Finance Bill: Clauses with powers to make secondary legislation

Contents

Glossary of statutory references and other terms:

CAA 2001	Capital Allowances Act 2001
CTA 2009	Corporation Tax Act 2009
CTA 2010	Corporation Tax Act 2010
FA, followed by a year	The Finance Act of that year
HMRC	Her Majesty's Revenue and Customs
ITA 2007	Income Tax Act 2007
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
ITTOIA 2005	Income Tax (Trading and Other Income) Act 2005
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
TMA 1970	Taxes Management Act 1970
VATA 1994	Value Added Tax Act 1994
EEA	European Economic Area
GAAP	Generally accepted accounting practice

Clause 5: Termination payments etc.: amounts chargeable on employment income

Clause 5 deals with changes to the taxation of termination payments.

Subsection (3) introduces new sections 402A to 402E ITEPA 2003. New section 402D provides for rules to calculate "post employment notice pay" (pay in lieu of notice) which does not now qualify as a termination payments which qualifies for the termination award tax free threshold. Subsection 402D(9) gives the Treasury the power to make regulations amend the meaning of "basic pay" for the purposes of the section. This is an affirmative power.

Subsection (6) introduces new section 404B into ITEPA 2003, which provides the Treasury with regulatory powers to vary the termination award tax free threshold (currently £30,000). Increases to the threshold can be made under the negative procedure but decreases must be made using the affirmative procedure. There are no plans to use this power.

Clause 10: Personal portfolio bonds

Clause 10 introduces new subsection sections 520(5) to (7) ITTOIA 2005 which provide powers to the Treasury to amend the list of property a life insurance policyholder can select without activating the anti-avoidance personal portfolio bonds rules. This power is required to allow the list of property which can be selected to be maintained to keep pace with changes in the financial services industry. Additions to the list are under the negative procedure on the basis that they are wholly relieving; deletions are under the affirmative procedure. This power will be used following Royal Assent, to add to the list of permitted assets;

- real estate investment trusts,
- overseas investment trust companies, and
- authorised contractual schemes.

The draft regulations which we intend to introduce after Royal Assent were published for consultation on the 5 December 2016. There were no subsequent changes to the regulations. A draft of the regulations is available for the Committee.

Clause 13: VCTs: exchange of non-qualifying shares and securities

Clause 13 amends section 330 of ITA 2007 (power to facilitate company reorganisations etc. involving exchange of shares) to introduce a new section 330(1A). This will allow regulations to be made by the Treasury to provide for the exchange of non-qualifying investments held by a Venture Capital Trust (VCT) in the course of a share reorganisation or company reconstruction. Without these regulations VCTs will have to continue to rely upon HMRC exercising its discretion to avoid immediate loss of approval when a non-qualifying investment is exchanged. The regulations will provide broadly similar protection to VCTs to that currently afforded by regulations on exchanges of qualifying investments. The draft

regulations will be published later in the autumn for public consultation. After consultation the regulations will be enacted under the negative procedure.

Clause 14 and Schedule 1: Social investment relief

Clause 14 and Schedule 1 introduce amendments to the social investment tax relief. Paragraph 6(3) of the Schedule inserts new sections 257MNA to 257MNE ITA 2007. New section 257MNE(1) provides that the Treasury may, by regulations, change the amounts of the investment limits. This power would be exercised under the draft affirmative procedure. There are no plans to use this power.

Clause 16 and Schedule 2: Calculation of profits of trades and property businesses

Clause 16 and Schedule 2 introduce new rules relating to the calculation of the taxable profits of unincorporated businesses. This includes a simplified treatment of capital expenditure under the cash basis for trades, professions and vocations and the introduction of the cash basis for the calculation of taxable profits of property businesses. **Paragraph 13 of Schedule 2** introduces new section 271A ITTOIA, and subsections (12) – (14) include powers for the Treasury to make regulations. The powers allow for:

- amendment of "condition A" in section 271A(2) which sets out the classes of property businesses which must calculate profits in line with GAAP and cannot therefore use the cash basis.
- alteration of the cash basis upper limit in section 271A(4). Property businesses with profits in excess of this limit (set at £150,000) must calculate their profits in line with GAAP and cannot use the cash basis.

There are no plans to use these powers. These are affirmative powers unless they are being exercised to omit a class of business from the list in section 271A(2).

Clause 17 and Schedule 3: Trading and property allowances

Clause 17 and Schedule 3 provide two new income tax allowances for individuals, a new trading income allowance of £1000 and a new property income allowance of £1000.

New section 783AD(1) sets the trading allowance at £1000 and new section 783BD(1) sets the property allowance at £1000. New section 783AD(2) provides a power for the Treasury to increase the trading allowance and new section 783BD(2) provides the same power for the property allowance. These are negative powers. There are no plans to use these powers.

Clause 18 and Schedule 4: Carry forward losses

Clause 18 and Schedule 4 reform the tax treatment of certain types of carried-forward loss for corporation tax purposes.

Consequential amendments

Clause 18(2) gives the power to make amendments by regulation to the Taxes Acts which may be required as a consequence of Schedule 4. This power is intended to deal with any consequential amendments that have not yet been identified, and will allow the Government to ensure that the tax system continues to operate effectively, without having to rely on primary legislation. The power to make regulations is given to the HMRC Commissioners and there are no plans to use the power. Regulations under this power are subject to negative procedure.

Powers to make provisions around shock losses, group allowance nomination notifications and allocation statements

Paragraph 16 of Schedule 4 inserts new Part 7ZA CTA 2010.

- New section 269ZQ gives the Treasury powers to amend the provisions in respect shock losses (losses so severe as to cause financial distress to the insurer) of insurance companies (in new sections 269ZJ to 269ZP) and the carrying forward of losses by insurance companies (in sections 124A to 124E FA2012). This power will only be exercised in consequence of changes to financial regulations. Regulations under this power are subject to negative procedure.

- New section 269ZS CTA 2010. This provides for a group deductions allowance. New section 269ZS (8) provides a power for the Commissioners of HMRC to make regulations regarding the process by which a group nominates a company within the group to administer the group deductions allowance, and how this is notified to HMRC. This power is needed to ensure the efficient and effective administration of the group deductions allowance nomination process. Regulations under this power will allow HMRC to ensure companies do not benefit from excessive group deductions allowance, and will allow companies to ensure they comply with their obligations in respect of the nomination process. There are no plans to use this power at present, but they will be used if HMRC considers that it would be beneficial to companies and to HMRC to have a clear process for nominating companies to administer the group deduction allowance. If there was a desire to use the power HMRC will first engage with interested parties, to minimise administrative burdens as far as possible. Regulations are subject to negative procedure.

- New section S269ZV CTA2010 deals with the requirements for and effects of the group allowance allocation statement. New section 269ZV (12) provides a power to allow HMRC to make regulations about the form and content of group allowance allocation statements for the purposes of CT loss reform, and to make regulations about circumstances where companies' obligations will be treated as met. This power is needed to ensure the efficient and effective administration of the group deductions allowance, and specifically how HMRC is informed of the allocation of the allowance. Regulations under this power will allow HMRC to ensure companies report the allocation in such a way that HMRC can satisfy itself that companies do not benefit from excessive group deductions allowance. They will also allow

companies to ensure they comply with their obligations in respect of the nomination process. This is HMRC Commissioners' power and there are no current plans to use the power. It is subject to negative procedure.

Power to make provision around joint amended returns to claim group relief for carried-forward losses

Paragraph 23 of Schedule 4 introduces new Part 5A CTA 2010 (group relief for carried forward losses). Paragraph 122 amends paragraph 77 of Schedule 18 FA 1998 so that the Treasury can make regulations to make it easier for companies to make claims to group relief for carried forward losses by allowing a group make to a single submission covering all companies in the group. It is intended to consult on draft regulations with a view to laying the Statutory Instrument by 31 January 2018 so that it comes into force before the first claims will have to be made. It will be subject to negative procedure. A copy of the draft regulations for consultation is attached to this letter.

Clause 20 and Schedule 5: Corporate Interest Restriction (CIR)

Clause 20 and Schedule 5 introduce a restriction on the amount of interest and other financing amounts that a company may deduct in computing its profits for corporation tax purposes.

Paragraph 1 of Schedule 5 inserts new Part 10 into TIOPA 2010.

- New section 437 TIOPA 2010 provides supplementary material for the new part, and section 437(2) defines "infrastructure authority". New section 437(3) provides a power for the Commissioners of HMRC to amend the definition of "infrastructure authority". The corporate interest restriction contains alternative rules that can by election apply to certain public infrastructure projects. These rules address the typically high gearing of such projects while providing effective projection against base erosion profit shifting (BEPS). The exclusion can apply where a public infrastructure asset is provided that is used for an activity that is regulated by an 'infrastructure authority'. The legislation then lists specific authorities which fall within this definition, such as the Environment Agency. The power to amend the definition is needed so the legislation can take account of new bodies being created or existing ones ceasing to exist. There are currently no plans to use this power. This power is exercised under the negative procedure.

- New section 456 TIOPA 2010 deals with creditor relationships of companies determined on basis of fair value accounting. It allows a company to elect for the amortised cost basis of accounting to apply to certain loans instead of the fair value basis. Applying the amortised cost basis of accounting prevents fair value movements from causing volatility in the application of the rules year on year. Applying the usual amortised cost basis, however, could be problematic for insurance entities (which often hold a large number of loans) because it would be impractical to recalculate their profits and losses on this basis. For this reason a modified definition applying in relation to insurance activities is included in new

section 456(6). New section 456(8) provides a power for the Commissioners of HMRC to amend the definition of 'amortised cost basis of accounting' if it is found to cause practical issues for insurance entities or other companies. There are currently no plans to use this power. This power is exercised under the negative procedure.

- The CIR rules use figures extracted from the group's financial statements to calculate the amount of interest restriction. The financial statements must be prepared under an 'acceptable' accounting framework which look at the accounting principles and practices used to draw up the statements. New section 481 TIOPA 2010 deals with cases where the actual financial statements of a worldwide group are not acceptable. New section 481(8) provides a power for the Commissioners of HMRC to change the conditions which determine whether an accounting framework is considered acceptable. For example, the power could be used if the principles and practices under a particular framework change and this has a significant impact on the effect of the rules. There are currently no plans to use this power. This power is exercised under the negative procedure.

- New section 491 TIOPA 2010 defines "relevant public body" for the purposes of new Part 10 TIOPA 2010. The definition of 'relevant public body' must be considered when applying the alternative rules for public infrastructure projects and for certain aspects of the related party rules. The definition includes specific bodies which will be treated as relevant public bodies such as the Crown and government departments. New section 491(3) gives the Commissioners of HMRC power to alter the meaning of "relevant public body" in case additional bodies need to be included or current relevant bodies excluded. The power is under the negative procedure. There are currently no plans to use this power.

- New section 495 TIOPA 2010 allows the making of regulations to adjust calculations under the rules where differences arise between the group's financial statements and the accounting or tax treatment of a member of that group. Without the power, differences between the group and entity accounts might lead to an unintended restriction under the rules. HMRC is aware of certain cases where there is a timing difference between the two sets of accounts which will arise on commencement of the rules. Draft regulations were published on 31 March 2017, to have effect from 1 April 2017. The period of consultation closed on 26 May 2017. A copy of the draft regulations is attached to this letter. These powers can be exercised by the Commissioners of HMRC and are under the negative procedure.

- New section 496 TIOPA 2010 allows the making of regulations by Commissioners of HMRC entitling a UK company which is party to capital market arrangements to transfer a tax liability which arises from the CIR rules to another UK company. Capital market arrangements allow companies to raise finance, typically through a special purpose company. The special purpose company (SPC) typically makes little, or no, profit and passes any significant profit back to the main company. It essentially functions as a cash conduit. Were the CIR rules to result in a tax liability in the SPC or another company that is party to the capital market arrangements, there would be

no funds to settle the liability so the election allows another company to take on this liability. Regulations can include administrative provisions about the election. This power is under the negative procedure. There are currently no plans to use this power.

- New section 497 TIOPA 2010 provides regulation making powers to deal with changes in accounting standards. It provides that the Treasury my make regulations to amend new Part 10 TIOPA 2010 if there are changes in accounting standards. The CIR rules require several calculations to be performed using figures derived from the financial statements. Financial statements will be prepared in accordance with various accounting standards and these standards change over time which could have an unintended impact on the application of the rules. The power therefore allows the necessary adjustments to ensure the rules work as intended when the underlying accounting standard changes. This is an affirmative power in cases where the regulations are capable of increasing a company's liability to corporation tax. There are currently no plans to use this power.

Paragraph 2 of Schedule 5 inserts new Schedule 7A into TIOPA 2010. Schedule 7A deals with interest restriction returns.

- Paragraph 3 of new Schedule 7A TIOPA 2010 provides that the Commissioners of HMRC may make regulations dealing with points of detail relating to the appointment of a "reporting company", which is responsible for submitting interest restriction returns and administering compliance with the requirements of the corporate interest restriction legislation on behalf of the worldwide group. The power is needed to make it possible to deal with practical points of administrative detail that it would be inappropriate to include in the primary legislation, should such addition rules prove necessary. This power is under the negative procedure. There are currently no plans to use this power.

- Paragraph 33 of new Schedule 7A TIOPA 2010 deals with reductions in the amount of a penalty under paragraph 30 (penalty for incorrect or uncorrected return) or paragraph 32 (penalty inaccuracy in return attributable to another company). Paragraph 33(5) provides that officers of HMRC may make reductions in special circumstances. Paragraph 33 (6) and (7) of new Schedule 7A allows the Commissioners of HMRC to set out in regulations the circumstances that should or should not be taken into account in determining whether and to what extent a penalty based on notional tax would be inappropriate in the particular circumstances of a group. This power is under the negative procedure. There are currently no plans to use this power.

- Paragraph 38 of new Schedule 7A TIOPA 2010 provides a duty to keep and preserve records. Paragraph 38(7) and (8) allow the Commissioners of HMRC to make regulations dealing with points of detail relating to the duty to keep and preserve records relevant to the corporate interest restriction, and in particular to specify particular records that need or need not be preserved. The power is needed to

make it possible to deal with practical points of administrative detail that it would be inappropriate to include in the primary legislation, should the need for such further detail arise. This power is under the negative procedure. There are currently no plans to use this power.

- Paragraph 71 of new Schedule 7A TIOPA 2010 allows the Commissioners of HMRC to make regulations to deal with cases where the submission of an interest restriction return, or some other action arising under the corporate interest restriction legislation, has a consequential effect on a company's tax position, such that it is treated as having amended return. In particular, such regulations could require a company to amend its tax return. The power is needed to make it possible to deal with points of detail that it would be inappropriate to include in the primary legislation, should the need for such further detail arise. This power is under the negative procedure. There are currently no plans to use this power.

Paragraphs 25(3) and 35 of Schedule 5 provide that any regulations made before 1 April 2018 under the powers in Part 10 TIOPA 2010 or which are consequential to Schedule 5 can have effect on or after 1 April 2017.

Draft regulations, The Corporate Interest Restriction (Consequential Amendments) Regulations 2017, which use paragraph 35 have already been published on gov.uk with a view to laying these once Finance Bill receives Royal Assent.

The draft amending Regulations were published on 21 February 2017 and are subject to a period of consultation, which closed on 18 April 2017. These amending Regulations arise out of consultation of the main measure. A copy of the draft regulations is attached to this letter.

Clause 21 and Schedule 6: Museums and Galleries exhibitions

Clause 21 and Schedule 6 provide tax relief for museums and galleries exhibitions. **Paragraph 1** of Schedule 6 inserts new Part 15E into CTA 2009 "museums and galleries tax relief".

- New section 1218ZCC provides an EEA expenditure condition that at least 25% of the expenditure is within the European Economic Area. New section 1218ZCC(4) provides a power to amend the percentage and the meaning of EEA expenditure.

- New section 1218ZCF defines the amounts of "additional deduction" that can be allowable pursuant to a claim under new section 1218ZCE. New section 1218ZCF(4) provides a power to amend the percentage figure for qualifying expenditure at subsections 1218ZCF(2) and 1218ZCF(3).

- New section 1218ZCG defines "qualifying expenditure" for the purposes of Chapter 3 of Part 15E. This includes the rule that expenditure must be incurred on or before 31 March 2022 to qualify. This date can be amended to a later date by regulation under new section 1218ZCG(3).

- New section 1218ZDC deals with the interaction between terminal loss relief rules and museums and galleries relief. Section 1218ZDC(7) provides a power to make administrative provision in relation to the surrender of a loss and the resulting claim under this section.
- New section 1218ZF provides a power to amend the definitions in sections 1218ZBC (costs of production) and 1218ZCD (core expenditure).

All of these powers are Treasury powers and are negative procedure. There are no plans to use these powers.

Clause 22: Grassroots sport

Clause 22(5) inserts new Part 6A CTA 2010. New sections 217A extends the circumstances in which contributions to grassroots sports can be deducted from the taxable profits of Corporation taxpayers. Companies other than qualifying sport bodies can deduct a maximum of £2500 per annum, unless the payment is made to a qualifying sport body. Section 217A (10) gives the Treasury the power to increase that threshold. This power has been provided to enable the Treasury to make a simple change in the threshold without the need for a full Finance Bill process. Use of this power requires the negative procedure. There are no plans to use this power.

New section 217C gives the meaning of a "qualifying sport body". New section 217C(3) allows the Treasury to alter the meaning of "qualifying sport body". Regulations made before 1 April 2018 may have effect before the regulations come into force (but not before 1 April 2017). The power is negative procedure. There are no plans to use this power.

Clause 25 and Schedule 7: Trading profits taxable at the Northern Ireland rate

Clause 25 and Schedule 7 make amendments to the Northern Ireland corporation tax regime in CTA 2010.

Paragraph 15 of Schedule 7 inserts new section 357WBA. It deals with the Northern Ireland workforce condition as it relates to partnerships, and sets a condition that 75% of a partnership's workforce expenses must be attributable to time spent in Northern Ireland. Section 357WBA(8) provides a power for the Commissioners of HMRC to specify the descriptions of deduction that are to be regarded as in respect of the firm's workforce. This is a negative power. There are no plans to use this power.

Paragraph 28 of Schedule 12 amends Schedule A1 of CTA2010 (first-year tax credits). This gives the Treasury the power to adjust the rate at which first-year tax credits are paid to reflect any difference in rate between the headline rate of corporation tax in the UK and the Northern Ireland rate of Corporation Tax, as well as preserving the Treasury's pre-existing power to change the rate at which first-year tax credits are paid generally. This amendment remedies a drafting error in the Corporation Tax (Northern Ireland) Act 2015. This is a negative power. There are no plans to use the power.

Clause 28: Substantial shareholding exemption: institutional investors

Clause 28 relates to the new and simpler shareholding exemption for companies owned by certain tax exempt institutional investors, known as Qualifying Institutional Investors (QII). It provides a power for the Treasury to make regulations to amend the list of QII, by adding or removing a class of investor, or by imposing or varying conditions which must be met by any class of investor. The power will allow for amendment of the list of qualifying investors to reflect the potential for new types of investor to be developed that should qualify, and also to reflect the fact that changes in the nature of some of those that are included in the list may mean that they should no longer qualify. There are no plans to use this power. This is a negative power.

Clause 38: First year allowance for expenditure on electric vehicle charging points

Clause 38(3) inserts new section 45EA CA 2001 which grants 100% capital allowances on expenditure on plant or machinery for an electric vehicle charging point where the expenditure is incurred in the period from 23 November 2016 to 31 March 2019 (in the case of corporation tax) or 5 April 2019 (in the case of income tax). New section 45EA(4) allows the Treasury by regulations to extend the period in which qualifying expenditure can be incurred. Clause 38(5) amends section 52 CAA 2001 so that the Treasury can by regulations amend the amount of 100% (but only in relation to the extension of the period). The powers would be exercised under the negative procedure. There are no current plans to use these powers.

Clause 41: Co-ownership authorised contractual schemes: information requirements

Clause 41 "Co-ownership authorised contractual schemes: information requirements" introduces a new power for the Treasury to make regulations specifying information to be provided by a co-ownership authorised contractual scheme to its investors and to HMRC. This will ensure investors can complete their tax returns and assist HMRC in their functions. The regulations are to be made by negative resolution procedure. Clause 41 sets out what the regulations may and may not provide for, permits penalties for non-compliance and specifies the earliest commencement date. The clause enables detailed requirements to appear in secondary legislation rather than on the face of the Bill. Draft regulations were published by HMRC on 20 March 2017 and are attached. A single set of regulations is being made in respect of this clause and clause 42.

Clause 42: Co-ownership authorised contractual schemes: offshore funds

Clause 42 introduces a new power for the Treasury to make regulations which will require a co-ownership authorised contractual scheme which has invested in an offshore fund to allocate certain amounts to investors and then treat those amounts as investors' income. This will close a loophole in the rules, reduce the risk of future avoidance and bring the

treatment of investors in co-ownership authorised contractual schemes into line with investors in transparent offshore funds. The regulations are to be made by negative resolution procedure. Clause 42 sets out what the regulations may provide for and enables detailed requirements to appear in secondary legislation rather than on the face of the Bill. Draft regulations were published by HMRC on 20 March 2017 and are attached. A single set of regulations is being made in respect of this clause and clause 41.

Clause 46: Remote gaming duty: freeplay

Clause 46 brings the treatment of freeplays for remote gaming duty more into line with freeplays for general betting duty. Subsection (2) of this clause amends section 159 (remote gaming duty: gaming payments) FA 2014 so that where customers have the opportunity to enter into remote gaming transactions for free, or at a reduced cost, the operator must account for duty on the charge that would otherwise have been made. This amendment makes further provision about these deemed payments in relation to their timing, and to disallow them when returned as prizes. The current section 159 FA 2014 already provides powers to amend the definition of "gaming payments" by Treasury Order under negative procedures. This clause replaces the existing secondary powers with powers for Commissioners of HMRC to make further provision about how a gaming payment is treated under Chapter 3 FA 2014. Subsection (8) of this clause provides for those regulations to be subject to the affirmative procedure. There are no plans to make regulations.

Clause 47: Tobacco Products Manufacturing Machinery Licensing Scheme

Clause 47(1) adds new section 8V into section 8 of the Tobacco Products Duty Act 1979. The new section defines what is meant by the expression 'tobacco products manufacturing machinery' and creates the powers, set out below, for the establishment and operation of a licensing scheme for tobacco products manufacturing machinery. This scheme is required to further tackle the trade in illicit tobacco products and to meet an obligation under the World Health Organisation Framework Convention on Tobacco Control Illicit Trade Protocol. It is intended that applications for licenses will be accepted from 1 April 2018 and that the scheme will take effect from 1 August 2018.

New section 8V provides powers for the Commissioners of HMRC to make regulations to prohibit a person from carrying out specified activities in respect of an item of tobacco products manufacturing machinery except in accordance with a licence. It also provide that if a person contravenes the prohibition, the machinery is liable to forfeiture. The regulations may provide for exemptions to this prohibition. Regulations may also make provision imposing obligations on those who have a licence, about penalties, reviews and appeals and for the Customs and Excise Management Act 1979 to have effect in relation to licensed persons, as it has effect in relation to revenue traders. Regulations may also deal with associated administrative rules about the grant of licences, including making provision for licences to be subject to conditions and restrictions and making provision for the variation, revocation and renewal of licences.

Section 9 of the Tobacco Products Duty Act 1979 is amended so that the power to make these regulations is subject to the negative resolution procedure.

These powers are required in order to establish a tobacco products manufacturing machinery licensing regime and to impose forfeiture, as well as penalties, where the conditions of a licence are breached.

It is intended to use the power as soon as practicable after Royal Assent to make and lay the Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2017. A draft of these Regulations is enclosed; it is intended that the consultation period on these Regulations will commence in October or November.

Clauses 48 to 59 and Schedule 13: Fulfilment businesses

Part 3 (commencing with clause 48) introduces the legislation for carrying on a third country goods fulfilment business. Part 3 prohibits any person from carrying on a third country goods fulfilment business unless that person holds an approval given by the Commissioners of HM Revenue and Customer (HMRC). There are four clauses which give power to the Commissioners of HMRC to make regulations.

Regulations implementing Part 3 will be made and laid under the negative procedure.

- **Clause 49** deals with the requirement for approval by HMRC, and clause 51 provides for regulations for approval and registration and associated matters. Clauses 49(3) and 51(1) and (2) provide that the Commissioners of HMRC may make regulations to implement the detailed aspects of the approval and registration scheme including imposing conditions on approvals, prescribing the approval and registration process, regulating the variation or revocation of any approval or registration or any conditions, imposing obligations on approved persons and setting out record keeping requirements. It is intended that the administrative procedure and any conditions for approvals, obligations imposed on approved persons and record keeping requirements set out in regulations will be applied in a targeted and proportionate manner.

- **Clause 55** deals with penalties. Clause 55(2) provides that the Commissioners of HMRC may make regulations to impose penalties for contravening any condition or restriction imposed under Part 3 or regulations made under Part 3. It is intended that regulations made under these powers will impose penalties not exceeding £3,000. Clause 55(5) allows for regulations to make provision for companies that are part of the same group to be jointly and severally liable for any penalties that are imposed by virtue of Schedule 13 or penalty regulations made under this part.

- **Clause 59** provides that any powers to make regulations will come into force on the day which the Act is passed, and for all other purposes Part 3 will come into force on a day appointed by the Commissioners for HMRC by regulations. The intention is that the substantive provisions of Part 3 will come into force from 1 April 2019.

Regulations implementing Part 3 will come into force in stages. First, regulations covering the application process, any conditions of approval, obligations imposed on an approved person and record keeping requirements will come into force on 1 April 2018. This will enable any person carrying on a fulfilment businesses to apply a full year in advance of the commencement of the scheme on 1 April 2019 and to familiarise themselves with the legislation. With the exception of a late registration penalty for existing fulfilment businesses which will apply from April 2018, regulations imposing penalties will apply from 1 April 2019 when the general prohibition also comes into force. It is intended that regulations under clauses 49, 51 and 55 will do no more than is necessary to properly regulate fulfilment businesses and tackle abuse by some overseas businesses selling goods to UK customers via online market places. A copy of the draft regulations, which are being consulted on, is attached to this letter.

Clause 60: Digital reporting and record-keeping: income tax etc.

Clause 60 introduces new digital record-keeping and reporting obligations on persons with income from a trade, profession or vocation, income from property, and partnerships.

The clause will enter into force on such day(s) as the Treasury may appoint by commencement regulations. At the present time, there are no plans to make such regulations. In a Written Ministerial Statement published on 13 July 2017, the Financial Secretary to the Treasury stated these obligations would not be extended to taxes other than VAT before 2020 at the earliest, although any person within the scope of this clause may choose to keep records and report information digitally for income tax purposes on a voluntary basis before that date.

Clause 60 (3) inserts Schedule A1 into TMA 1970. Schedule A1 includes a number of matters that may be set out in regulations by the Commissioners of HMRC, as set out below.

- Paragraph 2 excludes specific persons and activities from the requirements. In the case of an excluded activity, the person undertaking that activity may elect for the requirements to apply to that activity. Paragraph 2(4) provides that the Commissioners of HMRC may make regulations about elections and the withdrawal of such elections. An equivalent exclusion (and right to elect) for partnerships which undertake excluded activities is contained in Paragraph 4 of Schedule A1. HMRC will use these powers to provide a process through which excluded businesses are able to voluntarily opt into and out of the new digital record-keeping and reporting requirements.

- Paragraph 5 provides that (subject to Paragraph 11(4)) obligations on partnerships under the Schedule are to be met by a nominated partner. Paragraph 5(4) provides that the Commissioners of HMRC may make regulations about nominations and their revocation. These regulations will require partnerships to notify HMRC of the nomination using their software, ensure that there is a nominated partner at all times and in certain circumstances enable HMRC to nominate a partner.

- Paragraph 7 provides that the Commissioners of HMRC may make regulations requiring persons or partnerships to whom the Schedule applies to submit specified information to HMRC, periodically and by electronic communications. HMRC will use this power to ensure that businesses send periodic updates (at least every 3 months) containing summary totals of their income and expenditure to HMRC.
- Paragraph 8 provides that the Commissioners of HMRC may make regulations requiring persons to whom the Schedule applies to submit an "end of period statement" by electronic communications to HMRC for a basis period or tax year. HMRC will use this power to ensure that such persons send a statement of their business profit or loss for that period. The regulations (and notices made under the regulations) will also set out what must be contained in the statement and the date by which it must be sent.
- Paragraph 9 provides that the Commissioners of HMRC may make regulations to enable taxpayers to file or deliver, by electronic communications, any information which is required to be provided in response to a notice to file under Section 8 or Section 8A Taxes Management Act 1970 (as amended by Schedule 25 to Finance Bill 2017). HMRC intends to include provisions on this matter in regulations to be made later this year.
- Paragraph 10 provides that the Commissioners of HMRC may make regulations requiring partnerships to whom the Schedule applies to submit a partnership return containing specified information to HMRC in relation to each tax year. HMRC will use this power to require such partnerships to provide a return of the partnership profit or loss for the year as well as each partner's share of that profit or loss.
- Paragraph 11 provides that the Commissioners of HMRC may make regulations specifying the digital records that a person or partnership to whom the Schedule applies must maintain. HMRC will use this power to specify in the regulations what must be kept, the form the records should take and how long the records should be kept for.
- Paragraph 13 amplifies the scope of HMRC's regulation-making powers in relation to electronic communications and records that may be required to meet the requirements of paragraphs 7, 8, 9, 10 and 11 of that Schedule.
- Paragraph 14 provides that the Commissioners of HMRC must make regulations providing for an exemption to the new requirements for digitally excluded customers (as defined in this paragraph). HMRC will use these powers to specify in the regulations how a person or partnership can apply for exemption on the basis that they are digitally excluded.
- Paragraph 15 provides that the Commissioners of HMRC may make regulations setting out additional exemptions to the requirements. This includes the power to make provision for exemptions based on income or other financial criteria. Use of this power will depend on future Ministerial decisions.

- Paragraph 18 makes further provision about the regulations which may be made under the Schedule. These include provision for regulations to apply either generally or to specified cases or purposes, that they may include incidental, supplemental, consequential, transitional or transitory provisions, and that certain matters may be specified by the Commissioners in accordance with the regulations. HMRC will use this power to specify certain requirements in notices. Paragraph 18 also states that such regulations may provide for changes in the accounting date of a business to be disregarded; there are no plans to use this particular power immediately.

Regulations under the provisions of Schedule A1 cannot be made until such time as the clause itself enters into force. However, in order to give certainty to stakeholders as to how the powers are likely to be used, and in particular to assist third party software developers in building products which support digital record keeping and reporting on a voluntary basis, draft regulations under the provisions of paragraphs Schedule A1 (unless indicated otherwise above) were published for information and technical consultation on 13 September 2017. A copy of those draft regulations is attached for the information of the Committee.

If and when the clause enters into force, any regulations made under the provisions of Schedule A1 will be subject to the negative procedure.

Clause 61: Digital reporting and record-keeping for income tax etc.: further amendments

Clause 61 introduces Schedule 14, which makes various amendments to existing provisions of TM 1970. The clause and Schedule will enter into force on such day(s) as the Treasury may appoint by commencement regulations. At the present time, there are no plans to make such regulations. A decision on bringing this clause into force is linked to any decision to bring Clause 60 into force.

Clause 61(2) provides a power allowing the Commissioners of HMRC to make consequential amendments to any provision of the Taxes Acts in consequence of the provisions made by Clause 60 or Schedule 14. The changes introduced by those provisions comprise the biggest overhaul of tax administration since the introduction of Income Tax Self Assessment, with extensive changes required to the existing tax administration framework. This power is necessary in order to ensure that, should any further consequential amendments be identified after Royal Assent and before the clause enters into force (e.g. because of other tax legislation enacted by Parliament during this period), HMRC is able to make those amendments ahead of the commencement of any of the obligations set out in clause 60.

Any regulations made under Clause 61(2) will be subject to the affirmative procedure.

Clause 62: Digital reporting and record-keeping: VAT

Clause 62 provides for regulation-making powers to introduce new digital record-keeping and reporting requirements for businesses which are VAT-registered.

The clause amends the existing powers in Schedule 11 to VATA 1994 which enable the Commissioners of HMRC to make regulations about the administration, collection and enforcement of VAT.

The clause gives the Commissioners powers to make regulations requiring the submission of information, in addition to existing powers to require the making of VAT returns. It also amends existing powers of the Commissioners to make regulations about keeping and preserving records. HMRC will use this power to specify that certain records must be kept and preserved digitally. This will include information identifying the trader, the VAT Account (which is the source of figures needed for the VAT return and VAT updates), and basic information on supplies made or received.

The regulations will permit the voluntary submission of supplementary VAT data, in order to reduce the need for HMRC enquiry.

HMRC expects to publish regulations in draft for technical consultation before the end of 2017. It intends to lay and make these regulations no later than April 2018, giving businesses and software developers at least 12 months to prepare before the VAT requirements come into force from April 2019. In the interim, HMRC has published an Overview of the proposed VAT regulations and a copy is attached for the information of the Committee.

Any regulations made under the provisions of the VAT Act 1994 Schedule 11 are subject to the negative procedure.

Clause 65 and Schedule 16: Penalties for enablers of defeated tax avoidance

Clause 65 to the Finance Bill and Schedule 16 provide a new penalty regime for those who enable tax avoidance that is defeated by HMRC. This Schedule includes a number of regulation-making powers to ensure that the regime remains appropriately targeted to the enabler population, as well as providing a specific power in respect of legally privileged advice. These powers are as follows:

- **Paragraph 12(4)** of Schedule 16 provides a power to allow the Treasury to amend paragraph 12(3) by affirmative procedure. Paragraph 12 defines persons who are "financial enablers" and paragraph 12(3) defines the type of financial product provision of which will cause a person to come within the definition of "financial enabler". Regulations are not currently planned but the power will ensure that the definition of financial product may be amended should new types of financial product be developed in the future to enable abusive tax arrangements.

- **Paragraph 14(1)** of Schedule 16 provides a power to allow the Treasury to add to categories of person who are "enablers". Paragraph 14(2) includes a power to provide that a person who would otherwise be an "enabler" shall not be treated as such if prescribed conditions are met. Regulations made under paragraph 14(2) must be made using the negative procedure if they do not amend or repeal any provision of Schedule 16 but otherwise must use the affirmative procedure. Regulations

under paragraph 14(1) must be made using the affirmative procedure. Regulations are not currently planned in respect of these powers, but they will ensure that this legislation remains focussed on its target population should the definition of "enabler" under Part 4 prove to be too widely – or too narrowly – drawn in capturing the entire supply chain of tax avoidance.

- **Paragraph 44(4)** of Schedule 16 provides a power to allow the Treasury to impose requirements as to the form and content of declarations under paragraph 44 using the negative procedure. A declaration under this paragraph may be made by a relevant lawyer where a person cannot provide information to establish that they are not liable to an enabler penalty by virtue of that information being subject to legal professional privilege. A paragraph 44 declaration will ensure that legal professionals can evidence the fact that they are not liable to an enabler penalty without breaching legal professional privilege. It is proposed that regulations will be made under this power to come into effect 21 days after the passing of the Finance Act. A copy of the regulations is attached.
- **Paragraph 51** of Schedule 16 provides a power to allow the Treasury to amend the thresholds and conditions specified by Part 10 for naming an enabler of tax avoidance using the affirmative procedure. Regulations are not currently planned in respect of this power but it will ensure that naming thresholds and conditions can be revised where necessary (for example, in light of inflation).

Clause 66 and Schedule 17: Disclosure of tax avoidance schemes: VAT and other indirect taxes

Clause 66 and Schedule 17 reforms the way in which VAT and other indirect tax avoidance is notified to HMRC to more closely align it with the regime for direct taxes (the disclosure of tax avoidance schemes, ("DOTAS").

Paragraph 2 of Schedule 17 defines indirect tax for the purposes of the Schedule. Paragraph 2(2) allows the Treasury to vary the list of taxes included by regulations. This is to allow taxes to be added to or removed from the scope of the measure without the need for a Finance Bill measure. There are no plans to use this power. This is an affirmative power.

Paragraph 3(1)(a) provides for the Treasury by regulations to prescribe the description of tax avoidance arrangements that have to be disclosed. This is a negative power.

Paragraph 26 provides a duty for notify HMRC arrangements to HMRC. Paragraph 26(3) allows HMRC to make regulations to prescribe what information must be provided to HMRC by anyone party to indirect tax arrangements and the from in which it must be given.. This power is in Regulation 11 of the draft Indirect Tax (Disclosure of Avoidance Schemes) Regulations published for consultation on 20 March 2017. This procedure is via a negative resolution.

Paragraph 38 allows HMRC to vary the numerous time limits set in the legislation for parties to arrangments to provide information. There are no plans to use this power. The procedure is ia negative resolution.

Paragraph 42(1) allows the Treasury to vary the amounts of penalty chargeable for failure to comply with obligations under the Schedule and the time limits which apply to them. There are no plans to use the power. This is an affirmative power.

Paragraph 56 provides the general rules that apply to making regulations under the Schedule. A number of paragraphs refer to 'prescribed information' and draft regulations have been published for comment under this paragraph. These are the Indirect Tax (Disclosure of Avoidance Schemes) Regulations, to be made by HMRC; and the Indirect Tax (Notifiable Arrangements) Regulatons to be made by HMT. These Regulations provide detail of what has to be disclosed to HMRC, by whom and in what time and this would not be appropriate for primary legislation. These are negative powers. Copies of the draft regulations are attached to this letter.

Clause 68: Penalty for transactions connected with VAT fraud etc.

Clause 68 introduces a new penalty for participating in VAT fraud into VATA 1994. It inserts new sections 69C, 69D and 69E into VATA 1994.

The legislation permits HMRC to publish details of persons liable to the new penalty. New section 69E(1)(b) provides that HMRC may only publish details about a person if the potential lost VAT in relation to the penalty exceeds £50,000. Section 69E(13)(a) allows the Treasury to amend this subsection to vary the amount specified in 69E(1)(b).

The legislation also allows HMRC to impose liability on company officers where the actions of the company which gave rise to that liability were attributable to an officer of the company. Details of such company officers can also be published but new section 69E(3) provides that HMRC can only do so if the officer's liability exceeds £25,000. New section 69E(13)(b) allows the Treasury to vary the amount specified in 69E(3).

These are Treasury powers. There are no plans to use these powers. They are under the negative procedure.