

# FINANCE BILL 2004 LOBBY NOTES

## PART 1

### EXCISE DUTIES

#### *Rates of tobacco products duty*

**Clause 1** provides for an increase in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco and other smoking tobacco and chewing tobacco) with effect from 6pm on 17 April March 2004.

#### *Alcoholic liquor duties*

**Clause 2** provides for an increase in the rate of excise duty charged on beer to take effect at midnight on Sunday 21 March 2004.

**Clause 3** provides for an increase in the rates of excise duty charged on still wine and still made-wine to take effect at midnight on Sunday 21 March 2004.

**Clause 4 and Schedule 1** insert a requirement in the Alcoholic Liquor Duties Act 1979 that certain retail containers of spirits, and wine and made wine with an alcohol by volume (abv) of over 22%, should bear a duty stamp. The duty stamp will indicate that some or all of the duty chargeable on the alcoholic liquor has been paid or secured. The new legislation includes powers to make secondary legislation, specifying amongst other matters, the design, use and positioning of duty stamps, the procedures for acquiring them and the time when containers are required to be stamped. The new legislation also introduces a number of new offences and penalties for dealing in unstamped products that are required to bear a duty stamp and civil penalties for affixing wrong, altered or forged stamps.

#### *Hydrocarbon oil duties*

**Clause 5** increases the rates of excise duty applicable to hydrocarbon oils and biodiesel. The duty rates for ultra low sulphur diesel and ultra low sulphur petrol are increased by 0.5 penny per litre above inflation. The duty rates for rebated oils for use other than as road fuel are increased to narrow the differential with the main road fuel rates. The duty rate for biodiesel has been increased in order to maintain the 20 pence per litre duty differential with sulphur-free diesel. Other increases are in line with inflation. These changes will come into effect from 1 September 2004.

**Clause 6** amends the Hydrocarbon Oil Duties Act 1979 (HODA 1979) to introduce a new rate for natural gas for use as fuel in road vehicles, and to increase the rate of excise duty applicable to road fuel gas other than natural gas. These changes will come into effect from 1 September 2004.

**Clause 7** amends the Hydrocarbon Oil Duties Act 1979 (HODA 1979) to introduce new rates of duty for sulphur-free petrol and sulphur-free diesel. Sulphur-free fuels are petrol or diesel where the sulphur content does not exceed 0.001 per cent by weight, or is nil. These changes will come into effect on 1 September 2004. (PN3)

**Clause 8** provides, from Royal Assent, a power to amend by statutory instrument the definition of fuel oil that is set out in the Hydrocarbon Oil Duties Act 1979 (c.5) (HODA 1979).

**Clause 9** makes provision for the Hydrocarbon Oil Duties Act 1979 (HODA 1979) to be amended to remove the provisions that charge duty when two road fuels of differing duty rates are mixed together. It also rationalises the provisions that charge duty when a mixture is produced that contains a least one non-road fuel. It comes into effect from Royal Assent.

**Clause 10** amends the Hydrocarbon Oil Duties Act 1979 (HODA 1979) to introduce a new, reduced rate of duty for bioethanol used as a fuel for any engine, motor or other machinery, set at 28.52 pence per litre. This rate is also applicable to the bioethanol element of blends containing bioethanol and hydrocarbon oil. These changes will come into effect from 1 January 2005. (PN3)

**Clause 11** amends the Hydrocarbon Oil Duties Act 1979 (HODA 1979) so that the production of bioblend is a chargeable use of biodiesel. The change will come into effect on 1 January 2005.

**Clause 12** makes a technical amendment to the provisions in the Hydrocarbon Oil Duties Act 1979 (HODA 1979) that charge to excise duty liquids that are not hydrocarbon oil or biodiesel and which are used, or are to be used, in an engine, motor or other machinery or as an additive or extender in any substance so used.

**Clause 13** inserts a new section on warehousing into the Hydrocarbon Oil Duties Act 1979 (HODA 1979), to allow the application of duty suspension arrangements to a range of new energy products.

**Clause 14** amends section 10 of the Finance Act 1993, which allows the Treasury, by order, to specify that a mineral oil is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 (HODA 1979) as hydrocarbon oil or road fuel gas. That power will now be available in respect of certain energy products that are the subject of new Community legislation.

#### *Betting and gaming duties*

**Clause 15** provides for the Betting and Gaming Duties Act 1981 to be amended in relation to the charging of duty on certain types of pool betting.

**Clause 16** revalorises the duty bands for gaming duty for all accounting periods starting on or after 1 April 2004.

### *Amusement Machine Licence Duty*

**Clause 17** increases the rates of amusement machine licence duty on certain gaming machines. The new rates will apply to all licence applications received by the Commissioners of Customs and Excise on or after 22 March 2004.

### *Vehicle Excise Duty*

**Clause 18** enables a fee to be charged where a credit card is used to pay vehicle excise duty in order to licence a vehicle.

## **PART 2**

### **VALUE ADDED TAX**

**Clause 19 and Schedule 2** introduce a new requirement for businesses using VAT avoidance schemes to disclose their use. Its purpose is to increase transparency in the tax system. Certain VAT avoidance schemes will be put on a statutory register. Businesses with an annual turnover of £600,000 or more that continue to use these schemes will have to inform Customs and Excise. Businesses with a turnover of £10 million or more will also have to inform Customs and Excise if they use arrangements for the purpose of securing a tax advantage and include certain provisions included in or associated with avoidance schemes which will also be put on a statutory register. The changes take effect from a day to be appointed by the Treasury.

**Clause 20** authorises the Treasury to make an order modifying the rules on who can join a VAT group in particular cases. This power will be used to impose additional conditions for VAT grouping in limited circumstances, in order to prevent abuse. The clause also ensures that a company cannot be in two VAT groups at the same time.

**Clause 21** provides that a UK VAT registered customer will himself account for the VAT due on supplies of natural gas or electricity where that supply has been made by a supplier outside the UK.

**Clause 22** introduces a new power to determine the value of a supply where a motor car is supplied for a consideration by a motor dealer or a manufacturer to an employee, and the value of the supply is less than its open market value. The new legislation includes a power to direct that the value of such a supply shall be taken to be its open market value. Its purpose is to prevent avoidance of VAT in relation to the private use of stock-in-trade cars. The changes take effect in relation to any use or availability of use on or after a day to be appointed by the Treasury.

## PART 3

### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

#### CHAPTER 1

#### CHARGE AND RATE BANDS

##### *Income Tax*

**Clause 23** imposes the income tax charge for 2004-05, and sets the starting, basic, and higher rates of tax at 10 per cent, 22 per cent, and 40 per cent respectively.

**Clause 24** determines the personal allowances for those aged 65 or over for the year 2004-05. The personal allowance for those aged 65 or over but under 75 will be set at £6,830 and the personal allowance for those aged 75 or over will be set at £6,950.

##### *Corporation tax*

**Clause 25** charges corporation tax for the financial year beginning 1 April 2005 and sets the main rate at 30 per cent.

**Clause 26** provides for the small companies' rate of corporation tax for the financial year beginning 1 April 2004 to be 19 per cent, and for the fraction used in calculating marginal relief from the main rate to be eleven four-hundredths.

**Clause 27** provides for the starting rate of corporation tax for the financial year beginning 1 April 2004 to be 0 per cent, and for the fraction used in calculating marginal relief from the small companies' rate to be nineteen four-hundredths.

**Clause 28 and Schedule 3** provide for a "non-corporate distribution rate" of corporation tax. This is applied to at least part of a company's profits where distributions are made to persons other than companies on or after 1 April 2004 where the underlying rate of corporation tax is below the non-corporate distribution rate. It sets the rate at 19% for the financial year 2004 and introduces Schedule 3, which contains supplementary provisions.

##### *Trusts*

**Clause 29** provides for the rate applicable to trusts to be 40 per cent, rather than 34 per cent, and the Schedule F trust rate to be 32.5 per cent, rather than 25 per cent, for 2004-05 and subsequent years of assessment. The rate applicable to trusts is the rate of tax that generally applies to the income of discretionary or accumulation trusts, it and also applies to the capital gains of all trustees and the capital gains of the personal representatives of deceased persons. The Schedule F trust rate generally applies to dividend type income arising to discretionary or accumulation trusts. The clause also provides for Schedule 4, which makes various changes relating to the rate applicable to trusts, to have effect.

**Schedule 4** makes various changes related to the change in the rate applicable to trusts, from 34 per cent to 40 per cent, as provided for in clause 29. The changes mostly apply to the anti-avoidance legislation in section 677 Income and Corporation Taxes Act 1988 which charges tax on settlors (individuals who put funds into a trust) in respect of loans or other capital payments made to them or their spouse by the trustees of that trust. This amendment will ensure that the (notional) tax credit received by the settlor does not exceed the tax actually paid by the trustees. The changes will have effect for the tax year 2004-05 onwards.

## CHAPTER 2

### CORPORATION TAX: GENERAL

#### *Transfer pricing etc*

**Clauses 30 to 37 and Schedule 5** merge the current thin capitalisation requirements and subsume them within the general transfer pricing rules. The new rules will end transfer pricing and thin capitalisation requirements for small and medium-sized enterprises in most circumstances; extend the scope of transfer pricing requirements for other businesses so that they apply to UK and cross-border transactions; allow the connected UK business to make a corresponding adjustment in the calculation of its taxable income; and exempt companies that are dormant at 1 April 2004 from transfer pricing requirements for as long as they remain dormant.

#### *Expenses of companies with investment business and insurance companies*

**Clause 38** replaces section 75 of the Income and Corporation Taxes Act 1988, which deals with the expenses of management of investment companies. It also amends section 130 ICTA, which defines investment companies. The changes extend eligibility for the relief given by section 75 to companies with some investment business, and not just those within the current definition of investment companies whereby a company's investment activities must be the predominant part of its business. This will be of particular importance to companies, which manage investments consisting of shares in subsidiaries but also carry on a trade.

**Clause 39** inserts a new section 75A into the Income and Corporation Taxes Act 1988, which explains how expenses of management incurred by a company are referable to particular accounting periods.

**Clause 40** rewrites section 76 of the Income and Corporation Taxes Act 1988. In doing so it uncouples section 76 entirely from section 75 (which is also substantially rewritten). The new clause retains most of the provisions of the old and sets out a clear order in which the various types of expense and qualifications to the amounts deductible are made. The clause will have effect for accounting periods beginning on or after 1 April 2004 and also for periods that straddle that date in relation to the period falling after the date.

**Clause 41 introduces Schedule 6**, which contains consequential amendments to other enactments.

**Clause 42** provides the date of commencement for the revised relief for expenses of management in Clauses 38 to 41 and Schedule 6, subject to the transitional provisions in Clauses 43 and 44 and in Schedule 6.

**Clause 43** contains provisions, which supplement the general commencement rule in Clause 42 for the new management expenses regime set out in Clauses 38 and 39. It sets out the transitional provisions which apply where an investment company already entitled to deduct management expenses under the existing section 75 of the Income and Corporation Taxes Act 1988 comes within the new rules. The clause also sets out the detailed commencement rules for companies, which become entitled to deduct management expenses for the first time.

**Clause 44** provides the transitional provisions for the revised expenses of management relief for insurance companies. It covers periods of accounts, which straddle the commencement date of 1 April 2004.

#### *Amounts reversing expenses of management deducted*

**Clause 45** inserts a new section to deal with a charge to tax where sums credited in the company's accounts reverse sums charged in the accounts, which have already been allowed as expenses of management. This reflects the fact that under the new timing rules it is not necessary to "disburse" sums in order to obtain a deduction.

#### *Power to make consequential amendments*

**Clause 46** inserts a power for the Treasury to make consequential amendments to other legislation as a result of the changes to the relief for management expenses.

#### *Insurance companies: miscellaneous*

**Clause 47 and Schedule 7** prevent avoidance of corporation tax by companies carrying on life assurance business through the use of financial reinsurance arrangements. They also make some technical corrections to legislation about such companies in Schedule 33 Finance Act 2003.

#### *Loan relationships and derivative contracts*

**Clause 48 and Schedule 8** make a number of miscellaneous changes to the legislation that deals with loan relationships (debt and securities). The changes affect:

- the treatment of certain venture capital limited partnerships;
- companies in insolvency proceedings;
- companies that emigrate or move assets from a permanent establishment; and
- the "major interest" test.

**Clause 49 and Schedule 9** make a number of miscellaneous changes to the legislation that deals with derivative contracts. The changes affect:

- existing powers to amend parts of the derivative contracts legislation;
- companies that emigrate, or move assets from a permanent establishment;
- the “unallowable purposes” test; and
- the measure of the capital element of profits and losses on derivative contracts held by open-ended investment companies.

#### *Accounting practice*

**Clause 50** allows companies and other entities, which choose to adopt International Accounting Standards to draw up their accounts to use those accounts for tax purposes. Currently tax legislation only allows accounts drawn up using UK Generally Accepted Accountancy Practice to form the basis of a tax computation. The clause applies for periods beginning on or after 1 January 2005.

**Clause 51** prevents companies within the same group from gaining a tax advantage through the use of International Accounting Standards by one company and UK Generally Accepted Accounting Practice by the other in relation to the same transaction.

**Clause 52 and Schedule 10** make a number of detailed changes to the legislation relating to loan relationships, derivative contracts and intangible fixed assets. They adapt the legislation in the light of new accounting concepts and definitions used in International Accounting Standards.

**Clause 53** provides for immediate relief to companies and other entities which add research & development (R & D) expenditure to the cost of an intangible asset in accordance with International Accounting Standards or UK Generally Accepted Accountancy Practice. Before this change, relief for such expenditure could only be given as the cost of the asset was amortised through the profit and loss account. The clause applies from a date to be given by a commencement order.

**Clause 54** prevents a company whose business includes dealings in shares and other securities from escaping tax on its profits if it uses International Accounting Standards and treats any of its investments as “available for sale” rather than as trading assets.

#### *Miscellaneous*

**Clause 55** introduces an obligation on companies coming within the scope of corporation tax (CT) for the first time, or coming back into the scope of CT following a period of dormancy, to notify the Inland Revenue and to provide prescribed information about the company and its directors.

**Clause 56** will increase the existing thresholds for corporation tax exemption on the trading and property income of community amateur sports clubs (CASCs) registered with the Inland Revenue.

### **CHAPTER 3**

## CONSTRUCTION INDUSTRY SCHEME

### *Introduction*

**Clause 57** contains certain definitions for Chapter 3. That Chapter introduces a new scheme providing for deductions to be made on account of tax from certain payments made in the construction industry.

**Clause 58** defines a sub-contractor for the purposes of Chapter 3.

**Clause 59** defines who is a contractor. In addition to persons carrying on a business including construction operations, it defines a number of other bodies and businesses, under certain conditions, as being contractors for the purposes of the scheme.

### *Deductions on account of tax from contract payments to sub-contractors*

**Clause 60** defines a "contract payment" for the purposes of the Chapter and provides for certain payments to be excepted from the definition.

**Clause 61** requires a contractor to make deductions, at the relevant percentage, from contract payments. It provides upper limits for the relevant percentage.

**Clause 62** sets out how deductions under section 61 from individuals and companies are treated.

### *Registration of sub-contractors*

**Clause 63** sets out the requirements for registration for both gross payment and payment under deduction.

**Clause 64 and schedule 11** set out the requirements which individuals, firms and companies must meet to be registered for gross payment.

**Clause 65** deals with cases where there has been a change in control of a company.

**Clause 66** provides for the Inland Revenue, in certain circumstances, to cancel a registration for gross payment.

**Clause 67** provides for a person to appeal to the General or Special Commissioners of the Inland Revenue against the refusal or withdrawal of registration for gross payment.

**Clause 68** provides regulation-making powers in respect of cancellation of registration for payment under deduction and appeals relating to refusal of registration for, or cancellation of, payment under deduction.

### *Verification, returns etc and penalties*

**Clause 69** sets out the requirements for contractors to verify the registration status of sub-contractors.

**Clause 70** sets out the requirements for periodic returns to be made by contractors.

**Clause 71** provides powers to make regulations relating to collection and recovery of sums deducted.

**Clause 72** provides for penalties to be applied in certain circumstances.

### *Supplementary*

**Clause 73** allows regulations to make applying the provisions to agents, etc and provides supplementary regulation-making powers in connection with documents and records.

**Clause 74** sets out what are, and are not, "construction operations" for the purposes of the Chapter and provides powers for the definitions to be changed by Treasury order.

**Clause 75** defines the meaning of "the Inland Revenue" and makes provision for the delegation of the Board's functions.

**Clause 76 and Schedule 12** gives effect to the consequential amendments set out in schedule 12.

**Clause 77** provides for the new scheme to be commenced by an appointed day order and contains certain transitional provisions relating to persons holding certificates and cards under the existing system.

## **CHAPTER 4**

### **PERSONAL TAXATION**

#### *Taxable benefits*

**Clause 78 and Schedule 13** introduces new tax exemptions from the benefit-in-kind charge arising on the provision of childcare contracted by an employer and on the provision of childcare vouchers.

**Clause 79** extends the employee benefits exemption for loaned computers to circumstances where the benefit would be taxable as general employment income. At present the exemption (under section 320 Income Tax (Earnings and Pensions) Act 2003 (ITEPA)) applies only where the benefit would be taxable under the benefits code. It does not cover cases where the benefit would be taxable as earnings under Section 62 ITEPA, which would be the case where the employee has the choice of a salary alternative to the loaned computer. This clause will ensure that the exemption applies to the latter circumstances as well.

**Clause 80 introduces Schedule 14** and changes the rules for taxing the benefit derived when an employer provides an employee with a van for private use. It also introduces a new fuel charge when the employer provides free fuel for unrestricted private use.

**Clause 81** removes the tax charge that would otherwise arise where members of the fire, police and ambulance services are required to take their vehicles home so they can respond quickly to emergencies when on call. The measure is effective from 6 April 2004.

**Clause 82** amends the present tax exemption for MPs' EU travel expenses so that it mirrors the new House of Commons procedures for reimbursing these costs.

#### *Gift aid*

**Clause 83** provides for tax repayments to be donated to charity using the Self-Assessment tax return and allows such donations to be treated as qualifying donations for the purposes of Gift Aid.

#### *Gifts with a reservation*

**Clause 84 and Schedule 15** impose an income tax charge on the benefits of enjoying "pre-owned assets" from tax year 2005-06 onwards. "Pre-owned assets" are generally assets previously owned by the chargeable person and disposed of in whole or part since March 1986. The charge extends to cases when the chargeable person has funded the acquisition of an asset for their use by a third person, and to cases where the asset initially disposed of or acquired are replaced by other assets by the chargeable person. Separate rules, defining what counts as enjoyment and qualifying the chargeable benefits, apply to land; chattels; and intangible property. There are exemptions for a range of disposals including notably those to a spouse; those falling within the existing inheritance tax "gift with reservation" rules. A transitional election provides for arrangements made before the charge comes into effect.

#### *Miscellaneous*

**Clause 85 and Schedule 16** introduce a new income tax relief for employees who agree to meet some or all of their employer's secondary National Insurance liability arising from restricted or convertible employment-related securities.

**Clause 86** amends section 282A of the Income and Corporation Taxes Act 1988. Section 282A contains provisions for taxing income arising to husbands and wives from property they hold in joint names and basically provides for that income to be taxed 50:50 whatever the actual ownership of the property. Following this change income from shares in close companies (mainly companies owned by their directors or five or fewer people) will be taxed in accordance with the husband and wife's true share of the income, rather than simply half each. The change takes effect from 6 April 2004.

**Clause 87 and Schedule 17** correct a number of errors that were overlooked in the rewrite of employment income legislation into Income Tax (Earnings and Pensions) Act 2003. These corrections clarify the legislation to ensure that it continues to apply as intended.

## CHAPTER 5

### ENTERPRISE INCENTIVES

**Clause 88 and Schedule 18** make a number of amendments to the Enterprise Investment Scheme (EIS).

**Clause 89 and Schedule 19** make a number of amendments to the Venture Capital Trust (VCT) scheme.

**Clause 90 and Schedule 20** make amendments to the Corporate Venturing Scheme (CVS). The rules in relation to the subsidiaries of an issuing company are amended so that a company can be a qualifying subsidiary if it is a 51% subsidiary of the CVS company. This does not apply in relation to property managing subsidiaries and subsidiaries whose activities benefit from the money raised through the CVS – such subsidiaries have to be 90% subsidiaries. The activities for whose purpose the money raised is used must be carried on by the company that issued the shares, or a 90% subsidiary of that company.

**Clause 91** amends “the 75% qualifying subsidiary” rule within Schedule 5 of the Income Tax (Earnings and Pensions) Act 2003 which provides the rules for Enterprise Management Incentives (EMI) share options.

## CHAPTER 6

### EXEMPTION FOR CERTAIN INTEREST AND ROYALTY PAYMENTS

**Clauses 92 – 101** implement the EU Interest and Royalties Directive (Council Directive 2003/49/EC of 3 June 2003 – ‘the Directive’) into UK law. The terms of the Directive have effect from 1 January 2004. It provides for the elimination of source state taxation on interest and royalty payments between associated companies in different Member States of the European Union.

## CHAPTER 7

### SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX

#### *Introductory*

**Clause 102** provides introductory material and definitions used in Chapter 7 of Part 3 of the Finance Bill (clauses 102 to 110). This chapter ensures that persons who receive savings income from abroad do not suffer double taxation where special withholding tax may be levied on the income.

### *Credit etc for special withholding tax*

**Clause 103** ensures credit can be given against income tax when double taxation is suffered as a result of special withholding tax. Those affected will be able to set the tax withheld against their income tax liability. Any excess will be set against capital gains tax, and any remaining balance will be repaid.

**Clause 104** ensures credit can be given against capital gains tax when double taxation is suffered as a result of special withholding tax. Those affected will be able to set the tax withheld against their capital gains tax liability. Any excess will be set against income tax, and any remaining balance will be repaid.

**Clause 105** ensures that credit is given first for any foreign tax suffered before giving credit for special withholding tax. This ensures foreign tax credits are not wasted unnecessarily.

### *Computation of income etc*

**Clause 106** explains how income and gains are to be computed for income tax purposes, and capital gains are to be computed for capital gains tax purposes, where a person has suffered special withholding tax, but no foreign tax.

**Clause 107** determines how income and capital gains should be computed for the purposes of giving relief for foreign tax where a person has suffered both special withholding tax and foreign tax.

### *Certificates to avoid levy of special withholding tax*

**Clause 108** provides for the arrangements under which a person may apply to the Inland Revenue for a certificate. It specifies the information that the applicant must provide, and the information that the certificate must contain. The applicant can send the certificate to their paying agent so that he will not levy special withholding tax on payments of savings income he makes to him.

**Clause 109** provides for a person to appeal against a decision by the Inland Revenue to refuse to issue a certificate requested under Clause 108.

### *Supplementary*

**Clause 110** contains supplementary provisions to ensure that Chapter 7 of Part 3 of the Finance Bill functions as intended. This chapter completes the implementation in the UK of the EU Savings Directive and related international arrangements with other jurisdictions.

## CHAPTER 8

### CHARGEABLE GAINS

**Clause 111 and Schedule 21** counter tax avoidance schemes which rely on the availability of capital gains tax (CGT) gifts relief on the disposal of assets to the trustees of trusts which are settlements in which a settlor has an interest. The new provisions will prevent gifts relief being available in relation to such disposals made on or after 10 December 2003.

**Clause 112 and Schedule 22** prevent exploitation of the interaction between private residence relief and gifts relief to avoid capital gains tax (CGT). Their effect is that private residence relief will not be available in certain circumstances where a disposal is made on or after 10 December 2003 by an individual or the trustees of a settlement. These circumstances arise where the computation of the amount of any gain arising on the disposal has to take account of gifts relief obtained in respect of an earlier disposal. This is subject to a transitional provision which will restrict the amount of private residence relief available in respect of the disposal if there has been no “earlier disposal” on or after 10 December 2003.

**Clause 113** is essentially clarificatory, amending the provisions of the Taxation of Chargeable Gains Act 1992 (TCGA) relating to authorised unit trusts (AUTs) to bring its treatment of “umbrella schemes” strictly into line with the Inland Revenue’s established interpretation of the current rules, and with the closely corresponding treatment of such schemes which applies for certain purposes of the Income and Corporation Taxes Act 1988 (ICTA). The clause makes no substantive changes to the effects of the TCGA provisions, and does not make any amendments to the rules for unit trust schemes which are not AUTs. The amendments take effect for chargeable periods beginning on or after 1 April 2004.

## CHAPTER 9

### AVOIDANCE INVOLVING LOSS RELIEF OR PARTNERSHIP

#### *Individuals benefited by film relief*

**Clause 114**, together with Clauses 115 to 118 inclusive, is an anti-avoidance measure which applies to individuals who have carried on a trade, either alone or in partnership, which has computed its taxable profits or losses in accordance with the film tax reliefs at sections 40A to 40C and 41 to 43 Finance (No 2) Act 1992, and section 48 Finance (No 2) Act 1997. This measure tackles schemes, used by individuals who have benefited from these reliefs, which seek to convert a tax deferral into a permanent tax gain. The new rules will apply with effect from 10 December 2003. This particular clause sets out the necessary conditions for the measure to take effect, and raises a charge to income tax when those conditions are met.

**Clause 115** is part of an anti-avoidance measure, introduced by clauses 114 to 118 inclusive, which tackles schemes used by individuals who have benefited from film tax relief from turning a tax deferral into a permanent tax advantage. This particular clause describes what is meant by “disposal of a right of the individual to profits arising from the trade” for the purposes of section 114.

**Clause 116** is part of an anti-avoidance measure, introduced by clauses 114 to 118 inclusive, which tackles schemes used by individuals who have benefited from film tax relief from turning a tax deferral into a permanent tax advantage. This particular clause defines what is meant by “the losses claimed” and “the individual’s capital contribution to the trade” for the purposes of section 114.

**Clause 117** is part of an anti-avoidance measure, introduced by clauses 114 to 118 inclusive, which tackles schemes used by individuals who have benefited from film tax relief from turning a tax deferral into a permanent tax advantage. This particular clause sets additional rules for computing the chargeable amount in section 114. It prevents any double charge from arising under that section, and also ensures that no costs paid out or borne by an individual, in order to arrange an exit, can be deducted in computing the amount of the charge.

**Clause 118** is part of an anti-avoidance measure, introduced by clauses 114 to 118 inclusive, which tackles schemes used by individuals who have benefited from film tax relief from turning a tax deferral into a permanent tax advantage. This particular clause defines the meaning of “film related losses” in section 114 and 116 and “non-taxable consideration” in section 114.

#### *Individuals in partnership: restriction of relief*

**Clause 119** is an anti-avoidance measure which tackles avoidance schemes used by individuals who are members of a partnership. The new rules restrict relief for trading losses to the level of the partner's contribution where the losses are incurred in one of the first four years of assessment that the partner carries on the trade and where the partner does not spend a significant amount of time personally engaged in the trade. The new rules apply to all losses from the trade claimed by partners who join a partnership on or after 26 March 2004. Where an individual was already a member of the partnership before 26 March 2004, the new rules apply to trading losses derived from expenditure incurred on or after 10 February 2004.

#### *Individuals in partnership: exit charge*

**Clause 120**, together with clauses 121 to 124 inclusive, is an anti-avoidance measure which tackles schemes used by individuals in a partnership to reduce their tax on income from a licence or similar agreement. The partners aim to benefit from early loss relief against income tax, but then sell the income rights for a lower taxed capital sum. The new rules ensure that the disposal of income rights is charged to income tax. The new rules apply on or after 10 February 2004 but only to a partner who did not spend a significant amount of time in the trade when the losses arose. This clause sets out the conditions which give rise to a charge to income tax under this measure.

**Clause 121** is part of an anti-avoidance measure, introduced by clauses 120 to 124 inclusive, which tackles schemes used by individuals in a partnership to reduce their tax on income from a licence. This particular clause sets out how and when the charge to income tax arises under these rules.

**Clause 122** is part of an anti-avoidance measure, introduced by clauses 120 to 124 inclusive, which tackles schemes used by individuals in a partnership to reduce their tax on income from a licence. This particular clause sets out definitions necessary for clause 121.

**Clause 123** is part of an anti-avoidance measure, introduced by clauses 120 to 124 inclusive, which tackles schemes used by individuals in a partnership to reduce their tax on income from a licence. This particular clause sets out the circumstances which give rise to a disposal which is chargeable to income tax under these new rules.

**Clause 124** is part of an anti-avoidance measure, introduced by clauses 120 to 124 inclusive, which tackles schemes used by individuals in a partnership to reduce their tax on income from a licence. This particular clause sets out the definition of a “significant amount of time”. This is important because the legislation only applies to individuals who do not spend a significant amount of time engaged in the activities of the trade. The test is applied separately for each year of assessment by reference to what the partner did in the basis period for that year of assessment.

### *Companies in partnership*

**Clause 125**, together with clause 126, is an anti-avoidance measure which tackles avoidance schemes used by companies to shelter taxable profits within a partnership structure. The schemes allocate profit shares out of proportion to the shares of capital contributed by the partners to the partnership. Typically the income is allocated to a non-UK partner and the capital to the UK company, which then realises untaxed profits as capital. The legislation tackles this by deeming profits to arise to the UK company in line with its partnership share, and taxing those profits when the UK company realises capital. The new rules apply to capital realisations comprising untaxed profits arising on or after 17 March 2004.

**Clause 126**, together with clause 125, is an anti-avoidance measure which tackles avoidance schemes used by companies to shelter taxable profits within a partnership structure. The new rules apply to capital realisations comprising untaxed profits arising on or after 17 March 2004. This clause provides supplementary definitions for the purposes of clause 125.

## **CHAPTER 10**

### **AVOIDANCE: MISCELLANEOUS**

**Clause 127 and Schedule 23** introduce measures to prevent the continuing exploitation of loopholes in the capital allowance rules. The measures apply to the sale and leaseback or lease and leaseback of plant or machinery and prevent businesses from gaining an unintended tax advantage from the double benefit of retaining capital allowances and obtaining deductions for lease rentals.

**Clause 128 introduces Schedule 24** and strengthens existing anti-avoidance legislation concerning the income tax treatment of sale and repurchase (repo) and stock lending arrangements over UK equities.

**Clause 129** is an anti-avoidance provision that amends the income tax treatment of discounted securities in the form of strips of government bonds.

**Clause 130** affects the taxation of life insurance policies, life annuity contracts and capital redemption policies. It closes an avoidance loophole by restricting the corresponding deficiency relief, which is allowable against an individual's income where the computation of the gain when the policy or contract comes to an end shows a deficiency. The measure takes effect from 3 March 2004.

## CHAPTER 11

### MISCELLANEOUS

#### *Reliefs for business*

**Clause 131** makes a change to the SME research and development tax credit, the large company research and development tax relief and vaccines research relief. The change widens the definition of qualifying expenditure to include the costs of computer software, water, fuel and power. It also simplifies the definition of materials used in research and development.

**Clause 132** increases for one year the rate of first-year capital allowances for spending by small businesses on most plant and machinery. The rate is increased from 40 per cent to 50 per cent. The increased allowances apply to spending on or after 1 April 2004 for businesses within the charge to corporation tax and on or after 6 April 2004 for businesses within the charge to income tax.

**Clause 133** inserts two sections in the Income and Corporation Taxes Act 1988. These sections enable landlords who pay income tax to claim a deduction for expenditure to install loft insulation and cavity wall insulation in let residential property.

**Clause 134 and Schedule 25** allow individual Lloyd's underwriters who convert under Lloyd's rules to underwriting through a company or a limited partnership to carry forward unused trading losses, and, where the conversion is to a company, to defer charges to capital gains tax ("CGT"). This is provided certain qualifying conditions are met. The new relief for trading losses is available where the conversion takes place on or after 6 April 2004. The CGT relief is available where assets are transferred to the successor company on or after that date.

#### *Offshore matters*

**Clause 135 and Schedule 26** amend the offshore funds regime. They change the rules that determine whether or not an offshore fund can be certified as a "distributing fund". This in turn determines the tax treatment of a UK investor. The new rules

apply to the first account period of an offshore fund ending after Royal Assent, but existing funds will have the option to continue to apply some of the existing rules.

**Clause 136 and Schedule 27** provide a new definition of "offshore installation" for the purpose of the income tax deduction for seafarers (formerly known as the Foreign Earnings Deduction) and for certain other purposes of the Tax Acts. It also replaces certain references to "oil rigs" in those enactments with a reference to offshore installations. (BN 14)

### *Health*

**Clause 137** provides for payments made to care providers under immediate needs annuities to be exempt from income tax in the hands of the policyholder. Immediate needs annuity business will be taxed as 'other long-term business' (that is according to the normal rules for taxing trading profits) in the hands of the insurance companies that provide this type of business.

**Clause 138** amends section 519A ICTA 1988 to give the Treasury power to make an order to disapply tax exemption and to specify the tax treatment of profits arising from non-health care activities of NHS foundation trusts to the extent these are not carried out in companies.

## **PART 4**

### **PENSION SCHEMES ETC**

#### **CHAPTER 1**

#### **INTRODUCTION**

##### *Introductory*

**Clause 139** sets out the contents of the Part of the Bill that deals with pension schemes and other similar schemes.

##### *Main concepts*

**Clause 140** defines some of the basic terms used in this legislation.

**Clause 141** provides definitions of the term "member" and sets out the different capacities in which an individual may be a "member" of a pension scheme.

**Clause 142** sets out the different sorts of arrangements under which pension schemes can provide benefits to members.

#### **CHAPTER 2**

### **REGISTRATION OF PENSION SCHEMES**

### *Registration*

**Clause 143** provides for the registration of pension schemes that apply to join the simplified tax regime. This procedure is primarily for use by new schemes that are established after the simplified regime comes into effect.

**Clause 144** sets out the range of persons who may establish a registered pension scheme. A scheme established by someone outside this range would be unable to become a registered scheme.

**Clause 145** provides definitions for terms used in clause 144, which set out the range of persons by whom a registered pension scheme may be established. These include UK institutions and their equivalents in the European Economic Area (EEA).

**Clause 146** sets out how an appeal may be brought against a decision by the Inland Revenue not to register a scheme.

### *De-registration*

**Clause 147** provides for the conditions under which the Inland Revenue will withdraw the registration of a pension scheme, for example where there ceases to be a scheme administrator of the pension scheme.

**Clause 148** sets out the grounds on which the Inland Revenue can de-register a registered pension scheme. Where registration is withdrawn, a scheme will be liable to a substantial tax charge and the scheme, members and employers will not enjoy the tax advantages provided to registered schemes.

**Clause 149** provides a right of appeal against any decision by the Inland Revenue to withdraw registration from a registered scheme, and deals with procedures.

## **CHAPTER 3**

### **PAYMENTS BY REGISTERED PENSION SCHEMES**

#### *Introductory*

**Clause 150** provides an overview of this Chapter and signposts the sections dealing with the consequences of making payments that are not authorised or making unauthorised borrowing.

**Clause 151** defines the meaning of “payment” for the purposes of this chapter (Chapter 3 deals generally with the types of payment which registered schemes are and are not authorised to make). It specifies what is meant by a payment from a registered pension scheme and provides that payments made to persons connected to members and sponsoring employers are to be treated as made for the benefit of the member or sponsoring employer.

**Clause 152** defines which transactions are to be treated as loans for the purposes of determining when certain loans are “unauthorised payments”.

**Clause 153** provides a definition of “borrowing” for the purposes of the rules on what borrowing a scheme is authorised to make. Chapter 3 deals with the types of payments which a registered pension scheme are and are not authorised to make. Clauses 171, 172, 173 and 174 make provision about amounts that a registered pension scheme is not authorised to borrow. Clauses 172 and 174 specify that unauthorised borrowing will be subject to the scheme sanction change.

#### *Authorised member payments*

**Clause 154** sets out what payments a registered pension scheme can pay to or in respect of scheme members.

**Clause 155 and Part 1 of Schedule 28** describe the rules that apply to pension payments by registered pension schemes to their members. Where such payments fall within these rules they will be authorised payments for the purposes of Clause 154.

**Clause 156 and Part 1 of Schedule 29** describe the rules that apply to lump sum payments by registered pension schemes to their members. Where such payments fall within these rules then they will be authorised payments for the purposes of Clause 154.

**Clause 157 and Part 2 of Schedule 28** describe the rules that apply to pension benefits that can be paid by registered pension schemes when a member of a scheme dies. Where such payments fall within these rules then they will be authorised payments for the purposes of Clause 154.

**Clause 158 and Part 2 of Schedule 29** describe the rules that apply to lump sum death benefits paid by registered pension schemes. Where such payments fall within these rules then they will be authorised payments for the purposes of Clause 154.

**Clause 159** sets out when a registered pension scheme can transfer a member’s rights or funds to another pension scheme. A registered pension scheme may make a transfer to any other registered pension scheme and to any recognised overseas pension scheme but to no other scheme.

**Clause 160** allows registered pension schemes to make payments to a member in the normal course of its administration or management, for example paying wages or purchasing assets, whilst ensuring that any payment made exceeding arm’s length terms would be treated as an unauthorised payment.

#### *Unauthorised member payments*

**Clause 161** deals with cases where a member assigns to another person any of the benefits to which they are entitled under a registered pension scheme. It treats the scheme as having made an unauthorised payment to the member of the higher of the amount they received for assigning their rights and the amount they would have received had the transaction been carried out on arm’s length terms. It also prevents any payments in respect of the assigned rights to the assignee from being treated as unauthorised payments when made.

**Clause 162** deems an unauthorised payment to arise if an asset of a registered pension scheme is used to provide a benefit to a member of the scheme or a member of his family or household.

**Clause 163** deems a registered pension scheme to have made an unauthorised member payment if transactions are entered into which reduce the value of a scheme's assets or increases its liabilities and, in relation to the same event, increases the value of an asset or decreases the value of a liability of a scheme member.

#### *Authorised employer payments*

**Clause 164** lists what authorised payments a registered pension scheme can make to a sponsoring employer, and provides for further types of payment to be prescribed in regulations. It applies only to registered pension schemes that are occupational schemes.

**Clause 165** provides for circumstances in which payments from a public service scheme made to or for the benefit of the sponsoring employer are not unauthorised employer payments.

**Clause 166** provides for regulations to be made to define the term "authorised surplus payment". Registered pension schemes may make certain payments to sponsoring employers. Clauses 164 - 169 provide detail on what sorts of payments – termed "authorised employer payments" may be made. One such payment is an "authorised surplus payment".

**Clause 167** provides for one type of authorised employer payment that a registered scheme may make: a "compensation payment". Registered pension schemes are authorised to make certain payments to sponsoring employers – "authorised employer payments". Any payments outside those rules are treated as unauthorised payments and certain tax consequences attach to this.

**Clause 168 and schedule 30** that it introduces provide for one type of payment be made to a sponsoring employer: an "authorised employer loan". Registered pension schemes are authorised to make certain payments to sponsoring employers – "authorised employer payments". Any payment made outside of these rules is an unauthorised employer payment and subject to certain tax consequences.

**Clause 169** authorises schemes to make payments to a sponsoring employer in the normal course of its administration or management, whilst ensuring that any payment made exceeding arm's length terms would be treated as an unauthorised payment.

#### *Unauthorised employer payments*

**Clause 170** deems a registered pension scheme to have made an unauthorised employer payment if transactions are entered into which reduce the value of a scheme's assets or increase its liabilities and, in relation to the same event, increase the value of an asset or decrease the value of a liability of the sponsoring employer.

#### *Borrowing*

**Clause 171** sets out what amounts a registered pension scheme can borrow in respect of a money purchase arrangement. It limits authorised borrowing to an amount equal to half of the money and assets held by the scheme in relation to that arrangement. If borrowing exceeds the authorised limits Clause 172 provides that a scheme chargeable payment is treated as having been made equal to the excess. Scheme chargeable payments are chargeable to the scheme sanction charge under Clause 228.

**Clause 172** provides for a registered pension scheme to be treated as having made a scheme chargeable payment where it borrows an amount in respect of a money purchase arrangement which it is not authorised to borrow, and explains what the amount of any such payment will be. Clause 171 sets out what amounts a registered pension scheme is authorised to borrow in respect of a money purchase arrangement. Under Clauses 228 and 229 a scheme chargeable payment is chargeable on the scheme administrator at a rate of 40%.

**Clause 173** provides a limit on the amount a registered pension scheme is authorised to borrow in respect of arrangements, which are not money purchase arrangements. It limits borrowing to one half of assets held by the scheme for arrangements, which are not money purchase arrangements. If scheme borrowings exceed this limit, Clause 174 provides for the scheme to be treated as having made a scheme chargeable payment, and explains what the amount of any such payment will be. Under Clauses 228 and 229 a scheme chargeable payment is chargeable on the scheme administrator at a rate of 40%.

**Clause 174** provides for a registered pension scheme to be treated as having made a scheme chargeable payment where it borrows in respect of an arrangement which is not a money purchase arrangement an amount, which it is not authorised to borrow and explains what the amount of any such payment will be. Clause 173 sets out what amounts a registered pension scheme is authorised to borrow in respect of such arrangements. Under Clauses 228 and 229 a scheme chargeable payment is chargeable on the scheme administrator at a rate of 40%.

## CHAPTER 4

### REGISTERED PENSION SCHEMES: TAX RELIEFS AND EXEMPTIONS

#### *Scheme investments*

**Clause 175** provides that a registered pension scheme has no liability to income tax in respect of income from certain types of investment.

**Clause 176** provides that a registered pension scheme has no liability to capital gains tax in respect of gains from disposal of certain types of assets. It achieves this by amending Section 271 of the Taxation of Capital Gains Act (TCGA) 1992.

#### *Members' contributions*

**Clause 177** sets out the main conditions for relief for member contributions

**Clause 178** defines a relevant UK individual for the purposes of a registered pension scheme and defines what are relevant UK earnings.

**Clause 179** provides that an individual can claim tax relief on contributions to a registered pension scheme on the greater of 100% of his relevant UK earnings that are chargeable to tax in the year or £3,600. The £3,600 is available if the member contributes to a scheme that operates relief at source.

**Clause 180** introduces the three ways in which tax relief on members' contributions can be given, relief at source, net pay arrangement and relief by way of a claim. It provides for the circumstances in which each method can be used. Where net pay or relief by way of a claim are not available then relief must be given by relief at source.

**Clause 181** sets out the conditions that apply where relief on contributions is available under the relief at source system. It allows an individual to make a contribution to a registered pension scheme after deducting a sum equal to the basic rate of income tax on the contribution. The scheme administrator credits the individual with the gross amount of the contributions and claims a repayment of the amount deducted by the individual from the Inland Revenue.

**Clause 182** sets out the conditions that apply where relief on contributions is available under net pay arrangements. It provides that the sponsoring employer is entitled to deduct the contribution from the employment income of the individual member so that the member automatically gets relief for pension contributions to a registered pension scheme through the operation of PAYE and no further claim is required.

**Clause 183** sets out the conditions that apply where relief on contributions is available on making of a claim.

**Clause 184** allows certain shares acquired under Inland Revenue approved employee share schemes to be transferred by an individual to a registered pension scheme and to be treated as contributions paid for the purposes of relief for members' contributions. It specifies the conditions where the transfer of such shares can be treated as contributions.

#### *Employers' contributions*

**Clause 185** sets out the conditions for relief where an employer makes contributions to a registered pension scheme. Contributions are to be allowed to the extent that they are paid and would be allowable under the normal rules of Schedule D, section 75 Income & Corporation Taxes Act 1988 (ICTA) or section 76 ICTA 1988. Payments of a capital nature are not disallowed.

**Clause 186** provides for exceptionally large employer contributions paid in a chargeable period to be spread over 2 to 4 chargeable periods depending on the size of the contribution. A contribution will only be spread where it is more than 210% of the contribution paid in the previous chargeable period and the amount of the excess is £500, 000 or more. Payments to fund a cost of living

increase for pensioner members or to fund or to meet a future service liability for new entrants to a scheme are excepted from spreading.

**Clause 187** makes special provision to allow a deduction for a contribution that has been spread forward to a future chargeable period or periods in accordance with Clause 186 to be given in an earlier chargeable period where the employer permanently ceases to carry on a business. Employers have a choice about the period over which they want to spread contributions taking account of their financial position.

**Clause 188** deems certain statutory payments to be a payment of a contribution under a registered pension scheme by an employer relievable under Case I and II of Schedule D, section 75 Income & Corporation Taxes Act 1988 (ICTA) and section 76 ICTA. It provides for relief where payments are made after the employer's trade etc has been discontinued.

**Clause 189** ensures that an employer is not entitled to any relief in connection with contributions under a registered pension scheme apart from relief for the payment of the contribution itself.

**Clauses 190** amends section 307 and section 308 the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 so that exemptions from income tax apply to individuals in respect of contributions made on their behalf to a registered pension scheme by the individual's employer.

#### *Inland Revenue contributions*

**Clause 191** aims to maintain the existing tax treatment of payments the Board is required to make into an individuals registered pension scheme under section 43 of the Pension Schemes Act 1993, and section 39 of the Northern Ireland equivalent, once the pension provisions introduced in this Finance Bill come into effect.

#### *Inheritance tax exemptions*

**Clause 192** amends the Inheritance Tax Act 1984. It ensures that the existing inheritance tax relief for contributions to approved pension provision will apply to registered pension schemes and schemes for non-residents to which section 615(3) ICTA applies. It also ensures that the inheritance tax regime currently applying to approved and sponsored pension schemes and to personal pension arrangements will continue to apply to registered pension schemes and section 615 schemes on and after 6 April 2006.

## CHAPTER 5

### REGISTERED PENSION SCHEMES: TAX CHARGES

#### *Charges on authorised payments*

**Clause 193 introduces Schedule 31** and amends Part 9 of Income Tax (Earnings and Pensions Act) (ITEPA) 2003, providing for how authorised pensions and lumps sums paid from registered pension schemes are to be taxed.

**Clause 194** requires that the scheme administrator will be liable to a charge to income tax on any payment of a short service refund lump sum paid under a registered pension scheme. A short service refund lump sum is a lump which is a refund of the member's contributions in certain prescribed circumstances.

**Clause 195** provides that the scheme administrator will be liable to a tax charge at a rate of 35% on certain lump sum death benefits. This applies only to: pension protection lump sum death benefit, an annuity protection lump sum death benefit or an unsecured pension fund lump sum death benefit .

**Clause 196** provides for a tax charge to be paid by the scheme administrator if a registered pension scheme makes an authorised surplus payment. This taxes the scheme administrator at a rate of 35% on any amounts that are returned to a sponsoring employer of an occupational scheme because they are surplus to the requirements of that scheme.

#### *Unauthorised payments charge*

**Clause 197** provides that where an unauthorised payment is made by a registered pension scheme it is taxed at a rate of 40%.

**Clause 198** provides that in certain circumstances the person liable to an unauthorised payments charge will be subject to an additional charge. The "unauthorised payments surcharge" is charged at 15%.

**Clause 199** identifies when an unauthorised member payment is a surchargeable unauthorised member payment.

**Clause 200** provides the basis of valuation of crystallised rights of a member for the purpose of calculating the percentage of a members fund used up by a surchargeable unauthorised member payments in Clause 199, for all types of arrangements.

**Clause 201** provides the bases of valuation of uncrystallised rights of a member for the purpose of calculating the surchargeable unauthorised member payments in Clause 199, for all types of arrangements.

**Clause 202** identifies those unauthorised employer payments that are surchargeable unauthorised employer payments.

### *Lifetime allowance charge*

**Clause 203** sets out when the lifetime allowance charge will arise and points to the subsequent provisions that contain detail of how the charge will operate.

**Clause 204** sets out the amount to be charged under the lifetime allowance charge and the rate at which that amount is to be taxed. Amounts paid out to individuals as lump sums are to be taxed at 55%, and other amounts are to be taxed at 25%.

**Clause 205, together with Schedule 32**, sets out the “benefit crystallisation events” that use up all or part of an individual’s lifetime allowance, and which, when the lifetime allowance is exceeded, will give rise to a lifetime allowance charge. This clause and schedule also provide rules for calculating the “amount crystallised” at any of the different benefit crystallisation events.

**Clause 206** sets out the persons who are liable to pay the lifetime allowance charge. In most cases, the individual member of the registered pension scheme in relation to which the charge arises is, together with the Scheme Administrator of that scheme, jointly and severally liable to the lifetime allowance. But where the lifetime allowance charge arises by virtue of a death benefit lump sum paid in respect of a deceased member, the liable person is the recipient of the death benefit lump sum.

**Clause 207** sets out the amount of the standard lifetime allowance for 2006-07 and provides for certain individuals to be entitled to a lifetime allowance that is different from the standard lifetime allowance.

**Clause 208** provides rules to calculate how much of an individual’s lifetime allowance is available at any benefit crystallisation event. Each such benefit crystallisation event uses up part of the individual’s lifetime allowance, and after the whole of the lifetime allowance has been used up the lifetime allowance charge applies.

**Clause 209** provides for a specific adaptation to the usual rules on lifetime allowance in the event that a pension credit is acquired from a pension in payment.

**Clause 210** increases the lifetime allowance available to an individual who has not benefited from UK tax reliefs while not resident in UK. The enhancement has the effect of ignoring those amounts, which did not have benefit from UK relief.

**Clause 211** provides the lifetime allowance enhancement factor for individuals within Clause 210 (broadly, individuals who have built up savings in a registered pension scheme whilst non-resident) where the individual has a money purchase arrangement.

**Clause 212** provides the lifetime allowance enhancement factor for individuals within Clause 210 (broadly, individuals who have built up savings in a registered pension scheme whilst non-resident) where the individual has either a defined benefits or hybrid arrangement.

**Clause 213** deals with the lifetime allowance available to an individual who transfers funds or pension rights from an overseas pension scheme that have not received UK tax relief into a registered scheme. The clause increases the lifetime allowance available to such individuals to allow for the increase in their funds due to the transfer in of amounts that have not received UK relief.

**Clause 214** deals with the relevant relievable amount that is provided for in Clause 213 and that is deducted from amounts transferred from money purchase arrangements under recognised overseas pension schemes. This reduces the increased lifetime allowance provided for in respect of amounts, which have benefited from UK relief.

**Clause 215** deals with the relevant relievable amount that is provided for in Clause 213 and that is deducted from amounts transferred from arrangements other than money purchase arrangements under recognised overseas pension schemes. This reduces the increased lifetime allowance provided for in respect of amounts transferred in from overseas schemes, which had benefited from UK relief.

#### *Annual allowance charge*

**Clause 216** sets out when the annual allowance charge will arise, the liable person, the nature of the charge and the rate at which it is to be taxed. It also points to the subsequent provisions that contain detail of how the charge will operate.

**Clause 217** sets out the amount of the annual allowance for 2006-07 and provides for an annual Treasury order to be made setting the amount of the allowance for subsequent years.

**Clause 218** defines the “total pension input amount”, which is the amount against which the annual allowance is to be tested. Any amount by which the total pension input amount exceeds the annual allowance is to be subject to the annual allowance charge.

**Clause 219** sets out the basic rules for how the “pension input amount” is to be calculated in respect of cash balance arrangements.

**Clause 220** provides supplementary rules for how the pension input amount is to be calculated in respect of cash balance arrangements.

**Clause 221** provides further supplementary rules for how the pension input amount is to be calculated in respect of cash balance arrangements.

**Clause 222** sets out the rules for how the “pension input amount” is to be calculated in respect of other money purchase arrangements.

**Clause 223** sets out the basic rules for how the “pension input amount” is to be calculated in respect of defined benefits arrangements.

**Clause 224** provides supplementary rules for how the pension input amount is to be calculated in respect of defined benefits arrangements.

**Clause 225** provides further supplementary rules for how the pension input amount is to be calculated in respect of defined benefits arrangements.

**Clause 226** sets out the basic rules for how the “pension input amount” is to be calculated in respect of hybrid arrangements.

**Clause 227** sets out what the “pension input period” is for each arrangement in respect of which the increase in an individual’s rights is to be tested against the annual allowance.

#### *Scheme sanction charge*

**Clause 228** imposes a scheme sanction charge on the scheme administrator of a registered pension scheme where that scheme makes certain types of payment which are not authorised by this part of the Finance Bill.

**Clause 229** sets the rate of the scheme sanction charge at 40% on all scheme chargeable payments. It also provides for the tax payable under this charge to be reduced where tax has already been paid by a member or sponsoring employer under the unauthorised payments charge.

**Clause 230** defines the term “scheme chargeable payment” for the purposes of the scheme sanction charge.

#### *De-registration charge*

**Clause 231** imposes a de-registration charge on the funds held by a registered pension schemes where the Revenue withdraw that scheme’s registration under Clause 147. The charge is set at 40% of the total value of the scheme fund.

## **CHAPTER 6**

### **EMPLOYER- FINANCED RETIREMENT BENEFITS SCHEMES**

#### *Provision for benefits*

**Clause 232** sets out the taxation treatment of contributions by employers to employer-financed retirement benefit schemes.

**Clause 233** relates to expenses of an employer *other* than contributions in providing benefits under an employer-financed retirement benefit scheme. It provides that such expenses are not allowable as a deduction against profits unless and until there is a tax charge on the recipient of the benefits.

#### *Benefits*

**Clause 234** repeals Chapter 1 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003.

**Clause 235** sets out the tax treatment to be given to any cost incurred by employers in insuring against the risk that retirement or death benefits under an employer-financed retirement benefit scheme cannot be met because of the employer's insolvency. Such costs will be chargeable to tax on the employee as a benefit in kind.

**Clause 236** provides for the taxation of non-pension benefits from employer-financed retirement benefit schemes.

## CHAPTER 7

### COMPLIANCE

#### *Information*

**Clause 237** provides for the Inland Revenue to issue a notice to the scheme administrator of a registered pension scheme requiring them to deliver a return giving certain details of the registered scheme, for example its assets, liabilities and income.

**Clause 238** requires certain information to be reported without notice. The legislation will require information, prescribed in regulations, to be provided by scheme administrators to the Inland Revenue, by scheme administrators to members and by members to scheme administrators.

**Clause 239** provides the mechanism for obtaining more detailed information from registered pension scheme and employer-financed retirement benefit schemes. Registered pension schemes and employer-financed retirement benefit schemes will be required under other provisions of this Bill to provide certain core basic information either with or without the issue of a notice. This information will however only provide a very high level picture of the scheme and its activities. There will be times when the Inland Revenue want a more detailed picture.

**Clause 240** provides for appeals against a notice requiring the provision of information. The appeals are to the General Commissioners. However the appellant will have the normal rights to elect for the appeal to be heard before the Special Commissioners instead. The finding of the Commissioners is final and conclusive.

#### *Accounting and assessment*

**Clause 241** requires a scheme administrator to make returns to the Inland Revenue on a quarterly basis of any income tax they are liable for and to pay the income tax due on a quarterly basis, by specified deadlines. The clause includes powers to make Regulations in connection with the operation of the returns.

**Clause 242** gives the Board of Inland Revenue a regulation making power in respect of assessments to income tax under this Part.

### *Registration regulations*

**Clause 243** provides the vires to make regulations in connection with the registration of a non standard lifetime allowance. The regulation will require any person to make documents and certificates available and provide information.

### *Penalties*

**Clause 244** allows the Inland Revenue to impose penalties on the scheme administrator of a registered pension scheme where he has failed to comply with a notice, under Clause 237, requiring him to make a return and/or provide supporting documents by a specified date. It also provides for penalties to be imposed where information contained within the return or supporting document provided is incorrect.

**Clause 245** allows the Inland Revenue to impose a penalty if a person who is required to provide information under Clause 238 fails to comply with those requirements or provides incorrect information or documents. It also imposes a penalty for failure to preserve documents, where the maximum penalty is up to £3,000.

**Clause 246** provides for penalties to be imposed where a person fails to comply with a notice, issued under Clause 239, requiring them to produce documents for inspection or other particulars the Inland Revenue may reasonably require.

**Clause 247** provides for penalties to be imposed on a scheme administrator where they do not make a return of information and pay income tax to the Inland Revenue in accordance with Clause 241. Penalties may also apply where the return is incorrect through fraud or negligence.

**Clause 248** allows the Inland Revenue to impose a penalty where a person fraudulently, or negligently, provides or makes available incorrect or false documents, certificates or information in connection with any matter registered in accordance with the enhanced lifetime allowance regulations.

**Clause 249** allows the Inland Revenue to impose a penalty where an individual fails to comply with any information requirements in the enhanced lifetime allowance regulation.

**Clause 250** imposes a maximum penalty of £3,000 where an individual has claimed enhanced protection and then starts to accrue benefits but fails to notify the Inland Revenue within the time limits allowed.

**Clause 251** imposes penalties where a person fraudulently or negligently makes a statement or representation to enable themselves or another to get relief from tax, a repayment of tax, or benefit from an unauthorised payment. In addition a penalty will be imposed if a person assists or helps in providing incorrect information that is likely to result in an unauthorised payment.

**Clause 252** allows the Inland Revenue to impose a penalty on a scheme administrator where they consider that a registered pension scheme is being wound up deliberately to provide winding-up lump sums to the members, or winding-up lump sum death benefits to others.

**Clause 253** allows a penalty to be imposed on the scheme administrator if they transfer pension rights from a registered pension scheme in to another registered pension scheme that invests in insurance policies, if the transfer is not made to the scheme administrator or the relevant insurance company.

*Discharge of tax liability: good faith*

**Clause 254** allows the scheme administrator of a registered pension scheme to apply to the Inland Revenue to be discharged from a lifetime allowance charge liability where the scheme administrator reasonably believed there was no such liability and it would be just and reasonable to discharge the liability in question.

**Clause 255** provides an opportunity for a person or a scheme administrator to apply to the Inland Revenue for discharge from their liability to pay either the unauthorised payments surcharge or the scheme sanction charge (as appropriate) in a case where it would not be just and reasonable to impose it.

**Clause 256** allows certain persons in relation to a registered pension scheme to appeal against the decision of the Inland Revenue to refuse their application to be discharged from a liability to the lifetime allowance charge, unauthorised payments surcharge or scheme sanction charge.

*Scheme administrator*

**Clause 257** provides a definition of the term “scheme administrator”.

**Clause 258** sets out what happens to the liabilities of a scheme administrator where there are changes in the persons acting as scheme administrator.

**Clause 259** provides for the liability of the scheme administrator to pass, by default, to another person or persons, where either there is no scheme administrator under Clause 258(3), or where the scheme administrator cannot be traced, or where the scheme administrator has seriously defaulted on their liability. The person or persons who will assume liability are listed in order of priority under this clause. The person or persons also assume responsibility for all other obligations that would be imposed on the scheme administrator under the new tax rules.

**Clause 260** provides for certain liabilities of the scheme administrator to default to certain persons who were members of the pension scheme in certain circumstances.

**Clause 261** sets out supplementary provisions in relation to scheme administrator liabilities.

## CHAPTER 8

### SUPPLEMENTARY

#### *Interpretation*

**Clause 262** provides the definition of “insurance company” and “contracts of long term insurance” for the purposes of this Part of the Bill.

**Clause 263** defines the “relevant valuation factor”, used to value individuals’ rights under defined benefits arrangements.

**Clause 264** defines the term “market value” for the purposes of this Part of the Finance Bill.

**Clause 265** sets out the meaning of other definitions used in this Part of the Bill.

**Clause 266** provides an explanation of the abbreviations used in Part 1 of the Bill. This clause also provides an index of defined expressions for Part 1 of the Bill.

#### *Other supplementary provisions*

**Clause 267 and Schedule 33** it introduces make consequential amendments to tax legislation.

**Clause 268** provides general provisions for regulatory powers within this Part of the Bill.

**Clause 269 and Schedule 34** it introduces set out the transitional provisions and savings applying to certain schemes and members who, before 6 April 2006, qualified for certain tax privileged treatment which will not be compatible with the simplified regime.

**Clause 270** deals with the commencement of Chapters 3 to 7 and section 267 (with Schedule 33) of Part 4 of the Finance Act and provides for the simplified regime for pensions taxation to come into effect on 6 April 2006.

## PART 5

### OIL

**Clause 271 and Schedule 35** removes liability for Petroleum Revenue Tax (PRT) on new tariffing business where infrastructure of pre-16 March 1993 fields on the UK continental shelf is used to transport, process or provide services to other fields. New business for these purposes means tariffs received from 1 January 2004 under a contract entered into on or after 9 April 2003 in relation to a new oil or gas field or an existing field if it has not made use of PRT liable assets in the UK or on its shelf in the 6 years prior to 9 April 2003. Use of a few specified assets are exceptions to this rule such as previous use of tankers when a field switches to offtaking its oil by

pipeline. Expenditure related to the new business will no longer be eligible for PRT relief.

**Clause 272 and Schedule 36** introduces a new exploration expenditure supplement (EES) to help companies exploring for oil or gas in the UK or on the UK Continental Shelf that do not yet have any taxable income against which to set their exploration and appraisal capital allowances. The EES increases the value of unused allowances carried forward from one period to another by a compound 6% per annum. It applies to qualifying exploration and appraisal expenditure claimed for an accounting period ending on or after 1 January 2004.

**Clause 273** provides for a further restriction (to market value or the amount of a corresponding charge to petroleum revenue tax (PRT)) of the expenditure allowable for PRT incurred in respect of transactions between connected companies or made otherwise than at arm's length. It applies to expenditure incurred on or after 17 March 2004.

**Clause 274** ensures that where at the end of an oil field's life a loss arises, for example through expenditure on decommissioning the field, then after relieving all the loss-maker's profits from the field, the loss is carried back to relieve the relevant profits of previous participators that held the loss-maker's interest in the field. Only after all those profits are relieved can the balance of the loss be relieved, as an unrelievable field loss, against the profits of any other field of the loss-maker. The clause applies to losses arising in a chargeable period ending on or after 17 March 2004.

#### *Climate change levy*

**Clause 275** exempts supplies of fuel used in the production of excisable biofuels from the climate change levy. This is to prevent double taxation. The clause also provides for similar changes that may be needed in future to the scope of the exemption to be made by secondary legislation.

#### *Aggregates levy*

**Clause 276** enables the Treasury, on or after 1 April 2004, to vary by Order the amount of relief, and the period of the relief's availability, under the current aggregates levy relief scheme for Northern Ireland.

**Clause 277** enables the Commissioners of Customs and Excise to make provision in regulations for a new transitional aggregates levy relief scheme for Northern Ireland. The changes will take effect from a date to be appointed by Order but the regulations will cover a period from such date as they prescribe (which may be earlier than the appointed date) until 31 March 2012.

#### *Lorry road -user charge*

**Clause 278** amends section 137 Finance Act 2002 in order to assign responsibility for lorry road-user charge to Customs and Excise.

### *Inheritance tax*

**Clause 279**, together with Clause 280, reconstructs the enabling powers to allow the current regulations to be amended to provide for the extension of the existing simplified procedures. Existing secondary legislation provides simplified inheritance tax procedures for small non-taxpaying estates: these are a precondition of grant of probate (in Scotland, confirmation). There is scope for these procedures to be streamlined and extended to the great majority of non-taxpaying estates (including most larger estates which are covered by the exemptions for bequests to a spouse or to charity) and these provisions pave the way for that to be done.

**Clause 280** re-enacts the provisions that determine which inheritance tax (IHT) procedures are required as a precondition of the administration of a deceased person's estate (for example, in England and Wales, grant of probate). Together with Clause 279, it paves the way for revised processes later this year which will mean simplified forms, and a one-stop service for IHT and probate etc. formalities, for the great majority of non-IHT-paying estates. The main change is to make clear the separate requirements that must be met before a grant of representation (confirmation in Scotland) can be issued, depending on whether the estate is excepted from delivering an IHT account or not.

**Clause 281** updates the inheritance tax (IHT) penalty rules to bring them more into line with those for income and capital gains taxes. In particular, it removes the existing penalty charge for a person liable to tax where no additional IHT is payable in cases where the material delivered is fraudulent or negligent.

### *Stamp duty land tax and stamp duty*

**Clause 282 and Schedule 37** make miscellaneous changes to the legislation on Stamp Duty Land Tax in Part 4 Finance Act 2003, and also re-enact amendments made to Finance Act 2003 by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No 2) Regulations 2003 (SI2003/2816) made on 5 November 2003 under powers contained in section 109 Finance Act 2003 ('the section 109 regulations').

### *Stamp duty land tax*

**Clause 283** makes amendments to Part 4 of the Finance Act 2003. The amendments:

- modify the circumstances where there is a requirement to notify land transactions on a Stamp Duty Land Tax return where there is an assignment of a lease;
- remove the requirement to submit a Stamp Duty Land Tax return where there is a transaction for less than £1,000;
- provide that the register of community interests in land does not require an Stamp Duty Land Tax certificate;
- clarify that when two or more penalties are charged for one return the maximum penalty is 100% of the tax; and
- clarify that all claims to disadvantaged areas relief must be made on a Stamp Duty Land Tax return.

**Clause 284 and Schedule 38** provides for rules to deal with claims to relief from Stamp Duty Land Tax where the claim cannot be made in a Stamp Duty Land Tax return or amended return.

**Clause 285** provides that assents and appropriations by personal representatives of a deceased person to a person entitled under the will of the deceased person, or in an intestacy are exempt from Stamp Duty Land Tax.

**Clause 286** extends the relief from stamp duty land tax for charities to certain ‘charitable trusts’, as defined.

**Clause 287** provides for technical clarification of the Stamp Duty Land Tax treatment of shared ownership leases.

**Clause 288 introduces Schedule 39**, which substitutes a revised Part 3 of Schedule 15, Finance Act 2003, provides for consequential amendments to Finance Act 2003 and provides for the revised Part 3 of Schedule 15 Finance Act 2003 to have effect from the day after Royal Assent to Finance Bill 2004.

**Clause 289** amends paragraph 7 of Schedule 15, Finance Act 2003 to determine from whom Stamp Duty Land Tax may be recovered.

## **PART 7**

### **DISCLOSURE OF TAX AVOIDANCE SCHEMES**

**Clauses 290 - 302** provide new disclosure obligations on promoters of certain tax schemes and arrangements to give details of those schemes to the Inland Revenue. Taxpayers will be required to provide details of schemes and arrangements either where they have been purchased from an offshore promoter, and that promoter has made no disclosure, or where they have entered into notifiable arrangements not involving a promoter.

## **PART 8**

### **MISCELLANEOUS MATTERS**

**Clause 303** provides for the exclusion of the extended period for bringing an action based on a mistake of law in England, Wales and Northern Ireland, where the mistake in question relates to an Inland Revenue taxation matter.

**Clause 304** provides, in relation to an obligation based on redress of unjustified enrichment arising from an error of law relating to an Inland Revenue taxation matter, for the exclusion of the extended period in Scotland for making a relevant claim where the creditor has been induced by error to refrain from making a claim.

**Clause 305** provides for procedures enabling the UK and Andorra to assist each other in the recovery of customs debts owed to one by business established or with assets in the other. The clause provides for current UK legislation implementing an EC Directive on mutual assistance in debt recovery between member States to have effect in relation to a decision of the EC-Andorra Joint Committee. This Committee is charged with administering the agreement creating the customs union between the EC and Andorra. The procedures apply only to debts comprising customs duties payable in respect of imports and exports of goods. VAT, excise duties and other charges such as agricultural levies are not covered by this measure.

**Clause 306** provides for (including provision having retrospective effect) the repeal of section 2 of the Finance Act 1966. Section 2 of the Finance Act 1966 provides for the availability of Shipbuilders' Relief.

**Clause 307** provides that The Treasury, by its Executive Agency, the Debt Management Office (DMO), and National Savings and Investments (NS&I), by virtue of the statutory powers of the Director of Savings, may incur expenditure on preparations for the possible introduction of the single currency.

## **PART 9**

### **SUPPLEMENTARY PROVISIONS**

**Clause 308** provides for the repeals contained in Schedule 40 of the Bill to have effect. It also gives effect to the Notes in the Schedule that set out the commencement provisions and savings applying to the repeals.

**Clause 309** provides for the use of "the Taxes Act 1988" as an abbreviation for the Income and Corporation Taxes Act 1988.

**Clause 310** provides for the Bill to be known as "the Finance Act 2004" on enactment.