Concealment of documents could additionally mean that HMRC were able to assert that the error or failure was deliberate and concealed. This could involve a very substantial increase in the penalties sought.

Legislation: TMA 1970, s. 12B and Sch. 1A; FA 1998, Sch. 18, para. 21; FA 2008, Sch. 36, para. 39, 42, 43, 53–55

Case: *Bustard* [2015] TC 04703

HMRC Manuals: CH10000

Other Material: HMRC guidance: *Keeping your pay and records*

In-Depth: ¶181-900ff.

980 Record keeping retention periods

In relation to income tax returns, the length of retention period depends on whether the person is carrying on a trade (including property letting), profession or business. If they are, the related records must be retained until the fifth anniversary of the 31 January following the particular tax year. If they are not carrying on any such activity, the records only need to be kept until the second 31 January following the tax year. In relation to corporation tax, the retention period runs to the sixth anniversary of the end of the accounting period.

Where a notice requiring a return is issued late, the retention period is extended to the later of the date when any enquiry window is closed or the date when any enquiry into the return is completed. Separate provisions apply to records supporting claims which are not included in a return.

Notwithstanding the length of the statutory periods, the practitioner may well consider it advisable to recommend a longer period of retention. In the event of any subsequent enquiry, the availability of the records can make a significant difference. Where the client does not have the necessary storage space, consideration could be given to the use of electronic copying or off-site archiving.

Legislation: TMA 1970, s. 12B(2) and Sch. 1A, para. 2A

HMRC Manuals: CH14000

In-Depth: ¶181-900ff.

985 Record keeping penalties

HMRC have an absolute right to inspect statutory records (see 380).

Failure to comply with the record keeping requirements attracts a maximum penalty of £3,000. In practice, it has been extremely unusual for HMRC to impose such a separate penalty. In the context of enquiry cases, HMRC practice has been to simply take the record keeping compliance into account in considering the appropriate penalty loading under another provision such as for an inaccuracy in a return. Failure to keep the required records is likely to be regarded by a tribunal as evidence of carelessness if it gives rise to an inaccuracy in a return.

It is important to note that there is no provision for a record keeping penalty to be suspended. Thus, a penalty can be imposed for an inaccuracy in the records even if it is one which the practitioner would have identified and corrected in the process of preparing the business accounts and tax return. This makes it important for the practitioner to ensure that they have advised clients of weaknesses in their record keeping and of the corrective measures that are required. If in the course of preparing the annual accounts it becomes clear to the practitioner that there are deficiencies in a client's records, the client should be advised of:

- the nature of the errors;
- the action required to correct systems and records;
- HMRC's increasing vigilance in relation to record keeping obligations;
- the risk of penalties; and
- the possibility that record keeping failures could lead to a full enquiry.

HMRC publish various record-keeping products for the self-employed, sole traders and small businesses, including factsheets and online tools. Links to these are shown below. None of these has statutory authority but HMRC are likely to regard a taxpayer's failure to consider this advice or take other appropriate advice to indicate possible carelessness. A practitioner can do a lot to help a client to avoid that exposure by ensuring that the records are satisfactory. There is an important marketing opportunity for practitioners here. Clients may require persuasion that the cost of keeping their records in a satisfactory state is a sound investment. If HMRC start charging penalties of up to £3,000 for record keeping failures, that attitude may change.

Legislation: TMA 1970, s. 12B(5)

Case: *Seafield General Store & Post Office* [2010] TC 00333

HMRC Manuals: CH14000

Other Material: HMRC guidance: *Record keeping checks on your business*; *Keeping records for your Tax Return:* RK BK1; *Running a limited company*

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In-Depth: ¶181-900ff.

Key Data: 2-030

Disclosure in tax returns

1000 Disclosures in or with tax returns – overview

Disclosures of information in or with tax returns ensures that HMRC are given a proper understanding of an item in the return or computation. Aspects of this are considered separately in relation to the use of estimates, valuations and provisional figures (see 955ff.). The purpose of this type of disclosure is to fulfil the taxpayer's obligation to properly describe matters and, in so doing, to radically curtail HMRC's opportunity to subsequently make a discovery.

Taxpayers have an obligation under self-assessment to submit tax returns which, to the best of their knowledge and belief, are correct and complete. The HMRC officer has the power to enquire into returns to check that taxpayers have fulfilled that obligation.

A major benefit of disclosure for taxpayers is the concept of finality. If a return has not been selected for enquiry within (normally) 12 months of filing, HMRC cannot subsequently open that year unless they can make a 'discovery' (see 1415). Disclosure limits the circumstances in which HMRC can displace the finality of a self-assessment and make a discovery assessment.

Legislation: TMA 1970, s. 29(6), (7); FA 2008, Sch. 39, para. 7; *Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order* 2009 (SI 2009/403)

Case: *Sokoya* [2009] TC 00125

HMRC Manuals: EM3260

Other Material: SP 8/91

In-Depth: ¶180-225

1005 Benefits of making a disclosure within a tax return

If HMRC discover that tax has been lost they can make an assessment to recover the tax lost at any time up to 4 years from the end of the year of assessment, with extended periods of 6, or 20 years respectively (or from 6 April 2019, 12 or 20 years where the loss relates to an offshore matter or transfers) if careless or deliberate behaviour was involved. However,

HMRC cannot base a discovery on information that has previously been made available to them before the enquiry window closed if the HMRC officer could have been reasonably expected, on the basis of that information, to be aware of the under-assessment.

In the majority of cases where a return is selected for enquiry, it will be for an 'aspect' enquiry. In these aspect cases, the HMRC officer will be focusing on specific entries in the return, and not enquiring into the whole return. The risk of an aspect enquiry can be reduced by the practitioner identifying areas where a word of explanation in the Additional Information (white-space) box on the return or computation might help the reviewing officer understand an unusual feature that might otherwise prompt an enquiry. This might for example be the case where relevant information was volunteered to explain a significant change in the results of a business.

Given that an aspect enquiry can develop into a full enquiry, anticipation and disclosure by the practitioner of the explanations that an officer might require could in some cases prevent a time-consuming enquiry. Appropriate disclosure could also well make a difference in how HMRC or on appeal, the tribunal viewed the actions of a taxpayer and thus impact the time limits for assessment and the level of any penalty.

The guidelines of the professional institutes indicate that a policy of full disclosure should be adopted. That does not of itself require the use of the Additional Information section of the return but if a practitioner considers what if any additional information they would require if they were the HMRC officer reviewing the return, they are likely to be meeting the guidelines.

HMRC Manuals: EM3260

Other Material: SP 8/91; Guidance produced by professional bodies Professional Conduct in Relation to Taxation

In-Depth: ¶180-225

1010 Disclosure – prevention of discovery

A key purpose of volunteering information with a return is to prevent or reduce the scope that HMRC have for making a discovery (see 1415).

The disclosure of information that might debar discovery is only regarded as made available to HMRC if it is:

(1) information that is contained in the taxpayer's self-assessment tax return (or in a claim outside the return) for that year (or either of the two previous years) or in any accounts, statements or documents accompanying the return (or claim);

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(2) information contained in any document, accounts or particulars produced to HMRC for the purpose of its enquiries into the return (or into the claim);

(3) other information, the existence and relevance of which could reasonably be expected to be inferred by HMRC from information within (1) or (2); and

(4) other information, the existence and relevance of which is notified in writing by the taxpayer to HMRC.

Where the taxpayer is a partner, information contained in the partnership return and accompanying statements is similarly protected.

It is important to note the distinction that the legislation makes between the first two and the second two situations. Information within (1) and (2) above is automatically within the protection of disclosure if its relevance to the return or enquiry should be obvious to the HMRC officer. By contrast information within (3) has to satisfy the additional test of reasonable inference and information within (4) is only protected if the taxpayer makes it clear:

- the return to which it applies; and
- the relevance of the information to that return.

In relation to (2), it is worth noting that when HMRC close an enquiry, the taxpayer has finality for that year. HMRC have only one bite at the cherry and can only reopen that year by reference to new information subsequently coming into their possession.

In relation to all four situations, there is of course a question mark over the extent to which an HMRC officer could have been reasonably expected to be aware of the significance of the information. HMRC's view is that if the taxpayer specifically pointed out the relevance of the information to their tax position, that would prevent such a question arising. That is undoubtedly correct. But it is also undoubtedly correct that there are many categories of information where it is obvious that it is relevant to the taxpayer's tax position.

HMRC do not seriously question that an officer ought to know that accounts and computations, CGT computations and many other documents accompanying a return will contain information that is likely to be relevant to the taxpayer's self-assessment. Accordingly, such information is automatically protected. But if, for instance, a 96-page sale agreement is sent with the return, an officer probably could not reasonably be expected to be aware of something tucked away on p. 85 that cast doubts on the tax treatment adopted.

However, most tribunals are likely to decide that the officer could reasonably be expected to realise that the sale agreement was sent with the return because it had a relevance to the taxpayer's liability. A reasonable officer, confronted with the 96 pages, could be expected at least to realise that the identity of the vendor, the amount of the consideration, and possibly the identity of the purchaser was relevant information, even if he could not be expected to study the agreement fully just in case there was something else important to the tax position, and thus be aware of the few lines on p. 85 that the taxpayer or their adviser thought were pertinent to the tax treatment.

As a rule of thumb, the practitioner should consider drawing attention to the relevance of information if that relevance is not immediately apparent.

The commentary on discovery cases demonstrates the different conclusions that a court or tribunal can reach in relation to seemingly similar situations. This underlines the need where there is any doubt for disclosures to be more rather than less comprehensive and informative.

Consideration of some of the practical issues of disclosure is included below (see 1015).

Legislation: TMA 1970, s. 29(6)(a)–(c), 29A(6); FA 1998, Sch. 18, para. 44(2)

Cases: *Sanderson v R & C Commrs* [2014] BTC 502; *Exors of William Connell* [2016] TC 04940; *Gakhal* [2016] TC 05031; *Miesegaes* [2016] TC 05129

HMRC Manuals: EM3260

In-Depth: ¶184-310

1015 Disclosure – practical considerations

Practitioners have differing views on how much supporting information should be sent as a matter of course with tax returns. What is much more important is to consider on a case-by-case basis whether the volunteering of additional information is likely to protect the client from the risk of enquiry or discovery.

Disclosure may mean attaching a document to the return. It may mean attaching a statement explaining an entry. It may mean putting a note in the white space on the return or in the computation. If anything is attached to a return, a note detailing the attachments should be entered in the white space as the enclosures are likely to be separated from the

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- another member of the scheme;
- a trustee of the scheme;
- a partner (if the sponsoring company is a partnership); or
- a person who is, or at any time has been in the last ten years, a controlling director (if the sponsoring employer is a company).

(2) It must not have all the assets invested only in insurance policies.

SSASs were popular because they offered the opportunity of wide investment options and in particular the possibility to purchase property. They have therefore been ideal for directors who wish to purchase the company's premises.

They are still popular in some quarters because they permit a loan-back to the company, subject to certain restrictions. However, most of the special features of a SSAS have been removed by the 2006 pension regime.

SSAS schemes started before July 1989 may still offer higher amounts of tax free cash to the members of the scheme, dependent on their service and salary history, care should be taken before drawing benefits or transferring from these schemes.

HMRC Manuals: IHTM17022

10640 Funded Unapproved Retirement Benefit Schemes (FURBS)

These arrangements were introduced to provide additional retirement benefits for some employees whose earnings were in excess of the pensionable limit. Although their relevance diminished with the introduction in 2006 of the generous annual allowance and the fairly restrictive Lifetime Allowance, there was a resurgence following the anti-forestalling rules from 22 April 2009. FURBS are an individual trust based arrangement between the employee and the employer with the employer acting as the trustee. The contributions do not benefit from tax relief, but there is no limit to the benefits payable, and if required, the entire fund accumulated prior to 6 April 2006 could be taken on retirement as a tax-free lump sum. HMRC now refer to FURBS as Employer-Financed Retirement Benefits Schemes (EFRBS) – see 10645.

Legislation: former ICTA 1988, s. 612

HMRC Manuals: TSEM5300

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10645 Employer-Financed Retirement Benefits Schemes (EFRBS)

The term Employer-Financed Retirement Benefit Scheme (EFRBS) was introduced as part of the 2006 pension reform; this amongst other things amended the definition of the previously used terminology: 'non-approved' schemes. Non-approved was the collective pre-A day term used for Funded Unapproved Retirement Benefits (FURBS) (see 10640) and Unfunded Unapproved Retirement Benefits Schemes (UURBS) (see 10650) and all such schemes became EFRBS with effect from 6 April 2006. HMRC must be notified within three months of an EFRBS commencing and by 7 July following the tax year any benefit is provided.

There are special transitional rules for non-approved schemes as the tax position of an EFRBS is markedly different to non-approved schemes.

An EFRBS is an arrangement entered into by an employee and an employer to provide relevant benefits. Relevant benefits are any lump sum, gratuity or other benefit (including non-cash benefits) paid in respect of:

- retirement or death;
- anticipation of retirement;
- after retirement or death in connection with past service;
- anticipation or connection with a change in the nature of the employee's service; or
- a result of a pension sharing order.

Benefits can be constructed either on a money purchase or final salary basis. Regardless of how benefits are accrued under an EFRBS, currently they do not count towards the Annual Allowance (see 10710) and Lifetime Allowance (see 10715) as EFRBS are not registered pension schemes (this may be subject to legislative change). This is because they do not qualify for tax relief on employer or employee contributions.

EFRBS can be both funded and unfunded; however, if unfunded there is an obvious lack of security (**note:** any provision of security/insurance on an unfunded arrangement will give rise to a benefit in kind charge on the employee equal to the cost of provision). EFRBS are also not subject to the contribution and investment restrictions which apply to registered pension schemes, providing greater flexibility in design.

The advantages of an Employer-Financed Retirement Benefits Scheme have been undermined by the introduction of an income tax charge on third-party arrangements used by employers to provide a reward to employees. This charge will affect any reward, recognition or loan provided by an employer to an employee in connection with their employment. The charge will be based on the full value of the benefit. In particular,

the income tax charge will apply to third-party arrangements which are provide in addition to, or in replacement of, registered pension schemes. This means that the legislation includes EFRBS.

Legislation: ITEPA 2003, s. 393A, 554A

HMRC Manuals: EIM15000ff., EIM45000ff.

In-Depth: ¶412-310; ¶423-900

10650 Unfunded Unapproved Retirement Benefit Schemes (UURBS)

These arrangements are a means that some employers used to enhance a selected individual's occupational pension scheme. As with FURBS (see 10640), they were an individual trust-based arrangement between the employee and the employer with the employer acting as the trustee. They differ in that no contributions were actually made at the time to provide the future retirement benefits, which meant that the employee had no tax liability for any employer contributions. However, there is also no guarantee that a pension will be paid in the future. As with FURBS, the pension promise can be exchanged for a lump sum instead. HMRC now refer to UURBS as an Employer-Financed Retirement Benefits Scheme (EFRBS) (see 10645). They are subject to the same restrictions mentioned at 10645, but as they are unfunded, they escape the rules on employment income provided through third parties.

Personal Pension Schemes

10660 Types of Personal Pension Schemes

Individuals who are either self-employed, not employed, whose employer does not offer occupational pension arrangements, or who simply wish to establish a private pension scheme (which may be additional to an occupational one) will do so through either a personal or a stakeholder pension plan. These are invariably money purchase schemes in which contributions accrue in selected fund(s) and are subsequently converted into retirement benefits in the future. There are three main personal schemes: retirement annuities (see 10665), personal pensions (see 10670) and stakeholder pensions (see 10675).

10665 Retirement Annuities

Also known as s. 226 contracts, these were the precursor to personal pensions, which were introduced in July 1988. Contributions can continue to be made to these policies, but no new plans can be established. Many

of these plans contain guaranteed annuity terms, which are often higher than market annuity rates but also include specific conditions to qualify for the higher income amount.

Legislation: FA 2004, Sch. 36, para. 40

HMRC Manuals: PTM044220

In-Depth: ¶376-400

10670 Personal Pension Plans

These were introduced in July 1988. They are usually offered by life offices, and have a range of charging structures. The investment options are set by the life office although most now have a range of external funds links.

There are a number of features that can apply to these policies of which professional advisers need to be aware.

(1) Although many of these are written under a master trust with a nomination of beneficiary form, benefits left on death can be to a nominated beneficiary or to a separate trust. The trustees of the master trust retain discretion when making payments.

    Prior to 2015, many plan holders arranged a spousal bypass trust to direct death benefits to other family members. This was tax efficient until 2015 but is no longer as tax efficient following the *Taxation of Pensions Act* 2014.

(2) Many older policies are still invested in with-profits funds; these seek to smooth out the natural investment returns from the underlying investments. This can mean that the final value can be boosted by the addition of a terminal bonus or reduced by the application of a market value adjuster (MVA). Policy conditions will specify if an MVA applies.

(3) Some early personal pensions were written with a fixed guaranteed annuity rate. Although the terms of the annuity can be inflexible, the rate is generally very attractive compared with what is currently available. Some life companies will vary the terms of a guaranteed annuity, while still retaining elements of the guaranteed rate.

(4) Some of these old funds also have a guaranteed annual interest rate, which can be beneficial during market downturns.

(5) The value of these funds are subject to market risk, reviewing the asset allocation and adjusting the risk taken is therefore essential to maintaining their value. It is therefore vital that this aspect of a client's pensions is properly assessed. Investment management issues are covered later in this chapter.

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(6) Most personal pensions allow access to the open market annuity and a transfer of the funds to other registered pension schemes, without penalty. A few plans may contain a penalty charge on transfer.

Legislation: FA 2004, s. 154

HMRC Manuals: PTM031200

In-Depth: ¶375-050

10675 Stakeholder Pension Plans

Stakeholder pensions were introduced from 6 April 2001. They were an attempt by the Government to introduce low cost, simple pension plans in which the charges that could be levied were controlled. At first, no initial charges could be taken and the maximum annual management charge (AMC) was restricted to 1%. Whilst no initial charge can still be taken, the maximum AMC for individuals who join a stakeholder pension scheme on or after 6 April 2005 is now 1.5% for the first ten years, reducing to 1% thereafter if the individual remains in the scheme. Other mandatory standards required to qualify as a stakeholder pension are that:

- the scheme cannot charge for transfers into or out; and
- the scheme must accept contributions of as low as £20.

There are a number of features that can apply to these policies of which professional advisers need to be aware.

(1) The earlier schemes had very limited investment options. There may be an opportunity to improve this choice.

(2) As the funds increase over time, the issue of asset allocation becomes increasingly important and a balance needs to be struck between cost and investment risk.

Legislation: FA 2004, s. 154

HMRC Manuals: PTM031200

In-Depth: ¶375-050

10680 Workplace pensions

Since 6 April 2001, all employers have been required to provide access to a workplace stakeholder pension scheme unless they employ less than five individuals or already offer a pension scheme providing benefits to eligible staff. These requirements have largely been superseded by the Government's Auto Enrolment Initiative.

The Government introduced new responsibilities for both employers and employees from 2012 aimed at encouraging greater private pension saving via the workplace. These changes include the introduction of a new type of multi-employer trust based pension scheme. Originally, these were referred to as 'Personal Accounts' but have now been renamed Auto Enrolment Pension Schemes. They are mandatory for use by employers who do not have, or choose not to use, any existing pension schemes to meet the new obligations.

Employers have a duty to automatically enrol their eligible employees into a good quality workplace pension scheme. This differs from the stakeholder regime in that employers and employees have to make a contribution to the scheme, deducted via payroll, unless the employee opts out. From 2018–19, all employers are required to comply with this and contribution rates. Contribution rates, which have been phased in gradually, increase for all to 8% of eligible earnings from April 2019. Those who opt out have to be automatically re-enrolled every three years.

Employers who already offer a pension scheme which provides contributions above the mandatory level are not required to set up an auto enrolment scheme, unless they have eligible employees who are not members of the employer's scheme.

Non-compliance results in heavy financial penalties imposed by The Pensions Regulator.

Legislation: *Pensions Act* 2008, s. 67

In-Depth: ¶490-200

10685 Self Invested Personal Pension (SIPP)

A SIPP is simply a personal pension arrangement that allows investors maximum flexibility in the choice of the underlying investments. It is a registered pension scheme and it is now a financial product regulated by the Financial Conduct Authority. The following table shows the permitted range of investments within SIPPs. This is not exhaustive, but includes the most common assets that are held:

Stocks & Shares	Cash Deposits	Discretionary Management
Internal Life Office insured funds	Corporate Bonds	OEICS, Unit Trusts and Investment Trusts
Commercial Property & Land	Fixed Interest/Gilts	Futures and Options

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However, the flexibility means that schemes need to be mindful of potential charges arising on any unauthorised payments.

Legislation: FA 2004, s. 150, Sch. 29A, para. 1

In-Depth: ¶375-400

Tax relief for pension contributions

10700 Methods of tax relief for pension contributions

There are three methods by which a member can receive tax relief for contributions:

- relief at source;
- net pay arrangements; and
- relief on making a claim.

The member cannot choose how the relief is given. The mechanism for giving relief depends on the method that the pension scheme is allowed to operate under the legislation. The 'default' method is relief at source and the other methods are only permitted if certain conditions are satisfied.

Legislation: FA 2004, s. 191

HMRC Manuals: PTM044200ff.

In-Depth: ¶376-250

10705 Contributions and tax relief

Pension contributions can be made from birth to age 75, thereafter no further contributions are eligible for tax relief.

There is no limit on the amount that an individual can contribute to a registered pension scheme each year. However, there is a limit on the amount of those contributions which are eligible for personal tax relief. The maximum amount of relievable contributions in any year is the amount of the individual's relevant UK earnings that are chargeable to income tax for that year. However, an annual allowance charge can arise where contributions exceed the annual allowance for pension savings (see 10710).

Where those earnings are less than the 'basic amount' of £3,600, the maximum amount of relievable contributions is increased to that amount. However, in such a case, relief is only to be given by means of relief

at source (see 10700). Non-earners can claim this allowance and 20% income tax relief, even though they may not be taxpayers. They cannot carry forward unused relief.

Employers may pay contributions and these will not count as taxable benefits and do not count towards the limit for relievable pension contributions.

Legislation: FA 2004, s. 188, 189, 190

Case: *Crown v Quillan* [2015] BTC 16

HMRC Manuals: PTM044100

In-Depth: ¶376-000

10710 Annual allowance

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A charge to income tax, known as the annual allowance charge, arises where the total pension input for a tax year (see 10712) in respect of a member of one or more registered pension schemes exceeds the annual allowance for that year). The charge also applies, with modification, in the case of certain non-UK pension schemes. The amount of the annual allowance is £40,000.

In the event that contributions are lower than the annual limit, any unused relief may be carried forward up to three years (see 10713).

A tapered reduction of the annual allowance affects 'high-income individuals'. The taper works by reducing the annual allowance for the year by an amount given by the following formula (which, given the annual allowance s £40,000, has the effect of reducing the allowance by £1 for every £2 by which taxable income exceeds £150,000):

$$(T - \pounds150{,}000) \times (A - \pounds10{,}000/\pounds60{,}000)$$

Where:

T is the individual's adjusted income for the year; and

A is the annual allowance for the year.

The amount of the reduction is rounded down to the nearest £1.

The annual allowance cannot be reduced below £10,000. If adjusted income exceeds £210,000, the annual allowance will be £10,000.

An individual is a 'high-income individual' if:

- their adjusted income for the tax year exceeds £150,000; and

- their threshold income for the tax year exceeds £150,000 less the annual allowance specified for the tax year (as the annual allowance is £40,000, threshold income will have to exceed £110,000).

> **Example**
>
> Bob's pension contributions are normally £40,000 per annum, but in 2019–20, he makes a one-off additional contribution of £25,000 to top up his pension savings as a result of receiving a bonus. Bob's adjusted income for 2019–20 is £160,000.
>
> Bob's annual allowance for 2019–20 is tapered. The amount of the taper is £5,000 ((£160,000 – £150,000) × ((£40,000 – £10,000) / £60,000)). After deducting the taper, Bob's annual allowance for 2019–20 is £35,000.
>
> In 2019–20, a chargeable amount of £30,000 arises (£40,000 + £25,000 – £35,000). Bob does not have any unused allowances from the previous three tax years.

The annual allowance charge is levied on so much of the 'total pension input amount' (see 10712) as exceeds the annual allowance for that year. This excess is not treated as income for any purposes of the Tax Acts. However, the charge is amended where the individual meets the 'flexible drawdown conditions' (see 10711).

The rate of tax charged on the excess is the 'appropriate rate'; that is, the rate or rates which would be charged on the excess if it was to be added to the individual's 'reduced net income' for the tax year concerned. That figure is the sum calculated at Step 3 of the prescribed method of calculating income tax liabilities (see 3000). Any increase in the basic rate or higher rate bands due to pension contributions made under deduction of tax or Gift Aid payments is also taken into account for this purpose.

In summary, the excess input amount is added to the other taxable income for that year and taxed at the individual's marginal rate.

Liability for the annual allowance charge normally falls on the member but, in certain circumstances, some part may fall on the scheme administrator if the liability exceeds £2,000. However, the scheme administrator must then deduct the tax paid, plus interest, from the scheme member's benefits. This arrangement is therefore an easement of cash flow for the member who ultimately bears the tax burden.

Legislation: FA 2004, s. 227, 228ZA, 237A–237F

HMRC Manuals: PTM050000ff.

In-Depth: ¶386-000ff.

Key Data: 3-910

10711 Money Purchase Annual Allowance (MPAA)

This allowance restriction applies once an individual has exercised flexible access to their pension. From then on, the amount of their annual allowance for money purchase pension savings is reduced to £4,000, with no carry forward facility.

Where an individual, subject to the MPAA, has access to a defined benefit scheme (see 10610), they will retain an annual allowance of £36,000 in respect of accrual in a defined benefits scheme.

Payments made or accrual in excess of these amounts will be charged to tax at the individual's marginal income tax rate.

The MPAA is not triggered where the lump sum withdrawal is from a final salary scheme, or withdrawing small pots, see Lump Sums (see 10720).

Legislation: FA 2004, s. 227ZA, 227B, 227G

HMRC Manuals: PTM056500

Other Material: HMRC guidance for taxpayers – www.gov.uk/guidance/work-out-your-allowances-if-youve-flexibly-accessed-your-pension

In-Depth: ¶386-010; ¶386-350

Key Data: 3-910

10712 Annual pension input amount

All pension schemes have a uniform pension input period (PIP) which aligns with the tax year, 6 April to 5 April.

This is the aggregate of the pension input amounts in respect of each arrangement relating to the individual under all registered pension scheme. The pension input amount depends on the nature of the arrangements.

For money purchase pension schemes, the input amount is simply the aggregate of all contributions paid in that year.

For defined benefit schemes, the input amount is the increase in the value of the individual's benefit entitlement over the year and a formula is applied to arrive at this:

(Annual Pension at end of PIP – (Annual Pension accrued at start of PIP × CPI increase)) × 16. For example, (AP £23,000 – (AP £20,000 × CPI 2%) × 16 = Input amount £41,600.

Income tax

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Broadly, inducements are caught if they involve the laying out of money. Benefits representing amounts foregone or deferred are not generally caught as they do not involve an outlay.

For tax purposes, a reverse premium is treated as a revenue receipt. The timing of the charge generally follows accepted principles of commercial accounting. See, however, the anti-avoidance provision below.

An anti-avoidance provision aims at preventing the exploitation of timing differences by the grant of a lease to a connected person on clearly uncommercial terms (e.g. a 25-year lease with no rent review clause).

The above provisions do not apply to a payment or benefit:

- if or to the extent that it is taken into account under the capital allowances provision relating to subsidies, contributions, etc. to reduce the recipient's expenditure qualifying for allowances;
- received in connection with a relevant transaction where the person entering into the transaction is an individual and the transaction relates to premises occupied or to be occupied as his only or main residence; or
- to the extent that it is consideration for the transfer of an estate or interest in land which constitutes the sale in a 'sale and leaseback transaction'.

Legislation: CTA 2009, s. 96, 97, 98, 99, 100, 250

Cases: *IR Commr (New Zealand) v McKenzies (NZ) Ltd* [1988] 2 NZLR 736; *IR Commr (New Zealand) v Wattie* [1998] BTC 438

HMRC Manuals: BIM41050ff.

In-Depth: ¶711-550

Property business losses

22300 Property business losses

Commentary on corporation tax relief for (income) losses from UK and overseas property businesses can be found at 32235.

Legislation: CTA 2010, s. 62, 64

HMRC Manuals: PIM4230

In-Depth: ¶730-650; ¶730-700

Furnished holiday lettings

22350 Furnished holiday letting income – overview

The letting of furnished holiday accommodation constitutes a property business, and the trading income rules for calculating profits (see 21000ff.) accordingly generally apply. In addition, however, the letting of furnished holiday accommodation is treated in an especially beneficial way, i.e. broadly as a trade.

All the commercial lettings of furnished holiday accommodation made by a particular company are treated as one trade. The profit or loss has to be calculated, in practice, separately from other property business profits and losses in order to see whether advantage can be taken of the above benefits. However, any overall profit is included in the general property business result, as is any loss.

Although the special regime applies to furnished holiday lettings in both the UK and the EEA (excluding the UK), they are to be treated as two separate property businesses. The legislation contains parallel provisions for each type of business and the results of each need to be separately calculated.

The main benefits for the company of treatment as a trade are as follows:

- capital allowances are available for expenditure on plant and machinery acquired for purposes of the letting;
- CGT rollover reliefs are available;
- the substantial shareholding exemption may apply.

The above treatment applies only where there is a 'commercial letting' (see 22360) of 'furnished holiday accommodation' (see 22370) in the UK or in the European Economic Area (excluding the UK).

Legislation: TCGA 1992, s. 241, 241A; CAA 2001, s. 249, 250A; CTA 2009, s. 264, 269, 269A; CTA 2010, s. 65, 67A

HMRC Manuals: PIM4115

In-Depth: ¶711-700; ¶711-715

22360 'Commercial letting' condition

'Commercial letting' requires that the property be let:

(1) on a commercial basis; and

(2) with a view to the realisation of 'profits'.

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22380 Furnished holiday letting losses

Relief for losses generated by a furnished holiday lettings business may only be used to carry forward against profits of subsequent tax years arising from the same business in which the loss arose. Consequently, the profits and losses of a UK business and an EEA business need to be calculated separately.

Legislation: CTA 2010, s. 65, 67A

HMRC Manuals: PIM4115

In-Depth: ¶711-715

Non-resident landlords

22400 The scheme for non-resident landlords

Where a non-resident landlord has income from a UK property business, it is in principle subject to deduction of tax at source. The tax is deducted and paid over to HMRC by the landlord's agent (or, if there is no agent, by the tenant), and there is a final settling-up with the non-resident landlord under self-assessment.

The scheme provides for letting agents, or, where there is no letting agent, the tenant of a non-resident landlord, to:

- deduct tax at the basic rate from the landlord's UK rental income;
- pay the tax quarterly (with associated quarterly returns) to HMRC;
- submit annual information returns of details relating to income, expenses and tax deducted for each non-resident landlord.

But the scheme also provides, importantly, for non-residents to apply to HMRC for the payment of rents gross, without deduction at source. This will be common practice.

Application is made, in the case of companies, on Form NRL2. Approval may be given where:

(a) the non-resident landlord's UK tax affairs are up to date;

(b) the non-resident landlord has never had any UK tax obligations; or

(c) the non-resident landlord does not expect to be liable to UK income tax for the year in which the application is made.

Legislation: ITA 2007, s. 971, 972; *Taxation of Income from Land (Non-residents) Regulations* 1995 (SI 1995/2902)

HMRC Manuals: PIM4810

In-Depth: ¶303-300

Anti-avoidance measures

22450 Disposals of UK land: anti-avoidance from 5 July 2016

Where these rules apply, the amounts are treated for corporation tax purposes as profits from a trade. If the chargeable company is non-UK resident, that trade is the company's trade of dealing in or developing UK land. The profits are treated as arising in the accounting period of the chargeable company in which the profit or gain (including gains that are capital in nature) is realised.

The rules do not apply to:

- a profit or gain so far as it would already be brought into account as income in calculating profits (of any person) for income tax or corporation tax purposes; and
- gains attributable to periods before an intention to develop the land is formed.

The rules can apply where any of the following persons realises a profit or gain from a disposal of any UK land:

(a) the person acquiring, holding or developing the land;

(b) a person who is associated with the person in paragraph (a) during the project and up to six months following the disposal; and

(c) a person who is a party to, or concerned in, an arrangement:
   (i) that is effected with respect to all or part of the land; and
   (ii) that enables a profit or gain to be realised by any indirect method, or by any series of transactions.

For the rules to apply, any one of the following four conditions A to D must be met.

Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.

Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.

Condition C is that the land is held as trading stock.

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The legislation provides that the holding company of a trading group can not be an investment company.

The key difference in tax treatment between a company with investment business and an investment company is that the investment company may, in certain circumstances, deduct a capital loss arising on the disposal of shares in a trading company in calculating its total taxable profits. This is known as 'share loss relief'.

Legislation: CTA 2009, s. 1218B; CTA 2010, s. 68–90

HMRC Manuals: CTM08080

In-Depth: ¶713-040ff.

23010 Management expenses of an investment company

In computing the profits for an accounting period of a 'company with investment business' (see 23005), certain expenses commonly referred to as management expenses are deductible in calculating the company's taxable total profits, subject to meeting a number of conditions.

For guidance on expenses which are not deductible as expenses of management, see 23015, and for expenses which are not deductible, see 23020. For guidance on the means by which relief is obtained, see 23030.

Legislation: CTA 2009, s. 1219

HMRC Manuals: CTM08150ff.

In-Depth: ¶713-250

23015 Management expenses: expenses not deductible

Rules apply to deny a deduction where an investment is held for an unallowable purpose or where arrangements have been entered into to produce a wholly or partly contrived deduction for management expenses. These rules are unlikely to affect the vast majority of companies, only those which have deliberately and knowingly entered into a scheme to avoid tax.

In addition, the following expenses are not deductible management expenses (i.e. are not 'expenses of management'):

- any amount disbursed which is deductible in computing profits apart from as expenses of management;
- expenses of a capital nature unless falling within any of the categories in 23020 or are employer contributions to a pension scheme;
- expenses for which there is a statutory prohibition on deduction (e.g. business entertaining and gifts, crime-related payments, remuneration not paid within nine months of the end of the accounting period, contributions to employee benefit trusts, penalties, interest and VAT surcharges, a proportion of the hire costs of certain cars, etc.);
- brokerage and stamp duty on the purchase and sale of investments;
- the costs of raising finance, such as the issue of the debentures; and
- payments that are not wholly for the purposes of the company's business, such as excessive directors' fees or administrative expenses paid to a parent company otherwise than pursuant to an agreement;

The general principle established by case law is that to be deductible, expenses of management have to be expenses of managing the investment business, rather than the investment themselves. So, expenses that relate to the purchase or sale of a particular investment will not generally be deductible as expenses of management.

Legislation: CTA 2009, s. 1219 and Pt. 16, Ch. 4; CTA 2010, s. 838

HMRC Manuals: CTM08150ff.

In-Depth: ¶713-330

23020 Management expenses: deductible expenses

Expenses of management (i.e. deductible management expenses) include certain expenses by operation of statute; this includes 'commissions' and the following expenses:

- any statutory redundancy payment and corresponding employer's other payments in excess of the recoverable rebate (including payments after discontinuance of trade);
- any payment which is made after discontinuance of trade in addition to a statutory redundancy payment or other employer's payment up to three times the redundancy payment or other employer's payment provided it would be deductible under general principles if made before discontinuance;

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25010 A 'money debt'

'Money' is defined to include money expressed in a currency other than sterling. A money debt is a debt settled in money, or by the transfer of a right to settlement under a debt which is a money debt. 'Money', which is not defined further, must be taken to have its ordinary meaning. It would not, therefore, include physical commodities or a barter arrangement. 'Debt' includes a debt the amount of which falls to be ascertained by reference to matters which vary from time to time.

Legislation: CTA 2009, s. 303, 476

In-Depth: ¶717-050

25015 A transaction for the lending of money

The rules provide the following guidance on the meaning of this term:

- where an instrument is issued to evidence any money debt, the debt is taken to have arisen from a transaction for the lending of money;
- a debt arising from rights conferred by shares in a company does not arise from a transaction for the lending of money; and
- 'loan' includes any advance of money.

According to the Revenue press release announcing the publication of the original draft legislation (REV 21 of 28 November 1995), a loan relationship would arise from any debt 'which, under general law, is a loan'. So any transaction which would generally be regarded as lending would qualify, e.g. unsecured loans, overdrafts, drawn-down credit facilities, in addition to all securitised debts. Neither the duration of the financing, nor the form of payment for the loan – interest, discount, premium, or any combination – is relevant. Finance leases are excluded for, whatever their economic character, they are not loans for legal purposes.

From 6 April 2005, references to loan relationships include references to 'alternative finance arrangements' for the taxation of lending under Sharia law.

HMRC have confirmed that straightforward commercial contracts and invoices do not represent a security, and therefore, not a transaction of lending money. However, it would seem possible for such a transaction to become a transaction of lending – for example, where a debtor is granted extended time to pay.

Any instrument which represents a pure equity interest in a company cannot be a loan relationship. The reference to 'shares in a company' is

qualified by CTA 2009, s. 476, in that the term 'share' is deemed to mean any share under which entitlement to receive distributions may arise. It must therefore be taken to include preference shares. Building society shares are not shares for this purpose.

Legislation: CTA 2009, s. 303, 476

HMRC Manuals: CFM31040

In-Depth: ¶717-050

25020 Relevant non-lending relationships

The application of the loan relationships legislation is extended to money debts not arising from a transaction for the lending of money (referred to as a 'relevant non-lending relationship') in certain circumstances, for example where the debt is one on which interest is payable.

An example of a relevant non-lending relationship would be consideration outstanding on the purchase of an asset (e.g. Co A is in the business of selling properties). Co B buys a property and fails to pay the consideration due to Co A. The amount outstanding did not arise from a transaction for the lending of money therefore there is no loan relationship. If Co B pays Co A interest on the amount outstanding, or Co A makes an impairment adjustment in respect of any of the amount outstanding, those debits and credits will be treated as loan relationship debits and credits in Co A, and the interest would be a loan relationship debit for B. If A was not in the business of selling properties but was, for example, disposing of its business premises, the interest would be a loan relationship credit for A but the impairment would not be an allowable debit since the impairment loss would not be in respect of a business payment.

Legislation: CTA 2009, s. 477–569

In-Depth: ¶717-620ff.

25030 Loan relationships and special situations: late paid interest

In simple terms, a debtor company's (DCs) deduction for interest payable on a loan relationship is deferred until the accounting period in which the interest is actually paid where DC is a close company and the creditor is connected with DC.

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The rules in this area are complicated, and they have been subject to change in recent years.

Legislation: CTA 2009, s. 373

In-Depth: ¶717-324

25035 Loan relationships and special situations: connected companies

Where the debtor company and the creditor company are connected, that is to say, one has control of the other, debits and credits in relation to loans written off or released and debits in respect of impairment losses are not taken into account for tax purposes.

For these purposes, there is a connection between two companies at any time if one company has control of the other or if both companies are under the control of the same person.

Legislation: CTA 2009, s. 348–363A

In-Depth: ¶717-320

25040 Loan relationships and special situations: unallowable purpose

Debits on loan relationships which have an unallowable purpose are not recognised for corporation tax purposes. In addition, any exchange gains on a loan relationship which has an unallowable purpose will similarly not be recognised. Where a loan relationship has an unallowable purpose, so much of the debits, and foreign exchange credits, on that loan relationship for the accounting period as are attributable, on a just and reasonable apportionment, to the unallowable purpose are left out of account. Debits on loans for unallowable purposes which are not brought into account (and thus are already refused relief as loan relationship debits) are similarly denied relief under any other corporation tax provisions in CTA 2009.

The test, which must be carried out for every accounting period during which the company is party to the loan relationship in question, is whether the purpose for which the company is a party to the loan relationship or enters into a related transaction in respect of that loan relationship (such as the disposal or release of a loan) is one 'which is not amongst the business or other commercial purposes of the company'.

Legislation: CTA 2009, s. 441

In-Depth: ¶717-280

25045 Loan relationships and special situations: credit not taxable on release of liability

In addition to the situation where the debtor and creditor are connected, there are several circumstances where the release of a liability will not give rise to a taxable credit in the debtor company, including where:

(1) the release is part of a statutory insolvency arrangement;

(2) the creditor company is in insolvent liquidation and immediately before it went into liquidation, the debtor and creditor were connected companies and they were not connected immediately after that time;

(3) the relationship is not with a connected company but the debtor company is in insolvent liquidation;

(4) the release is in consideration of, or of any entitlement to, shares forming part of the ordinary share capital of the debtor company.

Legislation: CTA 2009, s. 322

In-Depth: ¶717-240

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25050 Loan relationships and special situations: close company releasing loan to a participator

Where a close company makes a loan to an individual who is a participator and releases it, the company is not entitled to a deduction under the loan relationship rules.

Legislation: CTA 2009, s. 321A

In-Depth: ¶717-240

25055 Loan relationships and special situations: deemed release where an impaired debt becomes held by connected party

Subject to some exceptions, there are two instances where there is a deemed release of a liability under a debtor loan relationship. Where these circumstances apply, the credit arising in the debtor company on the deemed release has to be brought into account for tax purposes.

The first instance applies where a company (C) acquires a debt from an unconnected creditor (T) and immediately after that acquisition C is connected with the debtor company (whether such connection arises by virtue of acquiring shares at the same time as the debt, or whether the

debtor and C were previously connected) and the pre-acquisition carrying value of the debt (being the original amount of the liability in the accounts of the debtor due less any release by T) exceeds the consideration which C has paid for the debt. This would apply, for example, where a parent company acquires from a bank (for a consideration less than the face value of the loan) a loan made by the bank to a subsidiary company of the parent. In such circumstances, there is a deemed release of the debt in the amount of the excess, so that the difference between the face value of, and the amount actually paid for, the debt is treated as released and therefore constitutes a credit taxable on the debtor.

The second instance where a deemed release occurs is where the identity of the creditor remains the same, but the creditor changes from being unconnected to connected, in circumstances where the amount that would have been the carrying value of the loan relationship asset in the accounts of the creditor if a period of account had ended immediately prior to the companies becoming connected would have been adjusted for impairment. The deemed release is of an amount equal to the impairment adjustment that would have been made. This instance would occur, for example, if a parent company acquired the company that had previously made a loan to the parent company's subsidiary where the value of the debt had become impaired (for example, because the subsidiary was in financial difficulty).

Legislation: CTA 2009, s. 361, 362

In-Depth: ¶717-320

25060 Loan relationships and special situations: disguised interest

Where a company is party to an arrangement which produces for the company a return in relation to any amount which is economically equivalent to interest, then the loan relationship rules apply as if the return were a profit arising to the company from a loan relationship. For this purpose, a return produced for a company by an arrangement in relation to any amount is 'economically equivalent to interest' if and only if:

(a) it is reasonable to assume that it is a return by reference to the time value of that amount of money;

(b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest; and

(c) at the relevant time, there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise).

There are three exclusions:

(1) where the return is otherwise taxable such as trading income, or under the fixed asset rules or under the derivative contracts rules;

(2) where the arrangements have no tax avoidance motive; or

(3) where the arrangements involve excluded shares such as certain group companies or companies that would be controlled foreign companies (CFCs) (see 39000) but for an exemption.

Where there is no tax avoidance motive, a company can elect for the exclusion not to apply. The election must be made no later than the time when the arrangement begins to produce a return for the company, and is irrevocable.

Legislation: CTA 2009, s. 486A–486E

In-Depth: ¶718-400

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25070 Loan relationships: bringing amounts into account

Debits and credits made in accordance with generally accepted accounting practice (GAAP) that are recognised in determining the company's profit or loss for the period are used to calculate a company's taxable income or deductions resulting from its loan relationships.

Trading loan relationships

For any loan to which a company is a party for trading purposes:

- credits are treated as trading receipts; and
- debits are treated as deductible trading expenses.

The test of whether or not a company is party to a loan relationship for the purposes of its trade depends on whether the company is a creditor or debtor. As a debtor, it need only show that it took on the debt for the purposes of its trade: whether the loan represents a temporary facility or is part of the company's capital should be irrelevant. It should not matter whether the loan finances current or fixed assets.

A creditor, however, may only treat a loan as a trading loan if it made or acquired the loan 'in the course of activities forming an integral part of [its] trade'.

Non-trade loan relationships

Any loan which is not for a trading purpose will give rise to debits (i.e. losses) and credits (i.e. profits) which are called, respectively, 'non-trading debits' and 'non-trading credits'. In any accounting period, the treatment of these is respectively:

- net non-trading credits (i.e. the aggregate of a company's non-trading credits, less the sum of all its non-trading debits, if any) are taxed as non-trading loan relationships; and
- net non-trading debits (i.e. the aggregate of a company's non-trading debits, less the sum of all its non-trading credits, if any) are relieved, as a 'non-trading deficit', under special rules outlined below.

Note that non-trading foreign exchange gains and losses are also dealt with under these loan relationship provisions for accounting periods ending after 31 March 1996.

Legislation: CTA 2009, s. 295–301

In-Depth: ¶717-100

25075 Set off of non-trade deficits

Significant changes to the rules in this area apply with regard to accounting periods beginning on or after 1 April 2017.

Periods beginning on or after 1 April 2017

A post-1 April 2017 loan relationship non-trading deficit may be relieved as follows:

(1) against the profits of other group companies for the deficit-making period by way of group relief surrender;

(2) against profits of the company of whatever description for the deficit-making period;

(3) against profits of the company for earlier accounting periods;

(4) against total profits of the company of subsequent accounting periods; and

(5) against the profits of other group companies for subsequent accounting periods by way of group relief surrender for carried forward losses.

Different claims may be made in respect of different parts of a non-trading deficit for any deficit period. No claim may be made in respect of any part of a non-trading deficit to which another claim relates.

Periods beginning before 1 April 2017

A loan relationship non-trading deficit of the deficit-making period:

(1) may be surrendered to other group companies by way of group relief;

(2) to the extent not relieved under (1) above, may be partly or wholly relieved against total profits of the deficit-making period (sideways relief);

(3) to the extent not relieved under (1) and (2) above, may be relieved against loan relationship profits after every prior relief of the 12-months immediately preceding the deficit-making period (carry-back relief); and

(4) to the extent not relieved under (1)–(3) above, must be carried forward and mandatorily relieved against loan relationship non-trading profits of the next accounting period (carry-forward relief) unless a disclaimer is made such that part or all of the carried forward deficit is to be carried forward to the next but one accounting period instead. In relation to pre-1 April 2017 non-trading deficits carried forward to post-1 April 2017 periods, this relief is subject to the general 50% restriction of profits over £5m against which carried forward losses may be relieved.

Group relief, sideways relief and carry-back relief are optional reliefs, i.e. they require a claim.

Legislation: CTA 2009, s. 456–463

In-Depth: ¶717-150; ¶717-155

25100 The corporate interest restriction

The corporate interest restriction applies from 1 April 2017. It works as follows:

(1) a worldwide group is able to deduct up to £2m per annum of net interest expense and similar financing costs in the UK;

(2) above this threshold, deductions for interest (and certain other financing costs) is capped by reference to current period interest capacity, i.e. the current period interest allowance plus the brought forward unused interest allowance of prior periods to the extent that it is unexpired;

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Reliefs

64110 Sale and lease-back relief

A 'sale and leaseback' arrangement means an arrangement under which:

- a transfers to B a major interest in land (the 'sale'); and
- out of that interest B grants a lease to A (the 'lease-back').

The relief for a sale and lease-back transaction is available on the lease-back element of a sale and lease-back, but not on the sale element. The lease-back element of a sale and leaseback arrangement is exempt from LBTT if:

- the parties enter into the sale transaction wholly or partly in consideration of the lease-back transaction;
- the only other consideration for the sale consists of or includes the payment of money or the assumption, satisfaction or release of a debt, or both; and
- where the parties are bodies corporate, they are not members of the same group for the purposes of LBTT group relief at the effective date of the lease-back transaction.

(Sch. 3)

Under Sch. 19, para. 27(3)(a), the first assignation of a lease following a sale and lease-back is taxed as if it were the grant of a new lease.

64120 Relief for certain acquisitions of residential property

There are a number of reliefs available in respect of certain acquisitions (generally by property traders) of residential property. They apply only in respect of areas of land that do not exceed the 'permitted area'.

The definition of 'permitted area' follows that in the CGT main residence relief – i.e. any property with an area of 0.5 ha or less will qualify. Larger properties will also qualify if 'required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character'.

A 'property trader' is an entity that carries on the business of buying and selling dwellings. It can be a company, an LLP or a partnership whose members are all companies or LLPs.

A 'house-building company' is a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

Acquisition by house-building company from individual acquiring new dwelling

This is a relief that obviates a double charge to LBTT when a private individual buys a house from a house-building company and as part of that purchase, sells his existing house to the house-building company. The first leg (the acquisition of the existing house by the house-building company) is exempt from the charge to LBTT, which is charged only on the purchase by the individual.

More precisely, where a dwelling ('the old dwelling') is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from LBTT if the following conditions are met:

- the individual (whether alone or with other individuals) must acquire a new dwelling from the house-building company;
- the individual:
  - must have occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition by the house-building company; and
  - must intend to occupy the new dwelling as his only or main residence;
- each acquisition must be entered into in consideration of the other; and
- the area of land acquired by the house-building company must not exceed the 'permitted area' (see above).

If the area of land acquired by the house-building company exceeds the permitted area, partial relief is available, in that the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Acquisition by a property trader from individual acquiring new dwelling

Where a dwelling ('the old dwelling') is acquired by a property trader or a company connected with a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met:

- the acquisition by the property trader must be made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies;
- the individual (whether alone or with other individuals) must acquire a new dwelling from a house-building company;

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64140 Multiple dwellings relief

This is a partial relief from LBTT, rather than a full exemption, which ensures that where a taxpayer is buying multiple dwellings in a single transaction, the taxpayer is not taxed at a higher tax band when the transaction involves dwellings which, if bought separately, would fall into a lower tax band. The relief works so that a prescribed minimum amount of tax is paid on land transactions involving the acquisition of multiple dwellings.

The relief applies where:

- the transaction includes at least two dwellings or at least two dwellings and other property; or
- there is a linked transaction involving a single dwelling linked to one of a number of transactions the main subject-matter of at least one of which involves some other dwelling or dwellings or some other dwelling or dwellings and other property.

The relief does not apply to land transactions that are leases for the purposes of Sch. 19, nor does it apply where crofting community right-to-buy relief is available (see 64180), or where group relief (see 64190), reconstruction relief (see 64200), acquisition relief (see 64200), or charities relief (see 64220) is available or has been withdrawn.

The relief calculation differs between cases where additional dwelling supplement applies and cases where it does not. The tax attributable to any one dwelling is derived by essentially finding the average consideration per dwelling, dividing by the number of dwellings, and then applying the tax rates appropriate to that average consideration.

However, the total amount of tax payable in relation to dwellings cannot be assessed at less than a minimum prescribed amount of 25% of the total amount of tax chargeable in relation to the dwellings in the absence of the relief.

Withdrawal of relief

The relief is withdrawn in full if a change of circumstance or change of plan takes place within the 'relevant period' and had that event occurred immediately before the effective date, relief would not have been available.

The relief is partially withdrawn if a change of circumstance or change of plan takes place within the 'relevant period' and had that event occurred immediately before the effective date, relief would have been available, but more tax would have been payable. Tax is chargeable as if the event had occurred immediately before the effective date and is calculated by

reference to the tax rates and bands in force at the effective date of the transaction.

The 'relevant period' is the shorter of:

- the period ending three years after the effective date of the transaction and
- the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of that dwelling to someone who is not connected with the buyer.

In the case of a transaction substantially performed before completion, the 'relevant period' runs from the date of substantial performance.

The recalculation of the tax due is based on the whole of the consideration given for the subject-matter of the transaction and the number of dwellings following the event, including any dwellings sold on prior to the event.

Where relief is withdrawn either partially or in full, the taxpayer must make a further LBTT return to Revenue Scotland.

(Sch. 5)

64150 Relief for certain acquisitions by registered social landlords

Registered social landlords (RSLs) are exempt from charge to LBTT on certain acquisitions.

A land transaction where the buyer is a registered social landlord is exempt where:

- the RSL is controlled by its tenants;
- the seller is one of the following:
  - an RSL;
  - the Scottish Ministers; or
  - a local authority;

or

- the transaction is funded with the assistance of a grant or other financial assistance made or given by way of a distribution under *National Lottery etc Act* 1993, s. 25 or under *Housing (Scotland) Act* 1988, s. 2.

An RSL is controlled by its tenants if the majority of its board members are tenants occupying properties owned or managed by it. 'Board member'

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means, where the RSL is a company, a director of that company; where the RSL is a body corporate whose affairs are managed by its members, a member; where the RSL is a body of trustees, a trustee; and in any other case, a member of the committee of management or other body entrusted with the direction of the RSL's affairs.

An RSL is defined as a body registered as such in the register maintained under *Housing (Scotland) Act* 2010, s. 20(1) (s. 65).

(Sch. 6)

64160 Alternative property finance relief

A number of reliefs are available to facilitate the use of Islamic (Sharia-compliant) finance products. They are generally only available where one of the parties is a 'financial institution', as defined by ITA 2007, s. 564B, omitting s. 564B(1)(d). The definition includes:

- a bank;
- a building society;
- a wholly owned subsidiary of a bank or building society;
- an insurance company.

Land sold to a financial institution and leased to a person

Relief from LBTT is granted for certain transactions carried out in pursuance of alternative financing arrangements, originally designed as Sharia-compliant 'mortgages'. The steps envisaged are:

- the financial institution purchases a major interest in the property concerned ('the first transaction');
- the financial institution grants a lease out of that interest (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant's right over or interest in the property) ('the second transaction'); and
- the financial institution and the person enter into an agreement that gives the person a right to require the institution or its successor in title to transfer the major interest purchased by the institution to that person ('the third transaction').

In these circumstances, the first transaction is exempt from LBTT if the seller is the person concerned (e.g. in the case of a 'remortgage') or another financial institution by which the interest was acquired under similar arrangements between it and that person.

The second transaction is also exempt from LBTT if the provisions relating to the first transaction have been complied with (including the payment of any tax chargeable).

The third transaction is exempt if:

- the provisions relating to the first and second transactions have been complied with (including the payment of any tax chargeable) and at all times between the second and third transactions:
  - the interest purchased under the first transaction are held by a financial institution; and
  - the lease or sub-lease granted under the second transaction is held by the person concerned.

The agreement relating to the transfer of the interest to the person is not treated as substantially performed unless and until the parties have entered into the third transaction and nor is it treated as a distinct land transaction by virtue of the rules relating to options and rights of pre-emption (under s. 12).

Land sold to a financial institution and person in common

Relief is also available where the property concerned is purchased jointly by the institution and the person as common owners.

The circumstances envisaged are where the financial institution and the person:

- purchase a major interest in land as common owners ('the first transaction');
- enter into an agreement whereby the person has a right to occupy the land exclusively ('the second transaction'); and
- enter into an agreement whereby the person has a right to require the institution to transfer to that person (in one or in a series of transactions) the whole interest purchased under the first transaction (a 'further transaction').

In such circumstances, the first transaction is exempt from tax if the seller is the person concerned or another financial institution by which the interest was acquired under similar arrangements between it and that person.

The second transaction is also exempt from LBTT if the provisions relating to the first transaction have been complied with (including the payment of any tax chargeable).

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A further transaction is exempt from tax if:

- the provisions relating to the first transaction have been complied with (including the payment of any tax chargeable) and at all times between the first and the further transaction:
  - the interest purchased under the first transaction are held by a financial institution and the person as common owners; and
  - the land is occupied by the person under the agreement entered into by means of the second transaction.

The agreement entered into by means of a further transaction is not treated as substantially performed unless and until the whole interest purchased by the first transaction has been transferred to the person concerned and nor is it treated as a distinct land transaction by virtue of the rules relating to options and rights of pre-emption (under s. 12).

A further transaction that is exempt from LBTT in these circumstances is not a notifiable transaction unless it involves the transfer of the whole of the purchased interest, so far as not transferred by a previous further transaction.

It should be noted that neither of the above reliefs applies if group relief or reconstruction or acquisition relief is available for the first transaction or has been withdrawn from that transaction.

Exempt interests

An interest held by a financial institution as a result of the first transaction under either of the above reliefs is an exempt interest (unless the first transaction is exempt by virtue of group relief or reconstruction or acquisition relief) but ceases to be so when the lease or agreement relating to the second transaction ceases to have effect or the right pertaining to the third or further transaction ceases to have effect or becomes subject to a restriction.

Land sold to a financial institution and resold to a person

A similar relief is available where a financial institution purchases a major interest in land ('the first transaction') and sells that interest to a person ('the second transaction'), and the person grants the institution a standard security over that interest.

The first transaction is exempt from LBTT if the seller is:

- the person concerned; or
- another financial institution by which the interest was acquired under other similar arrangements.

The second transaction is also exempt from LBTT if the financial institution complies with the provisions relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is at least the market value of the interest (or, in the case of the grant of a lease at a rent, the rent)).

Anti-avoidance rule

It should be noted that none of these reliefs applies to alternative finance arrangements if those arrangements, or any connected arrangements, include those for a person to acquire control of the relevant financial institution, which in turn include arrangements to acquire such control only if one or more conditions are met.

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64170 Relief for alternative-finance investment bonds

The rationale behind this relief is similar to that of alternative property finance relief (see 64160), in that if the financing for the purchase of a land transaction is effected by alternative-finance investment bonds (AFIBs), then the transaction should not be taxed more than once in consequence of the change of ownership of the acquired land interest as part of the financing arrangements.

AFIBs are certain Islamic structured financial instruments (referred to as 'sukuk') that are compliant with the Shari'a law prohibition on paying or receiving interest.

Basic principles of the relief

The qualifying conditions are complex and extensive and outside the scope of this commentary and are referred to in Sch. 8, Pt. 3 as Conditions A to G. The basic principles for the relief are related below:

- The 'first transaction' – the buyer of a property transfers a 'qualifying interest' in the land to the bond-issuer' in exchange for financing, which is structured with the issue of an AFIB, subject to an agreement that when the bond-issuer ceases to hold the interest it will be transferred back to the buyer. A 'qualifying interest' is a major interest, excluding a lease for 21 years or less. This is Condition A.
- The bond-issuer holds the major interest as a bond asset (as defined by ITA 2007, s. 564G) until the bond is terminated (within 10 years of the issue of the bond as stipulated to qualify). These are Conditions B and F.

NB: the bond-holder under an AFIB is not treated as having an interest in the bond assets, nor as a trustee of the bond assets.

- the seller and the buyer are to cease to be members of the same group by reason of the buyer's ceasing to be a 75% subsidiary of the seller or of a third company.

This last event does not prevent relief to the extent that the arrangements are for the purposes of an insurance-company demutualisation procedure as described above.

Group relief is also unavailable if the transaction:

- is not effected for bona fide commercial reasons; or
- forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to the tax.

A 'group company' means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

Withdrawal of group relief on degrouping event

Group relief is withdrawn if the buyer ceases to be a member of the same group as the seller:

- within three years of the effective date of the transaction; or
- in pursuance of, or in connection with, arrangements made before the end of that period.

However, it is withdrawn only if at the time of the degrouping event ('the relevant time'), the buyer or a 'relevant associated company' holds a chargeable interest:

- that was acquired by the buyer under the intra-group transaction; or
- that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed. There is a partial withdrawal if part only of the asset is held at the date of the degrouping event.

The amount chargeable on such a withdrawal is the tax that would have been chargeable in respect of the relevant transaction had it not been for the relief and taking the chargeable consideration as an amount equal to the market value of the subject-matter of the transaction, or an appropriate proportion of that tax. If the acquisition was the grant of a lease at a rent, then the amount chargeable is based upon that rent.

'Relevant associated company', in relation to the buyer, means a company that:

- is a member of the same group as the buyer immediately before the purchaser ceases to be a member of the same group as the seller; and
- ceases to be a member of the same group as the seller in consequence of the buyer's so ceasing.

Cases in which group relief not withdrawn

Group relief is not withdrawn in some cases, for example, where the buyer ceases to be a member of the same group as the seller by reason of the winding-up of the seller or of another company that is above the seller in the group structure.

The degrouping rules do not apply when the seller company leaves the group.

Cases involving successive transactions

Group relief may also be withdrawn if:

- there is a change in the control of the buyer that occurs:
  - within the three years following the effective date of the relevant transaction; or
  - in pursuance of, or in connection with, arrangements made before the end of that period;
- apart from this rule, group relief in relation to the relevant transaction would not be withdrawn; and
- any previous transaction falls within the following:
  - the previous transaction is exempt from charge by virtue of group relief, reconstruction relief or acquisition relief (see 64200);
  - the effective date of the previous transaction is less than three years before the date of the change in the control of the buyer;
  - the chargeable interest acquired under the relevant transaction by the purchaser in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the purchaser in relation to the previous transaction; and
  - since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of group relief, reconstruction relief or acquisition relief (see 64200).

Where these conditions are satisfied, the group-relief withdrawal rules apply in relation to the relevant transaction as if the seller in relation to

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