

Finance Bill 2009: Explanatory Notes

Clauses 91 to 126 (Volume 4 of 4)

April 2009

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EXPLANATORY NOTE

CLAUSE 91: HMRC CHARTER

SUMMARY

1. Clause 91 requires HM Revenue & Customs (HMRC) to prepare and maintain a Charter. The Charter will set out the standards of behaviour and values to which HMRC will aspire in dealing with taxpayers and others.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts a new section 16A into the Commissioners for Revenue and Customs Act 2005.
3. New section 16A(1) requires the Commissioners for Her Majesty's Revenue and Customs to prepare a Charter.
4. New section 16A(2) specifies that the Charter must include standards of behaviour and values to which HMRC will aspire in its dealings with taxpayers and others.
5. New section 16A(3) specifies that the Commissioners must regularly review the Charter and publish revisions as appropriate.
6. New section 16A(4) requires the Commissioners to report annually on how well HMRC is doing in living up to the standards in the Charter.
7. Subsection (2) requires the Commissioners to introduce the Charter before the end of 2009.

BACKGROUND NOTE

8. HMRC does not presently have a single document that sets out the rights and responsibilities of taxpayers and other persons that HMRC deals with. The possibility of introducing a Charter was proposed in a consultative document issued on 19 June 2008 which suggested that there was no need for a Charter to be supported by legislation. But most respondents argued that a legal foundation would be the best way of ensuring that the Charter would be an effective and enduring document. The Government then announced

that a clause giving the Charter explicit legislative backing would be included in the 2009 Finance Bill.

9. HMRC began a second consultation on 3 February 2009 on the content of the Charter. That consultation closes on 12 May 2009.

EXPLANATORY NOTE

CLAUSE 92 AND SCHEDULE 46: DUTIES OF SENIOR ACCOUNTING OFFICERS OF LARGE COMPANIES

SUMMARY

1. Clause 92 and Schedule 46 provide that senior accounting officers of large companies are required to take reasonable steps to ensure that the company and its subsidiaries (if any) establishes and maintains appropriate tax accounting arrangements. Senior accounting officers must provide the company auditors and HM Revenue & Customs (HMRC) with an explanation of the respects in which those arrangements are not appropriate. Large companies must notify HMRC of the name of the senior accounting officer. The clause includes a power to impose penalties on both senior accounting officers and companies who fail to comply with these requirements. The change has effect in relation to financial years beginning on or after the day this Act is passed.

DETAILS OF THE SCHEDULE

2. Paragraph 1 establishes that the senior accounting officer of a large company must take reasonable steps to ensure that the company and any subsidiaries establishes and maintains appropriate tax accounting arrangements. Also that the senior accounting officer takes reasonable steps to monitor those arrangements and identify any respects in which they are not appropriate. This is referred to as the 'main duty'.
3. Paragraph 2 refers to instances where the company or any of its subsidiaries does not have appropriate tax accounting arrangements. It requires that before the date on which the auditor's report on the company's accounts is finalised, the senior accounting officer must provide the auditor with an explanation of the respects in which the arrangements are not appropriate.
4. Paragraph 3 requires the senior accounting officer to certify to HMRC either:
 - that the company any its subsidiaries had appropriate tax accounting arrangements throughout the financial year; or

- stating whether it did; giving an explanation of the respects in which the arrangements are not appropriate, and stating whether an explanation has been provided to the company auditors.
5. Paragraph 4 requires a large company to notify HMRC of the name of anyone who was its senior accounting officer at any time during the year and how and by when this should be done.
 6. Paragraph 5 provides for a penalty of £5,000 on the senior accounting officer for a failure to comply with the ‘main duty’. This penalty is, however, limited to once per year per company.
 7. Paragraph 6 provides for a penalty of £5,000 on the senior accounting officer for a failure provide the company’s auditors with an explanation of the respects in which the company’s tax accounting arrangements are not appropriate.
 8. Paragraph 7 provides for a penalty of £5,000 on the senior accounting officer for a failure to provide the certificates required or for providing a certificate that contains a careless or deliberate inaccuracy. It is also provided that where a certificate is made neither carelessly nor deliberately, it will be treated as such if the senior accounting officer discovers the inaccuracy and does not take reasonable steps to notify HMRC.
 9. Paragraph 7 explains how the penalties apply if there were more than one senior accounting officer during the year. Effectively this makes only one person who was senior accounting officer liable to a penalty being the last in post to have failed in relation to the matter being penalised.
 10. Paragraph 8 imposes a penalty on the company if it fails to notify HMRC of the name of its senior accounting officer.
 11. Paragraph 9 provides for an escape from any of the penalties for failures under this clause where there is reasonable excuse for the failure.
 12. Paragraph 10 sets out the arrangements and time limits for assessing penalties.
 13. Paragraph 11 sets out the arrangements and time limits for appealing against any penalty under this clause.

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14. Paragraph 12 sets out when penalties must be paid and provides for any penalty under this clause to be enforced as if it were income tax charged in an assessment.
15. Paragraph 13 provides for the amount of the penalties under this clause to be revalorised in Regulations to take account of changes in the value of money.
16. Paragraph 14 applies certain relevant provisions of the Taxes Management Act 1970 to the provisions of this clause.
17. Paragraph 15 sets out what is meant by ‘appropriate tax accounting arrangements’.
18. Paragraph 16 sets out what is meant by a ‘large company’ and provides for HM Treasury regulations to exclude, but not add to, the types of company to be considered ‘large companies’ for the purpose of these provisions.
19. Paragraph 17 sets out what is meant by ‘senior accounting officer’.
20. Paragraph 18 concerns the arrangements for making regulations under this clause.
21. Paragraph 19 provides the meaning of a variety of terms included throughout this clause.

BACKGROUND NOTE

22. Large companies make a major contribution to the Exchequer. Inadequate tax accounting arrangements within such companies (or groups) can lead to misreporting of tax liabilities of very large amounts.
23. Currently, there is no legal obligation on any particular director or company officer to ensure that the company has appropriate tax accounting arrangements. This clause and Schedule will make the senior accounting officer with a company personally responsible for doing so.
24. Ensuring appropriate tax accounting arrangements are in place is no more than compliant companies will be doing already. The requirement on senior accounting officers to take reasonable steps to ensure appropriate tax accounting should in most instances merely underpin that good practice.

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25. Where large companies have not established appropriate tax accounting arrangements to enable accurate tax reporting, tax is at risk. Senior accounting officers of such companies will be required by this clause to take appropriate action to remedy that situation.

EXPLANATORY NOTE

CLAUSE 93: PUBLISHING DETAILS OF DELIBERATE TAX DEFAULTERS

SUMMARY

1. Clause 93 provides for the Commissioners for HM Revenue and Customs (HMRC) to publish information (including names) of persons who have been penalised for deliberate defaults: inaccuracies, failing to notify, and certain VAT and Excise duty wrongdoings where the tax lost exceeds £25,000. No details will be published if the person has made a full disclosure either unprompted or prompted within a time considered appropriate by HMRC. Any details must be published within 12 months from the relevant penalties becoming final and may not continue to be published beyond 12 months from when first published.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the Commissioners may publish information about any person who has incurred relevant tax penalties where the potential lost revenue, incurred in consequence of an investigation by HMRC, exceeds £25,000.
3. Subsection (2) lists the relevant tax penalties all of which are for deliberate or deliberate and concealed defaults. They are inaccuracy in documents, including inaccuracies attributable to supply of false information or withholding information by a person, failure to notify, unauthorised VAT invoice, putting product to use attracting higher (excise) duty, knowingly supplying such product, and handling goods subject to unpaid excise duty.
4. Subsection (3) gives statutory references for definitions of potential lost revenue for each relevant tax penalty. Broadly, this is the amount of tax unpaid or undeclared as a result of the default to which the penalty percentage is applied.
5. Subsection (4) specifies the information that may be published including the name, address, nature of any business, amount of penalties and potential lost revenue, period covered and such further information as may be required to make clear the person's identity.

6. Subsection (5) provides for the information to be published in any manner considered appropriate. It is envisaged this would be in quarterly lists on the HMRC website.
7. Subsection (6) requires the Commissioners to inform the person they are considering publishing information and to give the person a reasonable opportunity to make representations.
8. Subsection (7) provides that the Commissioners may not publish any information until the relevant tax penalties have become final, which is defined in subsection (12).
9. Subsection (8) provides that if information is to be published it must be within one year of the day the penalties have become final.
10. Subsection (9) provides that the information must not be published, or continue to be published, after one year from the day of first publication.
11. Subsections (10) and (11) give exemptions from publication for those whose penalties have been reduced by the full extent permitted. Subsection (10) does so for those who have made a full unprompted disclosure (with statutory references for the definition). Subsection (11) does so for full prompted disclosures provided this is made at a time the Commissioners' consider appropriate.
12. Subsection (12) explains that a penalty becomes final either when all appeal avenues have expired or been finally determined or when a contract settlement, including relevant penalties, is made.
13. Subsections (13) to (15) provide for Treasury orders to vary the financial limit (by negative resolution) and for an appointed day order to commence the provisions.

BACKGROUND NOTE

14. Publishing details (including names) aims to deter deliberate tax defaulters; reassure those who do pay the right tax; and encourage those who do not, to come forward and bring their tax affairs up to date.
15. The publication scheme is founded on definitions in the penalty regimes enacted in Finance Acts 2007 and 2008, which apply across the taxes and duties HMRC administer. In addition to the specific exemptions from publication for those making disclosure there may

be some exceptional circumstances where publication will not be appropriate.

EXPLANATORY NOTE

CLAUSE 94 AND SCHEDULE 47: AMENDMENT OF INFORMATION AND INSPECTION POWERS

SUMMARY

1. Clause 94 and Schedule 47 amend Schedule 36 to the Finance Act (FA) 2008 (Schedule 36) which contains HM Revenue & Customs' (HMRC) new information and inspection powers. The clause also allows for the repeal, by statutory instrument, of several other information and inspection powers that are no longer required.

DETAILS OF THE CLAUSE

2. The clause introduces the Schedule which amends Schedule 36.
3. Subsections (2) to (5) provide a power to make statutory instruments containing provisions or savings in consequence of or in connection with Schedule 36. This will allow the repeal of several information and inspection powers that are no longer required together with related provisions.

DETAILS OF THE SCHEDULE

4. Paragraph 2 inserts new paragraph 3(2A) into Schedule 36 to make clear that applications to the tribunal for approval of taxpayer or third party notices are heard without the taxpayer being present.
5. Paragraph 3(2) inserts new paragraph 5(3A) into Schedule 36 to make clear that applications to the tribunal for approval of notices under paragraph 5 of Schedule 36 are heard without the taxpayer being present.
6. Sub-paragraph (3) amends paragraph 5(4) of Schedule 36. The existing paragraph refers to a notice being given with the approval of the tribunal. Strictly speaking the tribunal approves the inspection rather than the notice and this change makes this clear.
7. Paragraph 4 inserts new paragraph 6(4) into Schedule 36. This makes it clear that there is no right of appeal under the Tribunals, Courts and Enforcement Act 2007 against a decision of the tribunal to approve an information notice.

8. Paragraph 5(2) amends the definition of “business assets” in paragraph 10 of Schedule 36 to make it clear that HMRC has no power to inspect documents other than statutory records unless they are trading stock or plant in the business.
9. Sub-paragraph (3) inserts new sub-paragraph 10(4). In general “documents” other than “business documents” are not subject to inspection. But certain documents may be either trading stock or plant in the business, and this new provision makes it clear that such documents may be inspected.
10. Paragraph 6 amends paragraph 11 of Schedule 36 to clarify and extend the scope of documents that can be inspected.
11. Paragraph 7 amends paragraph 12(5) of Schedule 36. The existing paragraph refers to a notice being given with the approval of the tribunal. Strictly speaking the tribunal approves the inspection rather than the notice and this change makes this clear.
12. Paragraph 8(2) inserts new paragraph 13(1A) into Schedule 36. This makes it clear that applications to the tribunal to approve an inspection of a business under Part 2 of Schedule 36 are heard without the taxpayer being present.
13. Paragraph 8(3) inserts new paragraph 13(3) into Schedule 36. This makes it clear that there is no right of appeal under the Tribunals, Courts and Enforcement Act 2007 against a decision of the tribunal to approve an inspection.
14. Paragraph 9(4) makes a consequential amendment to paragraph 21(8) of Schedule 36 and makes it explicit that the checking of payroll giving does not require the opening of a formal enquiry into a tax return.
15. Paragraph 9(5) inserts new paragraph 21(9) into Schedule 36. This makes it clear that the information powers are switched on or off for a particular person who has made a return only in relation to the capacity in which that person has made that return.
16. Paragraph 10(2) clarifies paragraph 35(2) of Schedule 36 and ensures that the references in paragraph 3(5) to “naming the taxpayer” are amended appropriately where a third party notice is given to check the tax position of a parent undertaking and any of its subsidiary undertakings.

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17. Sub-paragraph (3) inserts new paragraphs 35(4) and (4A) into Schedule 36. These provisions modify the rules that apply when a third party notice is given to a parent undertaking to check the tax position of more than one subsidiary undertaking. New paragraph 35(4) makes corresponding minor changes to those made to paragraph 35(2) above. New paragraph 35(4A) clarifies and adds to the modifications in existing paragraph 35(4). In particular, the parent undertaking may appeal against such a third party notice on any grounds (except in relation to statutory records), rather than the more restricted appeal rights applying to third party notices generally.
18. Sub-paragraph (4) amends paragraph 35(5) which concerns notices under paragraph 5 to a parent undertaking for checking the tax position of subsidiaries whose identities are not known. This is partly to reflect the changes made above to paragraph 5 of Schedule 36 and also to make it clear that although HMRC is not required to obtain tribunal approval for a notice, it may choose to do so. In addition, the parent undertaking's appeal rights are extended.
19. Paragraph 11(2) inserts new paragraph 37(2) into Schedule 36. This provides that paragraph 21 of Schedule 36 operates as intended in a partnership situation where the partnership tax return or a partnership claim or election has been submitted by any of the partners. In addition what was paragraph 37(2)(b) is no longer necessary in the light of changes made to paragraph 21 of Schedule 36 by paragraph 9 of this Schedule.
20. Sub-paragraph (3) amends paragraph 37(3) so that it applies to all third party notices, including notices issued to one partner for the purpose of checking another partner's tax position. The changes here mirror those made to the procedures for checking group companies by paragraph 10 of this Schedule.
21. Sub-paragraph (4) makes changes to paragraph 37(4) to clarify how that sub-paragraph works and reflect the fact that paragraph 37(3) will now apply more widely by virtue of the change made above.
22. Sub-paragraph (5) inserts new paragraph 37(5) into Schedule 36. This provision modifies the rules that apply when a third party notice is given to a partner to check the tax position of more than one other partner. It clarifies and adds to the modifications in existing paragraph 37(5). In particular, the partner receiving the third party notice may appeal on any grounds (except in relation to statutory records), rather than the more restricted appeal rights applying to third party notices generally.

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23. Sub-paragraph (6) amends paragraph 37(6) which concerns notices under paragraph 5 to a partner for checking the tax position of other partners whose identities are not known. This is partly to reflect the changes made to paragraph 5 of Schedule 36 by paragraph 3 of this Schedule and also to make it clear that although HMRC is not required to obtain tribunal approval for a notice, it may choose to do so. In addition, the appeal rights of the partner receiving the notice are extended.
24. Paragraph 12 inserts new paragraphs 37A and 37B into Schedule 36. The existing powers to ask for information in relation to a herd basis election and counteraction provisions are being repealed and Schedule 36 will be used instead. No specific provision is required to achieve this since both concern income tax and corporation tax, to which Schedule 36 already applies.
25. The effect of new paragraph 37A is that the restrictions on giving a taxpayer notice where a tax return had been made (paragraph 21 of Schedule 36) do not apply in relation to a taxpayer notice in relation to a herd basis election. Such a restriction would be inappropriate here since HMRC checks on herd basis elections are conducted outside the normal mechanism of a return and enquiry. Herd basis election rules are in Chapter 8 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and Chapter 8 of Part 3 of the Corporation Tax Act 2009.
26. New paragraph 37B has a similar effect in relation to a taxpayer notice given to a person to whom a counteraction provision applies. Counteraction provision is defined in new paragraph 37B(3).
27. Paragraph 13(2) provides for some tidying of paragraph 39 of Schedule 36, without any change of meaning.
28. Paragraph 13(3) and Paragraph 14 make consequential amendments to the headings of paragraphs 39 and 40 of Schedule 36 to reflect the introduction of a new penalty under paragraph 12 below.
29. Paragraph 15 inserts new paragraph 40A into Schedule 36 which provides for a penalty to apply where a person carelessly or deliberately provides inaccurate information or produces inaccurate documents in response to an information notice. Such a penalty exists in section 98(2) of the Taxes Management Act 1970 (TMA) for notices under current information provisions but the replacement is being incorporated into Schedule 36.

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30. Paragraph 16 makes minor changes to paragraph 41 of Schedule 36 to improve clarity.
31. Paragraph 17 provides for consequential amendments to paragraph 46 of Schedule 36.
32. Sub-paragraph (4) inserts new paragraphs 46(3)-(5) into Schedule 36 which determine the relevant date within 12 months of which a penalty assessment must be made. The existing rules are now applied to standard or daily default penalties only, and to ensure that the time limit works properly in relation to daily default penalties a third “latest date” is added.
33. Paragraphs 18, 19 and 20 provide for consequential amendments to paragraphs 47, 48 and 49 of Schedule 36.
34. Paragraph 21(3) inserts new paragraph 63(3A) into Schedule 36 which amplifies the definition of VAT in paragraph 63(3) of Schedule 36. New sub-paragraph (3A)(a) repeats what was previously in paragraph 63(3) of Schedule 36. New sub-paragraph (3A)(b) represents new material. The effect is that Schedule 36 will apply for the purposes of amounts accounted for under a particular VAT scheme which are not VAT but are treated as if they were.
35. Paragraph 22(2) amends the definition of tax position in connection with claims, elections, applications and notices. The purpose of the amendment is to narrow the scope of tax position so that it relates only to claims, etc, made by taxpayers themselves rather than documents given by a third person in connection with someone else’s tax position. This is in line with the original policy intention, but clarifies the law.
36. Paragraph 22(3) inserts new paragraph 64(2A) into Schedule 36. This makes it explicit that a person’s tax position includes matters relating to the withholding of income, for example, as part of payroll giving.

BACKGROUND NOTE

37. Schedule 36 to FA 2008 contains a new set of information and inspection powers to replace the separate main powers that existed for checking a person’s position for income tax, capital gains tax and corporation tax on the one hand and VAT on the other. Those new powers also apply to PAYE, the construction industry scheme, student loan repayments and national insurance contributions. They came into force on 1 April 2009.

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38. This Schedule makes amendments to clarify points that have been raised and ensure that the powers work as intended.
39. It also introduces a penalty into Schedule 36 to apply where any person deliberately or carelessly provides any incorrect documents or information in response to an information notice issued under Part 1 of Schedule 36. Such a penalty existed in section 98(2) of TMA for fraudulently or negligently providing information etc under information powers that have been replaced by Schedule 36.
40. The clause also provides a power to make statutory instruments containing provisions or savings in consequence of or in connection with Schedule 36 to FA 2008. This will allow the repeal of a significant number of information and inspection powers that are no longer required together with related provisions. These powers presently apply to particular types of tax check. The aim is that HMRC will use Schedule 36 instead. This represents alignment, helping both taxpayers and HMRC by putting all the powers in one place. The new powers allow HMRC to ask for a wider range of information in some circumstances, but provide more explicit safeguards for the way in which HMRC asks for information.
41. The proposals have been the subject of a recent consultation in November 2008 – Compliance Checks: The Next Stage with draft clauses on information and inspection powers.

EXPLANATORY NOTE

**CLAUSE 95 AND SCHEDULE 48: EXTENSION OF NEW
INFORMATION AND INSPECTION POWERS TO FURTHER TAXES**

SUMMARY

1. Clause 95 and Schedule 48 amend Schedule 36 to the Finance Act (FA) 2008 (Schedule 36). They extend HM Revenue & Customs' (HMRC) powers to obtain information and inspect businesses to matters concerning insurance premium tax (IPT), inheritance tax (IHT), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), petroleum revenue tax (PRT), aggregates levy (AGL), climate change levy (CCL) and landfill tax. The clause also provides for the Schedule to come into force on a day appointed by Treasury order, made by statutory instrument.

DETAILS OF THE CLAUSE

2. Subsection (1) amends paragraph 63(1) of Schedule 36 which specifies the taxes to which Schedule 36 applies. That Schedule makes provision about the powers of HMRC officers to obtain information and inspect businesses in respect of income tax, capital gains tax (CGT), corporation tax (CT) and VAT. The scope of the Schedule will now be widened to include the further taxes listed.
3. Subsections (3) and (4) provide that the amendments made by the clause and the Schedule will come into force on a day appointed by the Treasury by an order made by statutory instrument and that different days may be appointed for.
4. Subsections (5) to (8) provide a power to make statutory instruments containing provisions or savings in consequence of or in connection with Schedule 36.

DETAILS OF THE SCHEDULE

5. Paragraph 2 makes a consequential amendment to paragraph 5(4)(b) of Schedule 36 to reflect the inclusion of the new taxes into Schedule 36.
6. Paragraph 3 inserts new paragraph 10A into Schedule 36. This provides a power for HMRC to inspect business premises and assets

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and relevant documents on the premises. It is very closely modelled on the existing paragraph 10 of Schedule 36 but it now applies to an “involved third party” which is a new concept within Schedule 36. It allows HMRC to inspect the premises, assets and documents of certain involved third parties in order to check a person’s tax position, but only for a relevant tax. These new terms are defined by new paragraph 61A which is inserted by paragraph 14 below.

7. Paragraph 4 makes consequential amendments to paragraph 12 of Schedule 36.
8. Paragraph 5 inserts new paragraphs 12A and 12B into Schedule 36. New paragraph 12A(1) provides a power for HMRC to enter and inspect any premises for the purpose of valuing the premises with respect to income tax or CT. “Premises” is defined in paragraph 58 of Schedule 36. An example of the use of this power will be when a dwelling is transferred to or made available to an employee in return for services. The power replaces and updates that in section 110 of the Taxes Management Act 1970 (TMA) which will be repealed.
9. New paragraph 12A(2) provides a power for HMRC to enter premises and inspect the premises and any other property on the premises for the purpose of valuing, measuring or determining the character of the premises or property.
10. Under new paragraph 12A(3) the power in new sub-paragraph 12A(2) only applies if the valuation etc is reasonably required to check any person’s tax position as regards the specified taxes. This power replaces the powers in section 111 of TMA, section 220 of the Inheritance Tax Act 1984 (IHTA), section 94 of FA 2003 and Regulation 111 of SI 1986/1711.
11. New paragraph 12A(4) allows for other persons to accompany the HMRC officer if necessary (for example an expert external valuer who may value an asset such as a rare painting).
12. New paragraph 12B sets restrictions on carrying out inspections for valuation purposes under new paragraph 12A. The effect is that an inspection can only be carried out if one of two conditions is met. The first is that the relevant person (defined in sub-paragraph (3)) must have agreed the time of the inspection and been given a written notice. The alternative condition is that the inspection has been approved by the tribunal. In that case any relevant person specified by the tribunal must be given at least seven days’ notice in writing of the inspection.

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13. New paragraph 12B(5) and (6) mirror the rules in paragraph 12 of Schedule 36 about the content of the notice given at the time of inspection. In addition, new paragraph 12B(7) requires that an officer must produce evidence of authority if required to do so.
14. Paragraph 6(2) inserts a cross-reference to paragraph 39 of Schedule 36 (penalties), for clarity.
15. Paragraph 6(3) amends paragraph 13(1A) of Schedule 36 which is inserted by Schedule 47 allows applications to the tribunal for approval of an inspection visit to be without notice to the respondent. This is now made subject to new paragraph 13(2A) inserted by paragraph 6(5).
16. Paragraph 6(5) inserts new sub-paragraphs 13(2A) and (2B) into Schedule 36 which cover the tribunal's approval of inspections for new paragraph 12A (valuation), in the same way that paragraph 13(2) of Schedule 36 covers tribunal approval of inspection under paragraphs 10, 10A and 11 of Schedule 36. It adds conditions at new sub-paragraphs (b), (c) and (d) which only apply to inspections for valuation purposes. These provide for the person whose tax position is being checked and the occupier to be given a reasonable opportunity to make representations to the officer and for the tribunal to be given a summary of the representations made. The provisions relating to the occupier making representations do not apply if the tribunal is satisfied that the occupier cannot be identified.
17. Paragraph 7 amends paragraph 17(b) of Schedule 36 so that the power to record information extends to recording information about property and goods.
18. Paragraph 8(2) amends paragraph 21(7) of Schedule 36. Paragraph 21 of Schedule 36 restricts HMRC's power to ask for information to check an income tax, CGT or CT position for a period for which a tax return has been submitted. This replicates the existing arrangements (the enquiry window). This restriction does not apply for checks in relation to VAT which does not have an equivalent enquiry mechanism.
19. This amendment has the effect that the rules which apply to VAT will now apply more widely, to all the taxes now being brought within the scope of Schedule 36. There is an exception of SDLT (for which, see below), as that tax does have an enquiry window.
20. Paragraph 9 inserts new paragraph 21A into Schedule 36 to incorporate the SDLT enquiry window. This paragraph mirrors the

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existing paragraph 21 and provides the same restriction on asking for information in respect of SDLT as is provided for income tax, CGT and CT.

21. Paragraph 11 inserts new paragraphs 34A, 34B and 34C into Schedule 36. This introduces the concept of “involved third parties” and contains special provisions for pension schemes.
22. New paragraph 34A is closely modelled on the existing paragraph 34 of Schedule 36 but it now applies to an “involved third party” (defined in new paragraph 61A below). It allows HMRC to give such a person a third party or unknown taxpayer information notice in order to check any other person’s tax position, but only for relevant information, relevant documents and for a relevant tax. Involved third parties are all persons who stand in a special position in relation to a taxpayer for a particular tax.
23. Sub-paragraphs (2) to (5) disapply certain provisions of Schedule 36 which relate to third party notices. The effect of this is that involved third parties are treated as if they were first parties (taxpayers) rather than third parties in relation to approval and copying of notices. Similarly, an involved third party may not appeal against a requirement in a notice to provide information or documents which form part of their statutory records. Sub-paragraph (6) cross refers to definitions in new paragraph 61A (see below).
24. New paragraph 34B provides for pension schemes’ rules similar to those that will apply to involved third parties. There are additional special rules, taken from the existing information power in section 252 of FA 2004, about to whom copies of notices must be given.
25. New paragraph 34C defines a number of terms used in new paragraph 34B. The regulation envisaged in the definition of “prescribed” will be laid in time to come into force alongside this Schedule.
26. Paragraph 12 amends paragraph 35 of Schedule 36 taking into account other changes made by Schedule 48 to this Bill. The amendments reflect the insertion of new paragraph 21A. The special rules that apply to taxpayer notices where a return is held for the relevant period are extended to SDLT as that tax also has an enquiry window.
27. Paragraph 13 inserts a new paragraph 37(2A) into Schedule 36 to reflect the insertion of the new paragraph 21A.

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28. Paragraph 14 inserts a new paragraph 61A into Schedule 36. This defines certain terms used in the new inspection and information powers which apply to involved third parties. It contains a table which sets out what the terms “involved third parties”, “relevant information and relevant documents” and “relevant tax” mean in nine different cases. Involved third parties are persons who have obligations under current legislation to provide information in relation to certain taxes in the same way as the taxpayer and are defined in line with the current legislation.
29. Paragraph 15(1) provides for amendments to paragraph 62 of Schedule 36 which defines “statutory records” for the purpose of the information and inspection powers contained in Schedule 36, and presently reflects the scope of Schedule 36 as originally enacted by referring to records required to be kept under the Taxes Act or VAT legislation.
30. Sub-paragraphs (2) and (3) replace references to VAT legislation by a wider reference to any other tax legislation. This is a consequential amendment to reflect the changes made to the scope of the taxes now to be covered by Schedule 36.

BACKGROUND NOTE

31. Schedule 36 to FA 2008 contains a new set of information and inspection powers which apply in checking any person’s tax position in relation to income tax, CT, CGT and VAT. They came into force on 1 April 2009.
32. The main effect of this clause and Schedule is to apply Schedule 36 to FA 2008 to many of the other taxes and duties administered by HMRC, from a date to be appointed. Once complete, this will be a major piece of modernised cross-tax legislation.
33. There are some information powers in a range of taxes that are not adequately covered by the existing powers in Schedule 36 to FA 2008. To address this it has been necessary to introduce the concept of an “involved third party”. This reflects the approach of existing law to persons who are neither taxpayers (first parties) nor conventional third parties such as banks. These persons are closely involved in a potentially taxable event or transaction and are currently required to provide information about that activity. In relation to these persons some of the normal rules that apply to third party information notices are relaxed and HMRC will be able to inspect the premises of such parties.

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34. The amended Schedule 36 to FA 2008 also now contains an entry power for valuation purposes which brings together several existing powers into a single aligned power. The power to enter and inspect premises in Schedule 36 to FA 2008 only applies to business premises, but it is often necessary to value private premises or assets on such premises, e.g. for IHT, the valuation of all types of property is an essential form of check.
35. The valuation power introduced in Finance Bill 2009 contains safeguards which go beyond those in current legislation. In particular, a valuation inspection can only be carried out with either the agreement of the relevant person (usually the occupier) or the tribunal. There is no facility to make an unannounced visit.
36. The proposals have been the subject of a recent consultation in November 2008 – Compliance Checks: The Next Stage with draft clauses on information and inspection powers.

EXPLANATORY NOTE

**CLAUSE 96 SCHEDULE 49: POWERS TO OBTAIN CONTACT
DETAILS FOR DEBTORS**

SUMMARY

1. Clause 96 and Schedule 49 provide that HM Revenue & Customs (HMRC) may issue notices requiring third parties to provide contact details for those in debt to HMRC.

DETAILS OF THE SCHEDULE

2. Paragraph (1) provides that a number of conditions must be satisfied before HMRC can issue a formal notice. The first is that a person owes a sum to HMRC, and HMRC reasonably requires up-to-date contact details to be able to collect the debt. “Contact details” mean an address or other information about how the debtor may be contacted. The debt must arise under or by virtue of an enactment, or under a contract settlement. “Under or by virtue of an enactment” brings in those debts arising from taxes, duties etc imposed by statute. “Contract settlements” are defined in paragraph 8 and are contractual agreements made in connection with a person’s liability, usually as the result of an enquiry covering a number of years.
3. Second, an officer of Revenue and Customs must have reasonable grounds to believe that the third party has contact details that differ from the latest held by HMRC.
4. The third condition defines who the third party can be and so prevents HMRC formally requiring information from neighbours or relatives who have no business relationship with the debtor.
5. The fourth condition prevents HMRC formally requiring information from charities that acquire the contact details in the course of providing advice without charge.
6. Paragraph (2) provides that an officer of Revenue and Customs may serve a notice on a third party requiring the production of contact details. The requirement for a written notice does not preclude earlier requests, whether orally or otherwise. The notice must name the debtor, and in practice HMRC would provide sufficient other information to identify the debtor including the latest address it holds.

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7. Paragraph (3) provides that where a third party is required to provide contact details, it must be done within the period, at the time, and in the means and format reasonably specified in the notice. The notice does not need to specify means or form but in practice a response may be in writing, by telephone or otherwise. Confirmation that no different address is held from that which HMRC has provided will satisfy the notice.
8. Paragraph (5) provides that a person who fails to comply with a notice is liable to a penalty of £300. The procedures for penalties are the same as those for the information power to check a person's tax position under Schedule 36 to FA 2008.
9. Paragraph (6) provides that the Treasury may make regulations to alter the penalty in paragraph 5 where there is a change in the value of money.

BACKGROUND NOTE

10. HMRC makes every effort to ensure that the address information it holds is accurate and up-to-date. It uses a range of techniques to trace tax debtors who go missing, including the extensive use of commercial databases. However, there remain some who cannot be traced and in 2007 the Department wrote off £300 million for this reason.
11. This clause and Schedule allow HMRC to require relevant third parties to disclose address and contact details of missing debtors, where those details are reasonably required to collect what is owed. Relevant third parties are those who HMRC has reason to believe have more recent contact details than it holds. They are explicitly restricted to companies, local authorities and local authority associations and those who HMRC reasonably believes to have, or have had, a business relationship with the debtor.
12. This measure was the subject of initial consultation in June 2007 and further consultation in December 2008 (*Payments, Repayments and Debt: the Next Stage*). Draft legislation was published for consultation in January 2009, and a response document together with a final Impact Assessment was published in April 2009.

EXPLANATORY NOTE

CLAUSE 97 SCHEDULE 50: RECORD-KEEPING

SUMMARY

1. Clause 97 and Schedule 50 amend existing legislation to align the record-keeping rules for environmental taxes (aggregates levy, climate change levy (CCL) and landfill tax, insurance premium tax (IPT) and stamp duty land tax (SDLT). The clause also provides for the Schedule to come into force on a day appointed by Treasury order.

DETAILS OF THE SCHEDULE

2. Paragraph 1(1) introduces the amendments to paragraph 1 of Schedule 7 to the Finance Act 1994 (FA) 1994. This contains the record-keeping rules for IPT.
3. Paragraph 1(2)(a) inserts new paragraphs 1(3)(a) to (c) into paragraph Schedule 7 to FA 1994. This makes clear that HM Revenue & Customs (HMRC) may reduce the period for which records must be retained for IPT. Different reduced retention periods may be specified for different cases.
4. Paragraph 1(3) replaces paragraphs 1(4) to (6) of Schedule 7 to FA 1994 with a new sub-paragraph (4). The effect is to replace the existing power for HMRC to approve preservation of information instead of records with a general rule that such preservation is acceptable, subject to any conditions and exceptions set by HMRC in writing.
5. Paragraph 2 repeals a provision which is no longer required.
6. Paragraph 3 introduces the amendments to Part 4 to FA 2003. This contains the record-keeping rules for SDLT.
7. Paragraph 5(3) inserts new paragraph 9(2A) into Schedule 10 to FA 2003, which defines “the relevant day”. This is either the sixth anniversary of the effective date of the transaction, or an earlier day specified by HMRC. This allows HMRC to reduce the period for which records must be retained by specifying this in writing. Different reduced retention periods may be specified for different cases.

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8. Paragraph 5(4) inserts new paragraphs 9(4)-(6) into Schedule 10 to FA 2003. New paragraph 9(4) introduces a new power for HMRC to specify by regulation the records and supporting documents that must be kept.
9. New paragraph 9(5) contains provision about the scope of regulations under paragraph 9 of Schedule 10 to FA 2003. It allows for the possibility of tertiary legislation to specify records.
10. Paragraph 6 substitutes a new paragraph 10 into Schedule 10 to FA 2003. This restates existing law which allows the preservation of information in any form and there is a new power for HMRC to specify, in writing, conditions and exceptions to this general rule.
11. Paragraph 9(2) substitutes a new paragraph 4(2) into Schedule 11 to FA 2003. This restates the current six year retention period but now allows HMRC to reduce the period for which records must be retained by specifying this in writing. Different reduced retention periods may be specified for different cases.
12. Paragraph 9(4) inserts new paragraphs 4(4)-(6) into Schedule 11 to FA 2003. New sub-paragraph (4) introduces a new power for HMRC to specify by regulation the records and supporting documents that must be kept.
13. New sub-paragraph (5) contains provision about the scope of regulations under paragraph 4 of Schedule 11 to FA 2003. It allows for the possibility of tertiary legislation to specify records.
14. Paragraph 10 substitutes a new paragraph 5 in Schedule 11 to FA 2003. This restates existing law which allows the preservation of information in any form and there is a new power for HMRC to specify conditions and exceptions to this general rule in writing.
15. Paragraph 11 makes a consequential change.
16. Paragraph 13(2) repeals paragraph 3(3) and (4) of Schedule 11A to FA 2003 which contains provisions about evidence of records that are required to be preserved. These are no longer needed.
17. Paragraph 13(3) inserts new sub-paragraphs (4A) to (4C) into paragraph 3 of Schedule 11A to FA 2003.
18. New sub-paragraph (4A) introduces a new power for HMRC to specify by regulation the records and supporting documents that must be kept.

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19. New sub-paragraph (4B) contains provision about the scope of regulations under paragraph 3 of Schedule 11A to FA 2003. It allows for the possibility of tertiary legislation to specify records.
20. Paragraph 14 inserts new paragraph 3A into Schedule 11A to FA 2003. This restates existing law which allows the preservation of information in any form and there is a new power for HMRC to specify conditions and exceptions to this general rule in writing.
21. Paragraph 15 introduces the amendments to Schedule 7 to FA 2001. That Schedule includes record-keeping rules for aggregates levy.
22. Paragraph 16(2) replaces paragraphs 2(4) and (5) of Schedule 7 to FA 2003 with new sub-paragraph (4). The effect is to replace the existing power for HMRC to approve preservation of information instead of records with a general rule that such preservation is acceptable, subject to any conditions and exceptions set by HMRC in writing.
23. Sub-paragraph 16(3) makes consequential amendments.
24. Paragraph 17 repeals paragraph 3 of Schedule 7 to FA 2003 which contains provisions about evidence of records that are required to be preserved. This is no longer needed.
25. Paragraph 18 introduces amendments to Schedule 6 to FA 2000. This contains the record-keeping rules for CCL.
26. Paragraph 19(2) replaces paragraphs 125(4) and (5) with new sub-paragraph (4). The effect is to replace the existing power for HMRC to approve preservation of information instead of records with a general rule that such preservation is acceptable, subject to any conditions and exceptions set by HMRC in writing.
27. Paragraph 19(3) makes consequential amendments to paragraph 125(9) of Schedule 6.
28. Paragraph 20 omits paragraph 126 of Schedule 6 to FA 2000 which contained provisions about evidence of records that are required to be preserved. This is no longer needed.
29. Paragraph 21 replaces paragraphs 2(4) to (7) of Schedule 5 to FA 1996 with a new sub-paragraph (4). That Schedule includes record-keeping rules for landfill tax. The effect is to replace the existing power for HMRC to approve preservation of information instead of records with a general rule that such preservation is acceptable, subject to any conditions and exceptions set by HMRC in

writing. This paragraph also has the effect of omitting existing provisions about admissibility of documents in proceedings which are no longer needed.

BACKGROUND NOTE

30. Schedule 37 to FA 2008 introduced a common format for rules about keeping records for income tax, capital gains tax (CGT), corporation tax (CT) and VAT. It introduced a new flexibility for HMRC to shorten the periods for which records need to be retained for income tax, CGT and CT. It also introduced new regulation-making powers for HMRC in relation to specifying records and formats which can also be exercised by tertiary legislation. Regulations can be made when there is a need for legislative certainty on particular records. Schedule 37 to FA 2003 aligned the rules about preserving information instead of records and preserving information in any form and means, providing HMRC with flexibility to adapt to change, particularly with the increasing use of technology for keeping records.
31. The provisions of this Schedule make corresponding changes, from a day to be appointed, to the record-keeping requirements that apply to environmental taxes (aggregates levy, climate change levy and landfill tax), insurance premium tax and stamp duty land tax.
32. The proposals have been the subject of a recent consultation in November 2008 – Compliance Checks: The Next Stage. Draft clauses on record-keeping were published in February 2009.
33. The changes in this Schedule also support the proposed new compliance checking powers for these taxes and allow for a cross-tax approach to be taken by HMRC.

EXPLANATORY NOTE

**CLAUSE 98 AND SCHEDULE 51: TIME LIMITS FOR ASSESSMENTS,
CLAIMS ETC**

SUMMARY

1. Clause 98 introduces Schedule 51 which contains provisions amending time limits that apply to assessments and claims in respect of insurance premium tax (IPT), inheritance tax (IHT), stamp duty land tax (SDLT), petroleum revenue tax (PRT), aggregates levy, climate change levy (CCL) and landfill tax. The clause also provides for the Schedule to come into force on a day appointed by Treasury order, made by statutory instrument.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides for Schedule 7 to the Finance Act (FA) 1994 to be amended. The following paragraphs introduce and change time limits that apply to IPT claims and assessments.
3. Paragraph 2 extends the time limit for recovering overpaid IPT at paragraph 8(4) of Schedule 7 to FA 1994 from 3 to 4 years.
4. Paragraph 3 extends the time limit for claiming interest from HM Revenue & Customs (HMRC) at paragraph 22(9) of Schedule 7 to FA 1994 from 3 to 4 years.
5. Paragraph 4(2) changes the normal IPT assessing time limit from 3 to 4 years. It also restructures paragraph 26(1) of Schedule 7 to FA 1994 so that the time limit is geared to “the relevant event”, but without any change of effect.
6. Paragraph 4(3) inserts new paragraph 26(1A) into Schedule 7 to FA 1994 which defines “the relevant event”. This definition is the same as that previously given at sub-paragraph 26(1) of Schedule 7 to FA 1994.
7. Paragraph 4(4) makes a consequential amendment.
8. Paragraph 4(5) replaces paragraph 4(4) of Schedule 7 to FA 1994 with new paragraphs 4(4) and 4(5). The existing assessing time limit of 20 years in cases of fraud or where a person has failed to register is retained, but the reference to a tax loss due to “fraud” is changed to a

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tax loss “brought about deliberately”. This is in line with changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere. It is also made clear that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.

9. Paragraph 5 provides for the Inheritance Tax Act 1984 (IHTA) to be amended. The following paragraphs introduce and change time limits that apply to inheritance tax claims and assessments.
10. Paragraph 6 inserts new section 131(2ZA) into IHTA. It introduces a new time limit of 4 years from the transferor’s death for a claim under section 131(2)(b) of IHTA.
11. Paragraphs 7 to 10 introduce a new time limit of 4 years under the relevant sections of IHTA
12. Paragraph 11(2) amends section 240(2) of IHTA. This reduces the period allowed for HMRC to bring proceedings to recover additional tax under section 240(2) of IHTA (i.e. in a case where an account has been delivered) from 6 to 4 years.
13. Paragraph 11(3) replaces section 240(3) of IHTA with new subsections (3) to (6). New subsection (4) provides that the time limit remains at 6 years where the underpayment has been brought about carelessly. New subsection (5) increases the time limit to 20 years where the loss of tax is brought about deliberately. New subsection (6) provides that the new time limit at new subsection (7) applies in cases where no account has been delivered, and there is no deliberate loss of tax. New subsection (7) provides a 20-year time limit on proceedings to recover additional tax in such cases. New subsection (8) provides that these behaviour descriptions include the behaviour of a settler in certain cases.
14. Paragraph 12 inserts new section 240A into IHTA.
15. New subsection (1) provides that the new section supplements the new time limits in section 240 of IHTA.
16. New subsection (2) provides that a loss of tax is brought about carelessly by any person if the person fails to take reasonable care to avoid bringing about that loss. This corresponds with the definition of careless at paragraph 3(1)(a) of Schedule 24 to FA 2007.
17. New subsection (3) provides that where information is provided to HMRC by someone who later discovers that the information was

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inaccurate but does not take reasonable steps to inform HMRC, any loss of tax brought about by this is to be treated as having been brought about carelessly. This corresponds with the definition at paragraph 3(2) of Schedule 24 to FA 2007.

18. New subsection (4) provides that where a loss of tax is brought about by a deliberate inaccuracy in a document, it is to be treated as brought about deliberately. This is to ensure that in cases where a penalty is due for deliberate inaccuracy under paragraph 3 of Schedule 24 to FA 2007, the corresponding increase in time limit also occurs.
19. Paragraph 13 amends section 241(1) of IHTA by reducing the period in which repayment of an excess tax payment may be claimed from 6 to 4 years.
20. Paragraph 14 provides for FA 2003 to be amended. The following paragraphs introduce and change time limits that apply to SDLT claims and assessments.
21. Paragraph 15(2) amends paragraph 25(3) of Schedule 10 to FA 2003 reducing the period in which HMRC may make a determination of SDLT chargeable if no return is delivered from 6 to 4 years.
22. Paragraph 15(3) amends paragraph 27(2)(a) of Schedule 10 to FA 2003 by reducing the period during which a self assessment must be made if it is to replace a determination from 6 to 4 years.
23. Paragraph 15(5) amends paragraph 31(1) of Schedule 10 to FA 2003. This provides that the normal SDLT assessing time limit is reduced from 6 to 4 years.
24. Paragraph 15(6) replaces paragraph 31(2) of Schedule 10 to FA 2003 with new sub-paragraphs (2) and (2A).
25. New sub-paragraph (2) provides that the time limit remains at 6 years where there is a loss of tax brought about carelessly.
26. New sub-paragraph (2A) provides that it is increased to 20 years where the loss of tax is brought about deliberately by the purchaser or a “related person”. This increase to 20 years also occurs where the loss of tax is attributable to a person’s failure to notify HMRC that they are liable to tax, as required by section 76(1) or paragraph 3(3)(a), 4(3)(a) or 8(3)(a) of Schedule 17A to FA 2003, or where a person has failed to disclose an avoidance scheme as required by sections 309, 310 or 313 of FA 2004.

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27. Paragraph 15(7) amends paragraph 31(4)(a) of Schedule 10 to FA 2003. This increases the period during which HMRC may make an assessment on personal representatives from 3 to 4 years.
28. Paragraph 15(8) inserts new paragraph 31(6) into Schedule 10 to FA 2003. It defines a “related person” in relation to a purchaser for the purpose of the new behaviour-related time limits.
29. Paragraph 15(9) inserts new paragraph 31A into Schedule 10 to FA 2003. New sub-paragraph (1) provides that this supplements the time limits in new sub-paragraphs (2) and (2A).
30. New sub-paragraph (2) provides that a loss of tax is brought about carelessly by any person if the person fails to take reasonable care to avoid bringing about that loss. This corresponds with the definition of careless at sub-paragraph 3(1)(a) of Schedule 24 to FA 2007.
31. New sub-paragraph (3) provides that where information is provided to HMRC by someone who later discovers that the information was inaccurate but does not take reasonable steps to inform HMRC, any loss of tax brought about by this is to be treated as having been brought about carelessly. This corresponds with the definition at paragraph 3(2) of Schedule 24 to FA 2007.
32. New sub-paragraph (4) provides that where a loss of tax is brought about by a deliberate inaccuracy in a document, it is to be treated as brought about deliberately. This is to ensure that in cases where a penalty is due for deliberate inaccuracy under paragraph 3 of Schedule 24 to FA 2007, the corresponding increase in time limit also occurs.
33. Paragraph 15(10) amends paragraph 34(2) of Schedule 10 to FA 2003 by reducing the period in which a claim for relief may be made in respect of a mistake in a return from 6 to 4 years.
34. Paragraph 16(2) amends paragraph 8(2) of Schedule 14 to FA 2003. It reduces the period during which HMRC may make a determination of penalties or bring proceedings for penalties from 6 to 4 years from the date the penalty was incurred or, in the case of daily penalties, first incurred. This date is referred to by later paragraphs as “the relevant date”, from which certain time limits run.
35. Paragraph 16(3) amends sub-paragraph 8(3) of Schedule 14 to FA 2003. This provides that the 3-year time limit on making a determination of penalties or bringing proceedings is subject to the longer time limits allowed by paragraph 8 of Schedule 14 to FA 2003.

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36. Paragraph 16(4) inserts new paragraphs 8(4A) to (4C) into Schedule 14 to FA 2003. The time limit remains at 6 years where the penalty relates to a loss of tax brought about carelessly and is increased to 20 years where it relates to a loss of tax brought about deliberately or where certain obligations have not been met. The extended time limits for assessing penalties mirror those for assessing a loss of tax and the new rules in paragraph 31A of Schedule 10 to FA 2003, described above, also apply.
37. Paragraph 17 provides for the Oil Taxation Act 1975 (OTA 1975) to be amended. The following paragraphs introduce and change time limits that apply to PRT claims and assessments.
38. Paragraph 18(2) corrects the entry in the Table at Schedule 2 to OTA 1975 relating to section 33(1) of the Taxes Management Act 1970 (TMA). This does not change the effect of the provision.
39. Paragraph 18(3) omits the entries in the Table relating to sections 34 and 36 of TMA (assessing time limits) so that those provisions do not apply to PRT. Instead the following paragraphs make similar provision in OTA 1975.
40. Paragraph 19 inserts new paragraph 10(1A) into Schedule 2 to OTA 1975. It provides that the normal PRT assessing time limit is 4 years instead of the current 6 years.
41. Paragraph 20(2) inserts new paragraphs 12(1A) and (1B) into Schedule 2 to OTA 1975.
42. New sub-paragraph (1A) provides a normal 4 year time limit for the making or amending of PRT assessments
43. New sub-paragraph (1B) provides that the time limit does not apply to an amendment made to relieve allowable losses or made in consequence of allowing such relief.
44. Paragraph 20(3) amends paragraph 12(2) of Schedule 2 to OTA 1975. It reduces the normal time limit for making a further assessment from 6 to 4 years.
45. Paragraph 21 amends paragraph 12A(1) of Schedule 2 to OTA 1975. It reduces the period during which HMRC may make an assessment from 5 to 4 years.
46. Paragraph 22 inserts new paragraph 12B into Schedule 2 to OTA 1975. This provides extended assessing time limits in cases where a

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“relevant situation”, defined at new sub-paragraph (3), has been brought about carelessly or deliberately by the participator or a person acting on the participator’s behalf.

47. New sub-paragraph (1) provides that where the relevant situation is brought about carelessly, the time limit is 6 years.
48. New sub-paragraph (2) provides that where the relevant situation is brought about deliberately, the time limit is 20 years.
49. New sub-paragraph (3) defines “relevant situation” to be a loss of tax, an underassessment of profit, an overstated loss or a lack of any assessment.
50. New sub-paragraph (4) defines “relevant chargeable period”, from the end of which these time limits run. This is usually the chargeable period to which the assessment relates, but if the assessment is under paragraph 12(2) of Schedule 2 to OTA 1975, i.e. an assessment where the deficiency results from an excessive allowable loss accruing in a subsequent period, then it is that subsequent period.
51. New sub-paragraph (5) makes provision for where a participator acts in partnership with others. This provision was previously in the Table at paragraph 1(1) of Schedule 2 to OTA 1975.
52. New sub-paragraph (6) requires HMRC to take into account any relief or allowance the assessed person would have been entitled to in the period covered by the assessment. This mirrors the provision in section 36 of TMA which previously applied to PRT.
53. New sub-paragraph (7) clarifies that this requirement only applies if the person assessed so requires, again mirroring section 36 of TMA.
54. New sub-paragraph (8) applies the definitions of “careless” and “deliberate” at section 118 of TMA, to PRT, aligning these definitions with those for penalties in Schedule 24 to FA 2007.
55. New sub-paragraph (9) clarifies that where a person takes over the position of responsible person for an oilfield and they discover that information provided by their predecessor was inaccurate, then section 118(6)(b) of TMA applies as if the information had been provided by themselves.
56. Paragraph 23(2) amends paragraph 2(1) of Schedule 5 to OTA 1975 by reducing the normal period for making a claim for expenditure from 6 to 4 years.

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57. Paragraph 23(3) amends paragraph 2(7)(c) of Schedule 5 to OTA 1975. This means that in cases where HMRC has agreed to a deferral of the responsible person's return and the earlier of the time that the return is delivered or the latest time for the delivery of the return following the agreed deferral is now more than 2 years (previously 4 years) after the end of the claim period, then the time limit for making the claim is extended to 2 years after the earlier of the deferred delivery date and the date of delivery of the return. The effect is to ensure that there is always a minimum of 2 years in which to check a claim.
58. Paragraph 24(2) restructures paragraph 9(1) of Schedule 5 to OTA 1975 so that HMRC may give a notice of variation within a period labelled "the permitted period".
59. Paragraph 24(3) repeals paragraphs 9(1A) to (1C) and 9(2A) of Schedule 5 to OTA 1975. These sub-paragraphs formerly set out the old time limits for a notice of variation.
60. Paragraph 24(4) inserts new paragraphs 9(2B) and (2C) into Schedule 5 to OTA 1975. New sub-paragraph (2B) defines "the permitted period" for a notice of variation to be in the normal case the period of 4 years from the date of the original notice under paragraph 3 of Schedule 5 to OTA 1975.
61. New sub-paragraph (2C) extends this period to 6 years if the inaccuracy is careless and to 20 years if the inaccuracy is deliberate
62. Paragraph 24(6) inserts new paragraphs 9(12) and (13) into Schedule 5 to OTA 1975. New sub-paragraph (12) provides that a loss of tax is brought about carelessly by a responsible person or someone acting on their behalf if the person fails to take reasonable care to avoid bringing about that loss. This corresponds with the definition of careless at sub-paragraph 3(1)(a) of Schedule 24 to FA 2007.
63. New sub-paragraph (13) provides that where information is provided to HMRC by the responsible person for an oil field (or someone who acts on their behalf), and that person later discovers that the information was inaccurate but does not take reasonable steps to inform HMRC, the inaccuracy is to be treated as having been brought about carelessly. This is also the case where the inaccuracy is discovered by someone who becomes the responsible person for the oil field, or who acts on their behalf. This corresponds with the definition at sub-paragraph 3(2) of Schedule 24 to FA 2007.

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64. Paragraph 25(2) amends paragraph 1 of Schedule 6 to OTA 1975 by reducing the period for making a claim for expenditure from 6 to 4 years.
65. Paragraph 25(3) makes a consequential amendment to the entry relating to paragraph 9 of Schedule 5 to OTA 1975 in the Table in paragraph 2 of Schedule 6 to OTA 1975. This ensures that where this provision referred to the old time limits in Schedule 5 to OTA 1975, it will now refer to the new time limits there.
66. Paragraph 26 makes a consequential amendment to the entry relating to paragraph 9 of Schedule 5 to OTA 1975 in the Table in paragraph 1(3) of Schedule 7 to OTA 1975. This ensures that where this provision referred to the old time limits in Schedule 5 to OTA 1975, it will now refer to the new time limits there.
67. Paragraph 27 provides for Part 2 of FA 2001 (which includes Schedules 5, 8 and 10 to that Act) to be amended. The following paragraphs change time limits that apply to aggregates levy claims and assessments.
68. Paragraph 28 amends section 32(1) of FA 2001. It extends the period for reclaiming overpaid aggregates levy from 3 to 4 years.
69. Paragraph 29(2) amends paragraph 4(1)(b) of Schedule 5 to FA 2001 by extending the normal assessing time limit from 3 to 4 years.
70. Paragraph 29(3) replaces paragraph 4(3) of Schedule 5 to FA 2001 with new sub-paragraphs (3) and (3A).
71. New sub-paragraph (3) extends the assessing time limit to 20 years where the loss of tax is brought about deliberately or where a person has failed to register. The new term “deliberately” is in line with changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere.
72. New sub-paragraph (3A) clarifies that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.
73. Paragraph 29(4) amends paragraph 4(4) of Schedule 5 to FA 2001 by extending the period for making an aggregates levy assessment required by reason of some conduct of a deceased person from 3 to 4 years.

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74. Paragraph 30 amends paragraph 2(10) of Schedule 8 to FA 2001 by extending the period for making a claim for interest on a repayment from 3 to 4 years.
75. Paragraph 31(2) amends paragraph 4(1) of Schedule 10 to FA 2001. It extends the normal period in which HMRC may make an aggregates levy penalty assessment from 3 to 4 years.
76. Paragraph 31(3) replaces paragraph 4(2) of Schedule 10 to FA 2001 with new sub-paragraphs (2) and (2A).
77. New sub-paragraph (2) extends the assessing time limit to 20 years where the loss of tax is brought about deliberately or where a person has failed to register. The new term “deliberately” is in line with changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere.
78. New sub-paragraph (2A) clarifies that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.
79. Paragraph 31(4) amends paragraph 4(3) of Schedule 10 to FA 2001. It extends the period for making an aggregates levy penalty assessment required by reason of some conduct of a deceased person from 3 to 4 years.
80. Paragraph 32 provides for Schedule 6 of FA 2000 to be amended. The following paragraphs change time limits that apply to CCL claims and assessments.
81. Paragraph 33 amends paragraph 64(1) of Schedule 6 to FA 2000. It extends the period for reclaiming overpaid CCL from 3 to 4 years.
82. Paragraph 34 amends paragraph 66(10) of Schedule 6 to FA 2000 by extending the period for making a claim for interest on a repayment from 3 to 4 years.
83. Paragraph 35(2) amends paragraph 80(1)(b) of Schedule 6 to FA 2000. It extends the normal assessing time limit from 3 to 4 years.
84. Paragraph 35(3) replaces paragraph 80(3) of Schedule 6 to FA 2000 with new sub-paragraphs (3) and (3A).
85. New sub-paragraph (3) extends the assessing time limit to 20 years where the loss of tax is brought about deliberately or where a person has failed to register. The new term “deliberately” is in line with

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changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere.

86. New sub-paragraph (3A) clarifies that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.
87. Paragraph 35(4) amends paragraph 80(4) of Schedule 6 to FA 2000. It extends the period for making a CCL assessment required by reason of some conduct of a deceased person from 3 to 4 years.
88. Paragraph 36(2) amends paragraph 108(1) of Schedule 6 to FA 2000. It extends the normal period in which HMRC may raise a CCL penalty assessment from 3 to 4 years.
89. Paragraph 36(3) replaces paragraph 108(2) of Schedule 6 to FA 2000 with new sub-paragraphs (2) and (2A).
90. New sub-paragraph (2) extends the assessing time limit to 20 years where the loss of tax is brought about deliberately or where a person has failed to register. The new term “deliberately” is in line with changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere.
91. New sub-paragraph (2A) clarifies that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.
92. Paragraph 36(4) amends paragraph 108(3) of Schedule 6 to FA 2000. It extends the period for making an CCL penalty assessment required by reason of some conduct of a deceased person from 3 to 4 years.
93. Paragraph 37 provides for Schedule 5 to FA 1996 to be amended. The following paragraphs change time limits that apply to landfill tax claims and assessments.
94. Paragraph 38 amends paragraph 14(4) of Schedule 5 to FA 1996. It extends the period for reclaiming overpaid landfill tax from 3 to 4 years.
95. Paragraph 39 amends paragraph 29(8) of Schedule 5 to FA 1996. It extends the period for making a claim for interest on a repayment under paragraph 29 of Schedule 5 to FA 1996 from 3 to 4 years.
96. Paragraph 40(2) amends paragraph 33(1) of Schedule 5 to FA 1996 by extending the normal assessing time limit from 3 to 4 years. The time limit applies to both assessments to landfill tax and to associated

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penalties. Time limits run from the “relevant event”, which is defined below.

97. Paragraph 40(3) inserts new paragraph 33(1A) into Schedule 5 to FA 1996. It defines “relevant event” as the end of the accounting period or the date of the event giving rise to a penalty. The use of this term simplifies the drafting without changing meaning.
98. Paragraph 40(5) replaces paragraph 33(4) of Schedule 5 to FA 1996 with new sub-paragraphs (4) and (4A). These provisions apply to both assessments to landfill tax and to associated penalties.
99. New sub-paragraph (4) extends the assessing time limit to 20 years where the loss of tax is brought about deliberately or where a person has failed to register. The new term “deliberately” is in line with changes made in Schedule 24 to FA 2007 (penalties for incorrect returns) and elsewhere.
100. New sub-paragraph (4A) clarifies that a loss brought about deliberately includes a loss resulting from a deliberate inaccuracy in a document given to HMRC.
101. Paragraph 40(6) amends paragraph 33(5) of Schedule 5 to FA 1996. It extends the period for making an assessment to landfill tax or to associated penalties required by reason of some conduct of a deceased person from 3 to 4 years.
102. Paragraph 41 makes a minor clarifying change to sections 36(2) and (3) of TMA. This is to reflect the fact that sections 36(1) and (1A) of TMA (introduced by paragraph 9(2) of Schedule 39 to FA 2008) replaces “for the purpose” with “in a case”.
103. Paragraph 42 omits paragraph 66 of Schedule 39 to FA 2008. This paragraph was a saving so that changes to income tax time limits did not affect PRT. Removing it ensures that the amendments of section 33 of TMA made by Schedule 39 to FA 2008 will have effect for the purposes of PRT.
104. Paragraph 43 makes consequential repeals.

BACKGROUND NOTE

105. Schedule 39 to FA 2008 amends, from 1 April 2010 with transitional provision from 1 April 2009, most of the time limits that apply to claims and assessments for income tax, capital gains tax, corporation tax and VAT. The period for making claims is generally set at 4 years.

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The normal assessing time limit also becomes 4 years. For direct taxes it is 6 years where the loss of tax is brought about carelessly. For all taxes it is 20 years where the loss of tax is brought about deliberately or where there is a failure to notify liability or disclose avoidance arrangements.

106. The provisions of this Schedule make corresponding changes to the limit limits that apply to claims and assessments for insurance premium tax, inheritance tax, stamp duty land tax, petroleum revenue tax, aggregates levy, climate change levy and landfill tax. For some of these there is no requirement to notify liability or disclose avoidance arrangements, and so there is no extended time limit in those circumstances.
107. The proposals have been the subject of a recent consultation in November 2008 – Compliance Checks: The Next Stage. Draft clauses on time limits for assessments and claims were published in February 2009.

EXPLANATORY NOTE

CLAUSE 99 SCHEDULE 52: RECOVERY OF OVERPAID TAX ETC

SUMMARY

1. Clause 99 and Schedule 52 change the rules regarding claims for repayment of overpaid income tax, capital gains tax (CGT) and corporation tax (CT). The changes will have effect for claims made on or after 1 April 2010 except for certain transitional cases.

DETAILS OF THE CLAUSE

2. Clause 99 introduces Schedule 52 which amends the existing error or mistake relief legislation and allows HM Treasury to make transitional and other provisions as appropriate.

DETAILS OF THE SCHEDULE

3. Part 1 of the Schedule deals with overpayments of income tax and CGT. It replaces sections 33 and 33A of the Taxes Management Act 1970 (TMA) and introduces new Schedule 1AB to TMA which contains the main provisions. Part 1 amends other sections of TMA and Schedule 1A for error or mistake claims.
4. Paragraph 1 of the new Schedule 1AB provides that a person may make a claim for repayment of an amount they have overpaid by way of income tax or CGT or discharge of an amount that has been over-assessed, subject to restrictions. It also provides that the Commissioners for HM Revenue and Customs (HMRC) are not liable to give relief except under this provision or any other provision relating to income tax or CGT.
5. Paragraph 2 of the new Schedule 1AB sets out cases in which the Commissioners will not be liable to give relief:
 - case A is where the alleged overpayment arises from a mistake concerning a claim, election or notice or certain mistakes relating to capital allowances;
 - case B is where relief can be obtained by other means;
 - case C is where the claimant could have obtained relief by other means when they first knew, or ought reasonably to have known of the overpayment;

- case D is where the grounds of the claim have already been considered by a court or tribunal, or considered by HMRC and settled by agreement between HMRC and the claimant, during the course of an appeal;
 - case E is where the claimant knew or ought reasonably to have known the grounds at a time when claimant could have brought the appeal before the tribunal or a court in due course;
 - case F is where HMRC have taken proceedings to enforce payment of the amount; and
 - cases G and H deal with amounts that were understood to be due under the practice generally prevailing at the time the liability was computed or in the case of PAYE, the practice generally prevailing 12 months after the end of the tax year.
6. Paragraph 3 of the new Schedule 1AB sets a time limit for claims of four years from the period in respect of which the payment or the assessment was made except where the claim arises from a mistake in a return. For mistakes in returns, the time limit runs from the end of the period for which the return was made. Claims are to be made outside a Self Assessment return.
 7. Paragraph 4 of the new Schedule 1AB provides that where A is required to pay tax due from B under any enactment, a claim can only be made by B. If A pays an amount that they were not required to pay under a relevant enactment in respect of B, A may claim repayment but HMRC will not be required to pay an amount that has already been repaid to B.
 8. Paragraph 5 of the new Schedule 1AB provides that a claim in respect of a mistake in a partnership return must be made by a partner nominated by all the relevant partners.
 9. Paragraph 6 of the new Schedule 1AB allows HMRC to make a discovery assessment to recover any related underpayments of income tax, capital gains tax or corporation tax or to make a discovery determination for a related amount where these would otherwise be out of time or barred by section 29(2) of TMA or the CT equivalent. If the assessment or determination depends on these provisions it must be made before the claim is finally determined.
 10. Paragraph 7 of the new Schedule 1AB similarly allows HMRC to make a discovery amendment to a partnership statement to recover any related underpayments of income tax, CGT or CT.
 11. Paragraph 8 of the new Schedule 1AB extends claims to amounts paid under contract settlements. It allows HMRC to set any

repayments against amounts payable under discovery assessments or through partnership amendments related to the claim.

12. Paragraph 5 of the Schedule inserts a new subsection (2B) into section 43A of TMA to provide that a claim is relevant to an amendment or discovery assessment if it relates to the same year of assessment.
13. Paragraph 7 amends Schedule 1A of TMA to ensure that a claim has no effect if it is provided elsewhere that the amount should not be repaid or discharged.
14. Paragraph 10 follows the transitional provisions relating to changes to general claims time limits under Schedule 39 to the Finance Act (FA) 2008. It provides that a longer time limit will apply for claims made before 1 April 2012, by persons other than companies, where the claim relates to a mistake in a return and the notice requiring that return was not given within one year of the end of the tax year.
15. Paragraph 11 provides that section 33 of TMA will continue to apply in its current form for the purposes of petroleum revenue tax.
16. Part 2 deals with overpayments of CT. It amends paragraph 51 of Schedule 18 to FA 1998 and introduces new paragraphs 51A to G.
17. New paragraph 51 of Schedule 18 to FA 1998 provides that a person may make a claim for repayment of an amount they have overpaid by way of CT or discharge of an amount that has been over-assessed, subject to restrictions. It also provides that the Commissioners are not liable to give relief except under this provision or any other provision relating to corporation tax.
18. New paragraph 51A sets out the cases in which the Commissioners will not be liable to give relief:
 - case A is where the alleged overpayment arises from a mistake concerning a claim or election or notice or certain mistakes relating to capital allowances;
 - case B is where the claimant can obtain relief by other means;
 - case C is where the claimant could have obtained relief by another means when they first knew, or ought reasonably to have known of the overpayment;
 - case D is where the grounds of the claim have already been considered by a court or tribunal, or considered by HMRC and settled by agreement between HMRC and the claimant, during the course of an appeal.

- case E is where the claimant knew or ought reasonably to have known the grounds at a time when the claimant could have brought the appeal before the tribunal or a court in due course;
 - case F is where HMRC have taken proceedings to enforce payment of the amount; and
 - case G deals with amounts that were understood to be due under the practice generally prevailing at the time the liability was computed.
19. New paragraph 51B sets a time limit for claims of four years from end of the accounting period in respect of which the payment or the assessment was made except where the claim relates to a mistake in a return. In that case, the time limit runs from the end of the accounting period for which the return was made. Claims are also to be made outside a company tax return.
 20. New paragraph 51C provides that where A is required to pay tax on behalf of B under any enactment, a claim can only be made by B.
 21. New paragraph 51D provides that a claim in respect of a mistake in a partnership return must be made by a partner nominated by all the relevant partners.
 22. New paragraph 51E allows HMRC to make related discovery assessments or determinations where these would otherwise be out of time or prevented by paragraph 42 of Schedule 18 to FA 1998. If the assessment or determination depends on these provisions it must be made before the claim is finally determined.
 23. New paragraph 51F similarly extends the circumstances in which an amendment to a partnership statement can be made.
 24. New paragraph 51G extends claims to amounts paid under contract settlements. It allows HMRC to set any repayments against amounts payable under discovery assessments or through partnership amendments that are related to the claim.
 25. Paragraph 15 of the Schedule inserts a new sub-paragraph (1A) into paragraph 62 of Schedule 18 to FA 1998 to provide that a claim is relevant to an amendment or discovery assessment if it relates to the same accounting period.
 26. Paragraph 16 inserts a new sub-paragraph (8) into paragraph 88 of Schedule 18 to FA 1998 so that a company can make a claim where a mistake in its tax return for one accounting period leads to an additional amount being assessed in a later period.

BACKGROUND NOTE

27. Error or mistake relief is intended to provide a final opportunity for taxpayers to reclaim overpaid tax.
28. However, the current rules only apply to tax overpaid on assessments as a result of a relevant mistake in a return. The claim must be made within time limits. On receiving a claim, HMRC determine what amount is just and reasonable to repay and may take into account any liabilities that have not been assessed.
29. Claims under the new rules will apply to all overpayments of tax, ensuring there is a single route to obtain redress and that, as far as possible, disputes are dealt with through the tribunal.
30. A claim will be possible only if no other statutory steps are available to recover an overpayment when a person first becomes aware, or might reasonably be expected be aware, that they have overpaid.
31. The person must also have used any appeal rights that were available and the claim will have to be made within time limits.
32. The new rules also identify who can make a claim in respect of an overpaid amount. They enable the claimant to determine the amount to be repaid, subject to HMRC's right to enquire into the claim. There are detailed rules on how the amount to be repaid should be determined.
33. HMRC will be able to make an assessment to recover any directly related underpayments, rather than restricting the claim to take account of such liabilities.

EXPLANATORY NOTE

**CLAUSE 100 SCHEDULE 53: LATE PAYMENT INTEREST ON SUMS
DUE TO HMRC**

SUMMARY

1. Clause 100 sets out the general proposition for applying late payment interest to any sum due under or by virtue of an enactment to HM Revenue & Customs (HMRC) but paid late. Schedule 53 sets out the special provisions concerning the amounts, start date and end dates for charging late payment interest as well as further provisions to clarify the effect of interest on certain reliefs.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the clause applies to the late payment of any sums which are payable by a person to HMRC. The clause is designed to cover those sums due to be paid to HMRC as imposed by statute, while excluding those sums paid to HMRC as an organisation (such as sums paid in respect of the provision of supplies or rent).
3. Subsection (2) provides for the exclusion of amounts of corporation tax and petroleum revenue tax. In addition this subsection provides a power for the Treasury to specify in an order those other payments which will not fall within the scope of this legislation.
4. Subsection (4) sets out the general rule for the late payment interest start date. This general rule is subject to the special provisions that follow.
5. Subsection (5) introduces Schedule 53 which caters for the exceptions where the general rule set out at subsection (4) where special provisions apply.

DETAILS OF THE SCHEDULE

6. Paragraph 1 provides that this provision applies where a person makes a claim to reduce their payments on account due under income tax self assessment and is then due to make a balancing payment. The paragraph is designed to reproduce the effect of the current law set out at section 86(4)-(6) of the Taxes Management Act 1970 (TMA).

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7. Paragraph 1(1) provides for the conditions under which paragraph 1 applies.
8. Paragraph 1(2) sets out how to calculate the late payment interest in this situation and how much should be paid as a balancing payment.
9. Paragraph 1(3) sets out how to determine what amount if any is payable by the taxpayer.
10. Paragraph 2 deals with the application of late payment interest where payments on account of income tax are due from a person who is also entitled to a repayment of an overpayment.
11. Paragraph 2(1) states that paragraph 2 applies where payments on account are due from a taxpayer who is also entitled to a repayment of an overpayment.
12. Paragraph 2(2) provides for the amount of late payment interest that can be applied in the situation defined in paragraph 2(1).
13. Paragraph 2(3) sets out how to determine the size of the repayment if any, that is repayable.
14. Paragraphs 3(1) and (2) encompass such alterations to the tax liability after it has been initially established, and provide that the late payment interest start date in such cases is the date that would have applied if the assessment had been complete and accurate and made on time, and the amount had been due and payable as a result of the assessment.
15. Paragraph 3(3) provides further explanation of the words ‘an assessment which ought to have been made’ as used in this paragraph. This then provides clarity regarding the charging of interest where a person fails to notify HMRC of their liability to tax as required under section 7 of TMA.
16. Paragraph 4 provides the start date for late payment interest in respect of amounts postponed under section 55 of TMA (as specified).
17. Paragraph 5 provides the start date for late payment interest on an overpayment of tax recovered by virtue of an assessment under section 30 of TMA.
18. Paragraph 6 repeats the provisions of section 87A(5) of TMA relating to recovery of company tax credits or interest on such payments. The late payment interest start date on assessments made

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to recover such payments is the date when the payment of the tax credit or interest was made.

19. Paragraph 7 provides the late payment start dates for certain instalments of inheritance tax made under sections 227 and 229 of the Inheritance Tax Act 1984 (IHTA).
20. Paragraph 8 recreates the effect of section 236(2) of IHTA to ensure that where an amount of inheritance tax is underpaid as a result of an order made under the specified sections that late payment interest will not run until that order is made.
21. Paragraph 9 provides the start date for late payment interest in respect of amounts payable under section 147(4) of IHTA.
22. Paragraph 10 provides the date to start charging late payment interest in cases where VAT has been paid late as a consequence of a trader failing to register with HMRC for VAT purposes.
23. Paragraph 11 provides the date to start charging late payment interest where VAT has been charged on an invoice by a trader who has not registered with HMRC for VAT purposes and is subsequently recovered by HMRC.
24. Paragraph 12 legislates for the concessionary interest treatment currently applied where a taxpayer dies before payment of income tax is due (see Extra-statutory Concession A17).
25. Paragraph 12(1) describes the conditions that must apply for the rule set out in paragraph 12(2) to apply.
26. Paragraph 12(2) provides that such amounts do not carry interest from the date of death until the later of the normal late payment interest start date or the day after the end of the period of 30 days beginning with the grant of probate or letters of administration.
27. Paragraph 13 is designed to replicate the rules regarding the date to which late payment interest runs for those entities falling within the provisions of Chapter 15 of Part 15 of the Income Tax Act 2007 (ITA) (deposit takers, building societies and certain companies liable to deduct tax on behalf of others and pay it over to HMRC). The rules set out in this paragraph replace those currently set out at section 87 of TMA.
28. Paragraph 13(1) explains that this provision applies where tax was not paid when due by a deposit-taker, building societies and certain

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companies but was subsequently discharged or repaid because it was collected by deduction at source in a later period.

29. Paragraph 14 deals with acceptance of property in lieu of payment of inheritance tax. This paragraph states that late payment interest running in such cases will cease from the date when the property is valued.
30. Paragraph 15 restates elements of section 91 of TMA and provides that, where certain conditions are met, adjustments will be made to the amount of late payment interest payable, and if necessary, such sums will be repaid.
31. Paragraph 15(1) provides that, where certain conditions are met, adjustments will be made to the amount of late payment interest payable, and if necessary, such sums will be repaid.
32. Paragraphs 15(2) and (3) set out the conditions referred to in paragraph 15(1). These are that the interest must have arisen on sums due under income tax self assessment and that relief from tax has to be given by discharge.
33. Paragraph 16 permits a person receiving relief from tax by repayment of income tax to require it to be treated as a discharge of a qualifying charge to tax.
34. Paragraph 16(3) states that the repayment cannot be treated as a discharge of any assessment made after the relief was given, or as reducing without reducing to nil the tax charged in more than one assessment.

BACKGROUND NOTE

35. Clause 100 is designed to apply a simple and consistent interest charge to late payments across all taxes and duties. Late payment interest will apply, for the majority of payments due to HMRC and made late, from the payment due date until the date that payment is received. The interest charged will be simple interest, and will not generally be deductible in computing profits or income.
36. The clause sets out a general proposition for applying late payment interest to any sum due to HMRC but paid late. The formulation follows that used at section 127(1) of the Finance Act 2008 designed to facilitate recovery action for sums owed to HMRC.

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37. Both corporation tax and petroleum revenue tax are excluded from the Finance Bill 2009 legislation which does not currently accommodate either tax. The intention is to introduce parallel legislation for both taxes in Finance Bill 2010.
38. This Schedule sets out the exceptions to the general rules set out in the clause and how interest will operate in particular situations. These provisions cater for particular regime-specific rules. Although the aim is to harmonise the application of interest across taxes, some rules of this kind are necessary given the different structure and operation of the various taxes.
39. Part 1 of this Schedule sets out the amounts to which late payment interest will apply in particular circumstances. The first two paragraphs deal with claims to incorrectly reduce the payments on account due under the income tax self assessment system.
40. Part 2 sets out the situations where the late payment interest start date does not coincide with the date that the tax for the period or on the transaction is due for payment. The main situation where this applies is when a tax charge changes after it has been initially established, either due to amendment, correction or by some other method. The other situation where the late payment interest start date does not coincide with the date that the tax is due for payment is where HMRC brings tax into charge, usually by making an assessment where one has not already been made.
41. Part 3 sets out the situations where the late payment interest end date does not coincide with the date that the tax for the period or on the transaction is due for payment.
42. Part 4 restates elements of section 91 of TMA, defining how interest is to be treated in circumstances where the taxpayer qualifies for a relief. As well as defining the conditions that must be met for the taxpayer to qualify, the legislation sets out how any overpayments of late payment interest are to be repaid to the taxpayer.

EXPLANATORY NOTE

CLAUSE 101 SCHEDULE 54: REPAYMENT INTEREST ON SUMS TO BE PAID BY HMRC

SUMMARY

1. Clause 101 is designed to apply repayment interest on a simple and consistent basis to all overpayments of tax and Schedule 54 sets out some special rules regarding amounts carrying repayment interest.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the clause applies to any sums which are payable to a person by HM Revenue & Customs (HMRC) under or by virtue of an enactment. The clause is designed to cover those sums due to be paid by HMRC as imposed by statute, while excluding those sums paid by HMRC as an organisation (such as sums paid in respect of the provision of supplies or rent).
3. Subsection (2) provides that both corporation tax and petroleum revenue tax are excluded from this clause. In addition, this subsection provides a power for HM Treasury to specify in an order those other repayments which will not fall within the scope of this legislation.
4. Subsection (3) states that amounts provided for by this section will carry interest at the 'repayment interest rate' from the 'start date' until the date HMRC make the payment or repayment.
5. Subsection (4) introduces Schedule 54.
6. Subsection (5) provides that repayment interest does not apply in circumstances whereby an amount is payable as a result of a court judgement or an order of a court.
7. Subsection (6) provides that repayment interest will not apply on repayment interest itself so maintaining the current position of repaying simple interest.

DETAILS OF THE SCHEDULE

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8. Paragraph 1 states that this part sets out the general rule for determining the repayment interest start date, and that this rule is subject to the provisions of Part 2 of this Schedule.
9. Paragraph 2 state that where an amount has been paid to HMRC, the repayment interest start date is the later of the date when the amount now being repaid was paid to HMRC and the date the payment became due and payable where an amount has been paid in connection with a liability and is now to be repaid.
10. Paragraph 5 provides that for amounts not previously paid to HMRC but that are payable by HMRC as the result of a return being filed or a claim being made, the repayment interest start date is the later of the filing date for the return or the date the claim was required to be made (if any), or the date the return or claim was filed or made.
11. Paragraph 6 restates section 824(3)(b) of the Income and Corporation Taxes Act 1988 (ICTA) by providing that the repayment interest start date for repayments of income tax deducted at source for a year of assessment is 31 January next following that year.
12. Paragraph 7 sets the repayment interest start date at 31 January next following the year that is the later year in relation to the claim for certain claims to carry back loss relief and for the averaging of profits of farmers.
13. Paragraph 8 concerns the application of repayment interest in prescribed Mortgage Interest Relief at Source (MIRAS) cases and replaces section 824(3)(aa)(i) of ICTA.
14. Paragraph 9 concerns the application of repayment interest to repayments made as a result of a claim under section 228 of the Income Tax Act 1952 and is designed to replace section 824(2A) of ICTA.
15. Paragraph 10 recreates the effect of section 236(2) of the Inheritance Act 1984 (IHTA) to provide that where an amount of inheritance tax is overpaid as a result of an order made under the specified sections that repayment interest will run from when that order was made.
16. Paragraph 11 provides the repayment interest start date to be used where a claim is made under the prescribed sections.
17. Paragraph 12 provides the repayment interest start date where an amount is repayable under section 147(2) of IHTA.

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18. Paragraph 13 is designed to replace section 824(4) of ICTA in so far as attributing repayment made in respect of income tax.
19. Paragraph 13(2) sets out how the repayment should be attributed to payments of tax.
20. Paragraph 13(3) sets out how the repayment should be attributed to instalment payments of income tax.
21. Paragraph 14 replaces section 824(4A) of ICTA and explains the meaning of income tax deducted at source for the purpose of this Schedule.

BACKGROUND NOTE

22. Clause 101 is designed to apply repayment interest on a simple and consistent basis to all overpayments of tax. The clause sets out the general rules for applying repayment interest on sums to be repaid by HMRC 'under or by virtue of an enactment'.
23. Both corporation tax and petroleum revenue tax are excluded from the Finance Bill 2009 legislation which does not currently accommodate either tax. The intention is to introduce parallel legislation for both taxes in the Finance Bill 2010.
24. Schedule 54 sets out the exceptions to the general rules set out in the clause regarding repayment interest and covers how repayment interest will operate in particular situations. The provisions cover particular regime-specific rules. Although the aim is to harmonise the application of interest across taxes, some rules of this kind are necessary given the different structure and operation of the various taxes.
25. Part 1 of the Schedule sets out the general rule for applying late payment interest.
26. Part 2 sets out the specific rules to apply where the repayment interest start date does not follow the general rule.
27. Part 3 sets out how any repayment is to be apportioned for specific taxes and in specific circumstances. It goes on to give the definition for income tax deducted at source.

EXPLANATORY NOTE

CLAUSE 102: RATES OF INTEREST

SUMMARY

1. Clause 102 provides that the late payment and repayment rates of interest shall be specified in regulations made by HM Treasury.

DETAILS OF THE CLAUSE

2. Subsection (1) and (2) provide that the late payment and repayment interest rates will be set by regulations made by HM Treasury.
3. Subsection (3) provides a broad power to make regulations to set interest rates.

BACKGROUND NOTE

4. This clause provides for regulations to be made that would establish a regime with a single rate of interest applied by HM Revenue & Customs (HMRC) on overpayments across all taxes, duties and penalties (other than repayments made as part of the corporation tax quarterly instalment payments regime). The regulations would also provide for a single rate of interest to apply late payments across all taxes, duties and penalties (other than payments made as part of the corporation tax quarterly instalment payments regime).
5. The clause also provides the power to arrive at the prevailing rates of interest using formulae. The proposal is for HMRC to calculate interest by reference to the Bank of England base rate. Any rate changes would be made 13 working days after the Bank of England's Monetary Policy Committee make changes to the base rate.
6. This clause also provides the power for regulations to be made that set different rates for different taxes, if appropriate. HMRC intends to apply separate rates to the corporation tax quarterly instalment payments regime.

EXPLANATORY NOTE

CLAUSE 103: INTEREST: SUPPLEMENTARY

SUMMARY

1. Clause 103 sets out the definition of the terms used in clauses 100-102 and their associated Schedules and how the legislation would come into force.

DETAILS OF THE CLAUSE

2. Subsection (1) defines a number of terms used in these clauses and Schedules.
3. Subsection (2) provides the definition for the date when an amount becomes due and payable.
4. Subsection (3) and (4) provide that the legislation will come into force on a day or days appointed by HM Treasury in an order made by them and that different commencement days may be used for different provisions or for different purposes.
5. Subsections (5) and (6) provide that HM Treasury may by order make any consequential, transitional and incidental changes to interest legislation as necessary. This may cover amendments necessary to ensure that the legislation is correctly implemented and provides continuity of cover for interest and includes a power to amend any primary or secondary legislation.
6. Subsection (8) specifies which orders and regulations are to be provided by statutory instrument.
7. Subsection (9) requires that any Statutory Instrument so made may be subject to annulment by the House of Commons (the negative procedure).

BACKGROUND NOTE

8. This clause provides the full definition of all terms quoted throughout the legislation. In addition the clause provides for any amendments, repeals or general changes which may need to be made, prescribing how and in which manner such changes can be made.

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9. This clause provides for the commencement of the new harmonised interest regimes by a series of orders over time, so providing for a phased introduction. This is particularly relevant for those taxes where interest is not currently applied. This will allow time to ensure that clear guidance is available for taxpayers and their advisors and that HM Revenue & Customs' staff are trained in the new rules so that effective advice can be given to taxpayers.
10. The clause also provides for a definition of the process for introducing any orders and how and when any orders would be introduced or annulled.

EXPLANATORY NOTE

CLAUSE 104: MISCELLANEOUS AMENDMENTS

SUMMARY

1. Clause 104 sets out amendments to current legislation on interest charged and paid by HM Revenue & Customs (HMRC). The clause provides the due date for income tax charged where relief under the Enterprise Investment Scheme (EIS) is withdrawn from a taxpayer. The clause also makes changes to existing interest rate setting provisions so that in future interest rates can change automatically.

DETAILS OF THE CLAUSE

2. Subsections (1) to (3) make amendments to section 239 of the Income Tax Act 2007 so that when relief under the EIS is withdrawn from the taxpayer, the due date for any income tax charged as a result is in line with the general due date for income tax under section 59B of the Taxes Management Act 1970.
3. Subsection (4) removes the requirement for HMRC to set interest rates by order for those taxes where interest is currently charged.

BACKGROUND NOTE

4. This clause enables HMRC to move closer to interest harmonisation by removing an anomaly where a relief linked to income tax had a different due date to the due date for income tax. In addition, it enables HMRC to set rates automatically without the need for an Order.
5. The EIS is designed to help smaller higher-risk trading companies to raise finance by offering a range of tax reliefs to investors who purchase new shares in those companies.
6. Subsections (1) to (3) remove an anomaly where the due dates for interest on any income tax due differed from the due date for income tax self assessment. Removing this anomaly is a step towards harmonising the way interest is due across taxes.
7. Subsection (4) removes the requirement for HMRC to change interest rates by order. This enables HMRC to set interest rates in line with

changes announced by the Bank of England, offering greater transparency.

EXPLANATORY NOTE

CLAUSE 105 SCHEDULE 55: PENALTIES FOR FAILURE TO MAKE RETURNS ETC

SUMMARY

1. Clause 105 and Schedule 55 create a new penalty regime for late filing of tax returns for income tax, corporation tax (CT), Pay as you Earn (PAYE), National Insurance Contributions (NICs), the Construction Industry Scheme (CIS), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), inheritance tax (IHT), pension schemes and petroleum revenue tax (PRT). Taxpayers have a right of appeal against all penalties and no penalty can be charged if a taxpayer has a reasonable excuse for their failure. The clause provides for the Schedule or parts of the Schedule to be brought into force by Treasury order.

DETAILS OF THE CLAUSE

2. Subsection (3) allows different provisions of the Schedule to be brought into force at different times.
3. Subsection (8) provides that a statutory instrument, which contains an order under subsection (4), which includes provision to amend or repeal primary legislation, is subject to the negative procedure (meaning the instrument takes effect on a specified future date but is subject to annulment in pursuance of a resolution of the House of Commons).

DETAILS OF THE SCHEDULE

4. Paragraph 1 specifies in a Table all the returns or documents required to be made or delivered by a person which, if not made or delivered to HM Revenue & Customs (HMRC) on or before the filing date, would result in that person being liable to a penalty.
5. Paragraph 1(3) provides for more than one penalty to be charged in respect of the same failure. Each penalty can be applied and pursued in isolation and a person has a right of appeal against each of them.

Amount of penalty: occasional returns and annual returns

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6. Paragraph 2 details the returns to which an annual or occasional penalty applies.
7. Paragraph 3 provides that a failure to submit a return listed in paragraph 2 results in P becoming liable to a penalty of £100.
8. Paragraph 4(1) sets out the conditions for charging daily penalties where the delay in filing a return is prolonged.
9. Paragraph 4(2) provides for a penalty of £10 for each day that the failure to submit a return continues for a period of up to 90 days beginning with the date specified in the notice under paragraph 4(1).
10. Paragraph 4(3) provides for the date specified in the notice from which the penalty is payable to be earlier than the date on which the notice is given. This is because HMRC will be unaware of certain returns for taxes such as SDLT and IHT until they are received. The date specified in the notice may not be earlier than the end of the period of three months after the filing date.
11. Paragraph 5(1) provides for a penalty to be payable if a return is still outstanding six months after the filing date and there would have been a liability to tax shown in the return.
12. Paragraph 5(2) provides for that penalty to be the greater of £300 or 5 per cent of the liability to tax shown in the return.
13. Paragraph 6(1) provides for a penalty to be payable if a return is still outstanding 12 months after the filing date and there would have been a liability to tax shown in the return.
14. Paragraph 6(2) provides for the details of a penalty to be payable where, by failing to make the return, a person withholds information which would enable or assist HMRC to assess the person's liability to tax:
15. Paragraph 6(3) states that in any other case, the penalty is to be the greater of £300 or 5 per cent of the liability shown in the return.

Amount of penalty: CIS returns

16. Paragraph 7 states that the following paragraphs, which provide for a penalty, apply only for CIS returns.
17. Paragraph 8 provides for a penalty of £100 if the taxpayer fails to submit a return by the due date.

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18. Paragraph 9 provides for a penalty of £200 if the failure continues after the end of a period of two months beginning with the penalty date.
19. Paragraph 10 provides for a penalty of the greater of £300 or 5 per cent of the liability to make payments which would have been shown on the return if the failure continues after the end of the period of six months beginning with the penalty date and there would have been a liability to make payments to HMRC shown in the return in question.
20. Paragraph 11 provides for an additional penalty if the failure continues after the end of the period of 12 months beginning with the penalty date and there would have been a liability to make payments to HMRC shown in the return in question.
21. Paragraph 11(2) provides for higher penalties where by failing to make the return, the taxpayer withholds information, which would enable or assist HMRC to assess the amount of CIS deductions that the taxpayer is liable to pay.
22. Paragraph 11(5) states that in any other case, the penalty, if the failure continues after the end of the period of 12 months beginning with the penalty date, is the greater of £300 or 5 per cent of the liability to make payments which would have been shown on the return in question.
23. Paragraph 13 provides for fixed-sum penalties arising from late filing a CIS return to be capped to £3,000 where the person has just entered the CIS regime.

Reductions for disclosure

24. Paragraphs 14 and 15 provide details of reductions for disclosure in penalties under paragraphs 6, 11(3) or 11(4) where the taxpayer discloses relevant information, which has been withheld by a failure to make a return.
25. Paragraph 14(2) defines what is meant by disclosure of relevant information. It sets out three distinct elements, all of which are required for the maximum reduction: admission – telling HMRC that information has been withheld; taking active steps – giving HMRC reasonable help in assessing any tax unpaid as a result of the information being withheld; and access – allowing HMRC access to records to check the extent of any liability.

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26. Paragraph 14(3) sets out two types of disclosure: unprompted – where the taxpayer has no reason to believe that HMRC have discovered or are about to discover the relevant information; prompted – all other disclosures.
27. Paragraph 14(4) defines the quality of disclosure in terms of timing (how promptly the disclosure was made), nature (the level of evidence provided and degree of access to test the disclosure) and extent (how complete the disclosure may be).
28. Paragraph 15 describes how the penalties must be reduced, depending upon the quality of the disclosure.
29. Paragraph 15(5) states that HMRC must not reduce the penalty under this paragraph to below the minimum amount set under paragraph 14.

Special reduction

30. Paragraph 16(1) gives HMRC a power to reduce any penalty under the Schedule including the minimum amount penalty where they think it right because of special circumstances.

Interaction with other penalties and late payment surcharges

31. Paragraph 17 sets out to what penalties HMRC should charge if a taxpayer is liable to more than one penalty which is determined by reference to the same tax liability (which could for example include late payment surcharges, penalties for incorrect returns etc), subject to some exclusions set out in paragraph 18(2). Paragraph 18 states that where a taxpayer is liable to a penalty under this Schedule, it is to be reduced by the amount of any other penalty incurred by P that is determined by reference to the same tax liability.
32. Paragraph 17(3) states that tax-gear penalties under this schedule may not exceed 100 per cent of the relevant liability to tax.

Assessment

33. Paragraph 18 sets out the mechanisms by which HMRC must assess, notify and enforce penalties which are to follow the same procedures as for assessments to tax. All penalties must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
34. Paragraph 19 states that the assessment of any penalty under this Schedule must be made on or before the later of two dates. The first

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date is the last day of the two year period beginning with the filing date. The second date is the last day of the period of 12 months beginning with the end of the appeal period for the assessment of the amount of tax shown on the return, or, where there is no such assessment, the date on which the amount of tax is ascertained.

Appeal

35. Paragraph 20 provides appeal rights against decisions by HMRC to impose a penalty and of the amount of the penalty.
36. Paragraph 21(2) provides that a person is not required to pay a penalty before an appeal against the assessment of the penalty is determined.
37. Paragraph 22(3) provides that, if the tribunal substitutes its decision for HMRC's, then it may rely on paragraph 17 (special reduction) to a the same extent as HMRC or to a different extent to HMRC only if the tribunal thinks HMRC's decision in relation to paragraph 17 is flawed. Flawed is defined in paragraph 23(4) as meaning in light of the principles applicable in proceedings for judicial review.

Reasonable excuse

38. Paragraph 23(1) provides that no penalty arises in relation to any failure under this Schedule if the person satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure.
39. Paragraph 23(2) contains provisions about what is precluded from being a reasonable excuse.

Determination of penalty geared to tax liability where no return made

40. Paragraph 24(1) provides that a liability to tax that would have been shown in a return means an amount that, if a complete and accurate return had been delivered on the filing date would have been shown as due or payable by the taxpayer.

BACKGROUND NOTE

41. These provisions bring in an aligned system of deterrents and safeguards for failing to comply with some filing obligations, with a view to incorporating the remaining filing obligations next year for the taxes and duties administered by HMRC. Implementation will be staged over the next few years, and the provisions will be brought into effect by Treasury Orders. Necessary repeals of and

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amendments to legislation will be given effect through the order when appropriate.

42. This measure was the subject of initial consultation in June 2008 and further consultation in November 2008, when draft legislation was also published. A response document together with a final Impact Assessment was published in April 2009.

EXPLANATORY NOTE

CLAUSE 106 SCHEDULE 56: PENALTY FOR FAILURE TO PAY TAX

SUMMARY

1. Clause 106 and Schedule 56 create a new penalty regime for late payment of the following taxes: income tax, corporation tax (CT), Pay as you Earn (PAYE), National Insurance Contributions (NICs) the Construction Industry Scheme (CIS), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), inheritance tax (IHT), pension schemes and petroleum revenue tax. Taxpayers have a right of appeal against all penalties and no penalty can be charged if a taxpayer has a reasonable excuse for their failure. The Schedule provides that if a taxpayer enters into a time to pay arrangement with HM Revenue & Customs (HMRC), any late payment penalties that they would become liable to after the agreement is reached will be removed if the taxpayer meets the terms of the agreement. The clause provides for the Schedule or parts of the Schedule to be brought into force by Treasury order.

DETAILS OF THE CLAUSE

2. Subsection (3) allows different provisions of the Schedule to be brought into force at different times.
3. Subsection (8) provides that a statutory instrument, which contains an order under subsection (4), which includes provision to amend or repeal primary legislation, is subject to the negative procedure (meaning the instrument takes effect on a specified future date but is subject to annulment in pursuance of a resolution of the House of Commons).

DETAILS OF THE SCHEDULE

Penalty for failure to pay tax

4. Paragraph 1(1) introduces the Table setting out the amounts of tax to which the new penalty provisions apply and the date after which the penalty will be incurred. The Table defines the penalty date both for principal amounts of tax and amounts that might become due as the result of an assessment or determination of an amount of tax by HMRC, or by a correction to a return by HMRC or a taxpayer. It

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states that if a taxpayer fails to pay an amount of tax in column 3 of the Table by the date specified in column 4 of the Table, the taxpayer will be liable to a penalty under the Schedule.

5. Paragraph 1(3) states that a person may be liable to more than one penalty in the Schedule.

Amount of penalty for failure to pay annual or occasional amounts

6. Paragraph 3(1) defines the taxes to which this penalty model applies by referring to items in the Table.
7. Paragraph 3(2) provides that a person is liable to a penalty of 5 per cent of the amount of tax unpaid. This penalty is incurred if a taxpayer fails to pay the tax in full by the date provided for in column 4 of the Table. This date is normally 30 days after the due date for the tax.
8. Paragraph 3(3) states that any person who has tax unpaid five months after the penalty date is liable to an additional penalty of 5 per cent of the remaining unpaid tax.
9. Paragraph 3(4) states that any person who has tax unpaid eleven months after the penalty date is liable to an additional penalty of 5 per cent of the remaining unpaid tax.
10. Paragraph 4(1) applies the provisions of this paragraph to CT, whether payable under the Quarterly Instalment Payments scheme or not. Separate provisions are required for CT as the penalty dates are different. The first penalty date for CT is the day after the filing date for the CT return rather than the day after the due date for the tax, which is usually three months earlier.
11. Paragraph 4(2) states that any person who has tax unpaid the day after the filing date for CT is liable to a penalty of 5 per cent of the amount unpaid.
12. Paragraph 4(3) states that any person who has tax unpaid three months after the penalty date is liable to an additional penalty of 5 per cent of the remaining unpaid tax.
13. Paragraph 4(4) states that any person who has tax unpaid nine months after the penalty date is liable to an additional penalty of 5 per cent of the remaining unpaid tax.

Amount of penalty for failure to pay PAYE & CIS amounts

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14. Paragraph 5 applies paragraphs 6 to 8 (the penalty structure) to payments of tax under the PAYE or CIS regulations, except where HMRC has allowed or directed that the relevant period last six months (or more).
15. Paragraph 6(1) provides that a person is liable to a penalty of an amount determined by reference to the number of defaults of payments made of the same tax during the tax year. A default is defined in paragraph 6(2) as a failure to pay an amount of tax in full by the due date.
16. Paragraph 6(3) states that the first failure to pay an amount of tax due by its due date during a tax year does not count as a default.
17. Paragraph 6(4) provides that, where a person has one, two, or three defaults in a tax year, the taxpayer is liable to a penalty of 1 per cent of the total amount of those defaults.
18. Paragraph 6(5) provides that, where a person has four, five or six defaults in a tax year, a penalty of 2 per cent of the total of the defaults arises.
19. Paragraph 7 provides for a penalty of 5 per cent of the unpaid tax where the tax is unpaid six months after the penalty date.
20. Paragraph 8 provides for a penalty of an additional 5 per cent of the unpaid tax where the tax is unpaid twelve months after the penalty date.

Special reduction

21. Paragraph 9(1) provides for a reduction in penalty where there are special circumstances.

Suspension of penalty during currency of agreement for deferred payment

22. Paragraph 10(1) applies the paragraph where certain conditions are met as follows:
 - a) the taxpayer fails to pay an amount of tax;
 - b) before the date before the taxpayer becomes liable to any penalty under the schedule, they make a request to HMRC that the amount of tax be deferred (commonly referred to as a time- to-pay arrangement); and

- c) HMRC agrees to defer that payment (even if the agreement comes after the penalty is incurred).
23. Paragraph 10(2) provides that any liability that would arise during the time of the deferral does not arise.
24. Paragraph 10(3) provides that if the taxpayer breaks the agreement (as defined in sub-paragraph 4) and HMRC serves a notice specifying to which penalties they would become liable, they become liable to that penalty from the date of the notice. This provision effectively enables HMRC on issue of a notice to reinstate a liability that has been removed under paragraph 10(2).
25. Paragraph 10(5) applies the paragraph if the agreement between HMRC and the taxpayer is varied. This means that if an agreement is extended, paragraph 10(2) applies to remove any liability to a penalty for the extended agreement period.

Assessment

26. Paragraph 11 sets out the mechanisms whereby HMRC can assess, notify and enforce penalties, which are to follow the same procedures as for assessments to tax.
27. Paragraphs 11(4) and (5) allow HMRC to make supplementary assessments where an earlier assessment was made by reference to an underestimate of the amount of tax or for PAYE and CIS penalties, if a taxpayer makes additional defaults in year.
28. Paragraph 12 sets the time limit by which an assessment of any penalty must be made.
29. Paragraph 12(1) states that the assessment must be made on or before the later of two dates. The first date is the last day of the period of two years beginning with date specified in column 4 of the Table. The second date as the last day of the period of 12 months beginning with the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or if there is no such assessment the date on which the amount of tax is ascertained.

Appeal

30. Paragraph 13 provides appeal rights against decisions by HMRC to impose a penalty and of the amount of the penalty.

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31. Paragraph 14(2) states that sub-paragraph (1) does not operate to require a taxpayer to pay any penalty before an appeal against the assessment of the penalty is determined.
32. Paragraph 15(3) provides that, if the tribunal substitutes its decision for HMRC's, then it may rely on paragraph 9 (special reduction) to the same extent as HMRC, or to a different extent to HMRC only if the tribunal thinks HMRC's decision in relation to paragraph 9 is flawed. Flawed is defined in paragraph 15(4) as meaning in light of the principles applicable in proceedings for judicial review.

Reasonable excuse

33. Paragraph 16(1) provides that no penalty arises in relation any failure under this schedule if the person satisfied HMRC or (on appeal) tribunal that there is a reasonable excuse for the failure.
34. Paragraph 16(2) contains provisions about what is precluded from being a reasonable excuse.

BACKGROUND NOTE

35. These provisions bring in an aligned system of deterrents and safeguards for failing to comply with some tax payment obligations, with a view to incorporating the remaining tax payment obligations next year for the taxes and duties administered by HMRC. Implementation will be staged over the next few years, and the provisions will be brought into effect by Treasury Orders. Necessary repeals of and amendments to legislation will be given effect through the order when appropriate.
36. This measure was the subject of initial consultation in June 2008 and further consultation in November 2008, when draft legislation was also published. A response document together with a final Impact Assessment was published in April 2009.

EXPLANATORY NOTE

**CLAUSE 107: SUSPENSION OF PENALTIES DURING CURRENCY
OF AGREEMENT FOR DEFERRED PAYMENT**

SUMMARY

1. Clause 107 provides that taxpayers who enter into agreements with HM Revenue & Customs (HMRC) to defer payment of taxes are not liable to certain surcharges or penalties that would otherwise be due because of late payment. The clause includes a power to impose the surcharge or penalty if the taxpayer does not keep to the terms of the agreement. The change becomes effective for deferral agreements reached on or after 24 November 2008.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the circumstances in which the clause will apply.
3. Subsection (2) removes liability during the tax deferral period for the penalties and surcharges listed in subsection (5).
4. Subsection (3) provides for HMRC to impose the suspended penalty on service of a notice, if the terms of the deferral agreement are breached.
5. Subsection (4) sets out the ways in which a deferral agreement can be breached.
6. Subsection (5) sets out the penalties and surcharges to which this clause applies.
7. Subsection (6) provides that where a deferral agreement is varied by agreement between HMRC and the taxpayer, this clause applies to any agreement as varied.
8. Subsections (7) and (8) provide that HM Treasury may by Order add or remove taxes and penalties from subsection (5) by negative resolution Statutory Instrument in the House of Commons.

BACKGROUND NOTE

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9. In many of the taxes administered by HMRC, failure to make a payment in full by the date it is due can result in the taxpayer becoming liable to a late payment penalty or surcharge. This is to encourage taxpayers to fulfil their obligations and to reassure those who pay on time that they are not disadvantaged by those who do not. The way in which such penalties and surcharges work varies for different taxes.
10. In the Pre-Budget Report of November 2008, a new Business Support Package was announced. As part of this package, it was announced that HMRC would not impose penalties or surcharges for late payments of tax in cases where the taxpayer approached them to discuss payment problems before the penalty or surcharge became due and an agreement to defer payment was reached.
11. HMRC have operated this system since November 2008 using their administrative powers. This clause is intended to remove liability for penalties and surcharges for late payment of taxes when the taxpayer makes representations to HMRC to pay the tax over an extended period. These representations must be made before the penalty or surcharge becomes due and an agreement to pay over time must be reached.
12. If the taxpayer enters into an agreement to defer payment of an amount of tax, but then does not meet all of the terms of the agreement or make all of the agreed payments, the clause permits HMRC to impose the penalty suspended under the arrangement, at their discretion.
13. The clause is effective for tax deferral agreements reached on or after 24 November 2008.

EXPLANATORY NOTE

CLAUSE 108 SCHEDULE 57: MISCELLANEOUS AMENDMENTS

SUMMARY

1. Clause 108 and Schedule 57 make amendments to the provisions in Schedule 24 to Finance Act (FA) 2007 (penalties for errors) and Schedule 41 to FA 2008 (penalties for failure to notify and certain other wrongdoing). It also makes certain related changes.

DETAILS OF THE CLAUSE

2. The clause introduces the schedule. There is no requirement for an order to appoint a day for commencement.

DETAILS OF THE SCHEDULE

3. Paragraph 2 clarifies that the term under-assessment includes a reference to under-determination.
4. Paragraph 3 provides that only relief under S419 of the Income and Corporation Taxes Act 1988 that is deferred under S419 (4A) of that section is to be ignored for the purposes of calculating “potential lost revenue”.
5. Paragraph 5 provides that references to assessment in Part 3 of Schedule 24 to FA 2007 are references to a determination for the purposes of inheritance tax and stamp duty reserve tax.
6. Paragraph 6 provides that it is not necessary for a person to pay the penalty under Schedule 24 to FA 2007 in order for an appeal to be heard.
7. Paragraph 7 clarifies the definition of an officer of the company for the purposes of attributing liability for a penalty.
8. Paragraph 11 provides that it is not necessary for a person to pay the penalty under Schedule 41 to FA 2008 in order for an appeal to be heard.
9. Paragraph 12 clarifies the definition of an officer of the company for the purposes of attributing liability for a penalty.

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10. Paragraph 13 disapplies the assessment provisions of the Taxes Management Act 1970 in relation to certain penalty provisions contained within Finance Acts 2007, 2008 and 2009.

BACKGROUND NOTE

11. This clause and schedule make certain necessary changes to provisions in previous Finance Acts to clarify the application of various penalty provisions.

EXPLANATORY NOTE

CLAUSE 109 SCHEDULE 58: RECOVERY OF DEBTS UNDER PAYE REGULATIONS

SUMMARY

1. Clause 109 and Schedule 58 provide for the Commissioners for HM Revenue & Customs (HMRC) to make regulations to collect debts owed to HMRC through the Pay as You Earn (PAYE) system.

DETAILS OF THE SCHEDULE

2. Paragraph (1) provides that section 684 of the Income Tax (Earnings and Pensions Act 2003 (ITEPA) is amended. Section 684 of ITEPA allows the Commissioners for HMRC to make regulations for the assessment, collection and recovery of tax under PAYE.
3. Paragraph (3) amends section 684 of ITEPA to allow the Commissioners to make regulations for deductions in respect of specified relevant debts, the circumstances in which deductions may be made and the time that any deductions are treated as paid.
4. Paragraph (4) provides that no more than £2,000 may be deducted in any year without the employee's consent. This amount may be changed by Treasury order.
5. Paragraph (6) provides that section 684 of ITEPA is amended to insert new subsections (7AA) and (7AB). New subsection (7AA) defines a relevant debt as a sum payable under or by virtue of an enactment other than an excluded debt, or one payable under a contract settlement. "Under or by virtue of an enactment" brings in those debts arising from taxes, duties etc imposed by statute. "Contract settlements" are contractual agreements made in connection with a person's liability, usually as the result of an enquiry covering a number of years.
6. New subsection (7AB) defines terms and expressions used in new subsection (7AA). The definition of "excluded debts" preserves the Commissioners' existing powers to make regulation for the collection of income tax or capital gains tax through PAYE in section 684 of ITEPA and for the collection of tax credits through PAYE in section 29(5) of the Tax Credits Act 2002.

7. Paragraph 10 allows the necessary consequential changes to ITEPA and other enactments to be made by Treasury order.

BACKGROUND NOTE

8. This clause and Schedule give HMRC the power to collect small debts through the PAYE system, allowing debtors to spread payments and reducing HMRC's costs. Small debts account for a large proportion of the volume of tax debts but a small proportion of their value.
9. HMRC's aim is to secure immediate payment of debts in full or, where this is not possible, to set up a Time to Pay arrangement to reschedule the debt. If neither of these options are feasible, HMRC would consider collecting smaller debts through PAYE as one of a number of remedies available to it as a creditor. If the debtor did not want to pay in this way, HMRC would expect them to make other arrangements for payment. If no such arrangements were forthcoming, HMRC would have the ability to collect debts in this way at its option.
10. The right to object to collecting underpayments of income tax and capital gains tax under self assessment, where the due date had not already passed, would not be disturbed. The right to object to collecting tax credit overpayments in this way would also not be disturbed. A taxpayer would, as now, be able to appeal against their tax code. The existing safeguards, limiting the amount that may be collected in this way through the PAYE system and protecting the level of the taxpayer's income, would be preserved.
11. This measure was the subject of initial consultation in June 2007 and further consultation in December 2008 (*Payments, Repayments and Debt: the Next Stage*). A response document together with a final Impact Assessment was published in April 2009

EXPLANATORY NOTE

CLAUSE 110: MANAGED PAYMENT PLANS

SUMMARY

1. Clause 110 provides for HM Revenue & Customs (HMRC) to introduce managed payment plans.
2. Under these voluntary plans, taxpayers may pay income tax or corporation tax due under Self Assessment by instalments balanced equally before and after the normal due dates. While in the plan, taxpayers are protected from the interest and penalty consequences on payments made after the normal due date. The clause applies throughout the United Kingdom.

DETAILS OF THE CLAUSE

3. Subsection (1) provides that managed payment plans are available in respect of income tax or corporation tax payments that must be made under Self Assessment. These are payments on account of income tax payable in accordance with section 59A of the Taxes Management Act 1970 (TMA); payments of income tax and capital gains tax payable in accordance with section 59B of TMA; and payments of corporation tax payable in accordance with section 59D of TMA. The scope of section 59D of TMA excludes those large companies which are subject to the quarterly instalment payment scheme.
4. Subsection (2) provides that a number of conditions must be satisfied prior to entering into a managed payment plan. Subsection (2)(c) allows the Commissioners of HM Revenue and Customs to apply further conditions.
5. Subsection (3) provides that managed payment plans are not available to companies which have entered into a group payment arrangement.
6. Subsection (4) provides that so long as the taxpayer pays the instalments in accordance with the plan, each instalment is treated as having been paid on the normal due date. This means that there will be no late payment interest or penalties on those agreed instalments that are paid after the normal due date.
7. Subsection (5) provides that if the taxpayer fails to pay an agreed instalment, those payments made up to the date of failure are still

treated as paid on the normal due date. Later payments are outside the scope of the clause and, from the date of the failure, will attract late payment interest and penalties as appropriate. Late payment interest will run from the normal due date and late payment penalties will run from the penalty date.

8. Subsection (6) provides that companies that do not pay the agreed instalments still benefit from credit interest, but only where the failure arises before the normal due date.
9. Subsection (7) provides that an Officer of Revenue and Customs may notify the payer that payments made after the due date will not result in a penalty.
10. Subsection (8) provides that instalments paid before the due date are balanced by instalments paid afterwards if their time values as defined in subsection (10) are equal, or approximately equal.
11. Subsection (9) provides that the time value of instalments paid before and after the due date are aggregated for this purpose.
12. Subsection (10) provides that the time value of any particular instalment is the product of its amount and the period in days before or after the due date.

BACKGROUND NOTE

13. Some taxpayers find it difficult to pay their tax liabilities, particularly those with annual or twice yearly payment dates. Consultation and research have indicated that small businesses in particular would like a more flexible system that allows them to make smaller and more frequent tax payments than at present, which could help them better manage their cash flow.
14. HMRC supports those in temporary financial difficulty once a sum has become due through its Business Payment Support Service. It also offers a range of methods for payment in advance, including income tax budget payment plans and certificates of tax deposit.
15. Managed payment plans would allow taxpayers to spread their payments either side of the normal due date for payment of the tax, so long as those made in arrears are balanced by those made in advance. Entry to the plan will be voluntary.
16. While in the plan, taxpayers will not have to pay interest and penalties on instalments made after the normal due date. If they fail to

make the agreed payments they fall out of the plan and the normal consequences for late payment will follow for the amounts unpaid at the date of the failure. However, taxpayers who fail to make the payments, but who remain in contact with HMRC about their debt, may be relieved from penalties that would otherwise arise. This is in line with HMRC's Time to Pay arrangements to reschedule debt.

17. While it is expected that the details of any managed payment plan will be set out in the terms under which they are made available, HMRC may if appropriate specify these in regulations.
18. This measure was the subject of initial consultation in June 2007 and further consultation in December 2008 (*Payments, Repayments and Debt: the Next Stage.*) Draft legislation was published for consultation in January 2009, and a response document and a final Impact Assessment in April 2009.

EXPLANATORY NOTE

**CLAUSE 111: CUSTOMS AND ENFORCEMENT POWERS:
MOVEMENTS BETWEEN MEMBER STATES**

SUMMARY

1. Clause 111 amends section 4 of the Finance (No. 2) Act (F(No.2)A) 1992 to ensure that, in appropriate circumstances, officers of HM Revenue & Customs (HMRC) can use their powers to check whether or not a movement is between Member States. It will also make a textual change to clarify the circumstances in which officers can use their powers to conduct selective and proportionate checks on EU travellers for drugs and other prohibited goods.

DETAILS OF THE CLAUSE

2. Subsections (2) and (3) insert a new subsection 1A into section 4 of F(No.2)A 1992, which allows the exercise of powers in order to ascertain whether a movement is in fact between Member States.
3. Subsection (4) makes a drafting amendment to subsection (2) to clarify that the precondition for exercising powers for purposes listed in subsections 2(a) to (c) is where it is necessary to exercise such a power.

BACKGROUND NOTE

4. Section 4 of F(No.2)A 1992 limits the use of certain powers in the Customs and Excise Management Act 1979 (CEMA) in relation to movements between Member States. But the section provides two exceptions to that limitation. The first is where there are reasonable grounds for believing that the movement in question is not in fact between Member States. The second is where it is necessary to exercise the power for purposes connected with the collection of Community customs duties or the enforcement of any import prohibition or restriction.
5. The effect of this amendment is that an officer of HMRC will no longer need reasonable grounds for believing that a passenger has come from outside the EU in order to exercise the specified customs powers. This is necessary because at large international airports passengers from several flights mix airside before reaching customs. The amendment will permit officers to conduct limited checks such

as questioning the traveller and inspecting their travel documents in order to ascertain whether they are EU travellers or not.

6. Another effect of this clause is to amend the drafting of section 4 to clarify that officers do not need reasonable grounds for believing that it is necessary to exercise the relevant CEMA power before being able to do so for purposes connected with the collection of Community customs duties or the enforcement of any import prohibition or restriction. The section will now provide that the powers can be exercised where it is necessary to do so, as opposed to where there are reasonable grounds for believing that it is necessary to do so.
7. All checks on EU travellers are carried out in a selective and proportionate manner, and therefore will not interfere with an EU passenger's free movement rights.

EXPLANATORY NOTE

CLAUSE 112: VAT EXEMPTION FOR GAMING PARTICIPATION FEES

SUMMARY

1. Clause 112 amends Group 4 of Schedule 9 to the Value Added Tax Act 1994 to exempt from VAT all participation fees for playing bingo and other games of chance for a prize. The clause also makes consequential repeals.

DETAILS OF THE CLAUSE

2. Subsection (2) removes Note (1)(b) to Group 4, which was the basis of taxation for participation fees.
3. Subsection (3) removes Notes (5) to (11) from Group 4. These notes are now unnecessary, because they listed various categories of exceptions to the taxation of participation fees.
4. Subsection (4) revokes the Value Added Tax (Betting, Gaming and Lotteries) Order 2007 (S.I. 2007/2163). This Order updated the law on participation fees in the light of the Gambling Act 2005.
5. Subsection (5) removes sections 19(3)(b) and 26E(2) of the Betting and Gaming Duties Act 1981, and section 11(9)(a) of the Finance Act 1997. These sections are now unnecessary as they required the VAT element of participation fees to be ignored for the purposes of calculating bingo duty, remote gaming duty and gaming duty respectively.

BACKGROUND NOTE

6. Gambling is in principle exempt from VAT under EU law, although Member States have discretion as to the scope of the exemption they apply. In the UK, betting, gaming and lotteries are generally exempt from VAT under Group 4 of Schedule 9 to the VAT Act. However, Note 1(b) to Group 4 excluded from the exemption “the granting of a right to play a game of chance for a prize unless the playing of the game is excepted from this paragraph by Note (5)”. This in effect taxed participation fees for playing bingo and other games of chance,

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apart from certain exceptions for remote gaming and various categories of small scale gaming specifically listed in the law. (Participation fees are charges that a gaming operator makes to customers for participating in gaming. They may take the form of a fixed fee or a percentage of any stakes kept by the operator.)

7. The effect of the amendments in this clause is to exempt from VAT all participation fees for gaming.

EXPLANATORY NOTE**CLAUSE 113: GAMING DUTY****SUMMARY**

1. Clause 113 makes provision for gaming duty to be extended to apply to equal chance gaming, subject to specified exceptions. It also removes the requirement to list individual games for the purposes of gaming duty and gives the Treasury powers to add or remove specified games from the scope of gaming duty by order.

DETAILS OF THE CLAUSE

2. Subsection (3) substitutes a new definition of dutiable gaming in section 10(2) of the Finance Act (FA) 1997.
3. Subsection (4) exempts from duty any gaming which takes place in accordance with Article 77 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming for prizes on bingo club premises).
4. Subsection (5) inserts a new subsection (3AA) into section 10 of FA 1997 which exempts gaming in respect of which bingo duty or lottery duty is chargeable or would be chargeable but for an express exception.
5. Subsection (6) ensures all non-commercial equal chance gaming permitted under section 300 of the Gambling Act 2005 is exempted.
6. Subsection (7) exempts equal chance gaming which takes place in accordance with section 269 of the Gambling Act 2005 or to which Article 128 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 applies.
7. Subsection (8) amends section 10(5) to give the Treasury powers to provide that any specified game is or is not a casino game or equal chance gaming for the purposes of gaming duty.
8. Subsection (9) provides that a reference made to a game in an order made under section 10(5) shall be taken to include a reference to any game which is essentially similar to that game.

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9. Subsections (10), (11) and (12) set out the legislative process by which Treasury orders to include or exclude specified games from the scope of gaming duty shall be made.
10. Subsections (13), (14) and (15) insert definitions of ‘casino games’ and ‘equal chance gaming’ into section 15(3).
11. Subsection (16) removes redundant references to gaming duty in section 11 of Finance Act 2002 and paragraph 17(4) of Schedule 25 to Finance Act 2007.

BACKGROUND NOTE

12. Gaming duty currently applies to gaming by way of the non-equal chance games specified in section 10(2) of FA 2007 and games that are essentially similar. This clause has the effect of extending the scope of dutiable gaming to include equal chance gaming (games where players play against each other rather than against the house e.g. poker). It also replaces the current list of dutiable non-equal chance casino games with a generic description of such games, which removes the requirement for secondary legislation whenever new games are introduced.
13. The clause also gives the Treasury powers to add or remove specified casino games or equal chance gaming from the scope of gaming duty by order.

EXPLANATORY NOTE**CLAUSE 114: REMOTE BINGO ETC****SUMMARY**

1. Clause 114 makes provision for remote gaming duty to be charged on the provision of facilities for remote bingo and removes the playing of remote bingo, other than premises-based licensed bingo, from the scope of bingo duty. These changes will apply to games of bingo starting on or after 1 July 2009.

DETAILS OF THE CLAUSE

2. Subsection (2) of the clause amends section 17 of the Betting and Gaming Duties Act 1981 (BGDA), which sets out the charge to bingo duty, by inserting a new subsection (2A) so that bingo duty is not charged on the playing of bingo if it is not licensed bingo and remote gaming duty is charged on the provision of facilities for playing it.
3. Subsection (3) amends section 26H (exemptions to remote gaming duty) by inserting a new subsection (2A) so that the provision of facilities for remote bingo, other than licensed bingo, is not exempted from remote gaming duty.

BACKGROUND NOTE

4. Bingo duty is currently chargeable on the playing of bingo in the UK, unless specifically exempted, and applies to any version of the game of bingo, whatever name it is called.
5. Remote gaming duty is chargeable on the provision of facilities for remote gaming (i.e. gaming in which players participate by the use of digital communication media such as the internet, interactive TV or telephone) but excludes any gaming which is charged with, or specifically excluded from another gambling duty. It therefore excludes remote bingo played in the UK, which falls within the scope of bingo duty.
6. The effect of the current legislation is that the duty treatment of remote bingo varies according to where the bingo is played. In addition, remote bingo played in the UK in a domestic environment is exempted from bingo duty under the provisions of Part 1 of

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Schedule 3 to BGDA so in practice is not chargeable with either bingo duty or remote gaming duty.

7. The clause removes these inconsistencies in the treatment of remote bingo by bringing all remote bingo, except licensed bingo, within the scope of remote gaming duty. Licensed bingo refers to bingo played on licensed premises within the meaning of section 20C(2).

EXPLANATORY NOTE

CLAUSE 115: MEANING OF "GAMING MACHINE" AND "GAMING"

SUMMARY

1. Clause 115 provides for the definition of “gaming machine” and “gaming” for the purposes of the Betting and Gaming Duties Act 1981 to be set out in that Act.

DETAILS OF THE CLAUSE

2. Subsection (3) substitutes the meaning of “gaming machine” contained in section 25(1A) of the Betting and Gaming Duties Act 1981 (BGDA) and introduces new subsections (1A) and (1B).
3. New subsection (1A) provides that such machines which can be used for purposes other than gambling may be covered by the definition of a gaming machine, as well as those designed or adapted for the purposes.
4. New subsection (1B) excludes from the definition of gaming machine those machines that are designed or adapted to bet on future real events, for playing bingo on which bingo duty is or would be charged but for specific duty exemptions, or for playing a real game of chance on which gaming duty is or would be charged but for specific gaming exemptions.
5. Subsection (5) amends section 25 of BGDA by inserting new subsections (5) and (6).
6. New subsection 5(a) provides that a reference to gambling is to gaming or betting.
7. New subsection (5)(b) provides that “machine” includes a machine powered mechanically, by electricity, or by both means.
8. New subsection (5)(c) provides that a reference to a machine being designed or adapted for a purpose includes any alterations made to a machine which can reasonably lead it to be expected to be used for that purpose.
9. New subsection (5)(d) provides that the installation of computer software on a machine constitutes being adapted.

10. New subsection (5)(e) provides that “real” means non-virtual.
11. New subsection (5)(f) provides that “game of chance” includes a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of chance, but does not include a sport.
12. New subsection 5(g) provides that a reference to bingo includes any version of that game, regardless of what it is called.
13. New subsection (6) provides that the definition of gaming machine in section 25 of BGDA may be amended by Treasury order.
14. Subsection (6) of the clause provides for the amendment of section 33(1) of BGDA (interpretation).
15. Subsection (6)(a) provides that in section 33(1) of BGDA, the definition of “gaming” is amended to remove the reference to the Value Added Tax Act 1994.
16. Subsection (6)(b) introduces a new subsection (1A) into section 33 of BGDA.
17. New subsection (1A)(a) provides that a reference to game of chance in subsection (1) when used in relation to gaming includes a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of chance, but does not include a sport.
18. New subsection (1A)(b) provides that a reference to playing a game of chance in subsection (1) means participation in a game of chance whether or not there are other participants in the game and whether or not a computer generates images or data taken to represent the actions of other participants in the game.
19. New subsection (1A)(c) provides that a reference to prize does not include the opportunity to play the game again.

BACKGROUND NOTE

20. There are two elements to this clause; the first concerns the definition of gaming machine, the second the definition of gaming. At present both expressions are defined for the purposes of BGDA by reference to definitions contained in the Value Added Tax Act 1994 which in

turn rely to a substantial degree on social legislation contained in the Gambling Act 2005.

21. This clause amends sections 25 and 33 of BGDA so that they include their own statutory definition of “gaming machine” and “gaming” without the need to cross refer to the VAT legislation.
22. The changes are being made to simplify and clarify the betting and gaming duties legislation.

EXPLANATORY NOTE

CLAUSE 116: CLIMATE CHANGE LEVY: TAXABLE COMMODITIES
INELIGIBLE FOR REDUCED-RATE SUPPLY

SUMMARY

1. Clause 116 enables entitlement to claim the climate change levy (CCL) reduced rate to be restricted, by specifying in certificates given under the climate change agreement (CCA) scheme that certain taxable commodities will be ineligible for reduced rate supply.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Schedule 6 to the Finance Act (FA) 2000 to be amended.
3. Subsection (2) inserts new sub-paragraphs in paragraph 44 of Schedule 6 to FA 2000:
 - New sub-paragraph (2A) provides for the Secretary of State (in practice, for the Department of Energy and Climate Change) to:
 - give a new certificate or vary an existing certificate to make one or more taxable commodities ineligible for the reduced rate of climate change levy under the climate change agreement scheme; and
 - vary an existing certificate to allow such taxable commodities to be eligible for the reduced rate.
 - New sub-paragraph (2B) provides that a facility is not entitled to the reduced-rate on a taxable commodity if the commodity is described within a certificate as being ineligible for reduced-rate supply; and
 - New sub-paragraph (2C) provides that the Secretary of State can only include such provision in a certificate with the consent of HM Treasury and if the provision is in line with the stated EC State aid rules.
4. Subsection (3) makes consequential amendments to Schedule 6 to FA 2000.

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CLAUSE 116**

BACKGROUND NOTE

5. CCL was introduced in 2001 and is a UK wide tax on the use of electricity, gas, solid fuel and liquefied gases used for fuel purposes by business and the public sector.
6. The purpose of the CCL is to encourage the efficient use of energy and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.
7. CCAs were introduced alongside the levy in recognition of the levy's impact on the competitiveness of energy-intensive sectors of industry. They are voluntary agreements made between the Department of Energy and Climate Change and sector associations and their members. The agreements entitle participating facilities to pay a reduced rate of levy in return for meeting challenging targets for improving energy efficiency or reducing emissions.
8. The CCA scheme is a State Aid. Under new Community Guidelines on State Aid for Environmental Protection issued in 2008, where beneficiaries of aids in the form of tax reductions pay less than the relevant Community minimum tax levels, they must satisfy the European Commission that the aid is necessary and proportionate. The CCL reduced rates for gas and solid fuel are below the minimum rates given out in the Energy Products Directive (Dir 2003/96 EC). Denying sectors that do not satisfy the necessity and proportionality tests entitlement to claim the reduced rate on those particular taxable commodities will ensure compliance with the State aid rules and enable the sectors to join the CCA scheme, though such sectors will be able to benefit from the reduced rate only on supplies of electricity and liquefied petroleum gases.

EXPLANATORY NOTE

**CLAUSE 117 SCHEDULE 59: REMOVAL OF REDUCED RATE
WHERE TARGETS ARE NOT MET**

SUMMARY

1. Clause 117 provides for Schedule 59, which amends Schedule 6 to the Finance Act (FA) 2000, to provide for HM Revenue & Customs (HMRC) to recover climate change levy (CCL) where a facility in the climate change agreements (CCA) scheme does not meet the targets it has agreed with the Department of Energy and Climate Change (DECC). The recovery mechanism applies to certification periods under the CCA scheme beginning on or after 1 April 2009.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces Schedule 59, and subsection (2) provides that the amendments made by the Schedule have effect where the certification period (under the CCA scheme) begins on or after 1 April 2009.

DETAILS OF THE SCHEDULE

3. Paragraph 1 inserts a new paragraph 45B into Schedule 6 to FA 2000 to provide:
 - that the new paragraph applies to a facility in a CCA (sub-paragraph (1));
 - for the Secretary of State (in practice, for DECC) to issue a certificate in cases of unsatisfactory performance against targets agreed by a facility signing a CCA (sub-paragraph (2));
 - that the certificate must specify the facility, agreement, certification period, the target(s) and the progress made by the facility towards the target(s) (sub-paragraph (3));
 - that, where a certificate is issued, taxable supplies are treated as not being reduced-rate supplies and an amount is payable as levy on the supplies (sub-paragraph (4));
 - for calculating the amount payable on the taxable supplies (sub-paragraph (5));

- that the certificate must be sent to the Commissioners for HMRC and the operator of the facility (sub-paragraph (6));
 - that a certificate may be issued after the end of the certification period (sub-paragraph (7));
 - that the facility operator must not be required to pay the levy due under new paragraph 45B before the certificate is issued (sub-paragraph (8));
 - that the levy due under the paragraph is additional to levy already due on the supply (sub-paragraph (9)); and
 - for definitions of terms used in the new paragraph (sub-paragraph (10)).
4. Paragraphs 2 to 9 make consequential amendments to Schedule 6 to FA 2000.

BACKGROUND NOTE

5. CCL was introduced in 2001 and is a UK wide tax on the use of electricity, gas, solid fuel and liquefied gases used for fuel purposes by business and the public sector.
6. The purpose of the CCL is to encourage the efficient use of energy and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.
7. CCAs were introduced alongside the levy in recognition of the levy's impact on the competitiveness of energy-intensive sectors of industry. They are voluntary agreements made between the DECC and sector associations and their members. The agreements entitle participating facilities to pay a reduced rate of levy in return for meeting challenging targets for improving energy efficiency or reducing emissions.
8. The CCA scheme is a State Aid. A condition of the State Aid approval for the scheme in 2001 was that, for the last two years of the 10 year approval (1 April 2009 to 31 March 2011), the UK must introduce a mechanism to recover tax from facilities that fail to meet their targets during the period proportional to the extent that the targets were missed.

EXPLANATORY NOTE

**CLAUSE 118 SCHEDULE 60: LANDFILL TAX: PRESCRIBED
LANDFILL SITE ACTIVITIES**

SUMMARY

1. Clause 118 provides for Schedule 60 which will enable HM Treasury to prescribe by order that a landfill site activity is subject to landfill tax, remove the power to make regulations to provide that landfill tax is not payable in respect of the temporary holding of material for certain purposes in designated areas and remove the exemption from landfill tax for site restoration. The Schedule will also provide that HM Revenue & Customs (HMRC) has access to information on the temporary holding of material at a landfill site and site restoration and enable the landfill tax return form to be prescribed in guidance rather than regulations.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts a new section 65A into Finance Act (FA) 1996. The new section makes a number of provisions, including that:
 - HM Treasury may prescribe by order that an activity on a landfill site is subject to landfill tax;
 - an order may make any provision which HM Treasury thinks necessary or expedient in connection with the prescribing of landfill site activities;
 - an order may prescribe a landfill site activity by reference to conditions; and
 - an order may amend or otherwise modify part 3 of FA 1996 or any other enactment relating to landfill tax, apart from the rate at which landfill tax is charged.
3. Paragraph 3 inserts new subsections (7) (ca) and (cb) into section 71 of FA 1996 to provide that an order relating to the prescribing of landfill site activities, or an order amending part 3 of the FA 1996 or any other enactment relating to landfill tax, shall be laid before the House of Commons and, unless approved within 28 days, shall cease to have effect.

4. Paragraph 4 provides for the omission of section 62 of FA 1996 which confers the power to make regulations to provide that landfill tax is not payable in respect of the temporary holding of material for certain purposes in designated areas.
5. Paragraph 7 inserts a new paragraph 1A in Schedule 5 to FA 1996. It provides for Commissioners' of HMRC regulations that may make provision about giving information about material on a landfill site (or part of a landfill site) to HMRC. Regulations may require, or authorise HMRC to require, the designation of part of a landfill site as an "information area", that certain material is deposited in an information area and make provision about information relating to what is done with material.
6. Paragraph 9 inserts a new paragraph 2A in Schedule 5. It provides for regulations that may require the keeping of records relating to material at a landfill site (or part of a landfill site), including records about what is done with that material.
7. Paragraph 10 provides for the omission of section 43C of FA 1996 which provides for the exemption from landfill tax of material used for site restoration.
8. Paragraph 11 inserts a new paragraph 1B into part 1 of Schedule 5 of FA 1996. It provides that a landfill site operator must supply HMRC with certain information before commencing site restoration.
9. Paragraph 12 amends section 49 of FA 1996 so that the landfill tax return form shall be prescribed in such form as the Commissioners determine (and not necessarily by regulation).
10. Paragraph 13 provides that:
 - paragraph 10 (repeal of section 43C) comes into force on 1 September 2009;
 - paragraph 11 (information about site restoration) has effect in relation to the restoration of landfill sites commencing on or after 1 September 2009; and
 - regulations made under section 62 of FA 1996 (which is repealed by paragraph 4) and the repealed part of section 49 of FA 1996 (see paragraph 12) will remain in force until they are revoked. The power to revoke any such regulations by statutory instrument is retained.

BACKGROUND NOTE

11. Landfill tax was introduced on 1 October 1996. It encourages waste producers and the waste management industry to switch to more sustainable alternatives to landfilling waste.
12. The provisions in Finance Bill 2009 follow the judgment of the Court of Appeal in *Commissioners for Her Majesty's Revenue and Customs – v- Waste Recycling Group Limited [2008] EWCA Civ 849* (“the WRG case”). The judgment has significant implications for what is considered to be a taxable disposal of waste.
13. HM Treasury is taking powers to prescribe by order that an activity on a landfill site is subject to landfill tax in order to address the situation, in the light of the WRG case, that uses of waste on a landfill site are not taxable. The order will be published in draft during the Public Bill Committee stage.
14. Following the WRG case, it is clear that the temporary holding of waste on a landfill site for certain purposes and the use of material for site restoration are not, in any case, taxable. The current provisions in legislation, that tax is not payable in these situations, are therefore being removed as they are no longer necessary and their retention would create confusion.
15. In order to establish whether or not a taxable disposal of waste has taken place, HMRC will have a continued need for information about the temporary holding of waste at a landfill site and site restoration. Finance Bill 2009 provides that HMRC will continue to have appropriate access to this information.
16. The Commissioners’ regulations provided for in the Schedule will be published in draft during Public Bill Committee.
17. The removal of the requirement that the landfill tax return form is prescribed in regulations is a matter of administrative convenience which will bring landfill tax in line with the other environmental taxes (aggregates levy and climate change levy).
18. The Schedule will come into effect on the date that Finance Bill 2009 receives Royal Assent, save for paragraphs 10 and 11 which will come into effect on 1 September 2009. The associated secondary legislation provided for in the Schedule will come into effect on 1 September 2009.

EXPLANATORY NOTE

CLAUSE 119: REQUIREMENT TO DESTROY REGISTRATION DOCUMENTS WHICH ARE REPLACED

SUMMARY

1. Clause 119 amends Section 22(1) of the Vehicle Excise and Registration Act 1994 (VERA) and introduces a new subsection which allows the Secretary of State for Transport to make Regulations compelling the registered keeper of a vehicle to destroy an existing Vehicle Registration Certificate (V5C) once they have received an amended or updated document.

DETAILS OF THE CLAUSE

2. The subsection introduces the amendments made to VERA by the clause and inserts a new Section 22(1)(ha) into VERA which allows the Secretary of State for Transport to make Regulations requiring the destruction of a V5C where a new one is issued in place of it.

BACKGROUND NOTE

3. Registered keepers of vehicles are issued with a V5C registration document by the Driver and Vehicle Licensing Agency (DVLA). The V5C contains vehicle information as well as the name and address of the person recorded as the registered keeper. Keepers are legally obliged to notify DVLA if any of the details on the V5C change. The only method currently available to motorists to notify such changes is to post the current V5C to DVLA. DVLA records the changes and issues a new V5C.
4. DVLA plans to increase the amount of services it offers electronically, in line with the general policy of modernising Government. This clause will give DVLA the scope to develop a system for electronic notifications of changes in driver and vehicle details. Once these are in place motorists will be able to destroy a superseded V5C instead of having to return it to DVLA.
5. DVLA plans to consult with all interested parties, including the police, before the relevant regulations (The Road Vehicles (Registration and Licensing) Regulations 2002) are amended.

EXPLANATORY NOTE

CLAUSE 120: HYDROCARBON OIL DUTIES: MINOR AMENDMENTS

SUMMARY

1. Clause 120 makes two minor drafting amendments to the Hydrocarbon Oil Duties Act 1979 (HODA).

DETAILS OF THE CLAUSE

2. Subsection (2) removes an unnecessary reference in section 11(1) of HODA.
3. Subsection (3) corrects the wording of section 14D(2) of HODA so that there is a clear distinction between the conduct that attracts a civil penalty and conduct that is a criminal offence in relation to the supply of rebated biodiesel or bioblend for a prohibited use.

BACKGROUND NOTE

4. Finance Act 2008 introduced section 14D (penalties for misuse of rebated biodiesel or bioblend) of HODA. The clause amends this section so that there is a clear distinction between the conduct that attracts a civil penalty and conduct that is a criminal offence in relation to the supply of rebated biodiesel or bioblend for a prohibited use, and it removes an unnecessary reference in section 11(1) of HODA.

EXPLANATORY NOTE

**CLAUSE 121: EXTENSION OF AGRICULTURAL PROPERTY AND
WOODLANDS RELIEF FOR EEA LAND**

SUMMARY

1. Clause 121 provides that the existing inheritance tax reliefs for agricultural property and woodlands are extended to property in the European Economic Area (EEA) when an event chargeable to inheritance tax (IHT) occurs. Property qualifying for this extended IHT relief will also qualify for capital gains tax (CGT) hold-over relief.
2. The extension of agricultural property relief (APR) and woodlands relief (WR) also applies where IHT was due or paid on or after 23 April 2003. CGT hold-over relief in respect of disposals of agricultural property located in a qualifying EEA state in the past will also be possible.

DETAILS OF THE CLAUSE

3. Subsection (2) amends subsection (3) of section 115 of the Inheritance Tax Act 1984 (IHTA) to ensure relief continues to be limited to the agricultural value of agricultural property. Existing provisions limit relief by establishing agricultural value with reference to an assumed “perpetual covenant” that would prevent property being used for anything other than agricultural purposes under the terms of the Act. The amendment provides that an equivalent restriction must apply when establishing the agricultural value of the property (and therefore relief) outside the UK, Channel Islands and the Isle of Man. This is to ensure that relief is given on the same terms for property in other EEA states where the reference to a “perpetual covenant” may not have meaning.
4. Subsection (3) amends subsection (5) of section 115 of IHTA. The existing subsection allows relief in respect of agricultural property located in the UK, Channel Islands and the Isle of Man. Subsection (3) extends this so that relief is also applied to agricultural property located in states other than the UK, provided that the state in question is an EEA state (as defined by the Interpretation Act 1978) when a transfer of value under the terms of IHTA occurs. This change has a consequential effect on section 165 of the Taxation of

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Chargeable Gains Act 1992 (TCGA) as applied by virtue of paragraphs 1 and 3 of Schedule 7 to TCGA. The change to IHTA means that property which qualifies for APR under this clause will also qualify for business asset 'hold over' relief where it is farmed by a person other than the owner (property farmed by the owner already qualifies for hold-over relief regardless of where it is situated).

5. Subsection (4) inserts a new subsection (7A) into section 116 of IHTA. This ensures that, where agricultural relief for property is dependent on provisions that are specific to (or have meaning only in respect of) the law of the UK, the relevant UK legislation is to be taken to refer to equivalent provisions in other EEA states. The amendment enables existing references to rights and obligations that are specific to the law of the UK to operate in the context of the law of a foreign jurisdiction.
6. Subsection (5) amends subsection (1) of section 125 of IHTA, removing the words "in the United Kingdom". The amendment removes the existing geographical restriction on the location of property qualifying for woodlands relief in accordance with section 125.
7. Subsection (6) introduces a new subsection (1A) into section 125 IHTA. This applies woodlands relief to land located in the UK or other EEA state at the time of the death of the person whose estate is chargeable to IHT.
8. Subsection (7) provides that the extension of relief against inheritance tax for qualifying agricultural and woodland property will take effect for transfers of value where tax would have been payable on or after 22 April 2009 and for similar events before that date where IHT on such property was due or paid on or after 23 April 2003.
9. Subsection (8) provides that IHT paid on or after 23 April 2003, together with any interest that was charged on such IHT, on property newly qualifying as agricultural and woodland property under this clause, is repayable provided a claim for repayment is made. Such repayments (including interest) will attract interest under an existing IHTA provision. The deadline for making a claim to repayment will be six years after the date on which a qualifying payment was made (this is the normal time limit for claiming repayments of overpaid IHT) or, if later, 21 April 2010.
10. Subsection (9) provides that, in the case of property becoming entitled to relief as a result of this clause, an election to obtain woodlands relief can be made within two years of the date of death

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giving rise to the IHT charge or, if later, 21 April 2010. Claims for repayment of IHT will be possible where IHT paid falls within the previous subsection.

BACKGROUND NOTE

11. Agricultural property relief (APR) is set out at sections 115 to 124C of IHTA. The relief reduces, either entirely or partially, the agricultural value of agricultural property for the purposes of calculating a charge to IHT.
12. Agricultural property includes:
 - agricultural land or pasture;
 - farmhouses, cottages or buildings that are used for agricultural purposes and are proportionate in size to the nature and size of the farming activity;
 - woodland and buildings used for intensive rearing of livestock or fish;
 - growing crops transferred with the land;
 - stud farms that are breeding and rearing horses, and the land that the horses graze on;
 - short rotation coppice – trees that are planted and harvested at least every ten years;
 - land that is actively not being farmed to help preserve the countryside and habitat for wild animals and birds under the Habitat Scheme;
 - the value of land where the value includes the benefit of a milk quota; and
 - some agricultural shares and securities.
13. APR is normally given at a rate of 100 per cent of the agricultural value of land. However property rented out since before 1 September 1995 usually only qualifies for relief at a rate of 50 per cent of the agricultural value.

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14. Prior to 22 April 2009, for agricultural property to qualify for APR, it must have been located in the UK, the Channel Islands or the Isle of Man. The extension of APR to property in any EEA state will have effect for all occasions on or after 22 April 2009 chargeable to IHT. This extension will also have effect for earlier chargeable occasions where IHT in respect of the occasion was due or paid on or after 23 April 2003. The amendments ensure that relief will apply in respect of qualifying property located in either the UK, Channel Islands or Isle of Man or in an EEA state when a transfer of value under the terms of IHTA occurs.
15. The existing statutory regime for APR contains certain eligibility conditions for relief; for example, there is a minimum length of time for which the property must be owned. This clause extends APR to qualifying property in other EEA states but otherwise leaves APR unchanged. So the existing qualifications for relief will continue to apply to agricultural property on and after the date of extension.
16. Where APR is dependent on terms and restrictions which have meaning in the UK, this clause ensures that property in newly included EEA states will only qualify for relief to the extent that equivalent terms and restrictions are applied. For example APR at 100 per cent is dependent on the transferor having vacant possession of the land in question, or the right to obtain it within 12 months of the transferor. This new provision will ensure that the relief will work satisfactorily in other EEA states where a right to obtain something equivalent to vacant possession exists.
17. Extension of APR under this clause applies (but is not solely restricted) to relief against any chargeable events associated with settled property (i.e. property placed into a trust). Thus the extension will apply to periodic or exit charges associated with such settlements arising on or after 22 April 2009 and to similar charges arising before that date where the IHT was due or paid on or after 23 April 2003.
18. Extension of agricultural relief under this clause also applies (but is not solely restricted) to transfers of value which are, or are treated as being, Potentially Exempt Transfers (PETs) under section 3A of IHTA (provided those PETs result in an IHT being due or paid on or after 23 April 2003 and are in respect of qualifying property).
19. This clause also extends the availability of existing relief against IHT for trees or underwood comprised in estates (woodlands relief).

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20. Woodlands relief (WR) gives relief, providing an election is made by the person liable for the IHT that would otherwise be due, by excluding the full value of trees or underwood on qualifying land from the calculation of the death estate for IHT purposes. When the timber is sold an IHT liability may then arise on the original beneficiaries.
21. WR could only previously apply in respect of trees or underwood growing on land located in the UK. This clause extends the relief to trees or underwood growing on land located in other qualifying EEA states. The amendments restrict the extension of relief to circumstances where the land in question is located in a qualifying EEA state at the time of death. The relief is otherwise left unchanged.
22. Business asset hold-over relief allows deferral of a capital gains tax charge (on a gift or sale at undervalue of a business asset) until the asset is disposed of by the recipient. Claims for hold-over relief are possible in respect of agricultural property that is not farmed by the person claiming the relief.
23. This clause will have the effect of extending, from 22 April 2009, hold-over relief to agricultural property in other qualifying EEA states. Other conditions for the relief are unchanged.
24. Hold-over relief in respect of disposals of agricultural property located in a qualifying EEA state in the past will also become eligible for relief. Claims in respect of gifts or sales at undervalue on or after 23 April 2003 will be possible within existing statutory provisions for claims and amended returns. The time limit for claiming hold over relief is five years from 31 January following the tax year to which the claim relates. Claims to relief in respect of the tax year 2003-04 can therefore be made until 31 January 2010.

EXPLANATORY NOTE

CLAUSE 122 SCHEDULE 61: ALTERNATIVE FINANCE INVESTMENT BONDS

SUMMARY

1. Clause 122 and Schedule 61 facilitate the issue of alternative finance investment bonds based on real property. They ensure that disposals and acquisitions of real property in connection with such bonds do not incur liabilities to stamp duty land tax (SDLT) or tax in respect of chargeable gains and entitlements to capital allowances are preserved. They have effect from the date that Finance Bill 2009 receives Royal Assent.

DETAILS OF THE CLAUSE

2. Clause 122 provides for Schedule 61 to have effect in relation to relief from taxation of chargeable gains, SDLT, and capital allowances in connection with alternative finance investment bonds.

DETAILS OF THE SCHEDULE

3. Paragraph 1(1) of the Schedule provides that terms used in the Schedule have the same meaning as in section 48A of the Finance Act (FA) 2005, which deals with alternative finance investment bonds. This sub-paragraph also explains that references in the Schedule to “prescribed evidence” mean evidence prescribed in regulations made by HM Revenue & Customs (HMRC). It also defines a qualifying interest as “a major interest in land” or a share of such an interest. The only exclusion is a lease of less than 21 years.
4. Paragraph 1(2) provides that, unless it is clear from the context that this is not the case, any expressions used in the Schedule which are also used in Part 4 of FA 2003 (which deals with SDLT) shall have the same meanings in both places.
5. Paragraph 2 provides an exemption from SDLT for alternative finance investment bonds by ensuring the tax treatment of the bonds is the same as that provided within section 48B(2) of FA 2005 for income tax and capital gains tax (CGT).

6. Paragraph 3(1) states that the tax treatment of alternative finance investment bonds provided at paragraph 2 is not available where a bond-holder, or a group of connected bond-holders, acquires control of the underlying asset.
7. Paragraph 3(2) explains the circumstances in which it may be possible for a single bond-holder, or a group of connected bond-holders, to acquire control of the underlying asset.
8. Paragraph 4 provides two exclusions from paragraph 3.
9. Paragraph 4(2) provides the first exclusion, which applies where, at the time the rights under the bond were acquired, a bond-holder, or all of a group of connected bond-holders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise such control.
10. Paragraph 4(3) provides for the second exclusion which is available for persons acting as underwriters of the bond issuance providing they do not exercise control and management of the bond asset.
11. Paragraph 5(1) introduces 7 conditions (conditions A to G) for the application of paragraphs 6 to 18 of the Schedule to provide relief from SDLT and tax on chargeable gains and to determine the treatment for capital allowances purposes. This sub-paragraph also provides that paragraphs 20 and 22 of the Schedule can prevent these reliefs even if all 7 conditions are satisfied.
12. Sub-paragraph (2) provides condition A. This is that a person (“P”) transfers a qualifying interest in land to another person (“Q”) and P and Q agree that at a later time (when Q ceases to hold that interest as a bond asset in relation to an alternative finance investment bond of which Q is the issuer) Q will transfer that interest to P. The transfer of the qualifying interest to Q is described in the Schedule as “the first transaction”.
13. Sub-paragraph (3) provides condition B. This is that Q acts a bond issuer in relation to an alternative finance investment bond, and holds the interest in land as a bond asset.
14. Sub-paragraph (4)(a) provides condition C. This is that Q and P enter into a “leaseback agreement” to generate income and gains for the alternative investment bond.

15. Sub-paragraph (4)(b) provides that HM Treasury may, by regulations extend the scope of condition C to include financing structures other than those involving a sale and leaseback.
16. Sub-paragraph (5) explains what is meant by “leaseback agreement” in condition C. This is that Q grants P a lease or sublease out of the interest acquired in the first transaction. The sub-paragraph includes provision to ensure that the equivalent transactions under Scottish land law also constitute a leaseback agreement.
17. Sub-paragraph (6) provides condition D. That is that, the bond issuer (Q) is required to provide prescribed evidence that a satisfactory legal charge has been entered on the Land Register. The evidence needs to be provided to HMRC within 120 days of the first transaction. “Prescribed evidence” is evidence prescribed by regulation made by HMRC.
18. Sub-paragraph (7) provides rules relating to the charge over the land referred to in sub-paragraph 6.
19. Sub-paragraph (8)(a) provides that the amount of the charge is to include the amount of SDLT that would be due on the market value of the transfer of the interest at the date of the transfer.
20. Sub-paragraph (8)(b) provides that the charge also includes any interest and penalties that would be payable if the tax has been due (but not paid) on the first transaction.
21. Sub-paragraph (9) provides condition E. This is that, over the life of the alternative finance investment bond, Q receives payments of capital of at least 60 per cent of the value of the interest in land at the time of the first transaction. The purpose of condition D is to ensure that the main use of the interest in land is as a bond asset.
22. Sub-paragraph (10) provides condition F. This is that throughout the life of the alternative finance investment bond Q holds the interest in land as a bond asset.
23. Sub-paragraph (11) provides condition G. This is that at the termination of the bond, when the interest in land ceases to be a bond asset, the interest is transferred to P by Q (this transfer is described as “the second transaction”), and that the second transaction takes place no later than 10 years after the first transaction. This effectively puts a term of 10 years on the alternative finance investment bond.

24. Sub-paragraph (12) provides that the period of 10 years referred to in condition F can be altered by Treasury regulation.

Stamp duty land tax: first transaction

25. Paragraph 6(1) sets out the requirements for relief from SDLT on the first transaction. These are that the interest acquired is of land in the UK and that each of the conditions A to C are met within 30 days of the date of the transfer of interest in land from P to Q.
26. Paragraph 6(2) provides that where the requirements in this paragraph are satisfied the first transfer from P to Q is exempt from SDLT.
27. Paragraph 6(3) provides that the relief is subject to conditions relating to asset substitution at paragraph 18.
28. Paragraph 6(4) provides that relief on the first transaction is also subject to the provisions of paragraph 20 which provides that relief on the first transaction is not available where a bond-holder, or group of connected bond-holders, acquires control of the underlying asset.
29. Paragraph 7 details the circumstances where the relief on the first transaction will be withdrawn.
30. Paragraph 7(1)(a) provides for the first circumstance, where the asset is returned to P but the requirement to issue bonds to the value of 60 per cent of the asset is not satisfied and the asset is not held as a bond asset until the termination of the bond.
31. Paragraph 7(1)(b) provides that the relief is also withdrawn where a period of ten years has elapsed since the first transaction without conditions E and F having been satisfied.
32. Paragraph 7(1)(c) provides that relief is also withdrawn if at any time it becomes evident that any of conditions E to G cannot or will not be fulfilled.
33. Paragraph 7(2) provides that relief is also withdrawn where Q fails to provide prescribed evidence to HMRC that they have registered a charge within 120 days of the transaction (see above).
34. Paragraph 7(3) provides that if any of the circumstances set out in paragraphs 7(1) and (2) apply then the first transaction is no longer exempt from SDLT.

35. Paragraph 7(4) provides that the amount of SDLT chargeable is the tax that would have been charged on the market value of the interest transferred and paragraph 7(5) provides the time from which interest is due in respect of that amount.
36. Paragraph 7(6) provides that Q is also required to deliver a further land transaction return within 30 days of the date on which the relief is withdrawn.
37. Paragraph 7(7) provides that the return must include a self-assessment of the amount chargeable to tax in respect of the first transaction.
38. Paragraph 7(9) provides that the requirements of Schedule 10 to FA 2003 and section 76 of that Act are modified for the purposes of this schedule with the transaction being the event which triggered withdrawal of the relief and the effective date of transaction being the date of the withdrawal of the relief.

Stamp duty land tax: second transaction

39. Paragraph 8 provides relief from SDLT on the transfer of the land asset from Q back to P.
40. Paragraph 8(1) provides that the transfer of the land back to P is exempt if conditions A to G have been met and all the provisions of Part 4 of FA 2003 relating to the first transaction have been complied with.
41. Paragraph 8(2) provides that the relief is subject to conditions relating to asset substitution in paragraph 18.
42. Paragraph 8(3) provides that relief is not available in respect of the second transaction if paragraph 20 applies because a bond-holder or group of connected bond-holders acquires control of the underlying asset.
43. Paragraph 9 provides that if following the transfer of the land asset back from Q to P, Q provides prescribed evidence (see above) that conditions A to C and E to G have been met then the land ceases to be subject to a charge.

Taxation of capital gains

44. Paragraph 10 provides relief from charges under the Taxation of Chargeable Gains Act 1992 (TCGA) in respect of the first

transaction and any leaseback agreement between Q and P, provided that certain of the conditions in paragraph 5 are satisfied.

45. Paragraph 10(1) states that the paragraph applies if conditions A to C in paragraph 5 (see paragraphs 12 to 16 above) are all satisfied within 30 days of the effective date of the first transaction. This condition is the same as that in paragraph 6(1)(b) in respect of SDLT.
46. Paragraph 10(2) provides the relief in respect of the first transaction. The first transaction is not treated for the purposes of the TCGA as a disposal by P or an acquisition by Q. In general, tax is charged under TCGA only if chargeable gains arise on the disposal of assets, so the provision that there is no disposal prevents a charge from arising.
47. Paragraph 10(3) similarly provides that if condition C is satisfied by Q and P entering into a leaseback agreement, the granting of a lease or sub-lease in the leaseback agreement is not regarded for TCGA purposes as a disposal of an interest in the land by Q or an acquisition by P.
48. Paragraph 10(4) provides that sub-paragraphs (2) and (3) are subject to paragraph 11, which provides for withdrawal of the relief if any of conditions D to G are not met.
49. Paragraph 10(5) provides that, if the interest in land ceases to be the bond asset but is replaced by an interest in other land, paragraph 10 is subject to paragraph 18, and sub-paragraph (6) provides that paragraph 10 is also subject to paragraph 20 (see paragraphs 93 to 95 below).
50. Paragraph 11 effectively withdraws the special treatment provided by paragraph 10, if any of conditions D to G are not satisfied.
51. Paragraph 11(1) provides three circumstances in which the paragraph applies. These are that:
 - Q transfers the interest in land back to P without conditions E and F having been met;
 - the period specified in condition G (under paragraph 5(11)(b) this is currently 10 years, but can be changed by regulations) expires without both condition E and condition F being satisfied; or

- it becomes clear at any time that one or more of conditions E to G cannot or will not be satisfied.
52. Paragraph 11(2) provides for the paragraph to have effect in one other circumstance. This is that the interest in land that is the subject of the first transaction is an interest in land in the UK, but Q fails to provide evidence of a charge over the land as required by Condition D.
53. Paragraph 11(3) provides that where paragraph 11 has effect, the disregards for TCGA purposes of the first transaction and the grant of the lease or sub-lease do not apply. The effect of this is that these transactions can constitute disposals and acquisitions for TCGA purposes, so that chargeable gains or losses may arise. Any gains or losses are computed as they would be if the transactions had not been disregarded.
54. Paragraph 11(4) provides that any chargeable gains or losses that result from the application of sub-paragraph (3) do not arise for tax purposes at the time of the actual transactions (the first transaction, or the grant by Q to P of the lease or sub-lease). The exact time when they arise is determined by the conditions that result in the application of sub-paragraph (3):
- where sub-paragraph (3) applies because the interest in land is transferred from Q to P without one or both of conditions E or F being satisfied, the chargeable gain or loss arises immediately before the transfer of the interest from Q to P;
 - where sub-paragraph (3) applies by virtue of either of the conditions in the second and third bullets of paragraph 51 of this note, the chargeable gain or loss arises at the time mentioned in the relevant condition; and
 - where sub-paragraph (3) applies by virtue of the failure to provide evidence of a charge over land located in the UK, the chargeable gain or loss arises at the expiry of the time allowed under condition D.
55. Paragraph 12 provides relief from tax under TCGA in respect of the second transaction.
56. Paragraph 12(1) provides that the second transaction is not regarded for TCGA purposes as a disposal by Q and an acquisition by P if:
- conditions A to C and E to G are satisfied; and

- if the relevant land is in the UK, condition D is also met.

Capital allowances

57. Paragraph 13(1) explains that paragraphs 14 to 17 set out the treatment of alternative finance investment bonds for the purposes of the capital allowances legislation.
58. Paragraph 14 sets out the treatment for capital allowances purposes of plant and machinery or industrial buildings used for alternative finance investment bonds.
59. Sub-paragraph (1) provides that paragraph 14 applies to transactions falling within the conditions A to C set out in paragraph 5.
60. Sub-paragraph (2) provides that paragraph 14 only applies to assets that are either plant or machinery or an industrial building (or part of an industrial building).
61. Sub-paragraph (3)(a) provides that the expenditure by Q on acquiring the asset is not capital expenditure for the purposes of CAA.
62. Sub-paragraph (3)(b) provides that, for the purposes of CAA, Q is not treated as becoming the owner of the asset, instead P is to be regarded as continuing to be the owner of the asset.
63. Sub-paragraphs (4) and (5) provide that the treatment of the assets for the purposes of CAA is not affected by the leaseback agreement entered into by Q and P nor by the second transaction.
64. Paragraph 15 provides rules for the case where the asset held for the purposes of the bond is lost or destroyed.
65. Sub-paragraph (2) states that the first condition is that the asset is plant or machinery that was part of the subject matter of the first transaction.
66. Sub-paragraph (3) states that the second condition is that, whilst the asset is held as a bond asset, it is either permanently lost or ceases to exist.
67. Sub-paragraph (4) provides that if the conditions are met then for the purposes of CAA there is a disposal event for P in the period in which the loss occurs or the asset ceases to exist.

68. Sub-paragraph (5) sets out the disposal value that P is required to bring into account for the purposes of CAA.
69. Paragraph 16 sets out the treatment for the purposes of CAA where Q retains the asset, but no longer holds it as a bond asset.
70. Sub-paragraph (2) states that the first condition is that the asset is plant or machinery, or an industrial building (or part of an industrial building), that was part of the subject matter of the first transaction.
71. Sub-paragraph (3) states that the second condition is that Q retains the asset after ceasing to hold the asset as a bond asset.
72. Sub-paragraph (4) states that where the conditions are satisfied, Q is treated for the purposes of CAA as becoming the owner of the asset and P is treated as ceasing to be the owner of the asset.
73. Sub-paragraph (5) states that in the chargeable period for P in which Q ceases to hold the asset as a bond asset, P is treated as having disposed of the asset.
74. Sub-paragraph (6)(a) states that P is required to bring into account as the disposal value, the market value of the plant or machinery at the time of the transfer.
75. Sub-paragraph (6)(b) states that P is treated as receiving as the proceeds of the balancing event, for the purposes of industrial buildings allowances, the market value of the asset.
76. Paragraph 17 sets out the treatment for the purposes of CAA where Q transfers the asset to a third person.
77. Sub-paragraph (2) states that the first condition is that the asset is plant or machinery, or an industrial building (or part of an industrial building), that was part of the subject matter of the first transaction.
78. Sub-paragraph (3) states that the second condition is that Q transfers the asset to any other person than P.
79. Sub-paragraph (4) states that at the time that Q transfers the asset, the other person is treated for the purposes of CAA as becoming the owner of the asset and P is treated as ceasing to be the owner of the asset.
80. Sub-paragraph (5) states that in the chargeable period for P in which Q ceases to hold the asset as a bond asset, P is treated as having a

disposal event in respect of plant or machinery or a balancing event in respect of an industrial building (or part of an industrial building).

81. Sub-paragraph (6)(a) states that P is required to bring into account as the disposal value, the market value of the plant or machinery at the time of the transfer.
82. Sub-paragraph (6)(b) states that P is treated as receiving as the proceeds of the balancing event, for the purposes of industrial buildings allowances, the market value of the asset.

Supplementary

83. This section of the Schedule explains:
- the conditions that need to be satisfied for the relief to remain available if an asset is substituted; and
 - the circumstances in which relief may be denied where a bond-holder, or a group of connected bond-holders, acquires control of the asset.
84. Paragraph 18 provides rules for the case where the interest in land that was subject of the first transaction ceases to be a bond asset (before the termination of the bond) and is replaced as bond asset by an interest in other land. These rules allow such a substitution of bond assets to take place without disturbing the reliefs under paragraphs 6 to 17.
85. Sub-paragraph (1) lists the circumstances in which the paragraph applies. These are that:
- conditions A to C and G are met in relation to an interest in land (described as “the original land”), so that the interest in land is transferred from Q to P (condition G) at some time after conditions A to C have been satisfied;
 - the interest in land ceases to be held by Q as a bond asset and hence is transferred by Q to P before the termination of the life of the bond;
 - P and Q enter into further arrangements that fall within paragraph 5(2) (condition A) in relation to an interest in other land (described as “the replacement land”); and

- the value of the replacement land when transferred from P to Q is at least as great as the value of the interest in the original land at the time of the first transaction.
86. Sub-paragraph (2) provides modifications to the application of paragraphs 6 to 17 to the original land and the replacement land. The purpose of these modifications is that the replacement land is able to become the bond asset in place of the original land, without disturbing the effects of paragraphs 6 to 17 in relation to the relevant alternative finance investment bond arrangements. The modifications in respect of the original land are in sub-paragraph (3), and those in respect of the replacement land in sub-paragraph (4).
87. Sub-paragraph (3) provides that condition F (the requirement that Q should hold the original land as a bond asset throughout the life of the bond) need not be met in relation to the original land, provided that conditions A, B, C, F and G (taking account of the modifications made by sub-paragraph (4)) are met in relation to the replacement land.
88. Sub-paragraph (4) provides that following the substitution of the replacement land for the original land:
- condition E continues to apply by reference to the value of the original land at the time of the first transaction relating to that land (so that the amount of capital that Q must receive to satisfy condition E is unchanged by the substitution of land); and
 - the ten year time limit for condition G continues to apply by reference to the first transaction relating to the original land.
89. Sub-paragraph (5) provides that if Q registers a charge in relation to the replacement land, any charge imposed by condition D in relation to the original land will be discharged.
90. Sub-paragraph (6) provides that, if the replacement land is not in the UK, the charge on the original land will be discharged when Q provides HMRC with the prescribed evidence (see paragraph [3] above) that all of conditions A to C are met for the replacement land.
91. Sub-paragraph (7) provides for the rules in relation to asset substitution to apply where there is more than one substitution of land during the lifetime of a bond.

92. Paragraph 19 provides that, where a charge on the land is discharged because the land has ceased to be a bond asset, either at the expiration of the bond with all of conditions A to G having been met, or because of a substitution of land to which paragraph 18 applies, HMRC must take the necessary action to remove the charge from the land register. This must be done within 30 days of Q providing the prescribed evidence that enables the charge to be removed.
93. Paragraph 20 provides rules for the situation where a bond-holder, or a group of connected bond-holders, acquires control of the bond assets. The circumstances in which the paragraph applies are the same as for paragraphs 3 and 4 of the Schedule.
94. Sub-paragraph (2) explains what is meant by a single bond-holder, or a group of connected bond-holders, acquiring control of the underlying asset. This happens if:
- the rights of bond-holders under an alternative finance investment bond include rights of control and management over the bond; and
 - a bond-holder, or a group of connected bond-holders, acquires sufficient rights to enable them to exercise management and control over the bond assets, regardless of any other bond-holders.
95. Sub-paragraph (3) provides that:
- if a bond-holder, or the group, acquires control before the termination of 30 days from the first transaction, no relief for SDLT or TCGA purposes is available in relation to the arrangements; and
 - if a bond-holder, or the group, acquires control after that period of 30 days, and conditions A to C have been met within that 30 day period, paragraphs 8 and 12 apply to withdraw the reliefs under paragraph 6 (for SDLT purposes) and 11 (for TCGA purposes) respectively.
96. Paragraph 21(2) provides that where, at the time the rights under the bond were acquired, a bond-holder, or all of a group of connected bond-holders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred

sufficient bonds, as soon as reasonably possible so that they could no longer exercise such control.

97. Paragraph 21(3) provides for the second exclusion for persons acting as underwriters of the bond issuance providing they do not exercise the right of control and management of the bond asset.
98. Paragraph 22 is an anti-avoidance provision. It provides that the reliefs under paragraphs 6 to 12 (extended where appropriate by paragraph 18 in relation to substitutions of land) are not available unless the arrangements:
- are entered into for genuine commercial reasons; and
 - are not part of arrangements whose main purpose, or one of whose main purposes, is the avoidance of liability to any of a number of taxes (which are listed in paragraph 22(2)).
99. Paragraph 23 provides rules in relation to regulations that can be made under provisions of this Schedule.

Consequential changes

100. Paragraph 25 inserts new section 73C into FA 2003. This provides a cross-reference to this Schedule to Finance Bill 2009.
101. Paragraph 26 inserts new subsection (5A) into section 86 of FA 2003 (payment of tax) ensuring that tax is payable where the land ceases to qualify for relief in respect of alternative finance investment bonds.
102. Paragraph 27(2) amends section 48B of FA 2005 (alternative finance investment bonds) to replace references to ‘any tax other than the Corporation Tax Acts’ in subsection (2) and (3) with references to income tax or CGT.
103. Paragraph 27(3) inserts new subsection (9) into section 48B of FA 2003 which refers to this Schedule to Finance Bill 2009.
104. Paragraph 28 repeals paragraph 651(a) of Schedule 1 to the Corporation Tax Act 2009.
105. Paragraph 29 provides the commencement provision for the Schedule. Sub-paragraph (1) provides that the amendments to section 48B of FA 2005 made by paragraphs 2 to 4 and 27, and the amendment to FA 2003 made by paragraphs 25, have effect from the date Finance Bill 2009 receives Royal Assent.

106. Sub-paragraph (2) of paragraph 29 provides that the rest of the Schedule has effect where the first transaction (as explained in paragraph 5(2), takes place on or after the date that Finance Bill 2009 receives Royal Assent.

BACKGROUND NOTE

107. The Government has already introduced legislation enabling the provision of alternative methods for individuals or business to finance a property purchase, deposit money in a bank and borrow money from a financial institution. The focus has now moved to the issue of alternative finance investment bonds based on real property.
108. Interests in land or property as the underlying asset may often back bonds. In a normal securitisation, the investor does not have a direct ownership in the underlying asset but merely an interest-bearing certificate. With alternative finance investment bonds, however, the investors own part of the underlying asset. This necessary change in ownership of the underlying asset may involve SDLT, tax on capital gains and capital allowances issues.
109. To provide similar tax outcomes for alternative finance products to their equivalent conventional finance products, no SDLT or tax on capital gains should be charged when the land is sold to the issuer of the alternative finance bonds and no SDLT or tax on capital gains charged on the sale back of the property to the originator at the end of the bond term. In addition the position of alternative finance bond-holders will be clarified to ensure that SDLT does not arise on the acquisition or transfer of an alternative finance bond certificate. The originator should also be able to claim any CA's on the asset during the term of the bond.
110. These new provisions address certain tax barriers to ensure that the cost of issuing an asset based alternative finance investment bond is equivalent to conventional equivalent financial product.

EXPLANATORY NOTE

CLAUSE 123: MUTUAL SOCIETIES: TAX CONSEQUENCES OF TRANSFERS OF BUSINESS ETC

SUMMARY

1. Clause 123 introduces a power to make provisions by regulations governing the tax consequences of transfers of business or engagements by mutual societies.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the scope of the power.
3. Subsection (3) provides that regulations made under this power may in particular make provision about a number of particular areas as identified in subsections (a) to (h) including reliefs, exemptions and countering avoidance.
4. Subsection (4) provides that the regulations may modify enactments and instruments relating to tax; make any incidental, consequential, supplemental or transitional provisions that may be required including different provisions for different cases or different purposes.
5. Subsection (5) allows for such regulations to have unlimited retrospective effect subject to the condition that they do not increase any person's liability to tax.

BACKGROUND NOTE

6. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ("the 2007 Act") received Royal Assent on 23 October 2007. Its aim is to help the mutual sector to expand and flourish as an alternative model to other legal forms such as proprietary companies by making it easier for a mutual society to transfer its business to a subsidiary company of another mutual society.
7. Initial discussions with the mutual society sector ahead of implementation of the 2007 Act identified a number of tax issues that might act as a barrier to transfers under that Act and to transfers under pre-existing continuing rules.

RESOLUTION 66

8. This clause introduces a power for HM Treasury to make, by way of regulations, provisions for the tax consequences of transfers of business or engagements ensuring, as far as possible, equivalent tax treatment for all such transfers and countering potential avoidance.

EXPLANATORY NOTE

CLAUSE 124: NATIONAL SAVINGS: SURPLUS FUNDS

SUMMARY

1. This clause requires the Commissioners for the Reduction of the National Debt (“the Commissioners”) to pay to the Consolidated Fund surplus sums held by them by virtue of their investments under section 17 of the National Savings Bank Act 1971 (“the 1971 Act”).
2. The clause also gives a power to the Treasury to repeal or amend any enactment, by order, where the amendment is required as a consequence of the closure of ordinary accounts or the transfer of the surplus to the Consolidated Fund.

DETAILS OF THE CLAUSE

3. Subsection (1)(a) requires the Director of Savings and the Commissioners to prepare a statement showing the amount of the surplus held by the Commissioners.
4. Subsection (1)(b) requires the Commissioners to transfer the surplus to the Consolidated Fund.
5. Subsection (2) describes the surplus which must be transferred by the Commissioners to the Consolidated Fund (“the relevant surplus”) and specifies the sums which may be deducted from the relevant surplus before the transfer is made. Subsection (2)(a) allows sums expended by the Director of Savings in relation to the surplus to be deducted from the relevant surplus; subsection (2)(b) allows the Commissioners’ expenses in managing the surplus to be deducted from the relevant surplus; and subsection (2)(c) provides that any sums which may be transferred to the Consolidated Fund under section 20 of the 1971 Act shall not form part of the relevant surplus.
6. Subsection (3)(a) provides that sums expended by the Director of Savings in relation to the surplus must be paid into the Consolidated Fund.
7. Subsection (3)(b) allows the Commissioners to retain sums representing their expenses in relation to the surplus.
8. Subsection (4) requires the Director of Savings and the Commissioners to present the statement under subsection (1) to the Comptroller and Auditor General who must audit the statement and report to Parliament accordingly.

9. Subsection (5) allows the Treasury, by order, to repeal or amend the legislation on ordinary accounts where the repeal or amendment is considered necessary or expedient in consequence of the closure of ordinary accounts or in consequence of the transfer of surplus moneys to the Consolidated Fund.
10. Subsection (6) requires an order under subsection (5) to be made by statutory instrument.
11. Subsection (7) provides that an order under subsection (5) must be laid in draft before, and approved by a resolution of, the House of Commons before it is made.
12. Subsection (8)(a) provides that references to sums expended or expenses incurred in connection with ordinary accounts includes sums expended or expenses incurred in connection with any amounts held by the Commissioners by virtue of their investments under section 17 of the 1971 Act.
13. Subsection (8)(b) ensures that the expressions used in the section have the same meaning as in the 1971 Act.
14. Subsection (9) provides that the “1971 Act” means the National Savings Bank Act 1971 and an “enactment” (at subsection (5)) includes both an enactment in the 1971 Act and subordinate legislation.

BACKGROUND NOTE

15. The National Savings Bank Ordinary Account was launched in 1861. In accordance with the provisions of sections 17 to 20 of the 1971 Act, the balance of ordinary accounts in the National Savings Bank was transferred to the Commissioners who, in turn, were required to invest the funds transferred to them in accordance with those provisions. Interest on the investments held by the Commissioners met the operational running costs of the ordinary account as well as the interest paid to depositors.
16. When the ordinary account was closed to transactions in 2004, moneys remained unclaimed in some accounts. In 2008, for security and operational reasons, any balances remaining were transferred to a new ‘NS&I Residual Account’. The associated funds in respect of these accounts were transferred to the National Loans Fund.
17. All that now remains in the management of the Commissioners in respect of ordinary accounts is a surplus of moneys which represent sums set aside in the past to offset possible depreciation in the value of investments held by them (in accordance with section 20 of the 1971

Act) or sums which represent an increase in the capital value of their investments. The increase in the capital value occurred because the market value of gilt-edged investments held by the Commissioners rose as yields reduced in the 1990s and early 2000s, thereby increasing the value of older gilts. The 1971 Act makes no provision for how such a surplus must be managed.

18. This clause requires the Commissioners to pay to the Consolidated Fund surplus sums held by them by virtue of their investments under section 17 of the 1971 Act and makes provision for the manner in which such a surplus must be calculated, transferred and accounted for
19. The clause also allows the Treasury to repeal or amend, by order, statutory provisions relating to ordinary accounts which are no longer necessary.

**FINANCE BILL 2009
CLAUSES 125 & 126**

EXPLANATORY NOTE

CLAUSES 125 & 126: FINAL PROVISIONS

CLAUSE 125: INTERPRETATION

1. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of “ICTA” as an abbreviation for the Income and Corporation Taxes Act 1988.

CLAUSE 126: SHORT TITLE

2. This clause provides for the Bill to be known as the “Finance Act 2009” upon Royal Assent.

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