRAD) where an individual sells their old home within 3 years of buying a new home. This section also clarifies the meaning of `major interest` in land for the general purpose of HRAD.

Schedule 4ZA was inserted into the Finance Act 2003 by section 128 of the 2016 Finance Act. This contains legislation to charge higher rates of SDLT when a company buys residential property and when individuals who already own residential property do so.

An exception to this rule arises when someone sells an old home and buys a new home. HRAD won't be chargeable if the old home is sold before the new home is bought or if the old home

is sold within three years of buying the new home. In the latter case, HRAD must be paid upfront and can be claimed back so long as certain conditions are met.

The changes made by this legislation will ensure that Schedule 4ZA is easier to understand and more transparent when someone:

- amends an HRAD return after disposal of a previous main residence; or
- buys an undivided share in a property as a tenant in common.

Section 45 - Exemption for financial institutions in resolution

This section ensures that SDLT is not charged on transfers of land following the exercise of certain resolution powers under the special resolution regime in the Banking Act 2009 for managing failing financial institutions. The section will have effect for land transactions the effective date of which is on or after Royal Assent. A related change is made in respect of Stamp Duty by section 49.

Under the Banking Act 2009, the Bank of England has various resolution stabilisation powers to manage a failing financial institution in an orderly way. These ensure that an institution's operations can be maintained to protect financial stability, depositors and the taxpayer. Upon exercise of certain stabilisation powers the Bank of England may arrange a transfer of property which may include land held by the failing institution to a temporary holding entity appointed by the Bank of England or to a temporary public body.

Where an estate, right or power in or over land in England and Northern Ireland is acquired, the transaction is subject to SDLT calculated at the appropriate rate(s) by reference to the consideration given.

This section will provide an exemption from SDLT on land transactions following exercise of certain resolution stabilisation powers. This reduces the need for specific regulations to be made under section 74 of the Banking Act 2009 to provide an exemption from a SDLT charge on each exercise of certain resolution stabilisation powers under the Banking Act 2009. Moreover, by reducing the need for making specific regulations, this section will strengthen and simplify the process of resolving a failing financial institution and help to uphold the 'no creditor worse off' principle by ensuring an exemption from SDLT is available at the time of resolution announcement.

Section 46 - Changes to periods for delivering returns and paying tax

This section reduces the time limit that purchasers have to file a SDLT return and pay the tax due, from 30 days after the effective date of the transaction to 14 days. It applies to transactions to purchase land in England and Northern Ireland, with an effective date on or after 1 March 2019.

This section will improve the efficiency of the SDLT system. The majority of returns are already filed within 14 days of the transaction. It will not change liabilities for the purchaser.

When a chargeable transaction is notifiable, a return must be filed and any tax due paid within the time limit set out in the legislation. Generally, a transaction is notifiable where the chargeable consideration is £40,000 or more. The provisions that define notifiable transactions are at sections 77 and 77A, and paragraphs 3(5) and 4(4A) of Schedule 17A Finance Act 2003.

For most notifiable transactions, the time limit to file the return and pay any tax runs from the effective date of the transaction. The 'effective date of the transaction' is defined at section 119 Finance Act 2003 and is usually the completion date.

Further provisions in relation to reducing the time limit and improving the return will be made later this year by amending the Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837).

Section 47 - Stamp duty: transfers of listed securities and connected persons

This section introduces a new Stamp Duty (SD) market value rule for listed securities transferred to connected companies. The section will apply where money is paid or there is nil consideration or where the consideration is other than money. The tax has effect in relation to instruments executed on or after 29 October 2018. A related change is made in respect of Stamp Duty Reserve Tax (SDRT) by section 48.

Where shares in UK companies are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or Stamp Duty Reserve Tax (SDRT) on electronic transfers. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where shares in UK companies are transferred to a person who provides clearance services or issues depositary receipts.

HMRC has become aware of contrived arrangements involving the transfer of listed securities to connected companies for low consideration to minimise stamp taxes on shares liability.

This section inserts a market value rule to ensure where listed securities are transferred to a connected company, Stamp Duty is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

Section 48 - SDRT: listed securities and connected persons

This section introduces a new SDRT market value rule for listed securities transferred to connected companies. The section will apply where money is paid or there is nil consideration or where the consideration is other than money. The tax has effect in relation to transfers and agreements to transfer securities on or after 29 October 2018. A related change is made in respect of Stamp Duty by section 47.

This section inserts a market value rule to ensure where listed securities are transferred to a connected company, SDRT is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

Section 49 - Stamp duty: exemption for financial institutions in resolution

This section ensures that Stamp Duty is not charged following the exercise of certain resolution powers under the special resolution regime in the Banking Act 2009 for managing failing financial institutions. The section will have effect for instruments executed on or after Royal Assent. A related change is made in respect of Stamp Duty Land Tax by section 45.

Where shares in UK companies are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or SDRT on electronic transfers. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where shares in UK companies are transferred to a person who provides clearance services or issues depositary receipts.

This section ensures that Stamp Duty at the rate of 0.5% or 1.5% is not charged on certain qualifying share and property instruments or orders following exercise of a resolution stabilisation power. Where a transfer of shares is not chargeable to a 0.5% or 1.5% Stamp Duty charge under new section 85A, this will also cancel a charge to SDRT at the rate of 0.5% or 1.5% by virtue of section 99(5) and section 99(5ZA) to Finance Act 1986.

This section reduces the need for specific regulations to be made under section 74 of the Banking Act 2009 to provide an exemption from a Stamp Duty and SDRT charge on each exercise of certain resolution stabilisation powers under the Banking Act 2009. Moreover, by reducing the need for making specific regulations, this section will strengthen and simplify the process of resolving a failing financial institution and help to uphold the 'no creditor worse off' principle by ensuring an exemption from a 0.5% and 1.5% Stamp Duty and SDRT charge is available at the time of resolution announcement.

Section 50 - Stamp duty and SDRT: exemptions for share incentive plans

This section makes a minor change to ensure that the existing stamp duty relief continues to apply to share incentive plans (SIPs). This measure will have effect from 6 April 2014.

Stamp duty (SD) and stamp duty reserve tax (SDRT) may be payable on the transfer of shares. In 2001 a relief was introduced so that SD or SDRT would not be due when shares held in a SIP are transferred by the trustees to the employee. This long standing relief was introduced to prevent a double charge from arising.

Until 2014, tax advantaged share schemes, such as SIPs, had to be approved by HMRC before an employer could begin to operate them. SIPs were described as "approved share incentive plans" in legislation.

In 2014, the Government introduced self-certification for SIPs. This meant that SIPs no longer had to be approved by HMRC before an employer could begin to operate them. The changes were made in FA 2014.

Among the changes made to the SIP legislation by FA 2014, were that references to 'approved share incentive plans' were amended to 'Schedule 2 SIPs'. In error such references in section 95 FA 2001 were not amended.

This legislation will make the necessary amendments to section 95 FA 2001 to ensure consistency across all legislation relating to stamp duty relief for SIPs and will not change the basis on which relief is available.

Indirect taxes

VAT

Section 51 - Duty of customers to account for tax on supplies

This section amends section 55A of the Value Added Tax Act 1994 (VATA) so that an order made under subsection (9) can modify the application of subsection (3). Under the amended provision, when making an order specifying goods and services that are to be subject to the reverse charge, the Treasury may also modify the rule in subsection (3) which requires that the value of reverse-charged supplies received must be included in a person's taxable turnover for VAT registration purposes.

Subsection (3) of section 55A of VATA provides that the supply of specified goods and services in an order made under subsection (9) that exceeds £1000 in a given month must be included in the recipient's turnover for VAT registration purposes.

In certain well-established business sectors populated by a large number of small businesses, the overall effect of the aggregation rule in subsection (3) on the sector would be to increase regulatory burdens on small traders. This change will permit the Treasury to identify and make provision for such cases so that small businesses who are affected will have certainty that they will not exceed the VAT registration threshold as a result of receiving supplies that would otherwise be subject to the reverse charge and the aggregation rule.

Section 52 and Schedule 17 - Treatment of vouchers

This section and Schedule transposes Council Directive (EU) 2016/1065, which provides for the VAT treatment of vouchers, by amending VATA 1994. Specifically, it amends section 51B of, and Schedule 10A to that Act and inserts sections 51C and 51D and Schedule 10B. This will make the rules for the tax treatment of vouchers consistent, especially where they can be used either in the UK or more widely in the EU - thus preventing either non-taxation or double taxation of the goods or services relating to the vouchers.

It affects only vouchers, such as gift cards, for which a payment has been made and which can be used to buy something.

The section and Schedule will have effect for vouchers issued on or after 1 January 2019. Vouchers issued before 1 January 2019 will be subject to the existing rules. The section makes a consequential amendment to VAT Regulations (SI 1995/2518) Regulation 38ZA to include reference to Schedule 10B.

The government's objective is to ensure that the amounts customers pay when using vouchers to obtain goods or services is better reflected in the tax base. It also wants to make improvements for business by modernising and harmonising the VAT treatment of vouchers. It aims to do this by providing new, clear rules which separate vouchers with a single purpose (e.g. a traditional book token) from the more complex gift vouchers and set out how and when VAT should be accounted for in each case. The new legislation is not concerned with the scope of VAT and whether VAT is due, but with the question of when VAT is due and - in the case of multi-purpose vouchers - the consideration upon which any VAT is payable.

HMRC has engaged with stakeholders about the business impacts of this section and schedule.

<u>Section 53 and Schedule 18</u> – Groups - Eligibility

This section and Schedule amend section 43A of the Value Added Tax Act 1994 (VATA). Schedule 17 widens the eligibility criteria for VAT grouping and allows non-corporate entities, subject to certain conditions, to join a VAT group. These changes will come into effect after Royal Assent on a day to be appointed by Treasury regulations.

The UK will leave the European Union on 29 March 2019. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the government will continue to negotiate, implement and apply EU legislation.

UK VAT grouping allows two or more 'bodies corporate' (such as limited companies or limited liability partnerships) – to register as a VAT group if:

- Each body is established, or has a fixed establishment, in the UK; and
- They are under common control, for example a parent company and its subsidiaries.

VAT group treatment is a business facilitation measure to simplify VAT administration for business and HMRC. The effect of a VAT group is that its members account for tax on a single return and supplies between them are disregarded for VAT purposes.

Following a judgment from the Court of Justice of the European Union (CJEU) in *Larentia + Minerva* and *Marenave* (C-108/14 and C-109/14) the UK government is extending its eligibility beyond 'bodies corporate'.

At Autumn Statement 2016, the government launched a formal consultation on the Scope of VAT grouping and published the summary of responses document on 5 December 2017. Draft legislation was published on 6 July 2018.

This measure will widen the eligibility criteria for VAT grouping to include non- corporate entities (such as partnerships and individuals) who have a business establishment in the UK and control a body corporate.

In determining whether there is an establishment in the UK, a company is 'established' in the UK if it has its principal place of business or registered office in the UK, which means if either:

- the central management and control of the company are carried on in the UK;
- its headquarters or head office are in the UK.

A company will, generally speaking, be 'established' in only one country.

A company has a 'fixed establishment' in the UK for VAT grouping purposes if it has a real and permanent trading presence in the UK. For example, if either:

- it has a permanent place of business which comprises the necessary human and technical resources to carry on its business activities;

- it has a branch or office in the UK, which comprises its own staff and equipment.

HMRC will update guidance in relation to non-corporate entities after Royal Assent.

Sections 54 to 65 – Changes to other indirect taxes and duties (not covered in these notes)

Inheritance tax

Section 66 – Residence Nil-Rate band

This section introduces amendments to the residence nil-rate band (RNRB) clarifying the downsizing provisions and the definition of 'inheriting' property for RNRB purposes. The changes have effect from 29 October 2018.

The RNRB was announced at Summer Budget 2015 and commenced on 6 April 2017. The RNRB is an additional Inheritance Tax nil-rate band, conditional on a residence being passed on death to a direct descendant. This is £125,000, and rises to £150,000 in 2019/20, and £175,000 in 2020/21. Any unused RNRB can be transferred to a surviving spouse or civil partner. For estates with a net value of more than £2m there is a tapered withdrawal of the RNRB at a rate of £1 for every £2 over this threshold.

The RNRB is also available when a person downsizes or ceases to own a home on or after 8 July 2015 where the former home would have qualified for the RNRB if it was still owned and assets of an equivalent value, up to the value of the RNRB, are passed on death to direct descendants.

Section 67 – Application of penalty provisions

This section allows penalties to be raised against businesses registered for the Soft Drinks Industry Levy (SDIL) that fail to submit a quarterly return by the due date. It also ensures that a penalty can still be raised for non-payment of any SDIL due in the event that certain provisions within the Finance (No.3) Act 2010 are enacted. This measure has effect from Royal Assent.

Section 68 – Isle of Man

This section will allow the movement of levy-paid soft drinks between the UK and Isle of Man to be seen as neither an import nor an export for the purposes of the UK's Soft Drinks Industry Levy (UK SDIL). It also adds UK SDIL and the equivalent levy proposed by the government of the Isle of Man (Manx SDIL) to the list of common duties in the Isle of Man Act 1979.

Part 3 Carbon Emissions Tax

Sections 69 to 79 establish a new tax called the Carbon Emissions Tax and provides that HMRC will be responsible for its collection and management. The details are beyond the scope of this summary.

Administration and enforcement

Time limits for assessment etc

Section 80 – Offshore matters or transfers: income tax and capital gains tax

This section increases the assessment time limits for offshore income and gains to 12 years unless a longer time limit applies. It applies to income tax and capital gains tax where a tax loss arises in respect of offshore tax.

It can take longer to establish the facts in cases involving offshore assets and structures as it can be more difficult to access the information needed to understand the transactions. This section has been introduced to give HMRC more time to make assessments in these offshore cases.

This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document was published with the draft legislation on 6 July 2018.

Section 81 – Offshore matters or transfers: Inheritance tax

This section increases the time limit for proceedings for the recovery of inheritance tax (IHT) to 12 years in cases where a tax loss arises in respect of offshore tax unless a longer time limit applies.

It can take longer to establish the facts in cases involving offshore assets and structures. This section has been introduced to give HMRC more time to bring proceedings in these offshore cases.

This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document was published with the draft legislation on 6 July 2018.

Security deposits

Section 82 ¬– Construction Industry Scheme and Corporation tax etc

This section provides HMRC with powers to make secondary legislation to require a person to provide a security for corporation tax liabilities and construction industry scheme deductions that are or may be due to HMRC.

HMRC can require some businesses to provide a security, in the form of cash or a performance bond, where this is considered necessary to protect the revenue. Securities may be required where a taxpayer has a poor compliance record and in "phoenix" type cases where a business

accrues a tax debt, goes into liquidation or administration and the person responsible for the operation of the business sets up again, with the risk of running up further tax debts.

These powers to require security exist in relation to some areas of business tax, including VAT and PAYE. However, there is no similar provision in respect of corporation tax liabilities or deductions made by contractors on account of their subcontractors' income tax under the construction industry scheme. These changes are intended to extend the existing securities regime to these areas. It will not affect taxpayers who have agreed time to pay arrangements with which they are complying.

The persons who may be required to provide a security will be specified in regulations and where a business is a company will include the company's directors and officers.

The regulations were issued on 14 January and will be subject to consultation but are intended to take effect no earlier than 6 April 2019.

International agreements

Section 83 – Resolution of double taxation disputes

This section introduces statutory powers to implement the EU directive on tax dispute resolution mechanisms in the European Union and other similar international agreements.

Following a recent review, it was concluded that the mechanisms provided for in bilateral tax treaties and in the EU convention on the elimination of double taxation, known as the EU Arbitration Convention (90/463/EEC), might not result in double taxation disputes being resolved in a timely manner.

As a result, the European Council adopted Council Directive (EU) 2017/1852 on 10 October 2017 regarding tax dispute resolution mechanisms in the EU. The directive seeks to establish an effective regime for the resolution of tax disputes, and to minimise the risk of double taxation for businesses operating across borders.

Member states are required to comply with the provisions of the directive by 30 June 2019. This section sets out enabling provisions to allow the UK Government to achieve this requirement by amending TIOPA 2010, Part 2, Chapter 2, and issuing regulations. These provisions will have effect from the date of Royal Assent.

Section 84 – International tax enforcement: disclosable arrangements

Section 84 gives HM Treasury a power to make regulations to require disclosure of information about certain cross-border tax arrangements to HMRC to give effect to international rules. These provisions have effect from the date of Royal Assent.

This is in response to the publication of EU directive 2018/882/EU, commonly referred to as 'DAC 6', (amending the 2011 Directive on Administrative Cooperation (2011/16/EU)). The directive requires the disclosure of information on potentially aggressive tax planning cross-border arrangements by intermediaries, or individual or corporate taxpayers, to the relevant tax authorities. For a cross-border arrangement to be notifiable it must meet one of the

hallmarks specified in the directive. Notification will need to be made within 30 days and once notified the information will automatically be exchanged between other member states.

The regulations will also permit the implementation of new Organisation for Economic Co-operation and Development (OECD) model mandatory disclosure rules, should the decision be taken to implement those.

Any regulations introduced by this section are subject to a report by the Chancellor on the impact of having or not having a negotiated settlement for the withdrawal of the UK from the EU.

Payment of unlawful Advance Corporation Tax

Sections 85 and 86 – Interest in respect of unlawful ACT and Section 84 Supplementary

These sections provide a new non-exclusive interest like remedy in relation to certain claims against HMRC and its predecessor the Inland Revenue in respect of advance corporation tax (ACT) that was paid and subsequently set off or repaid before the time of the claim.

The changes address the outcome of the recent Supreme Court decision in *Prudential Assurance Company Ltd (PAC) v HMRC* [2018] UKSC 39.

The case concerned the tax treatment of UK-resident companies that received dividends from portfolio shareholdings in companies resident in the EU and other countries. At the time of receipt UK companies were not taxed on dividends from other UK companies but were taxed on foreign dividends. Where a UK company held 10% or more of the voting power in the foreign company in question, a credit was available for a corresponding share of the 'underlying tax', (the tax paid by the foreign company on the profits out of which the dividend was paid), but no credit was available for underlying tax in the case of shareholdings below this 10% threshold (portfolio holdings). The ECJ confirmed that the UK's tax treatment of foreign dividends breached Article 56 of the EC Treaty and was unlawful to the extent that the UK company shareholder received no tax credit for this underlying tax. This gave rise to the question of how much repayment should be made to PAC given the old tax rules on the set-off of ACT.

The sections set out the rate of interest that will be repaid in respect of such 'unlawful' ACT and certain restrictions on this interest calculation. The changes apply to claims made before 12 December 2012.

Voluntary returns

Section 87 ¬– Voluntary returns

This section amends the Taxes Management Act 1970 and Schedule 18 to the Finance Act 1998 and introduces a new power for HMRC to treat tax returns that have been made on a voluntary basis in the same way as tax returns delivered under statutory notice. This applies to voluntary tax returns from individuals, partnerships, trustees and companies.

The section will come into effect at Royal Assent. It will apply retrospectively to any voluntary return, whenever made. It will also have prospective effect.

Some tax returns are delivered each year 'voluntarily' to HMRC by taxpayers, i.e. they are delivered before HMRC has given a statutory notice requiring the return to be delivered. HMRC has historically operated a policy of accepting such voluntary returns and has charged or repaid tax based on them, opened enquiries into them if necessary, and generally has treated them as valid tax returns for all purposes. If HMRC did not accept voluntary returns it would have to ignore the information sent and formally ask taxpayers to resend the same information, which would cause delays and inconvenience both to taxpayers and HMRC.

In April 2018 the First-tier Tribunal ruled in *Patel & Anor v HMRC* [2018] UKFTT 185 (TC) that this policy was not supported by the law. In this case voluntary returns were filed and so HMRC could not raise an enquiry into the returns under TMA 1970, s 9A as that section allows enquiries into returns filed under TMA 1970, s 8, ie under a notice to file.

However in order to confirm the long standing policy of HMRC, this retrospective and prospective legislation makes clear that it is lawful for HMRC to have accepted, as statutory returns, the voluntary returns already received and to continue to accept them as such in the future.

The new legislation will not apply to any voluntary return where an appeal or judicial claim has been made prior to 29 October 2018 on the ground that the voluntary return was not a statutory return because it was not made and delivered pursuant to a statutory notice given by HMRC.

Interest

Section 88 – Interest under s178 of FA 1989 and section 101

This section amends legislation retrospectively to remove the need for an Appointed Day Order before interest can be charged or paid on tax and other amounts under section 178 Finance Act 1989. It also sets interest rates for certain purposes including retrospectively for Diverted Profits Tax and provides for interest to be charged under Section 101 Finance Act 2009 to certain penalties for Pay As You Earn (PAYE), from 6 May 2014.

This section ensures that certain interest rate provisions are implemented correctly. It allows HM Revenue & Customs to charge late payment interest and pay repayment interest and calculate Diverted Profits Tax correctly. The section also ensures that interest provisions in relation to certain penalties regarding PAYE are implemented correctly. It has retrospective effect where necessary.

Section 89 to 97 – Minor changes not commented on here.

Budget 2018 announcements

Rent-a-room relief change postponed

It had previously been announced that Finance Bill 2019 would introduce a shared occupancy test for rent-a-room relief for 2019/20 onwards. The potential claimant (or a member of his household) would have to use the residence as sleeping accommodation for at least part of the period of the tenancy in order to qualify for rent-a-room relief on the rents. It is now announced that this test will not be introduced by Finance Bill 2019.

Extending the Off-payroll workers to the private sector!

Responsibility for operating the off-payroll working rules (IR35) in the private sector, and deducting any tax and national insurance contributions due, will move from the individual to the organisation, agency or other third party paying the individual's personal service company. Small organisations will be exempt. This change will bring private sector organisations into line with public sector bodies and agencies and will have effect from **6 April 2020**.

NIC on termination payments

Reforms to the NICs treatment of termination payments and income from sporting testimonials, which were originally to be introduced from 6 April 2018 but were then deferred until 6 April 2019, are still further delayed, this time until 6 April 2020.

Principal Private Residence relief

From April 2020, two changes will be made to private residence relief as follows.

The fraction of the gain that is exempt is given by dividing the length of the part period of ownership during which the dwelling-house was the individual's only or main residence, but inclusive of the last 18 months of the period of ownership in any event (36 months for certain disposals by disabled persons and long-term residents in a care home) by the length of the period of ownership. The 18-month period is to be reduced to 9 months, but the 36-month period, where it applies, will be unchanged.

Where the dwelling-house in question has at any time in the period of ownership been let as residential accommodation, the part of the gain, if any, which would otherwise be a chargeable gain by reason of the letting is exempt to the extent of the lower of £40,000 and the amount of the gain otherwise exempt. This lettings relief will be reformed so that it applies only in circumstances where the owner of the property is in shared-occupancy with a tenant.

Class 2 U Turn

The Government had announced plans to abolish Class 2 National Insurance Contributions in April 2018; this date was then delayed until April 2019. However, on 6 September 2018 the Government announced that the abolition has been scrapped altogether.

For 2018/19 Class 2 NICs are paid by self-employed people with profits of £6,205 or more a year. The abolition would have saved millions of workers about £150 a year (£2.95 per week).

However, the Government realised that their proposed tax simplification would have come at a cost to a significant number of low earning self-employed people. In order to access the state pension, self-employed people earning less than £6,205 often pay Class 2 NICs on a voluntary basis. With its abolition, the only option available to these individuals would have been to pay Class 3 contributions, increasing their effective weekly payments from £2.95 to £14.65.

Employment allowance

Most employers can currently claim an employment allowance of up to £3,000 to offset against their liability to employer Class 1 NICs. The Government are to restrict the allowance to employers with an employer NICs liability of less than £100,000 in the preceding tax year. Where employers are connected, the £100,000 threshold will apply to their aggregated liability. This change will take effect from 2020.