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Chairs of the Finance Bill Public Bill Committee  
House of Commons  
London  
SW1A 0AA

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Dear Laurence and Ian

**POWERS CONTAINED IN AUTUMN FINANCE BILL 2023-24**

This letter provides information on secondary legislation under this year's Finance Bill and sets out detail on each power being taken.

A summary is provided on the powers contained in clauses 2, 7, 11, 12, 14, 15, 16, 17, 21, 26, 35 and 36.

I am copying this letter to the other members of the Public Bill Committee and depositing a copy of this letter in the Library of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Nigel Hunt'.

**Autumn Finance Bill 2023: Clauses with powers to make secondary legislation**

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## **Glossary of statutory references and other terms:**

### *Statutory references*

CTA09	Corporation Tax Act 2009
F(No.2)A	Finance (No. 2) Act 2023
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
ITTOIA05	Income Tax (Trading and Other Income) Act 2005
TMA 1970	Taxes Management Act 1970

### *Other terms*

BCEs	Benefit Crystallisation Events
EIS	Enterprise Initiative Scheme
HMRC	His Majesty's Revenue and Customs
HMT	His Majesty's Treasury
LTA	Lifetime allowance
OECD	Organisation for Economic Co-operation and Development
QROPS	Qualifying Recognised Overseas Pension Scheme
R&D	Research and Development
RDEC	Research and Development Expenditure Credit
SME tax relief	Tax Relief for Small or Medium Sized Companies
VCT	Venture Capital Trust

## **PART 1: INCOME TAX AND CORPORATION TAX**

### **Clause 2 Schedule 1: New regime for research and development carried out by companies.**

Clause 2 introduces Schedule 1 which makes changes to the Research and Development (R&D) tax relief for small or medium sized companies (“SME tax relief”), and to R&D Expenditure Credit (“RDEC”), the R&D relief is open to all but mainly claimed by larger companies. For most companies these two schemes are replaced by a new regime with a design similar to RDEC. Alongside this regime, enhanced support for lossmaking SME companies which are R&D intensive continues to be provided under similar rules to the existing SME scheme. Schedule 1 restates some powers that are part of the existing legislation and creates further powers. These include:

- New section 1042G to CTA09, inserted by paragraph 5 of Schedule 1, allows the Treasury to vary the rate of the expenditure credit. Any regulations made under this power would be subject to the negative procedure.
- New section 1112B to CTA09, inserted by paragraph 8 of Schedule 1, allows the Treasury to vary the parameters determining the level of a cap on payable credit, which depends on the level of the company’s PAYE and NIC, making the cap more or less restrictive. Any regulations made under this power would be subject to the negative procedure.
- New section 1112E to CTA09, inserted by paragraph 8 of Schedule 1, is also related to the PAYE/ NIC cap. A company may qualify for an exemption from this cap. One of the qualifying conditions for that exemption is based on the proportion of its expenditure that is on contracted out R&D or on externally provided workers. The power allows the Treasury to vary this parameter to broaden or narrow the exemption. Any regulations made under this power would be subject to the negative procedure.
- New section 1112J to CTA09, inserted by paragraph 8 of Schedule 1, allows the Treasury to limit the availability of relief under Chapter 2 (the enhanced support for loss-making R&D intensive SME companies) in various ways, either in respect of companies or groups, R&D, or expenditure, of a prescribed description. Any regulations made under this power would be subject to the negative procedure.
- New section 1138A, inserted by paragraph 9 of Schedule 1, makes provision for circumstances when R&D expenditure on externally provided workers and subcontracting may qualify for relief despite the activity taking place abroad. The new section contains powers (at subsection (1)(b) and subsection (4)) enabling the Treasury to adjust the relevant circumstances. Any regulations made under this power would be subject to the negative procedure.

### **Clause 7 Schedule 6: Administration of creative sector reliefs**

Clause 7 introduces Schedule 6 which makes changes to the creative industries tax reliefs available for film, TV, video games, theatre, orchestra, and museum and

gallery exhibition production companies to claim. Paragraph 3 of Schedule 6 allows the Commissioners for HMRC by regulations to specify additional information to be provided by a claimant company as part of a claim, as well as the form and manner in which the information is to be provided. Any regulations made under this power would be subject to the negative procedure.

### **Clause 11 Extension of EIS relief and VCT relief to shares issued before 6 April 2035**

Clause 11 extends the availability of Enterprise Investment Scheme (EIS) and Venture Capital Trust (VCT) tax reliefs by substituting the existing sunset clause dates of 6 April 2025, that limit reliefs to shares issued before this date, with new end dates of 6 April 2035.

The clause contains a provision enabling HMT to make regulations to commence these changes. No procedure would apply to the making of the regulations. It is intended to use the power to enable the provisions to take effect as described above, subject to domestic and international subsidy obligations being met.

### **Clause 12 Relief for payments of compensation by government to companies**

Clause 12 introduces subparagraph (2) of paragraph 7 which provides for a regulatory making power to define future compensation schemes by which corporate recipients may be exempt from their corporation tax liabilities.

Furthermore paragraph 11 provides a power to make regulations that are supplementary or incidental to the Post Office compensation schemes defined, or otherwise, within the Schedule.

Any regulations made under either power within this clause are subject to the negative procedure.

### **Clause 14 Schedule 9: Provision in connection with abolition of the lifetime allowance charge**

Clause 14 introduces amendments and provisions to complete the work to abolish the Lifetime Allowance (LTA) and clarifies the tax treatment of pension savings. It clarifies:

- how lump sums and lump sum death benefits will be taxed in absence of the LTA,
- the position of individuals with LTA protections,
- lump sum protections or LTA enhancement factors, and
- the function of Benefit Crystallisation Events (BCEs).

It also clarifies the tax treatment of transfers to a Qualifying Recognised Overseas Pension Scheme (QROPS) and sets out all necessary transitional arrangements and reporting requirements.

#### **Clause 14 Schedule 9 Part 3 Paragraph 52**

Paragraph 52 extends the existing power for Commissioners for HMRC to make regulations providing for further exclusions from the overseas transfer charge in relation to recognised transfers to a Qualifying Recognised Overseas Pension Scheme (QROPS), relieved relevant non-UK scheme transfers, and onward transfers to QROPS can be made. Any regulations made under this power would be subject to the negative procedure.

#### **Clause 14 Schedule 9 Part 4 Paragraph 71**

Paragraph 70 allows the Commissioners for HMRC by regulations to make provision on how the pension schemes will value an individual's uncrystallised pension for those with enhanced protection for the purpose of determining the level of their Lump Sum and Death Benefit Allowance. Any regulations made under this power would be subject to the negative procedure.

#### **Clause 14 Schedule 9 Part 4 Paragraph 84**

Paragraph 84 allows the Commissioners for HMRC to make regulations specifying how pension schemes value crystallised pension rights for the purpose of defining the pension commencement lump sum where an individual holds enhanced protection, including protected lump sum amounts. Any regulations made under this power would be subject to the negative procedure.

#### **Clause 14 Schedule 9 Part 4 Paragraph 127**

Paragraph 127 allows the Commissioners for HMRC to make further provision in regulations relating to transitional tax-free certificate, including substituting an alternative period for which schemes have to provide certificates to members. Any regulations made under this power would be subject to the negative procedure.

#### **Clause 14 Schedule 9 Part 6 Paragraph 133**

Paragraph 133 allows HMT, by regulations, to make additional provision or to modify the existing, transitional, transitory, or saving provisions to facilitate the transition from the Lifetime Allowance to the new allowances. Any regulations made under this power would be subject to the negative procedure.

#### **Clause 14 Schedule 9 Part 6 Paragraph 134**

Paragraph 134 allows HMT further provision in regulations to complete the abolition of the Lifetime Allowance. Regulations made under this power may amend any provision of the Income Tax Acts including any provision of, or amendment made by, Schedule 9; have effect in the tax year in which they are made or from 6 April 2024, if made in tax year 2023-24, and make different provision for different purposes

including any transitional provision. Regulations made under this power would be subject to the negative procedure, unless they increase a person's liability to tax, in which case they would be subject to the affirmative procedure. The power to make regulations under this provision will expire after 5 April 2026.

### **Clause 15: MPs' pension scheme etc: rectification of discrimination**

Clause 15(1) provides the Treasury with the power to make regulations in connection with how taxes apply to the remedy for the age-related discrimination arising from the reforms to the MPs' pension scheme and the pension schemes for members of the Welsh Senedd and the Northern Ireland Assembly.

Clause 15(7) provides that the regulations may make different provision for different cases and make consequential, incidental, supplemental, transitional, transitory or saving provision. Clause 15(8) provides that if the regulations are made before 6 April 2025, they may have retrospective effect in relation to the 2024-25 tax year. If they are made on or after that date, then they may have retrospective effect only if they do not increase any person's liability to tax.

The Treasury intend to exercise the power to make consequential changes to tax legislation to as far as possible put these members from the relevant pension schemes in the tax position they would have been in if the discrimination had never happened.

The power will be used, including but not limited to, making provision for:

- authorising redress payments made as a result of a remedy under one of the pension schemes;
- an exemption to a tax charge on those redress payments;
- ensuring that certain pensions and lump sums paid following a member's choice under the remedy are payments that registered pension schemes are authorised to make;
- a tax charge equivalent to the annual allowance charge or lifetime allowance charge that would have been due if the member's benefits had accrued or been paid when they would have been due if there had been no discrimination.

Regulations made under clause 15 will be subject to the negative resolution procedure.

### **Clause 16 Schedule 10: Expanding the Cash Basis**

Clause 16 introduces Schedule 10 which makes changes to the income tax cash basis for self-employed businesses and partnerships, providing a simpler way of calculating taxable profit for unincorporated businesses.

Current legislation at section 31C of the Income Tax (Trading and Other Income) Act 2005 includes a list of conditions which makes someone an 'excluded person' for a tax year. An 'excluded person' cannot make an election under section 25A ITTOIA05



to use the cash basis. The power in subsection 31C(10) allows the Treasury to amend section 31C, for example to exclude specific classes of person from using the cash basis.

Paragraph 16 of Schedule 10 omits section 31C and Paragraph 11 of Schedule 10 inserts a substantially similar new section 25C ITTOIA05, setting out a list of conditions which makes a trade an 'excluded trade' for a tax year. An 'excluded trade' cannot use the cash basis. New subsection 25C(9) replicates the existing power in subsection 31C(10), allowing the Treasury to amend new section 25C, for example, to exclude specific types of business from using the cash basis.

As with the existing power at subsection 31C(10), any regulations made under the replacement power at new subsection 25C(9) would be subject to the negative procedure, unless they restrict the circumstances in which a business can use the cash basis, in which case they would be subject to the affirmative procedure.

### **Clause 17 Part 1: PAYE regulations (special types of payer or payee)**

Clause 17(1) inserts new section 688AB into Chapter 3 of Part 11 of ITEPA 2003 to give the Commissioners for HMRC the power to make provision in the PAYE (Pay As You Earn) regulations to enable HMRC to set off amounts of tax already paid by a worker and their intermediary on income from engagements caught by the off-payroll working rules (commonly referred to as IR35) against a subsequent PAYE liability of the worker's deemed employer relating to the same engagement.

Regulations may provide for the treatment of an amount of tax as having been recovered from an individual or their intermediary, and for that amount not to be recoverable from the deemed employer in specified cases. New section 688AB(3) enables HMRC to provide for the amount to be set-off to be the best estimate which can reasonably be made by an officer of HMRC. New section 688AB(4) is an enabling power to make provision to prevent the worker and their intermediary from making repayment or relief claims or deducting or setting off the amount credited to the deemed employer.

Clause 17(2) enables provision to be made in relation to payments subject to the off-payroll working rules which are made on or after 6 April 2017. Regulations made under this power will be subject to the negative procedure.

## **PART 2: Other Taxes**

### **Clause 21 Schedule 12: Ensuring consistency of Parts 3 and 4 of the Finance (No.2 Act) 2023 with OECD rules**

Clause 21 introduces Schedule 12 which makes changes to the Multinational Top-up Tax and Domestic Top-up Tax by amending Parts 3 and 4 of Finance (No.2) Act 2023 to secure the effective implementation of the Global Anti-Base Erosion Model Rules agreed by the OECD/G20 Inclusive Framework on BEPS (the “Pillar Two rules”).

Paragraph 26 of Schedule 12 inserts new section 198A into F(No.2)A 2023 which includes a power to allow HM Treasury by regulations to alter the way that payroll costs and tangible assets are treated for calculating the substance based income exclusion in the circumstances specified by the regulation. Any regulations made under this power would be subject to the negative procedure.

Paragraph 36 inserts new subsections into section 262 which provides a power to allow HM Treasury by regulations to amend legislation to ensure consistency with the Pillar Two rules. The changes are designed to broaden the circumstances in which the power can be used, most notably to make changes which anticipate amendments to the Pillar Two rules, and to permit a limited degree of retrospectivity where the provision made is considered to be generally beneficial (as defined in the legislation) to persons affected by the implementation of the Pillar Two rules or by that provision. Any regulations made under the amended power in section 262 will be subject to the made affirmative procedure.

Paragraph 40 inserts new paragraph 13 into Schedule 16 to F(No.2)A 2023 which includes a power allowing HMRC to issue a notice specifying the alternative information that must be provided in an information return where an election for transitional reporting is made under that paragraph.

Finally, paragraph 2 of new Schedule 16A, which is inserted by paragraph 41, provides a power for HM Treasury to issue a regulation accrediting qualified domestic top-up taxes applying in other territories for the purposes of the safe-harbour introduced by that schedule. Any regulations made under this power would be subject to the negative procedure.

### **Clause 26: Vehicle excise duty exemption for foreign vehicles**

Clause 26 inserts new section 5A into the Vehicle Excise and Registration Act 1994. This clause enables regulations to be made, including retrospective provision exempting foreign vehicles, or foreign vehicles that meet certain conditions, from vehicle excise duty. In the first instance it is intended that the power will be exercised to provide for a 3-year exemption in respect of Ukrainian plated and registered vehicles belonging to individuals granted visas under the schemes introduced in relation to the conflict in Ukraine.

Subsection 5A(1) provides that the Secretary of State may, by regulations, make vehicle excise duty exemptions with respect to foreign vehicles, and Subsections 5A(2), (3), (4) and (5) make provision as to the scope of the power conferred by section 5A(1). Subsection 5A(6) defines expressions that are used elsewhere in that section. In particular, it defines a foreign vehicle as a vehicle that is registered outside of the United Kingdom.

Any regulations made under this power would be subject to the negative procedure.

## **PART 3: Miscellaneous and Final**

### **Clause 35: Additional information to be contained in returns under TMA 1970**

Clause 35 introduces amendments to the information which HMRC may collect through certain returns. The modifications are for the purpose of improving and enhancing the quality of the data HMRC collects. Amendments to the Taxes Management Act 1970 (TMA 1970) and to Chapter 6 of Part 11 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), will enable HMRC to make regulations specifying additional information to be required through the relevant return. New penalties are introduced for failure to comply with the information obligations relating to returns under the TMA 1970.

Subsections (1), (2) and (3) (relating to TMA 1970) and subsection (4) (relating to ITEPA 2003) expand the information which can be required (respectively by personal, trustee or partnership returns, or through a Pay As You Earn return) through regulations which are to be made by statutory instrument. They limit the information that can be so required to information which is related to the collection and management of taxes listed in section 1 TMA 1970. Regulations made under these powers will be subject to the negative procedure.

### **Clause 36: Commencement of rules imposing penalties for failure to make returns**

Sub-clauses 1 and 2 of Clause 36 allow for the Treasury to apply the regulation-making powers in sections 116 to 118 Finance Act 2021 to commence a new system of penalties (Penalty Reform), for individuals who elect to join and test the Making Tax Digital service, without being required to do so. Penalty Reform imposes points-based sanctions for late submission of returns, penalties for withholding information by not filing annual returns and penalties for late payment of tax liabilities. Individuals that volunteer to test the service will only be subject to late submission penalties where they fail to submit an annual return. Schedules 24 to 27 Finance Act 2021 set out the new system of penalties and the removal of the existing penalty regime under Schedules 55 and 56 Finance Act 2009.

Sub-clause 3(a) sets out that the regulations may provide that individuals must meet the Commissioners of HMRC's eligibility criteria and be accepted by an officer of HMRC, before they will be treated as a volunteer. Sub-clauses 3(b) and (c) provide that such regulations may provide that they will then be permanently subject to the new system of penalties, unless an officer HMRC gives notice to the individual that their election has ceased to have effect. For example, an officer of HMRC might provide such a notice if the individual experiences a change in circumstances, which means HMRC does not have the technical functionality to continue to support them in the service. After an election has ceased to have an effect for an individual, sub-clauses 3(d) and 4 allow for the Commissioners of HMRC to disapply the new system of penalties and treat them as though the existing penalty regime had never ceased to apply. However, this treatment does not apply to any penalties that the Commissioners of HMRC have already assessed.

Regulations made under the modifications made to sections 116 to 118 Finance Act 2021 by this clause would not be subject to a Parliamentary procedure unless

provision is made under section 118(5) Finance Act 2021 to amend or repeal an Act of Parliament, where the Commons-only negative procedure would apply.